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DRUG LAW ENFORCEMENT IN CRISIS: COPS ON STEROIDS

*Philip J. Sweitzer**

INTRODUCTION: POLICE AS FUNCTIONAL STRENGTH ATHLETES – A BONA FIDE OCCUPATIONAL QUALIFICATION OF CONTEMPORARY POLICING¹

As inner cities have become increasingly violent with the proliferation of the drug culture, the “war on drugs” has fostered a parallel development in police conduct: the emergence of a militaristic, hyper-masculine “cop.”² And, as “zero-tolerance” policies have become normative in cities like New York, Los Angeles and - more recently - in Baltimore and Washington, the paradigm shift away from the community-caretaking police officer to violent “soldier” cop seems to escalate proportionally. While many urban governments articulate policies committed to treatment of drug offenders, privately authorities are forced to concede that the police culture in urban areas –

* B.A., The Pennsylvania State University, 1976; J.D., The University of Baltimore School of Law, 2004. The author gratefully acknowledges the learned assistance of Prof. Byron L. Warnken in developing and researching this article. Prof. Warnken’s extensive resume in administrative police proceedings and issues in law enforcement were a primary influence in seeking his guidance and mentoring for the piece, along with the author’s own interest in weight training.

¹ Police departments throughout the country have “fitness test” clauses written into “minimum qualifications” requirements of the job as a condition of hire. *E.g.*, the Baltimore City Police Department imposes the following rigorous requirements:

Fitness Testing: All applicants will be required to pass a job-related fitness test administered by

Departmental personnel. Scope of Fitness Testing: Testing will consist of the following:

Situps: The score is the number of bent-leg sit-ups performed in one minute.

Bodydrag: You must drag a dummy 5’7” in height and 167 lbs. In weight a distance of 50 feet in 10 seconds.

Sit & Reach: Test measure the range of motion of the lower back and hamstrings.

Benchpress: One repetition maximum bench press using Dynamic Variable Resistance (DVR) protocol. The score is a ration of weight pressed divided by bodyweight.

Baltimore Police Department, Recruitment, at <<http://www.ci.baltimore.md.us/government/police/recruit.html>> (last visited September 10, 2004).

New York merely indicates in its pre-hire language that a candidate for the police academy will be required to “pass all ... physical examinations.” *See* NYPD Recruiting, available at: <<http://www.nypd2.org/html/recruit/requirements.html>> (last visited Sept. 10, 2004).

Los Angeles has as part of its pre-hire and ongoing employee retention a body composition testing program, setting specific upper limits on percentage of body fat for both police officers and firefighters. *See* Los Angeles Police Department Weight Standards, at <http://www.cityofla.org/PER/OHSD/Weight.htm> (last visited Sept. 10, 2004).

² Peter J. Kraska, *Playing War: Masculinity, Militarism and Their Real-World Consequences*, MILITARIZING THE AMERICAN CRIMINAL JUSTICE SYSTEM: THE CHANGING ROLES OF THE ARMED FORCES AND THE POLICE, 141-147 (Peter B. Kraska, ed., 2001).

as well as rural ones in some instances - has grown increasingly violent in a direct escalation of the drug war.³

The degree of violence into which police officers, in such a culture, can descend has recently shocked the conscience of the nation in *United States v. Volpe*.⁴ In that case New York City police officers were charged with sexually assaulting the detainee, Abner Louima, by anally sodomizing him with a broken broom handle.⁵ (Two of the four, Thomas Bruder and Thomas Wiese were actually charged with the ancillary crime of obstruction of justice to impede the subsequent investigation, while Charles Schwarz was charged concurrently with Justin Volpe with the assaults, conspiracy, and obstruction of justice.)⁶ As a result, Louima was hospitalized with multiple internal injuries, including a perforated bladder and bowel.⁷ The case was significant, not only for the level of brutality inflicted on the victim, but also for the especially heinous nature of the act, covered in the New York press as a case of modern homosexual torture.⁸

Significantly, the author believes, the officers involved in the arrest shared common physical traits and interests: specifically, they were all involved either in weightlifting or the martial arts.⁹

³ Christopher Swope, *Restless for Results*, GOVERNING MAGAZINE (Apr. 2001)(where the author describes the newly-elected O'Malley Administration's results-orientation and its support of measuring the success of drug-treatment centers with purely statistically-driven models). Rudolph Giuliani was less enthusiastic in his support of drug treatment however, particularly methadone, and was roundly criticized by the therapeutic community. David M. Halbfinger, *Giuliani's Methadone Proposal Is Backed By Little Evidence*, N.Y. TIMES, Aug. 19, 1998, at B1. The Abner Louima incident also occurred during Mayor Giuliani's Administration, which was plagued with charges of excessively forceful arrests and police brutality. See Kenneth Roth, Executive Director, Human Rights Watch, *An Open Letter to Mayor Rudolph Giuliani (July 15, 1998)*, <http://www.hrw.org/press98/july/ny-let.htm> (last visited September 10, 2004). During the course of the trial, a lot of controversy swirled around Mayor Giuliani for "failing to devote adequate attention to crimes by the police, as [he] confront[ed] crimes by others." *Id.*

⁴ 42 F. Supp. 2d 204, (E.D.N.Y. 1999), *aff'd*, 224 F.3d 72 (2d Cir. 2000).

⁵ *Id.*

⁶ *Id.*

⁷ See Baltimore Police Department Recruitment Home Page, *supra* note 1.

⁸ Amnesty International, in fact, released a 2001 report entitled "Crimes of Hate: Conspiracy of Silence," detailing the Louima case as just such an incident. See A I Reports, *available at* http://www.amnestyusa.org/askamnesty/torture200111_2.html (last visited Sept. 10, 2004).

⁹ Peter Noel, *The Making of a Guilty Plea*, VILLAGE VOICE June 1, 1999 at 64. There was also widespread speculation that Volpe, a member of the 70th precinct, had purchased the steroids in question from another four-year veteran of the force serving in the same precinct, Ralph Dols, who was later gunned down in a gangland-style execution on August 25, 1997, during the testimonial phase of the trial. Dols, a bodybuilder, was widely reported to be using and distributing

During the trial, several accounts in the New York media associated their powerful muscular physiques - particularly those of Justin Volpe and Thomas Bruder - with abuse of anabolic steroids.¹⁰

Steroid use, as it turns out, is the not-so-quiet little secret of state and city police departments as well as municipal fire departments across the country, not that this should come as much of a surprise.¹¹ Police officers often find themselves in situations requiring the use of physical force to either subdue or restrain suspects to effect custodial arrests. Therefore, most are occupationally-mandated, functional strength-athletes, whether they wish to pursue this weight training regimens recreationally or not.

Firefighters, likewise, frequently confront physically daunting circumstances requiring the carriage of heavy equipment and victims. As such, superior strength and conditioning are the stock in trade of both. The need for the cultivation and development of physical superiority has, therefore, emerged as a common theme among police officers and firefighters with an endemic nascent culture of strength attached. This culture of strength frequently manifests itself in police/fire/military athletic competitions, such as arm-wrestling contests, weight-lifting meets and

anabolic steroids. Subsequent investigation has linked the murder to the Russian mob in the Sheepshead Bay area of Long Island. Bill Sanderson, *Slain Cop Linked to Steroid Ring*, NEW YORK POST, August 13, 1999 at 1.

¹⁰ Noel, *supra* note 9, at 64.

¹¹ Chris Shugart, *Cops on Gear: A Roundtable Discussion*, TESTOSTERONE, available at <http://www.t-mag.com/articles/202cops.html> (last visited September 10, 2004) (an anonymous roundtable interview of three police officers from divergent jurisdictions – two of whom are assigned to narcotics enforcement - who discuss their own experience cycling steroids as part of an ongoing work-out regimen. The introduction to the group interview follows.

Imagine if your job was to take down bad guys and make the world a safer place, just like your favorite superhero. You'd probably want to be pretty big and strong, right? Heck, your body alone would be a visual deterrent when dealing with baddies. Now imagine if there was a magic potion that could help you increase your super powers. You'd probably take it, right? The problem is, this magic potion is illegal to use in most places. If you use it, you're breaking the law, yet, ironically, your job is to uphold the law.

This is the dilemma faced today by many law enforcement officers who use performance enhancing drugs. Is this the ultimate example of hypocrisy? Or does this situation merely exemplify the fallacy of America's so-called war on drugs? Without passing judgement [sic], *T-mag* decided to talk to three steroid-using cops about this topic. The names have been changed to protect the officers.

Id.

other strength-defined athletic pursuits.¹²

As a means for achieving such physical superiority, resistance strength training - weight lifting - also emerged in the late seventies and early eighties into the mass, popular culture as an efficient and effective regime.¹³ But, as a positive cultural development - strength training has been demonstrated to counter the degenerative effects of aging and induce many other positive physical and psychological benefits¹⁴ - resistance strength training has its darker associations as well: specifically, the widespread use of performance enhancing drugs in sport - anabolic steroids in particular - has a direct connection to the popularization of strength training through weightlifting and bodybuilding.¹⁵

¹² See *Coming Events*, POWERLIFTING USA Feb. 2003 at 49 (listing several police/fire/military weightlifting contests throughout the United States); see also Can-Am Police/Fire Games, Official Website available at <http://www.canampolicefiregames.org> (last visited Sept. 10, 2004).

¹³ See, e.g., CHARLES GAINES, PUMPING IRON, *passim* (Simon & Shuster, 1974).

¹⁴ E.g., Georgia State University, *The Benefits of Exercise*, available at <http://www.gsu.edu/~wwwfit/benefits.html> (last visited September 10, 2004); Indiana University, *The Benefits of Weight Training*, available at <http://www.indiana.edu/~health/weightrn.html> (last visited Sept. 10, 2004) (detailing the following exemplary health benefits of resistance weight training: improved glucose tolerance and diminution of the likelihood of developing diabetes; improved joint flexibility and range of motion; improved appearance; improved muscular strength; greater caloric expenditure, even when at rest; diminution of likelihood of developing osteoporosis).

¹⁵ Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 802(41)(A) (codified as amended in scattered section of the United States Code) provides that: The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, and includes--

- (i) boldenone,
- (ii) chlorotestosterone,
- (iii) clostebol,
- (iv) dehydrochlormethyltestosterone,
- (v) dihydrotestosterone,
- (vi) drostanolone,
- (vii) ethylestrenol,
- (viii) fluoxymesterone,
- (ix) formebulone,
- (x) mesterolone,
- (xi) methandienone,
- (xii) methandranone,
- (xiii) methandriol,
- (xiv) methandrostenolone,
- (xv) methenolone,
- (xvi) methyltestosterone,
- (xvii) mibolerone,
- (xviii) nandrolone,
- (xix) norethandrolone,

The subsequent dissemination of resistance weight training throughout sports as a means to the end of achieving prowess in any number of athletic pursuits, therefore, has raised the specter of steroid use everywhere in sport.¹⁶ Implicated sports such as weightlifting, wrestling, and football come to mind initially, where pure strength is the primary athletic determinant; however, anabolic supplementation has more recently been reported widely. In baseball, for example, the Mark McGwire, Ken Caminiti, Jose Canseco and Barry Bonds controversies come to mind.¹⁷ In track and field, the Ben Johnson controversy rocked the Olympic world.¹⁸ Today, the application of

(xx) oxandrolone,
(xxi) oxymesterone,
(xxii) oxymetholone,
(xxiii) stanolone,
(xxiv) stanozolol,
(xxv) testolactone,
(xxvi) testosterone,
(xxvii) trenbolone, and
(xxviii) any salt, ester, or isomer of a drug or substance described or listed in this paragraph, if that salt, ester, or isomer promotes muscle growth.

