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A JOURNAL SENTINEL WATCHDOG REPORT UPDATE

# Fired cop no stranger to inquiries

### Milwaukee police chief says 'obvious pattern' of serious allegations was overlooked

By Gina Barton of the Journal Sentinel

Feb. 12, 2011

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Ladmarald Cates

A recently fired Milwaukee police officer under federal investigation after a woman said he raped her on duty in July has been accused of breaking the law five times before, according to department records and officials.

Three of the previous allegations involved sexual misconduct - two with female prisoners and one with a 16-year-old girl.

The incidents involving Ladmarald Cates date to 2000, three years after he was hired by the department, according to internal affairs documents and officials.

In one case, Cates was suspended for two days for domestic violence battery. In another, he was suspended for eight days for mistreating a prisoner and failing to obey a supervisor's orders. In the others, he was not disciplined by the department.

In two of the earlier cases, the Police Department asked the Milwaukee County District Attorney's Office to consider these criminal charges against Cates: for the domestic violence battery in 2000 and sex with the teenager in 2007. He was not charged in either case.

The district attorney's office also declined to charge Cates following the July rape complaint. The FBI and U.S. attorney's office then opened an investigation into the incident, [the Journal Sentinel reported last month](#).

Cates' record shows how a police officer can rack up serious misconduct allegations for more than a decade before facing significant consequences. His history also shows that prosecutors don't routinely consider previous complaints against officers - even though that approach led to criminal convictions for sexual assault against former officer Steven Lelinski four years ago.

Milwaukee Police Chief Edward Flynn, who took over in 2008, acknowledged that a computerized early-intervention system designed to identify potentially troubled officers didn't flag Cates, who was fired in December. But Flynn said procedures instituted under his watch should stop officers like Cates from slipping through the cracks in the future.

"It is clear to me looking at this employee's record that from a management point of view an obvious pattern was overlooked," Flynn said. "The department did not see the forest for the trees here."

Attorney Robin Shellow, who represents the woman who says Cates raped her following a July 911 call, said both police and prosecutors failed her client.

"I am truly saddened that the Police Department and the district attorney's office in Milwaukee County choose to protect corrupt police officers more than the most vulnerable citizens of Milwaukee," Shellow said. "These are poor women, women of color, women who may have

made mistakes, but truly victims."

**An officer's history**

Click to view the Milwaukee Police Department's internal investigations of fired officer Ladmarald Cates.

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Shellow's client said Cates raped her and forced her to perform oral sex after he responded to her 911 call about teenagers trying to kick in the door of her north side home.

In an interview with the newspaper, the woman said numerous officers - on the scene and at the police station - accused her of lying when she begged for help and asked them to take her to the hospital. She spent about 12 hours in jail before being interviewed by internal affairs. Only after that was she taken to the hospital for treatment and evidence collection.

Cates first denied any sexual activity between them, but later admitted to internal affairs investigators they had sex, according to records.

Cates, 43, could not be reached. He denied wrongdoing in all the previous instances, according to department documents. His attorney, Jonathan Cermele, did not return telephone calls.

The misconduct allegations span the tenure of three police chiefs: Arthur Jones, Nannette Hegerty and Flynn.

"We've been working hard to improve and to address some of the issues for which Officer Cates is an unfortunate poster child," Flynn said.

Flynn fired Cates in connection with the July 911 call for lying and for idling and loafing, because having sex on duty is against department rules. Cates has appealed his dismissal to the civilian Fire and Police Commission, which has the power to give him his job back. A hearing has not yet been scheduled.

### 13 reviews back to 1998

An index of the department's internal investigations of Cates, provided to the Journal Sentinel under the state's open records law, lists 13 department reviews since 1998.

Six of them - the first of which occurred in 2000 - involved allegations of failure to conform to state statutes, according to the document. The other internal reviews involved alleged violations of department rules.

A request by the newspaper for documents containing detailed accounts of the investigations is pending with the Police Department. Limited information about some of the cases is contained in the index, known as a case file history, and in documents released by the Fire and Police Commission and the district attorney's office. During an interview with the newspaper, Milwaukee Police Capt. Pat Mitchell of the Professional Performance Division provided clarification about some of the incidents.

Cates was disciplined by the department for breaking the law first in 2000, according to his case file history. He was suspended for two days for domestic violence battery. His girlfriend at the time, also a Milwaukee police officer, said he choked her and shoved her during an argument, according to Fire and Police Commission records.

The department, under Chief Jones, referred the case to the district attorney's office, which offered Cates a potentially career-saving deal.

If Cates had been convicted criminally, he likely would have been removed from the force, because federal law prohibits people convicted of domestic violence offenses from carrying guns. Instead, he entered a one-year diversion agreement with the district attorney's office, which allowed him to avoid charges by refraining from criminal activity, avoiding violent contact with the victim and undergoing counseling.

The same year, Cates was investigated again for failure to conform to state statute, according to his case file history.

His former girlfriend, named in the battery case, had received a series of hang-up telephone calls and suspected Cates, according to Mitchell. He was neither disciplined nor referred for charges in connection with that allegation.

It is listed as "pending," which means police did not have enough information to prove misconduct or to clear the officer. If witnesses come forward or more evidence is presented, the internal investigation could be reopened.

In 2005, while working as head jailer at the city lockup, Cates was investigated for allegedly breaking the law in connection with an incident involving a female prisoner. The charge, which involved allegations of sexual contact, was ruled "not sustained," Mitchell said.

At the time, Cates was responsible for administration and paperwork. He was not supposed to interact with female prisoners or move them throughout the facility, according to a complaint filed with the Fire and Police Commission by then-Chief Hegerty.

