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GRACE WATKINS

## Piety Police

**ABSTRACT.** Religiously affiliated universities are permitted to maintain their own private police under the rationale that these departments serve an educational, rather than religious, mission. This Note calls that rationale into question by uncovering the history of the Brigham Young University Police Department's (BYUPD's) morals policing, which blurred the lines between the enforcement of the law and the school's religious Honor Code. Drawing on extensive archival research and previously unexamined legal materials, this history reveals how the BYUPD waged vice- and sexual-policing campaigns that extended far beyond campus borders.

The Note argues that BYU's religious affiliation shaped the methods, priorities, and powers of its campus police. In the 1960s, the BYUPD enlisted students and professors to assist with undercover drug operations, resulting in haphazard investigative tactics that disrupted campus life. During the 1970s, university administrators encouraged the BYUPD to aggressively police sexual morality. In response, campus officers used undercover student agents to conduct surveillance and sting operations targeting gay men living in Provo. Then, following a significant expansion of the BYUPD's statutory authority in 1979, local residents reported that officers were using their law-enforcement powers to conduct Honor Code investigations off campus. In the 2010s, similar concerns resurfaced when it was discovered that a BYUPD officer had shared confidential police reports with administrators to punish victims of sexual violence for Honor Code violations related to their assaults.

Despite repeated attempts to separate the BYUPD's law-enforcement and student-discipline functions, misconduct continued. This cycle suggests that the BYUPD's religious and police duties are inextricably entangled. These findings provide a cautionary tale as more religious universities – and, more recently, megachurches – establish their own law-enforcement agencies nationwide. The Note concludes by mapping the legal landscape of this growing category of private police and reflecting on the inherent risks posed by departments acting under the authority of both church and state.

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## INTRODUCTION

In 1978, an anonymous request appeared in *The Open Door*, a community newsletter for gay and lesbian residents of Utah.<sup>1</sup> The writer hoped to connect with gay men in Provo, home to Brigham Young University (BYU), the flagship educational institution for the Church of Jesus Christ of Latter-day Saints, commonly known as the Mormon or LDS Church. At BYU, where same-sex intimacy was banned by the school's Honor Code, such a request carried particular weight.<sup>2</sup> The message stated: "I have put much deep thought into [forming a gay] underground here . . . for anyone interested in the BYU area . . . get in touch with me. . . . First names only though, please. [BYU campus] [s]ecurity here seems to be working overtime in the places we've felt relatively safe in, until recently."<sup>3</sup> But these were not the words of a young man seeking connection. They were a trap placed by "John Friday," an undergraduate student who was

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1. CONNELL O'DONOVAN, "THE ABOMINABLE AND DETESTABLE CRIME AGAINST NATURE": A REVISED HISTORY OF HOMOSEXUALITY & MORMONISM, 1840-1980 (2004), <https://www.connellodonovan.com/lgbtmormons.html> [<https://perma.cc/E46N-EY2R>]; Ben Williams, *The Beginning of Utah's Gay Community*, QSALT LAKE MAG. (May 25, 2014), <https://www.qsaltlake.com/news/2014/05/25/beginning-utahs-community> [<https://perma.cc/AX9U-T4N4>].
  2. Dean Huffaker, *Homosexuality at BYU*, SEVENTH E. PRESS, Apr. 12, 1982, at 1, 1 ("R. Michael Whitaker, director of University Standards, outlined the university's policy toward homosexuals, 'A student involved in homosexual acts is subject to termination at BYU.'"). Today, the BYU Honor Code still prohibits "same sex romantic behavior." Honor Code Off., *Same Sex Romantic Behavior*, BYU, <https://honorcode.byu.edu/same-sex-romantic-behavior> [<https://perma.cc/W6VQ-M7CX>]; see also GREGORY A. PRINCE, GAY RIGHTS AND THE MORMON CHURCH: INTENDED ACTIONS, UNINTENDED CONSEQUENCES 146 (2019) (discussing a quote from Morris Thurston stating that "[t]he gay marriage problem will not arise at BYU and other Church universities because engaging in homosexual activity is a violation of the honor code and is a basis for expulsion from the University"). For more on the historical treatment of sexuality and gender by the Church of Jesus Christ of Latter-day Saints (LDS Church) and its interactions with the development of legal doctrines, see generally SARAH BARRINGER GORDON, THE MORMON QUESTION: POLYGAMY AND CONSTITUTIONAL CONFLICT IN NINETEENTH-CENTURY AMERICA (2002), which discusses federal efforts to criminalize polygamy and its consequences for constitutional law; PRINCE, *supra*, which discusses the role that the LDS Church played in opposing the legalization of gay marriage; and TAYLOR G. PETREY, TABERNACLES OF CLAY: SEXUALITY AND GENDER IN MODERN MORMONISM (2020), which discusses the LDS Church's responses to social changes from the gay, lesbian, and trans-rights movement.
  3. *Community Voice: Gay's [sic] at BYU*, OPEN DOOR, Nov. 1978, at 4, 10 (on file with Univ. of Utah, J. Willard Marriott Digit. Libr., Utah Dep't of Cultural & Cmty. Engagement, Connell O'Donovan LGBT Utah Hist. Collection, <https://collections.lib.utah.edu/ark:/87278/s6gb5y8k> [<https://perma.cc/8XXM-VK3E>]).

earning course credit to provide “undercover work and general surveillance” for the BYU Police Department (BYUPD).<sup>4</sup>