Rick Collins, J.D., points out in his treatise on steroid law that the single defining characteristic of the drugs criminalized in this section of the United States Code is *their capacity for promoting the growth of muscle tissue*, and that *no adverse health consequence is ever addressed in the statutory language itself*. See RICK COLLINS, LEGAL MUSCLE: ANABOLICS IN AMERICA, 2002. See also Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 812(c)(codified as amended in scattered sections of the United States Code).

¹⁶ Jose Antonio, an Assistant Professor of Exercise Physiology at Nebraska, addressed the Professional Baseball Strength and Conditioning Coaches Society, in January, 1999, and offered the following apology for implementing steroid cycles in player training regimens:

“I could safely put *any athlete on a cycle of anabolic steroids, and he'd get improvement in muscle mass, lean body mass and loss of fat, and his performance would go up, with no side effects. I guarantee it*. There's plenty of evidence that the supposed ill effects of using steroids are way overblown. The P.C. thing to say is steroids are not safe, but the science doesn't support it. I believe that if you use a low dose, 600 milligrams or less per week, of testosterone enanthate or Deca-Durabolin (nandralone decanoate), you can get great effects in terms of performance with no side effects.”

ESPN MAGAZINE, available at <http://espn.go.com/magazine/vol3no07roids.html> (last visited Sept. 10, 2004) (emphasis added).

¹⁷ Caminiti, Canseco, McGwire and Bonds all had notorious or rumored associations with steroids. Canseco admitted using the drugs; McGwire's use of androstenedione was widely publicized, a precursor, prohormone with supposed anabolic properties. Tom Verducci, *Steroids in Baseball: Confession of an MVP*, SPORTS ILLUSTRATED SPECIAL EDITION (May 28, 2002)(in which Ken Caminiti concludes that he had “made a lot of mistakes in [his] life (in an overt reference to his alcoholism), but *using steroids wasn't one of them*.” He also asserts that at least half the athletes in the sport are cycling steroids.). Caminiti had other substance abuse problems, including alcoholism and addiction to cocaine and other opiates, eventually dying from overdose of opiates in New York on October 10, 2004, of a fatal heart attack at the age of forty-one years. See Pete Bowles, *Drug OD killed Caminiti*, CHI. TRIB., Nov. 2, 2004, at C3.

¹⁸ *Id.*

resistance strength training is universal, evident in such sports as baseball, hockey, basketball, soccer, lacrosse, or other sports. Steroid use among athletes of every stripe, therefore, is well-documented. To quote a popular online bodybuilding periodical, *Testosterone Magazine*, “...everybody’s juicin’,” it seems.¹⁹

For police officers, however, this is particularly problematic: anabolic steroids are Schedule III controlled substances, subjecting users to criminal penalties of up to five years in prison and fines of up to \$250,000.00 for convictions on a charge of possession with intent to distribute.²⁰ For several pro bodybuilders, as well as police officers, these penalties have been enforced.²¹

Moreover, both police officers and firefighters are occupationally predisposed to steroid use, because functional strength and fitness is a *bona fide* occupational qualification for each, just like for professional athletes. Use of anabolic drugs by police officers and firefighters, however, points up the current philosophic crisis in U.S. drug enforcement policy and the limitations of that policy. Despite harsher penalties and increasing prosecutions, as John Burge points out in his definitive consideration of steroid legislation, use of anabolic steroids is nevertheless still on the rise.²²

This article will consider the social and legal implications of such increased use, consider the history and development of current steroid law and document its sporadic application and enforcement, where use of anabolic steroids by law enforcement officers is implicated, organized around a consideration of three specific cases: *Grubb v. Borough of Hightstown*,²³ *United States v.*

¹⁹ See Shugart, *supra* note 11.

²⁰ John Burge, *Legalize and Regulate: A Prescription for Reforming Anabolic Steroid Legislation*, 22 LOY. L.A. ENT. L. J. 33, 34 (1994).

²¹ See Luke Cyphers & Michael O’Keefe, *Supplements: Bitter Pills Swallow Sports*, N. Y. DAILY NEWS, July 25, 2001. (detailing the felony convictions of bodybuilders Craig Titus and Dan Duchaine for possession and distribution of anabolics, as well as the connection of Metabolife founder, Michael J. Ellis – a former police officer – to a methamphetamine lab in San Diego. Metabolife is a dietary reducing supplement that contains ephedra alkaloids, generally believed to stimulate metabolic rate and caloric expenditure.)

²² See Antonio, *supra* note 16.

²³ 802 A.2d 596 (N.J. 2002).

Woodall,²⁴ and *New York v. Foley*.²⁵ These cases – and others - involve police officers at every level of government, from county sheriff's deputies to New York State Troopers, all of whom are involved in personal administration, use, and/or distribution of anabolic steroids.

In so doing, this article will attempt to: 1.) postulate a credible hypothesis explaining the cultural context for such use; 2.) expand on Burge's hypothesis that steroids should be removed from Schedule III,²⁶ be legal for controlled athletic use, and be monitored by physicians on the basis of more current scientific research; and 3.) apply those data to evaluate and critique use of these drugs specifically by law enforcement officers, arguing that the physical benefits of *moderated, controlled* steroid use ought to be as determinative of social policy as the risk of overuse and abuse. As such, as a matter of enforcement practice, imputing the stigma of criminality to athletes who happen to be police officers and firefighters is as inappropriate as imputing that stigma to a competitive professional major league baseball player. Moreover, criminalizing use of the drugs has – in fact – established their covert abuse.

Finally, this article will synthesize these considerations into a logical conclusion, i.e., that the officers implicated in these cases are singled out for particular derision and exposure, because they represent the complete failure of law enforcement practice and the fallacy of prohibition as policy.

²⁴ No. 01-CR-441-ALL (M.D. N.C., Aug. 2, 2002)(sentence imposed).

²⁵ No. 03051B-2002 (Suffolk Co., NY, Sept. 25, 2003)(sentence imposed).

²⁶ Burge, *supra* note 20. As Burge points out, as schedule III drugs, steroids are classified in the same way as cocaine, amphetamines, and methamphetamines, making possession a felony offense. Classification as schedule III substances, however, was largely driven by political, rather than scientific or pharmaceutical considerations, as will become apparent below.

II. ANABOLIC STEROIDS: “HE” HORMONES ON DEMAND AND THE LAW²⁷

A. *Brawn And Bravado By Design*

To comprehend the particular significance of this repudiation requires a basic understanding of the enhancing drugs themselves. Burge has termed anabolic steroids “high technology drugs.”²⁸ Rick Collins actually considers them “medications.”²⁹ Though the author’s purpose here is neither to embark on a prolonged scientific discussion of the drugs, nor to become embroiled in arguing the merits of such distinctions, each is actually correct: as Collins points out, many of these isolates were specifically developed for dispensation by prescription, long before they were scheduled as controlled, dangerous substances.³⁰ Burge’s technology metaphor, however, seems more on point: as he and others point out, athletes view use of anabolic steroids in much the same way they view other extensions of technology, whether that be nutritional supplementation or cutting-edge equipment.³¹ This “technology” metaphor has specific implication and application, moreover, to use of the drugs by police officers, as will be seen.

Because the efficacy of anabolic steroids is well established,³² an extensive discussion of the scientific rationale for their role in a strength training regimen is not required: both scientifically and anecdotally, as Pope and others have commented, the results of steroid administration in

²⁷ Andrew Sullivan, *The He Hormone: Testosterone and Gender Politics*, N.Y. TIMES MAGAZINE, § 6, April 2, 2000 at 46.

²⁸ See Burge *supra* note 20.

²⁹ See Collins *supra* note 15.

³⁰ *Id.*

³¹ Cyphers, *supra* note 21; see also Jim Parry, Doping and Sport: Paper to the IEC Conference on Sport, available at <http://www.blues.uab.es/olympic.studies/doping/parry3.htm> (last visited Sept. 10, 2004) (in which he discusses the particular application of technology in sport today, ranging from aerodynamic biking gear and apparel to “slick” swimming gear, to technologically advanced athletic footwear, expresses empathy for Ben Johnson’s predicament as follows: “He was scapegoated, vilified and denied the opportunity at the height of his powers to do what he did best because he was guilty of the greatest sin: getting found out. He inhabited a culture in which drug-taking was seen as a *logical extension of technological aids designed to give athletes from one camp or country an edge over others*”(emphasis added)).

³² CHARLES E. YESALIS, ANABOLIC STEROIDS IN SPORT AND EXERCISE, 1993.

athletic training are frequently stunning.³³ However, in addressing the topic of steroid use by police officers, it is important to understand specifically why the drugs were developed and what they were developed to do, because their use by police officers especially conforms to that design: in a combative situation, as Sullivan has noted, testosterone and its derivatives are “facilitators of risk.”³⁴ More specifically, in a competitive or combative situation, they virtually guarantee an edge.³⁵

Steroids are testosterone derivatives that, when ingested or injected, build tissue, particularly muscle tissue.³⁶ Thus, they have an “anabolic” effect, by increasing muscle mass and density through enhanced protein synthesis at the cellular level.³⁷ Anabolism is the opposite process of catabolism. It is the breakdown of tissue, which is the natural effect of aging, exercise, and oxidation.³⁸ Steroids act to counteract this natural breakdown.

Steroids were specifically developed in Europe beginning in the mid-nineteenth century with the identification and isolation of testosterone by German and Dutch scientists from the testes of roosters and bulls.³⁹ In 1935, the German scientist Adolf Butenandt synthesized it, with much of the experimentation in the field shifting to the Nazi military in the years preceding World War II.⁴⁰

³³ *Id.*; see also, David L. Katz, & Harrison G. Pope, Jr., *Affective and Psychotic Symptoms Associated with Anabolic Steroid Use*, 145 AM. J. PSYCHIATRY 487 (1988)(documenting the psychiatric effects of steroid use among thirty-one subjects, twenty-nine male and two female, thirty percent of whom had used the drugs as early as age fifteen. One of the reported subjects was an eighteen-year-old “man,” whose body weight increased from 135 pounds to 230 pounds over a two-year period, and whose ability to do a weight-bearing squat increased from 135 pounds for two repetitions at the onset of his use of the drugs, to 655 pounds at the end of four steroid “cycles,” totaling fifty-five weeks. Moreover, the subject experienced “dramatic” gains in the development of muscular tissue and at 230 pounds had a remarkably low percentage of body fat. The study makes the statement that the medical literature to date had probably “underestimated the potential of these drugs under conditions of actual use by the athletes.”

³⁴ See Sullivan, *supra* note 27 at 47 (where he comments, “if your job is to whack home runs, *capture criminals*, or play the market, then testosterone is a huge advantage.”) (emphasis added).