Nonetheless, Cates moved a woman from the female "bullpen" - an area with lots of prisoners in it - to an individual holding cell. While she was there, "Officer Cates was observed having lengthy conversations with her," the complaint says.

While the investigation about his activities with the female prisoner was going on, Cates went against a supervisor's orders and asked another officer about its progress, the complaint says.

Cates was suspended for eight days for mistreating a prisoner and failure to obey a supervisor's orders.

Two years later, in February 2007, Cates was investigated for sexual assault and misconduct in public office. A different woman said she had consensual sex with him in the city jail, according to Mitchell.

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Consensual sex on duty is against department rules. But investigators could not prove conclusively misconduct or clear the officer. Again, the case was pended, and Cates was neither disciplined nor referred for charges.

In November 2007, Cates, then 40, was investigated for allegedly having sex with a 16-year-old girl while off duty. The department, under Hegerty, sent the case to the district attorney's office, which again did not prosecute Cates. A form letter sent to the victim's parents, a copy of which was provided to the Journal Sentinel under the open records law, says the case won't be prosecuted, but does not specify why. Cates also was not disciplined by the police department, according to the case file history.

No additional information about the investigations into the three sexual misconduct allegations was included in the records released to the newspaper.

## Weighing a charge

In deciding whether to charge someone with a crime, prosecutors must weigh the credibility of the victim, defendant and other witnesses. When considering charging a police officer, the district attorney also has to consider what impact the badge will have on jurors' reactions, according to Chief Deputy District Attorney Kent Lovern.

However, the tendency for jurors to believe police officers more than their victims - especially if those victims have troubling histories or criminal records - can be overcome if prosecutors can show a pattern of wrongdoing by the officer.

That's what happened in the case against fired Milwaukee officer Lelinski. But for nearly a decade, according to prosecutors, Lelinski got away with sexually assaulting prostitutes, drug addicts and women with warrants out for their arrest - women whose reputations would not stand up to his.

At a 2007 trial, Lelinski was convicted of second-degree sexual assault and attempted second-degree sexual assault, both felonies, and fourth-degree sexual assault and lewd and lascivious behavior, both misdemeanors. He was acquitted on two counts of third-degree sexual assault. He is serving a prison term of more than 20 years.

From 1996 to 2005, nine women accused Lelinski of sexual misconduct. He was not charged until 2006, when Assistant District Attorney Miriam Falk decided to take on the case.

Falk charged Lelinski in connection with incidents involving three women, two of which occurred in 2005 and one in 2002. A different prosecutor had declined to charge the 2002 case at the time.

The other six cases were too old to charge by the time Falk charged Lelinski, but a judge allowed her to present information about them during Lelinski's trial because they showed evidence of a pattern. Other prosecutors had been made aware of many of those incidents shortly after they occurred, but did not issue charges because they did not consider the women credible.

In two of those cases, which occurred in the late 1990s, internal affairs investigated, but did not notify the district attorney's office.

As a rule, prosecutors aren't in the business of reviewing internal investigations, Lovern said. Further, under a U.S. Supreme Court decision, if an officer makes a statement as part of an internal investigation, it can't be used in court.

"If something is deemed as an internal matter, it's not something we would be later made aware of in a criminal investigation," he said. "It's something we would not be allowed to consider in evaluating a later criminal charge."

While prosecutors may examine past referrals to learn more about a potential defendant's background, they aren't necessarily looking for trends, Lovern said.

"Every matter we review must rise or fall on its own particular set of circumstances," he said. "We review each one of those independently."

## 'Pattern is a pattern'

In building a case against Cates, Flynn said the former officer's history added credibility to the accusations that he raped a 19-year-old woman after her July 911 call.

"We recognize individual cases can be difficult to prove, but a pattern is a pattern," he said. "If there is a pattern even of unsubstantiated allegations, we recognize it requires a closer look."

In 2007, the department started using a data-based system in an attempt to identify such trends. The early intervention system, which the department had struggled to implement since 1993, tracks squad car accidents, vehicle pursuits, uses of force, internal investigations (including citizen complaints) and sick leave. Three hits on any combination of those in 90 days flags an officer, who is then required to meet with his or her supervisor.

Because the sexual misconduct allegations against Cates didn't all occur within three months, the system didn't identify him, Flynn said.

On the flip side, the system wastes a lot of time because the computer mandates meetings for high-performing officers who simply have been unlucky over a 90-day period, Flynn said. For example, some officers have special Taser training and may be repeatedly ordered by supervisors to use them.

"It's clear to me the system's performance has come nowhere near close to its promise," Flynn said.

While the department is working to improve the system, it is not a substitute for good management and communication, he said. To that end, department managers now analyze employee behavior the same way they analyze crime, using data to evaluate officer performance. Weekly, they review indicators such as sick time. Quarterly, they delve into issues such as citizen complaints.

"Organizationally we're examining this stuff in a big room with all the accountable commanders at the same time," Flynn said.

Ultimately, it's the job of federal authorities to serve as watchdogs, making sure local police and prosecutors aren't letting officers get away with breaking the law, said Laurie Levenson, a professor at Loyola Law School in Los Angeles.

"If you have somebody in a position of authority who may be committing a crime, it's the feds' job to investigate," she said. "They have to objectively evaluate it."

When FBI agents and the U.S. attorney take on an investigation, they consider a suspect's entire history, said Leonard Peace, spokesman for the FBI's Milwaukee office.

"When we do get involved, we will ask for all the information on the individual," he said. "Personnel, criminal, administrative records. We want everything."

Read the first story about this case at [jsonline.com/watchdog](http://jsonline.com/watchdog). John Diedrich of the Journal Sentinel staff contributed to this report



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