These fake ads ran until early 1979, when Friday connected with David Chipman, a Provo resident who was questioning his sexuality.<sup>5</sup> After several days of correspondence, the two men drove to a nature preserve in a neighboring county.<sup>6</sup> Friday later testified that his “purpose was to pose in an undercover role as a homosexual” in his interactions with Chipman, who had “many questions about the life and feelings of a homosexual.”<sup>7</sup> Noting that Chipman “seemed so scared” and “unwilling to make the first move,” Friday suggested they meet again later that day at the more private location of a friend’s house.<sup>8</sup>

Unbeknownst to Chipman, BYUPD officers were listening to their conversation.<sup>9</sup> Friday was wearing a wire that transmitted audio to the campus-police

4. Brief of Respondent at 2, *State v. Chipman*, No. 17058 (Utah Aug. 28, 1980) (on file with Utah State L. Libr.) (explaining that the student “was known by the undercover name of John Friday”); Brief of Defendant-Appellant at 3-5, *Chipman*, No. 17058 (Utah Aug. 28 1980) (on file with Utah State L. Libr.) (“The State’s case centers primarily about the testimony of one [John Friday] an ‘intern’ working with the B.Y.U. police force in connection with his schooling as a ‘law enforcement major’, a course he had been pursuing for the previous two years . . . all in connection with his classes at Brigham Young University.”); Brief of Defendant-Appellant, *supra*, at 16 (“This was part of Mr. [Friday]’s academic field work, i.e., not only to engage in the ‘often competitive activity of ferreting out crime,’ but also to get a good grade.”).

The campus police department at Brigham Young University (BYU) has been referred to by a variety of names throughout its history, but it will be referred to as the BYUPD in this Note for the purposes of clarity and consistency. The undercover undergraduate student will be referred to by the alias he used during the operation that led to David Chipman’s arrest, as introduced in the next paragraph. This alias is used because it was the name known to Chipman and also accounts for the student’s young age at the time. Rather than focus on the specific individuals involved, the Note uses this case to illustrate broader structural failures in the BYUPD’s training and supervision of student officers. The alias John Friday is seemingly a reference to the character of “Joe Friday” on the popular television series *Dragnet*. See Mark Eddington, *Nielsen Looks Back On Long Career, Life*, DAILY HERALD (Provo), Aug. 13, 1995, at A1, A2 (describing how former BYUPD chief Swen Nielsen was inspired to embark on a career in law enforcement due to the character of “Joe Friday” on *Dragnet*).

5. *ACLU Appeals Provo Sex Crime Conviction*, DAILY HERALD (Provo), Aug. 29, 1980, at 19, 19 (“Chipman has said he is not a homosexual, and has since married in the Mormon Temple. He said that at the time of his meetings with [Friday] he was unsure about his sexual prefer[en]ces.”); Brief of Defendant-Appellant, *supra* note 4, at 5, 9. After the conclusion of this case, Chipman is reported to have changed his name. See O’DONOVAN, *supra* note 1. In this Note, he will be referred to by the name used in public records from his trial, providing a degree of anonymity similar to the undercover student. This choice reflects the sensitivity of the subject matter and the serious allegations raised by both parties.
6. Brief of Defendant-Appellant, *supra* note 4, at 5-6, 8-9.
7. *Id.* at 9, 16.
8. *Id.* at 9-10.
9. *Id.* at 4.

surveillance team, who had followed the pair to the nature preserve in unmarked cars.<sup>10</sup> Chipman later testified that he eventually reached over and touched Friday's upper thigh.<sup>11</sup> Suddenly, Friday turned to him and said, "[Y]our ass is grass," which was the code phrase he used to summon the BYUPD for arrest.<sup>12</sup> Chipman was charged with forcible sexual abuse; Friday alleged that Chipman groped him without consent.<sup>13</sup>

Far from an isolated incident, Chipman's arrest was part of the BYUPD's decades-long crusade against "deviant" conduct, particularly same-sex relationships, premarital sex, and drug use. This Note uncovers the history of the BYUPD's morals-policing campaigns, arguing that they blurred the line between law enforcement and religious discipline in ways that stretched the limits of the department's legal authority. These campaigns devastated the lives of the marginalized people they targeted and extended far beyond campus to ensnare people like Chipman who were not affiliated with the university.

For the purposes of this Note, I use several related terms to describe the BYUPD's enforcement activities. "Morals policing" serves as the broadest category, which refers to the investigation of crimes against public order, rather than crimes against people or property.<sup>14</sup> Within this umbrella falls "vice policing," which historically targeted criminalized activities such as drug use and same-sex relations.<sup>15</sup> In the 1950s, many municipal police departments formed dedicated

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10. *Id.* at 9, 12.

11. The exact location of Chipman's contact with Friday's body is contested. Chipman maintained that he touched Friday's upper thigh. *Id.* at 11. Friday contended that Chipman forcibly groped his groin. *Id.* at 11-12.

12. *Id.* at 12. The exact phrasing of the code phrase was confirmed by the testimony of another BYUPD officer, Malin Shepherd. *Id.*

13. *Id.* at 12-13.

14. Anne Gray Fischer defines morals policing as follows:

Sexual policing is a form of "morals policing" — also referred to as crimes against public order or against society — a legal category separate from crimes against people or property. Morals policing is a powerful tool for state authorities because it is so slippery: morals violations seem at once obvious while remaining impossibly vague. . . . Public morals laws have historically included a broad and overlapping set of state and municipal offenses such as, but not limited to, disorderly conduct, vagrancy, loitering, prostitution, common nightwalking, fornication, adultery, or being a lewd or lascivious person.