³⁵ Sullivan, *supra* note 27 at 47 (where Sullivan posits several examples of professions in which elevated serum testosterone levels are typical, including those of the military, the police, and trial lawyers).

³⁶ See Yesalis, *supra* note 32, *passim*.

³⁷ See Yesalis, *supra* note 32, *passim*.

³⁸ See Yesalis, *supra* note 32, *passim*.

³⁹ See Yesalis, *supra* note 32, *passim*.

⁴⁰ See Yesalis, *supra* note 32, *passim*. Nazi military experimentation with steroids coincided with experimentation with amphetamines, for the specific purpose of creating a more aggressive fighting force. Steroids were also reportedly used

However, much of the initial credit for understanding the efficacy of testosterone in building strength and muscle mass is due the Soviet Union, whose Olympic and amateur weight lifters discovered its particular muscle-building properties in the late Forties.⁴¹ That exposure and knowledge passed to the Eastern Bloc countries. The East Germans, for example, already having introduced steroid programs into the strength-related sports of weight-lifting and wrestling, eventually engaged even their young, female Olympic swimmers in a scandalous, orchestrated regimen of compelled anabolic steroid administration during the Seventies.⁴²

Steroid use in the United States was widely reported in the Forties and Fifties in the West Coast bodybuilding community, but burst onto the U.S. scene overtly in 1954 when Dr. John Ziegler, a team physician for the U.S. weightlifting team at the World Championships in Vienna that year, managed a bit of pharmacological espionage from the Russians.⁴³ Later, Ziegler, a physician/weight-lifter/sports researcher-in-residence at Pennsylvania's famed York Barbell Club, touted the beneficence of the methyltestosterone tablets he discovered in Vienna, looking to refine their effect.⁴⁴ His experiment paid off: in response to his overtures, the Swiss pharmaceutical giant Ciba⁴⁵ developed the ubiquitous bodybuilding "pill" Dianabol (methandrostenolone), thus legitimizing its use in strength sports with the imprimatur of his medical credential.⁴⁶

by the Germans at the 1936 Olympic games, though Yesalis disputes this claim, n. 32 *supra*. The efficacy of hormones – testosterone, insulin and human growth hormone - has also been studied by the United States military, however, which – though it vigorously prosecutes steroid users within its ranks – has come to the *medical* conclusion that controlled use demonstrates benefits for sustaining and promoting muscle mass and strength, notwithstanding some inherent risks. See Food and Nutrition Board, *The Role of Protein and Amino Acids in Sustaining and Enhancing Performance*, (National Academies Press, 1999).

⁴¹ JOHN D. FAIR, *MUSCLETOWN, USA: BOB HOFFMAN AND THE MANLY CULTURE OF YORK BARBELL*, 1999.

⁴² See Lynn Sher, East German Doping Scandal, ABC News, available at abcnews.go.com/onair/2020/2020_001013_egermanathletes_feature.html (last visited Feb. 10, 2003).

⁴³ See Michael Martino, *Ergogenic Aids*, Powerpoint Presentation of the Georgia College & State University Exercise Science Program, available at <http://www.faculty.de.gscu.edu/~mmartino/1> (last visited Mar. 1, 2003).

⁴⁴ Fair, *supra* note 41.

⁴⁵ Now a subsidiary of Novartis International, AG. See, Ciba Specialty Chemicals, Inc., Home Page, available at: <http://www.ciba.com> (last visited Nov. 12, 2004).

⁴⁶ Fair, *supra* note 41. Much of the controversy with anabolic steroids, in fact, and their potential side effects revolves around whether the drugs are dosed orally or intramuscularly. Dianabol and other orally administered anabolics are

As has already been seen, however, much of the original European experimentation with anabolics has specific ties to the military.⁴⁷ This is important, for three reasons. First, steroids have not only physical, but also psychologically affective properties; second, both the physical and the psychological effects of steroids were considered highly desirable by military authorities sponsoring their development through extensive programs of pharmacological experimentation; and, third, contemporary policing has largely become militarized.⁴⁸

Steroids work to increase muscle mass and strength androgenically, as well as anabolically. The administration of anabolic steroids – derivatives of testosterone – therefore has a direct masculinizing effect on users.⁴⁹ This masculinizing effect, moreover, has psychological as well as physical implications, as both Pope and Sullivan have noted.⁵⁰ The psychological effects of steroid administration – which one might associate with traditionally-labeled “masculine” behavior – include emotional rigidity, risk-tolerance, aggression, combativeness, and self-confidence, though these effects are by and large anecdotally documented.⁵¹ More recently, however, the Harvard

particularly controversial, because since they are water-based and orally administered, they must be metabolized through the liver. Generally, this increases the likelihood that the user may experience liver-involving side effects, such as tumor growth. *See* Burge, *supra* note 17.

⁴⁷ Yesalis, *supra* note 32, *passim*.

⁴⁸ *See* Sullivan, *supra* note 27; *see also*, Yesalis, *supra* note 32; *see also*, Kraska, *supra* note 2.

⁴⁹ Sullivan, *supra* note 27, (describing his personal experience with injectible testosterone prescribed as part of his HIV therapy, notes its particular correlation not only to physical but also psychological dominance). Steroid users, moreover, regularly document the masculinizing effects of testosterone, including increased development of body and facial hair, pattern baldness, acne, deepening of adult male voices, etc. *See* Yesalis, *supra* note 32.

⁵⁰ *Id.*

⁵¹ The National Institute for Drug Abuse conducted targeted behavioral studies to establish a link between “abuse” of anabolic steroids and negative behaviors such as aggression, paranoia, and irritability. Though its study tends to establish the link in three out of four specific study groups given “high dosages,” NIDA’s official statement remains noncommittal on the question. *See* National Institute on Drug Abuse, *Anabolic Steroid Abuse*, available at <http://www.drugabuse.gov/PDF/RRSteroi.pdf> (last visited Sept. 10, 2004). There are very specific studies, however, confirming the physiological masculinizing effects of steroid administration in animals, and striking anecdotal accounts of uncontrollable rage – in several cases ending in murder - in heavy human steroid users. *See* Andrew Taber, ‘*Roid Rage*, SALON MAGAZINE (Nov. 18, 1999), available at <http://www.salon.com/health/feature/1999/11/18/steroids/print.html> (last visited Sept. 10, 2004) (where Taber discusses the murder cases of bodybuilders Bertil Fox and Sally McNeil and intimates that abuse of the drugs may have been responsible for the premature deaths of Florence Joyner and Walter Payton. Other accounts of steroid-induced emotions include feelings of invincibility, sexual voracity, and rage. The documented psychiatric effects of the study include irritability, lack of concentration, sleep disturbances, and headaches, as well as some signs of depression once administration of the drugs stopped and the subject “came off” the

psychiatrist Harrison Pope, arguably the singular expert in steroids' psychiatric profile, has also documented testosterone's ameliorative effects in treating depression in men.⁵²

In sum, steroids function in two major ways: first, they increase protein synthesis at the cellular level in muscle tissue, increasing muscle size and strength; second, they masculinize users, both physically and psychologically. Steroids' androgenic effect is therefore as significant as its anabolic effect: emotional rigidity and resistance to physical and emotional stress during periods of prolonged or heavy conflict is an advantage. As Sullivan points out, "in most combative, competitive environments, especially physical ones, the person with the most T (testosterone) wins."⁵³

B. Prohibition: Why Congress Should Have Listened To The American Medical Association

From the legitimacy of medically-endorsed use in the Fifties, to outright prohibition in the early Nineties, the story of the evolution of steroid legislation follows a rather typical thematic course: first, criminalize trafficking in the drug; second, sanction individual use and possession.⁵⁴ What is unique about steroid legislation, as both Burge and Collins point out, is that this two-tiered level of criminalization, applied to steroid prohibition, actually followed a somewhat uniquely bifurcated procedural path. Initially, the intent of the law was only to criminally sanction trafficking in the drugs.⁵⁵ Therefore, individual use of anabolics was not implicated.

cycle. Moreover, the study seems to establish a direct correlation between dosage and both the nature and extent of psychiatric symptoms.)

⁵² William J. Cromie, *Testosterone Drives Away the Blues*, Harvard Gazette, available at <http://www.news.harvard.edu/gazette/2003/01.09/01-testosterone.html> (last visited Sept. 10, 2004) (detailing the results of Pope's recent study with AndroGel, a dermal-release patch formulation of testosterone, in treating depression in men. Countering his earlier attribution of depression to cessation of steroids, Pope's more recent study *endorses the use of the testosterone transdermal patch as an effective therapy for treating the illness*. Moreover, the test subjects also uniformly gained muscle mass and lost body fat, even though the testosterone therapy was not absolutely effective in brightening every test subject's mood.).

⁵³ Sullivan, *supra* note 27, at 46-48.

⁵⁴ Anti-Drug Abuse Act of 1988, 100 P.L. 690, § 2401, 102 Stat. 4312 (1988)(codified at 21 U.S.C. § 1501)(where the clear intent of the law is to limit the imposition of criminal sanctions to "any person who distributes or possesses with intent to distribute" anabolics).

⁵⁵ *Id.*

Collins, in his treatise on steroid law, opines that the first phase in this bifurcated prohibition process actually “worked well,” with due important exception: distribution of steroids through the mail.⁵⁶ With mail delivery a facile way of doing business, a huge black market for the drugs therefore developed in the late Eighties.⁵⁷ Moreover, with the growth of this black market, questions about pharmaceutical integrity and quantities of anabolics being manufactured began to emerge, prompting calls from the medical community to schedule steroids in order to ensure pharmacological genuineness and distribution controls.⁵⁸ Even so, Collins again points out that the intent of the initial call for scheduling was primarily to “keep Big Pharmacy honest,” rather than haul individual athletes off to jail.⁵⁹ Since laws to this point did not impose specific federal controls on steroid manufacture – but instead, only upon distribution – the government clearly had an interest in preventing pharmaceutical manufacturers from supplying a potentially huge black market.⁶⁰

The legislative process for scheduling steroids thus gained impetus largely from mail marketing efforts, with Attorney General Edwin Meese initiating an inquiry, requesting the Department of Health and Human Services for an evaluation on the potential for abuse.⁶¹ John Lawn, however, the Director of the Drug Enforcement Agency, opposed the idea, recommending against scheduling steroids.⁶² Later, in March, 1988, Health and Human Services Secretary Otis

⁵⁶ Collins, *supra* note 15, at 4. According to Collins, between the time the law was adopted and implemented and the spring of 1990, steroid distribution prosecutions were on the rise and the enforcement mechanism was extremely effective in ferreting out dealers.

⁵⁷ Collins, *supra* note 15, at 4.

⁵⁸ W.N. Taylor, *Synthetic Anabolic-Androgenic Steroids: A Plea for Controlled Substance Status*, 15 PHYSICIAN AND SPORTS MEDICINE 5 (May 1987).

⁵⁹ Collins, *supra* note 15.

⁶⁰ Collins, *supra* note 15.

⁶¹ Authorized under Comprehensive Drug Abuse Prevention and Control Act of 1970, 21 U.S.C. § 811 (as amended) (1987).

⁶² Collins, *supra* note 15.