ANNE GRAY FISCHER, *THE STREETS BELONG TO US: SEX, RACE, AND POLICE POWER FROM SEGREGATION TO GENTRIFICATION* 7 (2022).

15. I. India Thusi, *The Racialized History of Vice Policing*, 69 UCLA L. REV. 1576, 1580-81 (2023) ("Historically, these crimes have included sex work, gambling (or the numbers game), narcotics consumption, sodomy, and interracial relationships.").

vice squads that enforced antisolicitation and sodomy laws against gay men.<sup>16</sup> Thus, “sexual policing” represents a further subset focused specifically on offenses ranging from public indecency to private consensual acts between same-sex partners. While secular laws on illicit sex were indirectly influenced by religious values, the BYUPD’s approach to morals policing was distinctive due to its explicit connection to LDS doctrine on sexuality, temperance, and personal conduct, which resulted in particularly intrusive and wide-ranging enforcement practices.<sup>17</sup> Moreover, the BYUPD’s morals-policing campaigns operated on a different timeline than city police; the campus police escalated their operations in the 1970s, just as these practices were starting to decline among municipal vice squads.<sup>18</sup>

These distinctive characteristics arose from the institutional context of the BYUPD. The department’s position within a religiously affiliated university gave it both the means and the motive for intensive morals policing: university resources enabled unique investigative tactics, institutional interests drove patrol priorities, and officers’ dual role in disciplining students and enforcing laws conferred specialized powers. Drawing on original archival and case research, this Note illustrates how these tactics, priorities, and powers shaped the BYUPD’s morals policing in three ways.

First, the BYUPD’s access to university resources facilitated unconventional and often-unethical experimentation in their policing methods.<sup>19</sup> In the early years after its founding in 1952, the BYUPD had limited funds, equipment, and access to law-enforcement services, such as the Federal Bureau of Investigation (FBI) Laboratory.<sup>20</sup> However, its officers aspired to expand their department’s operations and prestige.<sup>21</sup> In pursuit of these goals, the department relied on university resources to replicate traditional police services.<sup>22</sup> For example, during the student protest movement of the 1960s, it enlisted students to assist with extensive undercover operations and used faculty to test forensic evidence.<sup>23</sup> These operations entrenched policing as an enduring feature of university life by weaving it into BYU’s academic and social structures. They exposed students to

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16. ANNA LVOVSKY, VICE PATROL: COPS, COURTS, AND THE STRUGGLE OVER URBAN GAY LIFE BEFORE STONEWALL 5 (2021).

17. Ariela R. Dubler, *Immoral Purposes: Marriage and the Genus of Illicit Sex*, 115 YALE L. J. 756, 763–64 (2006).

18. See discussion *infra* Section II.B.

19. See discussion *infra* Part I.

20. See discussion *infra* Section I.A.

21. See discussion *infra* Section I.A.

22. See discussion *infra* Sections I.B, I.C.

23. See discussion *infra* Sections I.B, I.C.

the dangers of undercover work, incentivized them to spy on their peers, and diverted academic resources to sustain the BYUPD's daily operations.<sup>24</sup> And because these students and professors were largely untrained, their work was haphazard, sometimes resulting in misconduct.<sup>25</sup> Yet the BYUPD was often able to overcome these procedural failings in court and, in doing so, contributed to a police-friendly body of case law that applied to all law enforcement in the state.<sup>26</sup>

Second, BYU administrators deployed the campus police to advance the university's religious agenda.<sup>27</sup> Specifically, administrators directed the department to shield students from what they deemed immoral influences in Provo, particularly "homosexuality" and drug use.<sup>28</sup> These institutional directives aligned with the BYUPD leadership's personal support for morals policing, as well as their goal of expanding the department's powers.<sup>29</sup> This convergence of administrative pressure and departmental interests drove the BYUPD's aggressive focus on vice and sexual policing, which they pursued through drug raids and sting operations targeting gay men from the 1960s through the 1980s.<sup>30</sup> While officers made arrests under secular state laws, the university's religious mission influenced what the department chose to prioritize on patrol and where it directed its resources.<sup>31</sup> In this way, university administrators' religious agendas played a role in determining who was arrested.

Lastly, the BYUPD improperly used its law-enforcement powers to enforce student disciplinary rules.<sup>32</sup> From the department's early decades, officers were tasked with enforcing the university's religious conduct code in addition to state and federal law.<sup>33</sup> Eventually, the BYUPD successfully lobbied for statutory powers that included the ability to enforce university rules.<sup>34</sup> This dual role created concerning overlap, as officers used both their formal powers and their informal

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24. See discussion *infra* Sections I.B, I.C.

25. See discussion *infra* Sections I.B, I.C.

26. See discussion *infra* Section I.C.

27. See discussion *infra* Section II.

28. See discussion *infra* Sections I.C, II.A.

29. See discussion *infra* Sections I.A, II.B.

30. See discussion *infra* Sections I.C, II.B.

31. See discussion *infra* Section II.B.

32. See discussion *infra* Section III.

33. GARY JAMES BERGER & RONALD PRIDDIS, BRIGHAM YOUNG UNIVERSITY: A HOUSE OF FAITH 124 (1985) ("In November of [1961], Chief Nielsen announced that his department had been charged with enforcing federal and state laws, as well as campus regulations . . ."). For examples of the BYUPD's Honor Code enforcement, see discussion *infra* Sections I.A and II.A.