Bowen agreed.⁶³

Legislation purporting to schedule steroids, first limited to Dianabol – expanding later to most other anabolic drugs, inevitably followed, first introduced in July, 1988, by Rep. Dan Lungren (subsequently Attorney General) of California.⁶⁴ In considering the legislation, the House Subcommittee on Crime elicited expert testimony from authorities on steroids such as Charles Yesalis of The Pennsylvania State University.⁶⁵ Because steroids do not conform to the requirements of Schedule III, (i.e., they are not physically addictive, irrespective of the potential for abusing them), Yesalis and other experts such as DEA Deputy Administrator Gene Haislip suggested to the Committee that it reconsider the legislation: steroids were not appropriate drugs for controlled substance classification as Schedule III drugs.⁶⁶ The American Medical Association came down on the same side, i.e., against scheduling the drugs at all.⁶⁷

⁶³ Collins, *supra* note 15.

⁶⁴ Collins, *supra* note 15.

⁶⁵ See *Steroids in Amateur and Professional Sports – The Medical and Social Costs of Steroid Abuse*, S. Hrg. 101-736 (1988) (where Yesalis argued for scheduling the drugs on Schedule V, not III).

⁶⁶ Under 21 U.S.C. § 811(c), steroids should meet eight criteria to be scheduled as controlled, dangerous substances: 1.) Actual or relative potential for abuse; 2.) Scientific evidence of pharmacological effect; 3.) State of current scientific knowledge; 4.) Historical and current patterns of abuse; 5.) Scope, duration, and significance of the abuse; 6.) Risk to the public health, if any; 7.) Propensity of users to become psychologically or physically dependent on the drug; 8.) Is the drug a precursor to something already scheduled? Since there has been no physical or psychological dependence upon the drugs ever clinically demonstrated, and the risk to the public health of athletes using steroids is demonstrably less than that of alcoholic beverages or cigarettes, Yesalis and the DEA witnesses correctly argued against scheduling steroids as controlled dangerous substances. *Id.*

⁶⁷ *Steroids in Amateur and Professional Sports – The Medical and Social Costs of Steroid Abuse*, S. Hrg. 101-736 (1988). Yesalis, in fact, argued for scheduling the drugs on Schedule V, simply to require pharmaceutical companies to report manufacture. At the hearing, the following exchange between Senator Joseph Biden and Edward L. Langston, M.D., of the American Medical Association, is recorded at page 90:

BIDEN: And I understand that the AMA is perfectly, and any doctor here, is perfectly at liberty to comment on the ethical questions about competition. But we are asking you to be here because you are doctors, not ethicists and nor have my professional law nor yours been particularly astute at the subject. I would ask you all, if you can, as best you can, focus on the medical issue here.... Do you believe there are serious physical side effects; that is, everything from growing of facial hair to enlargement of the - anyway, do you believe they exist?

LANGSTON: But those are side effects, as we have side effects profiles on any medication that we use. Our contention is that are looking at an issue of how do we combat the problem of inappropriate use of anabolic steroids ...

Despite overwhelming evidence and testimony to the contrary, the following year in 1989, the Senate took up its own hearings under Senator Joseph Biden.⁶⁸ The tone of the hearings took on a suspiciously McCarthyesque tenor.⁶⁹ Biden, in fact, overtly badgered and cajoled professional witnesses who did not tow the “party line” with respect to outlawing the drugs.⁷⁰ The result of the hearings produced legislation criminalizing dispensation, possession and use of the drugs the following year, in 1990.⁷¹

That Congress acted, moreover, primarily out of concern that moderated use of steroids would become normative in professional athletics, creating a “stepped-up” competitive field of athletes, rather than on the basis of actual medical concerns, is equally apparent from the

BIDEN: And your objection is also to have it fall with any category of a controlled substance, I through V, is that right?

LANGSTON: I think it is a definitional technicality and CSA has the rigid criteria to be considered. And one of them is proven dependency. Now, if that is proven through the literature that you have the *potential* for dependency --

Senator Biden at this point runs Dr. Langston through a drill on the distinctions between “proven dependency” and “potential for dependency” in a brisk exchange through page 94. Testimony continues at page 95 as follows:

BIDEN: The AMA is saying we do not have enough evidence to meet the existing written criteria under the Controlled Substances Act. That is what you are saying, is that not correct?

LANGSTON: I think that is correct, yes, sir.

BIDEN: I do not know how that AMA can say that ... either the AMA does not believe it has a high potential for abuse, or the AMA does not believe that it may cause abuse.

LANGSTON: What I am saying is that at this point, in particular, your reference to it may cause dependency, severe psychological or physical dependency based on the information at hand and established literature and a number of studies to support that, it is our interpretation that it does not meet that criteria.

BIDEN: That it does not reach the level of “*may*.”

LANGSTON: *That is right.* And if that changes, then, obviously we are willing to look at that, sir.).

Id.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Anabolic Steroid Control Act of 1990, 101 P.L. 647, 104 Stat. 4851 (1990)(that amended 21 U.S.C. § 812(c) containing the Schedules of the Controlled Substances Act); *see also* 21 C.F.R. 1308.13 (2003).

testimony.⁷² The concern about use by professional and college football players seems particularly acute. Some have even suggested that the entire impetus for scheduling derives from the personal interest of one lawmaker, Congressman Lungren, to ensure his son made the cut for the Notre Dame football team, without having to resort to cycling steroids to be competitive.⁷³

That prohibition has been completely ineffective, moreover, is largely already apparent, both from the testimony of professional athletes cited above, and the pervasiveness and extent of use.⁷⁴ Yesalis, moreover, confirmed to the Senate the inefficacy of most steroid testing regimens. That lawmakers' ostensible intention - to ferret out athletic cheating by criminalizing steroid use - was ill-conceived in the first place, moreover, seems an understatement. Can we expect, next, a public law criminalizing the use of pine tar on bats, or authorizing the criminal detention of hockey players on assault charges for high sticking? Congressional activism in criminalizing steroids has been an unqualified disaster and - in fact - may largely be responsible for the secretive, covert overdosing of the drugs in gyms throughout America.⁷⁵

⁷² Most of the testimony in the report, in fact, is by athletic coaches and athletes, with very little by actual experts on the drugs. Moreover, as demonstrated, the expert medical testimony was effectively ignored anyway. The gamut of testimony is replete with words like "disgraceful," and "drug-user," overtly making out the argument that athletes who use the drugs are "cheaters." Thus, the legislation to prohibit use of the drugs passed primarily on the premise that *athletic cheating needed to be headed off*. In fact, as the documented testimony of Caminiti and Canseco and testimony by football players like Joe Klecko amply demonstrates, what - in fact - the legislation really did was *simply push use of the drugs underground*. Athletes still, by and large, are using steroids, because they understand how well the drugs really work, in spite of their risks.

⁷³ Collins, *supra* note 15.

⁷⁴ Tom Verducci, *Steroids in Baseball: Confession of an MVP*, SPORTS ILLUSTRATED SPECIAL EDITION (May 28, 2002) at pages 40-43 (in which Ken Caminiti concludes that he had "made a lot of mistakes in [his] life (in an overt reference to his alcoholism), but *using steroids wasn't one of them*." He also asserts that at least half the athletes in the sport are cycling steroids.)

⁷⁵ Burge, *supra* note 20 (made this point persuasively nearly a decade ago, arguing that criminalization has not worked, that it has had "no discernible effect on the rate of usage," and has, indeed, likely exacerbated the problem because users - who do not fit the typical pattern of "drug abusers" and are therefore extremely shaken by confrontations with the law and enforcement agencies - are extremely covert and intelligent about disguising their use of the drugs).

III. “MUSCULAR CHRISTIANITY:” THE CULTURAL RELATIONSHIP BETWEEN THE PERFECTED MALE FORM AND SOCIAL ORDER

That Americans, in the 21st century, would accept a relationship between superior strength and conditioning and effective policing is not terribly surprising: primarily, the basis for constructing such a connection rests on a utilitarian foundation.⁷⁶ Strength and conditioning improve athletic performance; therefore, they also improve police performance since much of police work is athletic by its very nature.⁷⁷ For this reason, the utilitarian argument in support of steroid use by police officers is the easier to make: muscle size improves strength; strength improves performance; police find themselves in ever-increasing physically challenging circumstances; thus, improved strength and conditioning is directly correlative to the discharge of the police officer’s professional responsibilities.⁷⁸

This argument, however, is largely undercut by an alternative reality: that discretionary use of steroids by most police athletes is primarily for cosmetic purposes.⁷⁹ In short, steroid use by most athletes in gyms across the United States is primarily for improving personal appearance, to give the user a more muscular physique, purely for the aesthetic improvement *per se*. Steroids are being used by police officers in primarily the same way as bodybuilder-athletes, in conjunction with bodybuilding weight-training regimens, to create a specific look.⁸⁰ These cops want to be big, burly, and imposing, to have the physical proportions of comic book superheroes.⁸¹

The motivations behind this are less clear. For some it may be purely personal. For others, it seems apparent that the reason that they chose to become police officers is psychologically

⁷⁶ *Supra* text accompanying note 1.

⁷⁷ *Supra* text accompanying note 1.

⁷⁸ *Supra* text accompanying note 1.

⁷⁹ See Kristen Johnson, *Drug Sentences Over 54 Years: Ringleader Woodall to Serve 27*, A12 THOMASVILLE TIMES, July 25, 2002, A12 (detailing the “brawny” composition of a North Carolina jurisdiction’s police force and the “supercop” appellation).

⁸⁰ *Id.*

⁸¹ *Id.*

inextricably intertwined with their bodybuilding impulse.⁸² For still others, bodybuilding provides an additional edge, a badge of external authority and physical superiority.⁸³ Pope has suggested that for some men, obsession with physical perfection has become the male equivalent of anorexia in adolescent girls in the new millennium.⁸⁴

Pope's inquiry, however, is medically and psychologically – rather than sociologically or aesthetically - grounded. While he, like Yesalis, argues strongly for change to ramp down the social pressure on adolescent young men to strive for physical perfection at considerable risk, he fails to consider either the true historical or the aesthetic antecedents of that pressure. He minimizes the pure aesthetic appeal of an iconic muscularity, primarily blaming the American media and Madison Avenue for normalizing the fantastic.⁸⁵

The drive for male physical perfection, however, derives from as remote a time and place as the gymnasias of classical Greece, a cultural-aesthetic influence Pope directly invokes in the title of his work.⁸⁶ “Adonis,” - the Greek variant of the Semitic word “Adonai,” and equivalent term the Old Testament uses to refer to the Hebrew Yahweh or Jehovah – was the archetype of masculine physical perfection in Greek mythology.⁸⁷ The Adonis aesthetic, later assimilated in the Roman warrior's armor breastplate, is the functional equivalent of a bronzed, static Schwarzenegger torso.⁸⁸ The “Adonis complex,” as such, is not the making of pop culture as Yesalis and Pope argue; rather,

⁸² ALAN M. KLEIN, *LITTLE BIG MEN: BODYBUILDING SUBCULTURE AND GENDER CONSTRUCTION*, *passim* (State University of New York Press, 1993) (a psychological and anthropological discussion of Klein's seven years observing amateur and professional bodybuilders in gyms on the West Coast, organized around the discussion of how the bodybuilding impulse in the subjects Klein studied was psychologically motivated, but culturally reinforced).

⁸³ Johnson, *supra* note 79.

⁸⁴ HARRISON G. POPE, JR., *THE ADONIS COMPLEX: THE SECRET CRISIS OF MALE BODY OBSESSION*, *passim* (2000) (in which Pope postulates various theories for the popularization of the body building and working out craze in America. Among these, he theorizes that the equalization of women in the work force and men's loss of personal role-definition at work have created the necessity for an exaggerated masculinity.).

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ See CARLOS PARADA, *GENEALOGICAL GUIDE TO GREEK MYTHOLOGY* at 37, (1993).

⁸⁸ CAMILLE PAGLIA, *SEX, ART AND AMERICAN CULTURE* at 79, (1992) (in which Paglia comments that “modern bodybuilding is ritual, religion, sport, art, and science, awash in Western chemistry and mathematics. Defying nature, it surpasses it.”)

pop culture – as Camille Paglia argues articulately in her essay *Alice in Muscleland* – has simply recast the classical ideal in its own technologically-enhanced image.⁸⁹

Moreover, Pope’s work virtually ignores the link between the idea of male physical perfectibility as a paradigm for the spiritual or the virtuous following the Industrial Revolution. But that the two are linked not only hearkens back to classical times and the pagan notion of gods, cast in the image of men; to the contrary, the very notion of the perfected male form as a paradigm for social order derives directly from Victorian England and the emergent nineteenth century theological strand popularly known as, “Muscular Christianity.”⁹⁰

Muscular Christianity, ascribed to the work of Charles Kingsley, emerged in Victorian England in the exposition of *Alton Locke*, his novel about the social inequities endured by farmers and tailors in the 1840s.⁹¹ Much of Kingsley’s work reflects his commitment to the political enfranchisement of the working class in Great Britain.⁹² His work, in turn, greatly influenced the Victorian fundamentalist theologian Charles Haddon Spurgeon.⁹³ In Spurgeon and Kingsley, the central tenet of “Muscular Christianity” – that there was a direct relationship between the perfected male physique and social order – found full expression.⁹⁴ Spurgeon, who exerted great influence over emerging American “muscular Christians,” like D. L. Moody and G. Stanley Hall, also had a direct hand in exporting the Young Men’s Christian Association to the United States, whose first

⁸⁹ *Id.*; see also CAMILLE PAGLIA, *SEXUAL PERSONAE: ART AND DECADENCE FROM NEFERTITI TO EMILY DICKINSON*, (1990). Paglia posits the theory throughout her work that the tension in American popular culture between the Christian and the pagan is inherent and its principal appeal to the rest of the world. She, therefore, is highly critical of feminists like Michigan Law Professor Catherine MacKinnon, believing that “body-hating” feminism has put masculinity under attack. A fan of football and bodybuilding herself, Paglia celebrates the steroid-using bodybuilder as a reassertion of the classical ideal in contemporary America.

⁹⁰ See generally, CLIFFORD PUTNEY, *MUSCULAR CHRISTIANITY: MANHOOD AND SPORTS IN PROTESTANT AMERICA, 1880-1920* (2001); see also, CLIFFORD PUTNEY, *Muscular Christianity*, *The Encyclopedia of Informal Education*, available at http://www.infed.org/christianeducation/muscular_christianity.htm (last visited Jan. 20, 2005).

⁹¹ See generally, David Alderson, *An Anatomy of British Polity: Alton Locke and Christian Manliness*, in *VICTORIAN IDENTITIES: SOCIAL AND CULTURAL FORMATIONS IN NINETEENTH-CENTURY LITERATURE* (Ruth Robbins & Julian Wolfreys, eds., 1996).

⁹² *Id.*

⁹³ Putney, *supra* note 90.

⁹⁴ Alderson, *supra* note 91.

American branch opened in Boston in 1851.⁹⁵ In 1866, its New York branch added a gymnasium.⁹⁶

YMCAs, ever since, have been a primary force in the fitness movement in the United States, premised on the notion that since the body was the “temple of the Lord,” athletic prowess and physical culture was the direct corollary of spiritual development.⁹⁷ This close association between Christian fundamentalism and weightlifting, moreover, is still extremely common, as is the current mutation of the athletic associations of Great Britain’s Muscular Christianity into its American analog: the Fellowship of Christian Athletes.⁹⁸

IV. “MUSCULAR CHRISTIANITY” DEVOLVES INTO MUSCULAR AUTHORITARIANISM

Politically, this influence also evolved, linked to President Theodore Roosevelt’s *A Strenuous Life*, and – by inference – to Ronald Reagan and the emergence of “muscular Christians” around him, specifically the influence of his drug czar, William Bennett and the head of Criminology at Princeton, John D’Iulio.⁹⁹

Bennett, an unabashed advocate for the return of religious values to public life and an author on values education was the quintessential architect of U.S. drug policy during the Reagan administration, with its emphasis on heavy drug interdiction, criminalization, and zero-tolerance.¹⁰⁰

⁹⁵ Putney, *supra* note 90.

⁹⁶ Putney, *supra* note 90.

⁹⁷ Putney, *supra* note 90.

⁹⁸ Putney, *supra* note 90.

⁹⁹ Kevin Ryan, *Is Character Education Hopeless?*, available at http://www.taemag.com/issues/articleid.16284/article_detail.asp (last visited July 24, 2004).

¹⁰⁰ Bennett, however, recently admitted to a gambling addiction, one which cost him and his family nearly eight million dollars over the years. The direct connection between gambling, organized crime, and the drug trade is well-established. See Bob Edwards, *Stop Picking on Bill Bennett for His Moral Lapses So He Can Get Back to Picking on Us for Ours* (May 8, 2003). There have been, subsequently, satirical calls for Bennett to be elevated to the post of national “gambling czar.” While tongue-in-cheek, it also bears noting that Bennett’s former associate, John Walters, was recently named to Bennett’s old post by the Bush administration, signaling a continuation of Bennett’s zero-tolerance enforcement policies. See *Senate Judiciary Confirms Controversial ‘Drug Czar’ Despite Widespread Opposition from Civil Rights and Public Health Organizations*, available at http://www.drugpolicy.org/news/pressroom/pressrelease/pr_november08_01.cfm (last visited Apr. 29, 2003). Walters has been widely criticized for what has been termed a “lock-em-up” attitude toward drug offenders, with little use for rehabilitation, other than

Specifically, it was in Bennett's heavy-handed law enforcement policy – the Reagan White House's "War on Drugs" - that the balancing principle of Muscular Christianity - humility, grace and tolerance - got lost.¹⁰¹ With it, the community-based ethic of policing went too. Authoritarianism, disguised as principled authority, thus took over, swaddled in patriotism, moralism, and religiosity under direct federal sponsorship.¹⁰²

To implement this policy, the Federal government authorized a block-grant program to state and local police departments, specifically offering direct money payments as an incentive for drug interdiction programs.¹⁰³ The program provided direct incentives for drug-related arrests with these funds and also offered police departments specific grants for the acquisition of highly violent response equipment, funding such things as automatic weapons, Kevlar vests, and other para-military equipment.¹⁰⁴

The local agencies, addicted to the heady smell of block grant money and drug arrests, complied.¹⁰⁵ They mobilized and militarized.¹⁰⁶ Drug courts overflowed. Prisons filled. And in response to the escalating levels of violence, the police got ever more violent.¹⁰⁷ The exaggerated level of violence and threat naturally engendered an exaggerated masculinity, and an overstated muscularity: as will be seen in the cases that follow, cops on steroids are simply the natural evolution of a conscious decision by the federal government to promote military authoritarianism in drug enforcement, and the implementation of military technologies.¹⁰⁸ The highly violent and

faith-based programs. Coincidentally, faith-based social initiatives have become a primary focus of the Bush administration, with D'Iulio's appointment. *See also*, Kraska, *supra* note 2.

¹⁰¹ *See* Kraska, *supra* note 2.

¹⁰² *See* Kraska, *supra* note 2.

¹⁰³ *See* Kraska, *supra* note 2.

¹⁰⁴ *See* Kraska, *supra* note 2.

¹⁰⁵ *See generally*, STEVEN A. EGGER & CHRISTINA J. JOHNS, POWER, IDEOLOGY, AND THE WAR ON DRUGS: NOTHING SUCCEEDS LIKE FAILURE (1992).

¹⁰⁶ *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ *See* Kraska, *supra* note 2.

technological sophistication of drug enforcement efforts available to the police in drug arrests are particularly notable, because – as will be seen – they coincide remarkably with the “high technology” aspect of anabolic steroids.¹⁰⁹ This recurrent motif plays throughout the representative cases that follow.

V. CASE STUDIES

Steroid use by police officers, by definition, is furtive. Actually, that it is an understatement: distribution of the drugs, which - as Yesalis notes - formerly passed primarily from athlete to athlete, has taken on the darker mercantile associations of street drugs.¹¹⁰ The author’s personal interest in weight training over the past twelve years has piqued his interest, having personally observed at least two law enforcement officers – and perhaps more - in health clubs and gyms where he held memberships, whose use of anabolics seemed a virtual certainty. At a certain point, it became apparent to the author that two of these police officers in particular had the kind of massive, defined musculature that simply was not possible without the amplifying effect of the drugs.

Further, beyond the obvious conclusion that the officers in question were using the drugs,

¹⁰⁹ See Omnibus Consolidated Rescissions and Appropriations Act of 1996, 104 P.L. 134, 100 Stat. 1321 (1996)(codified as amended in scattered sections of the U.S. Code), appropriating a quarter of a million dollars for the acquisition of Kevlar vests for use by drug interdiction police authorities; see also Peter Kraska, *supra* note 2, on the proliferation of automatic weapons and Special Weapons and Tactics (SWAT) units on police forces across the United States. Kraska sees the pattern of militarization escalating with the drug war in the United States, with “besieged” communities – traditionally underserved by “community-based” policing operations – actually eventually welcoming such units. Kraska’s basic thesis is that the drug war has actually evolved into a real war, with all the “accoutrements and ordnance” of civil unrest. See, Safariland Body Armor, Official Website, available at <http://www.safariland.com> (last visited Sept. 10, 2004) (featuring body armor for police officers in military-themed camouflage). The author’s assertion here is that, steroid use by police officers in that war is simply a natural extension of its technology and symbols. Strength athletes using steroids do not view themselves as drug abusers. Much of the training for SWAT units is done by special ops military units like the Navy’s SEAL units and the Army’s Delta Force. See Kraska, *supra* note 2. Use of steroids in these special ops units, moreover, is widely anecdotally reported. *Id.* See, John Davies, The Top Exercises for Functional Strength, available at http://www.t-mag.com/nation_articles/170top9.html (last visited Sept. 10, 2004) (detailing such use from a hyperlinked letter to the editor). Police officers using anabolics – like professional athletes - apparently distinguish their use of the drugs from abuse of opiates, for instance, and view use of steroids as an extension of muscle-building technology and nutrition supplementation.

¹¹⁰ See, Parry, *supra* note 31.

however, the obvious contradiction in the relationship between the physique and the uniform, of covert law-breaking in the ostensible service of enforcement, raised questions in the author's mind not only about the pervasiveness of the conduct, but also its inherence to law enforcement. To answer these questions, the following cases – he believes - are instructive.