34. See discussion *infra* Section III.A.



authority as uniformed police to enforce the Honor Code.<sup>35</sup> Indeed, Honor Code investigations drew on officers' training in interrogation and surveillance techniques and also carried the implicit threat of legal consequences.<sup>36</sup> These blurred lines only further entangled the BYUPD's law-enforcement role with its religious responsibilities and created opportunities for misconduct. In the 2010s, for example, one officer misused confidential law-enforcement databases to help administrators identify Honor Code violations, including to punish women who reported sexual violence.<sup>37</sup>

The history of BYUPD morals policing tells a story of precarious progress. While the department has formally ended its enforcement of the Honor Code and discontinued undercover student operations, these changes came only after sustained pressure from students, local residents, advocates, and state officials.<sup>38</sup> Among these critics were members of the LDS Church, who argued that these practices were incompatible with both their faith and the separation of church and state.<sup>39</sup>

Yet the BYUPD's history also suggests a recurring cycle: the department implements policy changes in response to public criticism, but as public attention wanes and specific incidents fade from memory, the same misconduct resurfaces either in its original form or through new methods. This pattern indicates that internal policy reforms alone cannot fully disentangle the BYUPD from the university's religious mission. It also demonstrates that gender, sexual, and racial minorities bear the brunt of misconduct. Lastly, this cycle underscores the importance of preserving the historical record of the BYUPD's morals-policing campaigns, which has been largely absent from recent policy debates about the department's powers.<sup>40</sup>

At first glance, BYU may seem like an outlier case due to its connection to the LDS Church. However, the history of the BYUPD serves as a cautionary tale with wide applicability to other religiously affiliated campus police, campus law enforcement writ large, and private police forces, as described below.<sup>41</sup>

*Religiously affiliated campus police.* Much of the existing scholarship on campus policing has focused on Ivy League private institutions, leaving religiously

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35. See discussion *infra* Sections II.A, III.

36. See discussion *infra* Sections II.A, III.A.

37. See discussion *infra* Section III.B.

38. See discussion *infra* Sections II.B, III, Conclusion.

39. See discussion *infra* Sections II.B, III, Conclusion.

40. See discussion *infra* Section III.B.

41. In this Note, I refer to campus police and university police interchangeably as the police departments affiliated with higher-education institutions.

affiliated campus police largely unexamined.<sup>42</sup> However, this literature does not fully capture the distinct dynamics at play within religiously affiliated universities, which comprise a substantial subset of higher education. As of 2021, 849 such institutions enrolled close to two million students.<sup>43</sup> Among them, BYU is one of the largest religiously affiliated universities by enrollment, and its police department was a leader in developing the field of campus law enforcement, making it a particularly instructive model.<sup>44</sup>

These characteristics make the BYUPD a useful comparator for campus police at conservative religious colleges, which is a particularly timely contribution given recent legislative efforts to establish new campus police departments at these institutions.<sup>45</sup> While some universities maintain only nominal religious ties, others – like Liberty University and Bob Jones University – incorporate religious doctrine into virtually every aspect of university life, from student conduct codes to curricular requirements.<sup>46</sup> In these respects, such universities share

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42. Yalile Suriel, Grace Watkins, Jude Paul Matias Dizon & John Joseph Sloan III, *Afterword to COPS ON CAMPUS: RETHINKING SAFETY AND CONFRONTING POLICE VIOLENCE* 244, 246 (Yalile Suriel, Grace Watkins, Jude Paul Matias Dizon & John Joseph Sloan III eds., 2024) [hereinafter *COPS ON CAMPUS*] (“[M]any studies of campus police thus far have focused on elite private institutions such as the University of Chicago and those of the Ivy League.”).
  43. Digest of Educ. Stat., *Fall Enrollment and Number of Degree Granting Postsecondary Institutions, by Control and Religious Affiliation of Institution: Selected Years, 1980 through 2021*, NAT’L CTR. FOR EDUC. STAT., [https://nces.ed.gov/programs/digest/d22/tables/dt22\\_303.90.asp](https://nces.ed.gov/programs/digest/d22/tables/dt22_303.90.asp) [<https://perma.cc/W25Z-DGME>].
  44. John Waldo, *The Lawmen and the Prophets: Sectarian Exercise of Police Authority in Utah and New Jersey*, 1980 UTAH L. REV. 447, 448 n.8 (“Brigham Young University is the largest sectarian university in the nation . . . (based on 1977 enrollment of 24,028 undergraduates.)”); see *Facts & Figures: About BYU*, BYU, <https://www.byu.edu/facts-figures> [<https://perma.cc/5KXB-JDPH>]; *Colleges with Christian Affiliations*, CAMPUS EXPLORER, <https://www.campusexplorer.com/student-resources/how-many-christian-colleges-in-the-us> [<https://perma.cc/CQZ6-QLA8>] (noting BYU as an example of a “larger Christian . . . universit[y]” and listing BYU’s combined undergraduate and graduate enrollment as 34,130). For discussion of the BYUPD’s role in the campus-law-enforcement field, see *infra* Section I.A.
  45. See Austin Huguelet, *College of the Ozarks Makes Another Push for Its Own Police Force*, SPRINGFIELD NEWS-LEADER (Jan. 28, 2020, 12:07 PM CT), <https://www.news-leader.com/story/news/politics/2020/01/28/another-push-campus-police-department-college-of-the-ozarks/4589864002> [<https://perma.cc/UG6E-FXXP>]; S.B. 774, 100th Gen. Assemb., 2d Reg. Sess. § 173.2700 (Mo. 2020) (H. Comm. substitute).
  46. See Anayat Durrani, *U.S. Colleges with Religious Affiliations: What Students Should Know*, U.S. NEWS EDUC., (May 8, 2024, 5:08 PM), <https://www.usnews.com/education/best-global-universities/articles/us-colleges-with-religious-affiliations-what-students-should-know> [<https://perma.cc/S9EM-H43H>]; *Educational Philosophy & Mission Statement*, LIBERTY UNIV., <https://www.liberty.edu/about/purpose-and-mission-statement> [<https://perma.cc/SV2P-7ELF>]; *University Creed and Mission*, BOB JONES UNIV., <https://www.bju.edu>