A. Woodall: *The Strong Arm of the Law*

Gerald Hege, the Sheriff of Davidson County, North Carolina, has been called the toughest law enforcement officer in America.¹¹¹ A high-tech automatic M3 9 mm machine gun is his sidearm, a black flack jacket and military boots his uniform.¹¹² Sheriff Hege, in fact, has turned his “kick-ass-and-take-names” style into a personal franchise: his department sports a spider-web logotype in the spirit of Dragnet, with the “KATN” mnemonic an integral part of the brand.¹¹³ A celebrity and COURT TV regular, Sheriff Hege has locked up celebrities like Deborah Norville on his “Cell Block A.”¹¹⁴ His policing *ethos* became the obvious catalyst for much of Kraska's work on the militarization of the police.¹¹⁵

His human resource policies are straight out of the military too: officers who forget to wear their uniform hats are fined \$100.00 for a first offense; tardiness to work by a minute merits a write up as a first offense, a dismissal as a second.¹¹⁶ He reinstated chain gangs and seized nearly two

¹¹¹ See, Zay N. Smith, *Quick Takes: Who's the Tough Guy Now?*, CHI. SUN-TIMES, (May 25, 2004)(commenting on Hege's felony convictions for abuse of power and corruption).

¹¹² *Id.*

¹¹³ Jaime Dispenza, Gerald Hege in Photos, *The News & Record*, available at <http://www.news-record.com/photo/hege/hege5.html> (last visited Apr. 28, 2003).

¹¹⁴ Norville, in fact, won two journalism awards for her *Inside Edition* segment that featured her five-day incarceration in the Hege cell block, from both the National Women's Political Caucus and American Women in Television and Radio. See *Inside Edition Awards*, available at <http://www.insideedition.com/awards.htm> (last visited Feb. 23, 2003).

¹¹⁵ See, e.g., Peter B. Kraska & L. J. Cubelis, *Militarizing Mayberry and Beyond: Making Sense of American Paramilitary Policing*, 14 JUST. Q. 607 (1997); Peter B. Kraska & D. J. Paulsen, *Grounded Research Into U.S. Paramilitary Policing: Forging the Iron Fist in the Velvet Glove*, 7 POLICING & SOC'Y 253 (1997); Peter B. Kraska & Vincent E. Kappeler, *Militarizing American Police: The Rise and Normalization of Paramilitary Units*, 44 SOC. PROB. 18 (November, 1997).

¹¹⁶ Dispenza, *supra* note 113.

million dollars worth of cocaine and paraphernalia in a single year of policing.¹¹⁷ Though controversial, Hege was nevertheless a star of paramilitary policing in rural America.¹¹⁸

But things started to go wrong in April, 2001, when a local bodybuilder, Wyatt Kepley – the son of a Davidson County Commissioner – got stopped at the San Diego airport with about a million dollars worth of steroids in his bags on a return trip to Charlotte.¹¹⁹ Mr. Kepley made a lot of noise to the authorities in California about his father’s political prominence back home.¹²⁰ What authorities there didn’t know was that Kepley’s best steroid customers were many of the local police.¹²¹ His protests, however, did not dissuade Federal authorities anyway, who started an investigation.¹²²

What they uncovered was an extensive pattern of dealing and use of steroids by several bodybuilding athletes in the Davidson County Sheriff’s Department and Davidson County municipal police departments, with Lt. Scott David Woodall – a 10-year veteran of the force described by superiors as a “supercop” - the ringleader.¹²³ The case made headlines, for the sheer magnitude of corruption and use of physical intimidation by the police officers involved. Though procuring steroids for personal use was the common thread through all the officers’ involvement, inasmuch as each shared a dedication to the weight room, the drug-ring peddled the typically profitable street drugs like Ecstasy, cocaine, and marijuana as well.¹²⁴ Indictments issued in July,

¹¹⁷ Dispenza, *supra* note 113.

¹¹⁸ Dispenza, *supra* note 113.

¹¹⁹ Greg Jarvis, *Drug Cops Shock Waves*, NEWS & OBSERVER June 30, 2002, at B1.

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² Robert F. Moore, *Feds: Officers Dealt Drugs*, CHARLOTTE OBSERVER, Dec. 13, 2001, at 3B.

¹²³ An appropriate description, apparently, given the news accounts of the “brawny” physical composition of the force. See Johnson, *Drug Sentences Over 54 Years: Ringleader Woodall to Serve 27*, THOMASVILLE TIMES, July 25, 2002, at A12.

¹²⁴ *Id.* Woodall’s indictment looks like a rap sheet one might actually expect to see more from a major urban drug player. He was charged with violating 21 U.S.C. §§ 846; 841 (a)(1); 841 (b)(1)(a); and 853 (conspiracy to distribute cocaine hydrochloride, marijuana and anabolic steroids, and methyldioxmethamphetamine (Ecstasy)); 18 U.S.C. § 1851(a)(wrongful use of force); 18 U.S.C. § 924(c)(1)(A)(2)(carrying a firearm during a crime of violence); and 18 U.S.C. § 242 (depriving individual of civil rights).

2001, with all of the defendants convicted on multiple counts.¹²⁵

In all of the discussion about the incident in the press, however, there seems to be no plausible theory as to why this happened in Davidson County. The media, for instance, has made no specific connection between the extremity of Davidson County's policing and the extremity of the steroid abuse among Davidson County cops. Apparently, neither the symbolic nor the aesthetic relationship between the obviously hyped-up symbols of militarism – flack jackets, batons, automatic weapons, leather, and camouflage – and exaggerated muscularity is sufficiently clear.¹²⁶

More specifically, that the officers in question here are clearly caught in the middle and that the criminal justice system is incapable of comprehending the direct association between *the character of the work* and the *character of the abuse*, despite clear evidence to the contrary, seems counterintuitive to say the very least.¹²⁷ Quintessentially, these police officers are jocks, whose

¹²⁵ United States v. Woodall, No. 01-CR-441-ALL (M.D. N.C., Aug. 2, 2002) (order imposing sentence)(in which Woodall, addressing the Court, tells U.S. District Judge William Osteen sentencing of his identity confusion working narcotics undercover, being unable to “tell the good guys from the bad guys,” and the moral relativity he felt in drug enforcement, posing as a drug dealer to arrest drug dealers. All of the officers involved, moreover, started out dealing in street drugs to support their steroid habit, something Archdale police Sgt. Christopher Shetley made clear. *See also, supra* note 75. He and Kepley were bodybuilding pals and, following a divorce and ordered child support, Shetley started dealing street drugs to support his muscle habit. *See also* Alan Klein, *supra* note 55 (for the proposition that bodybuilders in particular tend to have extraordinary dedication to the regimentation, rigidity and obsessive qualities of the sport, with concurrently exaggerated needs for personal control owing to strict dietary regimens). In Woodall's case, as he got to be a seasoned “narc” and undercover cop, the abuse escalated exponentially. At one point in the investigation, Woodall recounted breaking into Kepley's house, stealing \$160,000.00 in cash and \$20,000.00 of steroids from Kepley's safe, and having the audacity to sell \$12,000.00 of the drugs back to Kepley. Of the six convicted, moreover, four were police officers: Woodall, Shetley, Douglas Westmoreland and William Rankin. All were recreational bodybuilders, whose personal sense of occupational identity was inextricably intertwined with the physicality of being “supercops,” the common thread running throughout the entire criminal episode. They, moreover, epitomize the trend Yesalis, *supra* note 32, identifies: that recreational strength-athletes, to support their black-market steroid use, will resort to mixing that use with street drugs for profit.)

¹²⁶ The European press, however, has no problem drawing this parallel. *See Amerikas Schattenkrieger (America's Shadow Warriors)*, DER SPIEGEL ONLINE, available at <http://www.spiegel.de/spiegel/inhalt/0,1518,ausg-924,00.html> (last visited Sept. 10, 2004) (describing Central Intelligence Agency special operations paramilitary forces in Afghanistan as “muscle-bound icons,” in a specific reference to the Sylvester Stallone “Rambo” films of the 1980s).

¹²⁷ The testimony of forensic psychologist Terry Metcalfe at trial demonstrates the inextricability of “on-the-job” identity with personal identity, particularly when “feigned” occupational behavior is antisocial and becomes entrenched. In such cases, the officer's “under-cover” identity merges with his own, such that, it becomes “as real as his own persona.” *See* THOMASVILLE TIMES, *supra* note 123.

involvement with steroids was originally cosmetic, recreational risk behavior.¹²⁸ That eventually there was a failure of character is indisputable. That the inherently dishonest enforcement modality set up that failure, however, is equally indisputable.

In reading the sentencing materials, it becomes obvious that lying, aggrandizement, and drug-dealing in the pursuit of arrests became facile tools for these officers, and that the boundary between their professional “law enforcement” behavior and their criminal conduct got extremely blurred.¹²⁹ In fact, since the professional conduct and the criminal conduct was *precisely the same* course of conduct, this is really not so incomprehensible.

B. Grubb: Pain, But No Gain

The ominous pattern of near institutional involvement by police officers in a single jurisdiction in *Woodall* contrasts starkly with the case of Bryan Grubb, a municipal police officer employed by the Borough of Hightstown, New Jersey in 1995. Inherent police dishonesty - what the New Jersey Superior Court eventually termed a complete failure to monitor a witness (whom the Court obviously believed lack credibility) – is its recurrent *leitmotiv*, along with what apparently is a cop committed to superior physical conditioning.¹³⁰ That, against the backdrop of self-imposed steroid administration by the defendant police officer, ties it to *Woodall*. Otherwise, two cases could not be more factually distinct.

The brief facts of *Grubb* are nearly impossible to recount.¹³¹ *Grubb* seems to stand for both factual and legal complexity: not only did the litigation involve a criminal prosecution taken to appeal, where the conviction was reversed, the conviction’s reversal became the impetus for civil

¹²⁸ *Supra* text accompanying note 125. *Woodall*, in fact, commented at sentencing specifically that his need to support his steroid regimen led to his involvement with dealing the more typical – and profitable – street drugs like cocaine, marijuana and ecstasy.

¹²⁹ *Supra* text accompanying note 125.

¹³⁰ *State v. Grubb*, 725 A.2d 707 (N.J. 1999).