key aspects of BYU's institutional structure. And though the LDS Church is doctrinally distinct from other Christian denominations, it nevertheless "share[s] a great deal with the theological and political conservatism of evangelicals and Protestant fundamentalists."<sup>47</sup> As a result, BYU and conservative Christian universities enforce similar conduct codes, including restrictions on same-sex relationships and gender presentation. Because many of these institutions limit access to campus police records in their institutional archives, this case study offers a rare glimpse into what their operations could look like, providing a view into how religious doctrine can influence the exercise of police power and how these policing priorities can extend past campus boundaries.<sup>48</sup>

The BYU case study also helps explain why prior constitutional challenges to religiously affiliated university police have failed. These Establishment Clause challenges relied on abstract arguments that the mere existence of these departments violates the separation of church and state.<sup>49</sup> By contrast, the history of the BYUPD offers specific examples of where religious doctrine directly influenced law-enforcement decisions. The BYU case study also offers insights into how to find such evidence. Religious entanglement in campus policing may not be clear on the surface of an arrest or investigation; rather, it often emerges only through deeper examination of the department's history and institutional culture.

*Campus law enforcement as a whole.* Campus law enforcement encompasses nearly 1,300 agencies nationwide, with many commanding multimillion-dollar budgets and military-grade equipment, such as tanks and grenade launchers from the Department of Defense.<sup>50</sup> The BYU case study reveals two little-known

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/about/creed-mission.php [https://perma.cc/97W5-PJS7]; *The Liberty Way—Student Honor Code*, LIBERTY UNIV., https://www.liberty.edu/students/honor-code [https://perma.cc/6XXG-KBW9]; *Student Handbook*, BOB JONES UNIV., https://studenthandbook.bju.edu [https://perma.cc/MC2S-WDJF].

47. PETREY, *supra* note 2, at 8.

48. This observation is based on the author's experience conducting extensive research on campus police at university archives across the country.

49. For discussion of these cases, see *infra* Section IV.A.

50. ELIZABETH J. DAVIS, BUREAU JUST. STAT., NCJ 309076, CAMPUS LAW ENFORCEMENT AGENCIES SERVING 4-YEAR INSTITUTIONS, 2021-2022—STATISTICAL TABLES 1, 13 (Nov. 2024), https://bjs.ojp.gov/library/publications/campus-law-enforcement-agencies-serving-4-year-institutions-2021-2022 [https://perma.cc/C9ZZ-GY6T]. For more on campus-police budgets and equipment, see generally *How Much Money Does the University of California Spend on Its Police Departments?*, RECLAIMUC (June 22, 2020), https://reclaimuc.blogspot.com/2020/06/how-much-money-does-university-of.html [https://perma.cc/LYW3-9GG7], which discusses the overall budget of campus policing in California; Lauren Kaori Gurley, *California Police Used Military Surveillance Tech at Grad Student Strike*, VICE (May 15, 2020), https://www.vice.com/en/article/7kppna/california-police-used-military-surveillance-tech-

aspects of this field. First, the morals policing at BYU represents one chapter in a larger story of higher education's policing of sexuality, which was by no means restricted to religiously affiliated institutions.<sup>51</sup> Second, like other campus police, the BYUPD employed extensive surveillance and undercover operations to monitor student behavior.<sup>52</sup> These tactics clashed with the "student-oriented" service image that these departments have cultivated.<sup>53</sup>

These insights challenge the popular perception of campus police as a less punitive alternative to city police.<sup>54</sup> While campus police are often used to handle student misconduct internally, the BYUPD's history reveals that campus police can in fact subject students to more intensive surveillance than municipal police.<sup>55</sup> In BYU's case, the campus police engaged in extensive monitoring of student sexual activity.<sup>56</sup> At other universities, these activities were more focused on student political organizing.<sup>57</sup>

The BYU case study also highlights the danger of state laws that grant sweeping jurisdiction to campus police, including the authority to enforce university rules and regulations.<sup>58</sup> Scholarship by Anne Walther, A.W. Geisel, and

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at-grad-student-strike [https://perma.cc/RL6G-8KET], which discusses advanced technology used by campus police; Nathalie Baptiste, *Campus Cops: Authority Without Accountability*, AM. PROSPECT (Nov. 2, 2015), <https://prospect.org/civil-rights/campus-cops-authority-without-accountability> [https://perma.cc/25FW-KED6], which discusses the broad scope of authority given to campus police; and Hannah K. Gold, *Why Does a Campus Police Department Have Jurisdiction over 65,000 Chicago Residents?*, VICE (Nov. 12, 2014), <https://www.vice.com/en/article/4w7p8b/why-does-a-campus-police-department-have-jurisdiction-over-65000-chicago-residents-1112> [https://perma.cc/T369-EWUB], which discusses the off-campus jurisdiction of the campus police at the University of Chicago.

51. See generally Margaret A. Nash & Jennifer A.R. Silverman, "An Indelible Mark": *Gay Purges in Higher Education in the 1940s*, 55 HIST. EDUC. Q. 441 (2015) (discussing the Gay Purges at the Universities of Texas, Wisconsin, and Missouri in the 1940s).
52. See discussion *infra* Section I.B.
53. See discussion *infra* Section I.B.
54. See Andrea Allen, *Are Campus Police 'Real' Police? Students' Perceptions of Campus Versus Municipal Police*, 94 POLICE J. 102, 111 (2021) ("[S]tudents were unanimous in the perception that MP [municipal police] are far more prone to sanction offenders, especially in a severe manner. 'I would say the campus police would be more lenient than [MP]' remarked Participant 13.").
55. See discussion *infra* Section II.B.
56. See discussion *infra* Sections I.A, II.A.
57. See discussion *infra* Section I.B.
58. For more on the development of campus police powers, see generally COPS ON CAMPUS, *supra* note 42; Vanessa Miller, *A National Survey and Critical Analysis of University Police Statutes*, 72 BUFF. L. REV. 101 (2025); Sunita Patel, *Transinstitutional Policing*, 137 HARV. L. REV. 808 (2024); Vanessa Miller & Katheryn Russell-Brown, *Policing the College Campus: History, Race,*

Leigh J. Jahnig has gestured to the risk that these laws could enable misconduct.<sup>59</sup> The BYU case study builds on this work by detailing examples of such abuses of power, thereby providing greater clarity on the risks they pose. The history of the BYUPD suggests that one practical difficulty is limiting the use of officers' state police power to enforce student disciplinary rules. Even when campus police departments implement policies to compartmentalize these roles, officers often blur the boundaries in practice. While some scholars have proposed legislative reforms to address this problem,<sup>60</sup> the BYUPD's pattern of recurring misconduct suggests that these two duties are simply incompatible.

Moreover, even if it were possible to maintain a strict separation between criminal investigations and conduct-code enforcement, campus police cannot turn off their informal authority. Allowing officers to enforce university rules expands the reach of law enforcement into campus life and increases exposure to police encounters and their attendant risks. As this Note's case study illustrates, student discipline takes on a quasi-criminal dimension when enforced by campus police, which conflicts with the educational and rehabilitative aims of the student-conduct process.<sup>61</sup> Police may use the heft of their office to investigate Honor Code violations, which themselves can give way to criminal charges. This dynamic raises questions about what constitutes "lawful orders" by campus

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*and Law*, 29 WASH. & LEE J. CIV. RTS. & SOC. JUST. 59 (2023); SEYMOUR GELBER, *THE ROLE OF CAMPUS SECURITY IN THE COLLEGE SETTING* (1972); BONNIE S. FISHER & JOHN J. SLOAN III, *CAMPUS CRIME: LEGAL, SOCIAL, AND POLICY PERSPECTIVES* (3d ed. 2013); DIANE C. BORDNER & DAVID M. PETERSEN, *CAMPUS POLICING: THE NATURE OF UNIVERSITY POLICE WORK* (1983); Kenneth J. Peak, Emmanuel P. Barthe & Adam Garcia, *Campus Policing in America: A Twenty-Year Perspective*, 11 POLICE Q. 239 (2008); Eugene A. Paoline & John J. Sloan III, *Variability in the Organizational Structure of Contemporary Campus Law Enforcement Agencies: A National-Level Analysis*, 26 POLICING 612 (2003); POLICING AMERICA'S EDUCATIONAL SYSTEMS (John Harrison Watts ed., 2019); and NEW DIRECTIONS IN CAMPUS LAW ENFORCEMENT: A HANDBOOK FOR ADMINISTRATORS (O. Suthern Sims, Jr. ed., 1971).

59. Anne Walther, *The Dual Role of the Campus Police Officer at Public Institutions of Higher Education*, 2023 BYU EDUC. & L.J. 57, 59; A.W. Geisel, Comment, *Campus Policing and Police Reform*, 171 U. PA. L. REV. 1771, 1773-77, 1808 (2023); Leigh J. Jahnig, *Under School Colors: Private University Police as State Actors Under § 1983*, 110 NW. U. L. REV. 249, 274-75 (2015).

60. See, e.g., Walther, *supra* note 59, at 83-84; Jahnig, *supra* note 59, at 273-74.

61. See Ian F. McNeely, *Student Development Theory and the Transformation of Student Affairs in the 1970s*, 64 HIST. EDUC. Q. 66, 67 (2024) ("Discarding the antiquated paternalism of *in loco parentis*, [campus administrators between the 1960s and 70s] recognized contemporary students not as immature charges to be disciplined, but as autonomous—if still developing—adults in need of expert guidance.").

police and when private universities' police can be considered to act under the color of state law.<sup>62</sup>

*Private police.* Finally, this Note provides insight on the vast contemporary landscape of private policing, with private officers now outnumbering public law-enforcement personnel.<sup>63</sup> This scale alone warrants careful scholarly attention. Among private police forces, private university police stand out as some of the largest and most powerful in the United States, which makes them an especially important subject of study within this field.<sup>64</sup>

As the BYU case study suggests, religiously motivated private law enforcement is not a new phenomenon. Rather, it fits within a longer historical arc of private actors enforcing moral norms, a lineage that includes organizations like the Comstock Society, which employed private enforcement authorities for vice policing.<sup>65</sup> Recognizing this historical continuity sharpens the case for investigating the role of organized religion in contemporary private policing.