¹³¹ *Id.*; *Grubb v. Borough of Hightstown*, 751 A.2d 1119 (N.J. 2000), *complaint dismissed*, 756 A.2d 639 (N.J. 2000); *aff’d*, 802 A.2d 596 (N.J. 2002).

litigation in the employment context in Officer Grubb's bid for reinstatement.¹³²

On March 18, 1995, Bryan and Christine Grubb were surrounded by a dozen or so Middlesex County police officers as they left their home on a brief shopping junket.¹³³ Bryan was arrested, charged with possession and intent to distribute anabolic steroids.¹³⁴ Not only was he a decorated Marine with all the regalia of military decoration, Officer Grubb also wore the external accoutrements of steroid use. With a hefty powerlifting and bodybuilding regimen, Bryan Grubb was built.¹³⁵ An acquaintance, Vincent Zarlenga, arrested March 13, 1995, on charges he possessed and intended to distribute anabolic steroids, agreed as part of a plea arrangement to implicate Mr. Grubb to the Middlesex Narcotics Task Force for possession and distribution of steroids, and to participate in an "integrity sting." Zarlenga represented to the police that he and Grubb were about to enter into a transaction for the exchange of stanozolol (commonly known by bodybuilders as Winstrol) for Clenbuterol.¹³⁶

Although the prosecutor authorized wiretapping Grubb's phone during the course of the subsequent "investigation," the police neglected to properly record many of the conversations.¹³⁷ More to the point, they mistakenly believed Clenbuterol was a Schedule III steroid.¹³⁸ Zarlenga, thereafter, eventually established a time and place for an exchange of the stanozolol, but the "deal" never occurred, with Grubb refusing to leave his automobile.¹³⁹ The police, following him to the nearby shopping center, arrested him anyway, alleging they had probable cause to believe he was

¹³² *Grubb*, 725 A.2d at 713.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ Princeton Packet On-Line News (Mar. 26, 1999), *Case Dismissed Against Hightstown Police Officer*, available at www.pacpubserver.com/new/news/3-26-99/entrapped.html (last visited Nov. 14, 2004).

¹³⁶ Clenbuterol is a commonly-prescribed anti-inflammatory steroid for the treatment of asthma, known for its fat-diminishing properties by bodybuilders. It is not a Schedule III drug.

¹³⁷ *Grubb*, 725 A.2d at 711-713.

¹³⁸ *Id.*

¹³⁹ *Id.*

involved in a conspiracy to make the deal.¹⁴⁰ At trial, they presented Zarlenga and his recorded statements to the police in evidence. The jury returned a guilty verdict, with the Court denying the defense's motion for a judgment of acquittal.¹⁴¹ Officer Grubb forfeited his position as a police officer, pending appeal of his conviction, during which period he was briefly incarcerated, prior to being released pending appeal.¹⁴²

On appeal, the New Jersey Superior Court Appellate Division reversed the lower court's decision, holding that the State had engaged in activity that was spurious enough to qualify as due process entrapment.¹⁴³ The Intermediate Appellate Court posited its reversal of the conviction on the premise that the State's methodology was inherently dishonest:

Defendant's due process entrapment arose in an atypical circumstance where the *improper methods of the police stem from their lack of supervision over the informant*, (emphasis added) rather than the use of heavy-handed tactics; and from their instigation of a sting operation based on their *misapprehension*, which continued until after defendant's arrest, *that the drug defendant agreed to sell to the informant was illegal*. In light of this scenario and in conjunction with the other circumstances of this case, the State is unable to meet its burden.¹⁴⁴

The State, unhappy with the reversal, petitioned for certification to the New Jersey Supreme Court, which denied the writ.¹⁴⁵

With Officer Grubb's appellate acquittal, the Borough of Hightstown Police Chief, Kevin Hopkins, started over, initiating a disciplinary proceeding against Grubb on August 19, 1999, to terminate him by filing formal charges.¹⁴⁶ Hopkins had withheld any disciplinary action during the pendency of the criminal case, believing that a criminal conviction would establish Grubb's

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Princeton Packet On-Line News, *supra* note 135.

¹⁴³ Princeton Packet On-Line News, *supra* note 135.

¹⁴⁴ Princeton Packet On-Line News, *supra* note 135.

¹⁴⁵ *Grubb*, 736 A.2d 526 (1999).

¹⁴⁶ *See Grubb v. Borough of Hightstown*, 751 A.2d 1119 (N.J. 2000), *complaint dismissed*, 756 A.2d 639 (N.J. 2000); *aff'd*, 802 A.2d 596 (N.J. 2002).

termination for cause and obviating the need for further proceedings with his earlier forfeiture.¹⁴⁷

Thereafter, administrative hearings convened on September 21st. In response, Grubb filed a motion to dismiss, alleging that the Borough had failed to comply with a particular notice requirement of New Jersey state law, which states:

The complaint shall be filed in the office of the body, officer or officers having charge of the department ... with notice of a designated hearing thereon by the proper authorities, which shall be not less than 10 nor more than 30 days from date of service of the complaint.¹⁴⁸

The Borough Council denied the motion.¹⁴⁹ Grubb pressed the Borough to take its denial directly to the Superior Court on appeal for a determination, relying on the language of the same statute which provided for the right to waive the administrative proceeding, and “. . . appeal the charges directly to any available authority specified by law or regulation.”¹⁵⁰ Both parties stipulated to a stay of the administrative proceedings.¹⁵¹ The matter proceeded on appeal – again – to the Superior Court of New Jersey.¹⁵² The Superior Court, however, declined to exercise jurisdiction over the administrative charges, holding that, while the statutory provision gave Officer Grubb the right to seek redress through judicial – rather than administrative – process, it was not vested with the authority to exercise original jurisdiction over the controversy.¹⁵³ The court, therefore, dismissed his appeal and remanded the cause back to the Borough Council, which summarily adopted a resolution to terminate Grubb.¹⁵⁴

Once again, Officer Grubb appealed the Borough Council’s termination resolution to the Appellate Division of the Superior Court, arguing that: 1.) the Borough was precluded from

¹⁴⁷ Princeton Packet On-Line News, *supra* note 135.

¹⁴⁸ Princeton Packet On-Line News, *supra* note 135.

¹⁴⁹ See Grubb v. Borough of Hightstown, 751 A.2d 1119 (N.J. 2000); *complaint dismissed*, 756 A.2d 639 (N.J. 2000), *aff’d*, 802 A.2d 596 (N.J. 2002).

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Id.*

terminating him administratively, since he had forfeited his position and had never been reinstated; 2.) that, as a matter of law, it was precluded from bringing the charges based on evidence, whose lack of credibility was established in the criminal proceeding; and, 3.) that his procedural and substantive due process rights were violated.¹⁵⁵

In the context of the employment proceeding, however, the Appellate Division – the very Court that had acquitted him in the criminal proceeding - disagreed.¹⁵⁶ Finding that his attorney’s post-reversal correspondence with the Police Department constituted an effort to procure reinstatement, the Court rejected Officer Grubb’s arguments completely, opining in conclusion:

The ultimate finding that plaintiff, a police officer, *was engaged in criminal activity was well supported by the record.* We perceive of no other appropriate remedy than termination and reject any suggestion by plaintiff that the penalty was too harsh.¹⁵⁷

Here, while the Court’s legal analysis – particularly its distinction between the differing respective evidentiary standards in criminal and civil proceedings – is deft, the end result remains unjust. In the criminal proceeding, the Court’s argument against sustaining the conviction was the lack of credibility of the State’s informant.¹⁵⁸ But in the civil context, the Borough relied heavily upon the same testimony.¹⁵⁹ While insufficient to warrant his criminal conviction on the charges, the same Court held that his termination, *as a direct consequence of the criminality of his conduct*, was warranted, established by “competent and credible evidence.”¹⁶⁰

The Court’s ultimate determination here is troubling in several respects, but most obviously because it serves a political end: where the State cannot establish criminality in the context of a criminal proceeding, and fails to meet its evidentiary burden of production, subsequent termination

¹⁵⁵ *Id.*

¹⁵⁶ *Grubb v. Borough of Hightstown*, 751 A.2d 1119 (N.J. 2000); *complaint dismissed*, 756 A.2d 639 (N.J. 2000), *aff’d*, 802 A.2d 596 (N.J. 2002).

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

of the officer on the basis of the criminality of his conduct seems specious at best.

Officer Grubb had the temerity – the sheer will - to fight back. His case garnered a lot of public attention and generated considerable suspicion of the Middlesex and Mercer County authorities, particularly in the Princeton press. The system held Officer Grubb up to public derision, not only because he violated his oath but also because he demonstrated the fundamental fallacy of drug enforcement as a matter of policy. His fight revealed active governmental complicity with criminals in bringing drug prosecutions, the same criminal association for which the New Jersey Court upbraided him.¹⁶¹ But his real crime was exposing the extent, desperation, and cunning of “war-on-drugs” authoritarianism. That the government will never tolerate such overt dissent from one of its own seems all the more obvious by its action here: it must completely discredit individuals who have the audacity to expose official corruption and hypocrisy.

In Grubb’s steroid use, moreover, there is a stunning common thread that links him to *Woodall*: his military history.¹⁶² Bryan Grubb was a Marine, the service branch with perhaps the most entrenched reputation – short of special operations units - for psychological rigidity and physical dominance.¹⁶³ As it happens, the Marines also have something of a steroid problem within the ranks on their hands, with the highest reported level of steroid prosecutions in the combined services and a serious public relations campaign underway to deter anabolic use.¹⁶⁴

Bryan Grubb came to the Hightstown Police Department a good soldier. From testimony,

¹⁶¹ Princeton Packet On-Line News, *supra* note 135.

¹⁶² See Johnson, *supra* note 123.

¹⁶³ See Kevin Brooks, *A Deadly Temptation* (Winter 2002), GROUND WARRIOR ONLINE MAG., available at <http://www.safetycenter.navy.mil/media/groundwarrior/issues/Winter00/steroids.htm> (last visited Sept. 10, 2004) (detailing the dangers of steroid overdosing and the prevalence of steroid abuse among Marines. Much of the information on the site related to the inherent “dangers” of the drugs actually relates to the danger of self-administration.).

¹⁶⁴ *E.g.*, United States v. Moravec, No. 02-0202 (N.M.C.A., decided Nov. 20, 2002). 2002 CCA LEXIS 278 (2002)(Table); United States v. McGrew, 53 M.J. 522, 2000 CCA LEXIS 114 (2000); United States v. Harrington, No. 99-0517 (N.M.C.A., decided June 23, 1999) 1999 CCA LEXIS 188 (1999)(Table); United States v. Miller, No. 98-1047 (N.M.C.A., decided October 6, 1998) 1998 CCA LEXIS 433 (1998)(Table).

his steroid use was part of that life. He has an extensive legal past.¹⁶⁵ He has written a lot of case law, and through it all, he endured.¹⁶⁶ But he will never be a police officer again.

C. Foley: *Sex, Steroids and Rock & Roll*

Probably the most extensive pattern of steroid involvement by police officers as a group, however, occurred two years ago with the apprehension of several officers in a cross-jurisdictional “integrity sting,” one that transcended state boundaries from New York to Florida.¹⁶⁷ The *Foley* case actually involves, however, a cluster of cases that arise out of the same factual context, including another case against Foley, and a co-defendant, New York State Trooper Michael Christy. Also indicted in the same “sting” were Foley’s brother James, a younger New York State Trooper, and Robert Grettler, a New York police detective assigned to the Warrants Division.¹⁶⁸

The police officers were arrested on Sept, 12, 2002, and arraigned over the course of the next 30 days. The specific nature of the charges appears to be possession, sale, and distribution of controlled dangerous substances, including cocaine and anabolic steroids.¹⁶⁹ The author, having written to the local authorities on multiple occasions, has been unable to procure a copy of the respective charging documents, though docket entries are available on line.¹⁷⁰ Most of the defendants were released on bond, after being arraigned on September 18, 2002.

¹⁶⁵ *State v. Grubb*, 725 A.2d 707 (N.J. 1999); *Grubb v. Borough of Hightstown*, 751 A.2d 1119 (N.J. 2000), *complaint dismissed*, 756 A.2d 639 (N.J. 2000); *aff’d*, 802 A.2d 596 (N.J. 2002); Princeton Packet On-Line News, *supra* note 135.