Religious involvement in private policing is not limited to higher education. In fact, university police have paved the way for a new category of religiously affiliated private police: megachurch police. In 2019, Alabama lawmakers amended the state statute governing university police by authorizing a church and its affiliated school to employ police, a development that could spread to

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62. See generally Jahnig, *supra* note 59 (analyzing the role of private university police for the purposes of § 1983 suits); Rachel Harmon, *Law and Orders*, 123 COLUM. L. REV. 943 (2023) (analyzing the legal status of police-officer commands).

63. Elizabeth E. Joh, *Conceptualizing the Private Police*, 2005 UTAH L. REV. 573, 575; Seth W. Stoughton, *The Blurred Blue Line: Reform in an Era of Public & Private Policing*, 44 AM. J. CRIM. L. 117, 128 (2017); Ben K. Grunwald, John Rappaport & Michael Berg, *Private Security and Public Police*, 21 J. EMPIRICAL LEGAL STUD. 428, 429 (2024).

64. E.g., Kelly Heinzerling, *With 120 Officers, Penn Has the Largest Private Police Force in Pennsylvania*, DAILY PENNSYLVANIAN (Oct. 8, 2017, 9:28 PM), <https://www.thedp.com/article/2017/10/with-120-officers-penn-has-the-largest-private-police-force-in-pennsylvania> [https://perma.cc/B33X-MXTL]; Meghan Thompson, *University of Chicago Police History May Offer Lessons for Hopkins, Baltimore*, WTOP NEWS (Feb. 21, 2019), <https://wtop.com/baltimore/2019/02/university-of-chicago-police-history-may-offer-lessons-for-hopkins-baltimore> [https://perma.cc/GQ8D-X2WB] (“38 percent of private colleges nationally [have] their own police forces whose officers are armed and separate from campus security.”); see BRIAN REAVES, BUREAU OF JUST. STAT., NCJ 248028, CAMPUS LAW ENFORCEMENT, 2011-12, at 1 (Jan. 2015), <https://bjs.ojp.gov/content/pub/pdf/cle1112.pdf> [https://perma.cc/8VKT-SKGE] (“Among private institutions, nearly half of the students were enrolled on campuses with sworn (46%) and armed (45%) officers.”).

65. See GEORGE CHAUNCEY, *GAY NEW YORK: GENDER, URBAN CULTURE, AND THE MAKING OF THE GAY MALE WORLD, 1890-1940*, at 367 (1994).



other states.<sup>66</sup> Courts have tolerated religious affiliation in policing when tied to educational institutions, reasoning that the police departments serve the school rather than the church.<sup>67</sup> However, the BYU case study troubles this distinction. Despite its university affiliation, the BYUPD still entangled its religious and law-enforcement duties. This history casts doubt on the ability of megachurch police—or even school resource officers in parochial schools—to operate as intended.

Finally, a note on methodology is in order. The most direct historical evidence of the BYUPD's operations—their internal records—has been deaccessioned from the university archives and is no longer available.<sup>68</sup> Therefore, researching the BYUPD's morals-policing campaigns required casting a wide net to find alternative sources. This Note thus draws on original archival research from BYU institutional records, case law, trial documents from the Utah State Law Library, local and student newspaper coverage, state legislative materials, and first-person accounts from former students and Utah residents.<sup>69</sup> The Note weaves together evidence from these fragmentary sources to reconstruct an account of the BYUPD's enforcement practices that might otherwise have remained obscured by the loss of primary-source materials.

To analyze these records, the Note employs legal-historical methods. Investigating the early history of campus police offers a rare view into the internal dynamics—the founding principles, departmental culture, formative events, and leadership objectives—that influenced the development of their legal powers and tactics. This historical perspective helps contextualize contemporary incidents by revealing that they are not isolated events, but rather part of longstanding patterns that relate to the core missions of campus police.

The Note is organized into four Parts. The first three Parts each center on a Utah Supreme Court case that illustrates a different facet of the BYUPD's expansive powers and the religious interests these powers served. Beginning with the

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66. See Catherine Patterson, *Briarwood Presbyterian Now Able to Hire Police Officers*, WBRC 6 NEWS (June 18, 2019, 8:18 PM EDT), <https://www.wbrc.com/2019/06/19/briarwood-presbyterian-now-able-hire-police-officers> [<https://perma.cc/UC6Y-GBEK>]; ALA. CODE § 16-22-1(a) (2025).

67. See discussion *infra* Section IV.A.

68. A finding aid for the BYUPD's deaccessioned records still exists, however. See REGISTER TO THE SECURITY OFFICE RECORDS, 1965-1975 (2002) (on file with Brigham Young Univ., Harold B. Lee Libr., Univ. Archives, UA 691). It included such materials as confidential case reports, investigation reports on lewd conduct, and correspondence with the Federal Bureau of Investigation (FBI). *Id.*

69. One such collection is the University Police Media Releases at Brigham Young University, which is a compilation of newspaper clippings from 1960-1969. The date and source of each article were either handwritten or stamped on the materials, but newspaper page numbers were not included. Therefore, page numbers are not included in citations for these articles.