¹⁶⁶ *State v. Grubb*, 725 A.2d 707 (N.J. 1999); *Grubb v. Borough of Hightstown*, 751 A.2d 1119 (N.J. 2000), *complaint dismissed*, 756 A.2d 639 (N.J. 2000); *aff’d*, 802 A.2d 596 (N.J. 2002); Princeton Packet On-Line News, *supra* note 135.

¹⁶⁷ *New York v. Foley*, No. 03051B-2002 (Suffolk Co., NY, filed, Sept. 12, 2002).

¹⁶⁸ *New York v. Foley*, No. 20370 (Suffolk, N.Y., filed, Sept. 12, 2002); *New York v. Christy*, No. 03051A-2002 (Suffolk, N.Y., filed, Sept. 12, 2002); *New York v. Grettler*, No. 02480A-2002 (Suffolk, N.Y., filed Sept. 12, 2002); *New York v. Grettler*, No. 2002SU008625 (Suffolk, N.Y., filed Sept. 12, 2002); *N.Y. v. Foley*, No. 2001RI006797 (Richmond, N.Y., filed, Oct. 11, 2002); *New York v. Foley*, No. 03051C-2002 (Suffolk, N.Y., filed, Sept. 12, 2002). Because of the involvement of many “civilian” defendants, there are many other pending indictments in this “transaction,” though this list seems to contemplate all the outstanding charges against the police officers involved. The author submitted multiple freedom of information requests for copies of the respective charging documents in the cases noted above to District Attorney Thomas Spota’s office as well as to both the Suffolk County Police Department and the New York State Police. Not a single agency complied with any request submitted, over the period of eight months.

¹⁶⁹ See docket entries for cases noted, *supra* note 168.

¹⁷⁰ See Andrew Smith, *Two Cops Guilty in Drugs Deal*, NEWSDAY, Sept. 26, 2003, at A25 (reporting that both Grettler and Foley pled guilty to possession and distribution charges on September 25, 2003).

In Foley's case, this became something of an issue. Eric Naiburg, Foley's attorney, argued at the arraignment that Foley was a seven-year veteran of the force who garnered awards for service and distinction.¹⁷¹ He further stated that the \$350,000.00 bail requirement imposed by the State was excessive, since his client posed no flight risk and "was not a bum."¹⁷² Judge Joseph Farnetti agreed, lowering the bail requirement to \$150,000.00.¹⁷³ Most of the Defendants are now awaiting trial, with dates scheduled from June, 2003 through April, 2004.¹⁷⁴ Factually, the case broke across the New York metropolitan area with the kind of sensational coverage not seen since the Louima hearings.¹⁷⁵ Of particular interest to the press was the emotional perturbation and intense grief evinced by the respective officers on being arrested. The New York Post ran a screaming headline "Drug Charge Cops Busted Out Crying," not expecting big tough guys to appear so shaken at their personal encounter with law enforcement.¹⁷⁶ The officers' womanizing "party" lifestyle also garnered headlines in the New York press - remarkable in a city of extremes - which reported the situation as police corruption by sex, steroids and rock and roll.¹⁷⁷

Interestingly enough, the investigation did not center around steroid use initially. Instead, it apparently started strictly as a CDS investigation on the cocaine charges, with Officer Foley's cocaine use reported by a private citizen in the fall of 2000.¹⁷⁸ The reports in the New York press, moreover, support the assertion that the cocaine use led investigators to the hand-to-hand steroid

¹⁷¹ *Id.*

¹⁷² Grettler and Thomas Foley eventually plead guilty to the charges, served or are serving extremely reduced prison sentences of six months to a year, but are subject to reindictment under federal law. The other officers have maintained their innocence and are awaiting trial. *See*, Samuel Bruchey, Cops Investigated for Steroid Use, *NEWSDAY* (Dec. 19, 2004) at A48.

¹⁷³ *Id.*

¹⁷⁴ Smith, *supra* note 170.

¹⁷⁵ Kieran Crowley, *Drug Charge Cops Busted Out Crying*, *N.Y. POST*, Sept. 21, 2002, at 9.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ Smith, *supra* note 170.

distribution between the officers at the World Gym they frequented in Ronkonkoma, NY.¹⁷⁹ Otherwise, authorities apparently weren't suspicious, by simply looking at the officers, that they might be using "gear," the street name for anabolics.¹⁸⁰

Since these cases are still being investigated and prosecuted in the New York courts, moreover, it is difficult to relate them to the paramilitary thread of the other two cases; as an aside, however, it is significant to note the geographical proximity of the activity here to the Sheepshead Bay incident involving Officer Ralph Dols, a known steroid abuser in the NYPD's 70th Precinct, who, along with Chuck Schwarz of the Louima case, shared a common military history: both were Marines.¹⁸¹ There has been speculation that the drug distribution ring identified with the 70th precinct, associated with the Russian mafia in the Sheepshead Bay area, also supplied many other police officers in the NYPD with anabolics.¹⁸²

VI. ANALYSIS

Any one of the cases in this topical consideration of steroid use by police officers would have been an intellectually satisfying study. None of them, however, in isolation from the others answers the author's essential binary question, which is: is there something inherent to policing that predisposes police officers to steroid use; and, if so, why would a police officer be willing to risk his livelihood to pursue use of the drugs?

The answer to the first question, invoking the utilitarian argument on the side of functional strength and toughness, seems an unqualified "yes." Policing, like sport, predisposes cops to using performance-enhancing drugs, because it requires extensive physical performance like sport. The

¹⁷⁹ Smith, *supra* note 170.

¹⁸⁰ Smith, *supra* note 170.

¹⁸¹ Noel, *supra* note 9.

¹⁸² Noel, *supra* note 9.

current environment, where the level of violence is “ramped up,” requires ever-increasing levels of performance. The technological aspect of steroid administration dovetails perfectly with the strength and fitness aspect of policing, where those are *bona fide* occupational qualifications. Here, the relationship is clear.

As already noted, however, many police officers arguably use the drugs for the same reasons as most civilians: for their cosmetic effect, of enhancing appearances. The aesthetic argument is perhaps less obvious, though more compelling. It seems clear from observing these police officers personally, and from reading the cases that suggest a burgeoning phenomenon, that police who are using steroids have that use bound up with their own personal aesthetic. Additionally, the drugs are being used to achieve a *professional aesthetic* tied specifically to presenting a physically imposing and deterring image. For cops on steroids, this professional aesthetic of physical imposition and deterrence effectively becomes part of the uniform, a part of the officer’s professional “persona,” one of its distancing symbols. Kevlar vests, flack jackets, and camouflage are all, likewise, distancing symbols, technological refinements of armor. Steroid-induced male musculature is the inherent body armor.

And, specifically because of this inherence, police officers will continue to take the risk. Their steroid use is not simply an occupational tool, but also the means for creating ever more potent distancing and authority symbols; additionally, the practice becomes enmeshed with the officer’s identity, the presentation of his physique an integral piece of his personality.¹⁸³ Woodall’s “I-couldn’t-tell-the-difference-between-the-bad-and-the-good” confession and the work of occupational psychiatrists makes this clear.¹⁸⁴

¹⁸³ Klein, *supra* note 82 (in which he establishes the same body-psyche connection in bodybuilders to explain their surreptitious use of steroids).

¹⁸⁴ D. PATON & J.M. VIOLANTI, *TRAUMATIC STRESS IN CRITICAL OCCUPATIONS: RECOGNITION, CONSEQUENCES AND TREATMENT*, p 3-14 (Univ. of Illinois Press, 1996).

Violanti, for instance, hypothesizes that recurrent exposure to trauma in police work diminishes sensitivity to stress, establishes a permanent state of “hypervigilance,” and establishes adrenaline addiction in many police officers. More specifically, he compares this directly to war-related incidence of post-traumatic stress disorder in soldiers.¹⁸⁵ This addiction to the excitement of policing opens the psychiatric portal to steroid use, because testosterone and its derivatives directly ameliorate the recurrent stress to which cops are, necessarily, exposed, in the process enhancing, rather than impeding, performance.¹⁸⁶ As such, steroid use by police officers is likely far more pervasive than known, and will probably continue an upward trend. Surreptitious use by baseball professionals, undetected for years, clearly establishes how low dosing can “hide” personal administration of the drugs behind the façade of physical vitality.

Moreover, this largely cosmetic risk behavior is conduct that our society – in other contexts – overtly promotes. The cosmetic use of Botox (botulism toxin), for instance, for diminishing the signs of aging is a well established medical practice, and cosmetic risk behavior, because botulism toxin, unlike anabolic steroids, is inherently dangerous.¹⁸⁷ We are not, however, outlawing cosmetic use of Botox. Legislative targeting of steroids is both illogical and blatantly hypocritical.

VII. CONCLUSION

Cops on steroids are a burgeoning legal/social phenomenon, meriting further scientific and psychiatric study.¹⁸⁸ Such study will be impossible, however, where the environment of prohibition portends to destroy the individual officer’s entire life, merely to initiate the inquiry. Steroid use by

¹⁸⁵ *Id.*

¹⁸⁶ See Pope, *supra* note 33; see also Sullivan, *supra* note 27.

¹⁸⁷ Tom Paulson, *He’s Got His Own Take on Lead Dangers*, SEATTLE POST-INTELLIGENCER, July 26, 2004, at A1 (detailing the work of pediatric lead poisoning expert William O. Robertson, M.D., who compares exposure to lead in the interview to the use of botulinum toxin as “the most dangerous toxins known to man” and a “biological weapon,” noting further that “the dose makes the poison.”).

¹⁸⁸ The author notes that there are many reported instances in the media of police anabolic steroid use that are not mentioned here including cases in Palm Beach County, FL; Oregon; the Seattle, Washington, area; and many reported cases throughout California, all of which are too numerous and beyond the scope of this limited inquiry.

police officers, in fact, represents the hoax of prohibition falling in on itself: when police officers, assigned to narcotics units, feel compelled to personally administer steroids to sufficiently equip themselves for the task, the inherent dishonesty of prohibition is all too apparent.¹⁸⁹

For this reason, steroids must be removed from Schedule III, decriminalized, and subject to medical oversight. Burge's cogent argument, made more urgent by the emerging possibility of muscle-policing the world of professional baseball, makes more sense now than it did just nine years ago. More to the point, we must come to terms with reality. Prosecution of police officers for steroid abuse will become a problem unto itself, because use of the drugs is still on the rise. Internal Affairs Divisions thus face the prospect of specializing in steroid investigations, demonstrating further the incredulity of the foundational policy on which current enforcement practice is built. More and more police officers will be held up to personal derision and destruction. The credibility of enforcement practice, therefore, will further erode.

And the reality we must face is this: the war on drugs – despite billions of dollars spent by the federal government to provide incentives for local and state governments to wage it – *has been lost*. Cops on steroids are not only the natural extension of the technological militarization of policing and the war metaphor in drug enforcement, they are also its ultimate repudiation, both in policy and practice.

¹⁸⁹ See Charles H. Whitebread, *Freeing Ourselves from the Prohibition Idea in the Twenty-First Century*, 33 SUFFOLK U. L. REV. 235 (2000).