BYUPD's founding in 1952, Part I describes how the department relied on university resources for undercover operations in the first decades of its existence. These resources provided the department with enhanced investigative capabilities but often led to procedural failings and altered the academic environment of the university. The following two Parts examine different aspects of the BYUPD's enforcement of the Honor Code and the university administration's religious directives. Part II explores the period from the late 1960s through the early 1980s, showing how BYU administrators manipulated campus police priorities to advance religious objectives, particularly in targeting gay men with arrest through sting operations on and off campus. Part III investigates the BYUPD's activities from the late 1970s to the 2010s. After the department gained broad statutory powers in 1979, local residents complained that officers were enforcing the Honor Code off campus. Subsequently, it was discovered that one officer repeatedly misused his access to law-enforcement databases to punish sexual-assault victims. These incidents highlight the potential concerns that arise when campus police are granted off-campus jurisdiction and the authority to enforce university rules, including the risk that officers may use formal police powers and resources to pursue student disciplinary investigations. Finally, Part IV broadens its focus beyond BYU to map the legal and statutory powers of the growing category of church-affiliated police forces across the United States.

## **I. ACADEMIC ASSETS: USING UNIVERSITY RESOURCES FOR UNDERCOVER OPERATIONS**

This Part chronicles the expansion of the BYUPD's resources and authority from its founding in 1952 through the early 1970s. Both internal professional ambitions and external pressures from university administrators steered the trajectory of this growth. Administrators called on the BYUPD to engage in vice policing—specifically drug enforcement—as a shield against the countercultural influences of the student protest movement. Eager to establish the new field of campus law enforcement but excluded from resources available to municipal police departments, the BYUPD improvised by deploying students as undercover agents and enlisting chemistry professors to test evidence.

The 1972 Utah Supreme Court case *State v. Madsen* illustrates the consequences of these tactics: a local Provo resident was arrested in a sting operation involving an undercover former student and subsequently convicted based on evidence tested by a BYU chemistry professor. These makeshift methods compromised the integrity of investigations, strained university relationships, and expanded the department's reach beyond campus boundaries. In short, this Part demonstrates how the BYUPD exploited institutional resources to bypass the



procedural safeguards that typically accompany conventional law-enforcement methods.

### A. *The BYUUPD's Founding*

The Wasatch Mountains loom over BYU's flagship campus in Provo, Utah. Every hour, the Carillon Bell Tower chimes the LDS hymn "Come, Come Ye Saints," its melody echoing across the manicured lawns of the campus.<sup>70</sup> As the premier educational institution of the LDS Church, BYU holds deep cultural importance in Utah, where many state officials are alumni and over two million residents are LDS members.<sup>71</sup>

The BYU student body is often described as homogeneous.<sup>72</sup> In 2023, 98.5% of students were LDS members.<sup>73</sup> Today, over 80% of its 35,743 students are white and 36% are from Utah.<sup>74</sup> Approximately half of the student body serves as missionaries for the LDS Church, and nearly 20% are married.<sup>75</sup>

But all BYU students – religious or not – have one thing in common: a stated commitment to abide by the Honor Code, which is a condition of attendance.<sup>76</sup> In accordance with LDS teaching, the Code bans premarital sex, same-sex

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70. Univ. Rels., *Carillon Bell Tower*, BYU, <https://ur.byu.edu/carillon-bell-tower> [<https://perma.cc/4LKA-MHRQ>]; see Dallin H. Oaks, President, BYU, Start of Semester Address: Where Much Is Given 3 (Sept. 5, 1978), [https://speeches.byu.edu/wp-content/uploads/pdf/Oaks\\_Dallin\\_1978\\_09.pdf](https://speeches.byu.edu/wp-content/uploads/pdf/Oaks_Dallin_1978_09.pdf) [<https://perma.cc/4SWT-FMLK>].

71. *Facts and Statistics: Utah*, CHURCH JESUS CHRIST LATTER-DAY SAINTS, <https://newsroom.churchofjesuschrist.org/facts-and-statistics/state/utah> [<https://perma.cc/2QU3-XVQM>].

72. Franchesca Lopez, Julia Stark, Grant Frazier, Evan Jones & Jennifer Koski, *BYU Students Take on a Homogeneous Campus*, SUNSTONE (Jan. 1, 2019), <https://sunstone.org/byu-students-take-on-a-homogeneous-campus> [<https://perma.cc/GXC5-DFZU>].

73. Kylie Swann, *Introductory Religion Courses Acquaint Non-LDS Students with the Religious Culture of BYU*, DAILY UNIVERSE (Oct. 16, 2023), <https://universe.byu.edu/2023/10/16/introductory-religion-courses-acquaint-non-lds-students-with-the-religious-culture-of-byu> [<https://perma.cc/Z4HJ-6F3E>].

74. *Facts & Figures: About BYU*, *supra* note 44.

75. *Id.*; *BYU Athletics and Missions*, BYU ATHLETICS, <https://byucougars.com/news/2023/08/14/missions> [<https://perma.cc/YQS4-D23P>]; *First Year Experience: Missionary*, BYU, <https://fye.byu.edu/missionary> [<https://perma.cc/4ZT5-2MA6>].

76. *University Policies: Church Educational System Honor Code*, BYU, <https://policy.byu.edu/view/church-educational-system-honor-code> [<https://perma.cc/2WTK-VG3M>] ("By accepting appointment, continuing in employment, being admitted, or continuing enrollment, each member of the campus communities personally commits to observe the CES Honor Code.").

relationships, and the consumption of alcohol or coffee.<sup>77</sup> The Code also requires regular church attendance and gender-specific grooming standards.<sup>78</sup>

While BYU's commitment to LDS values has remained constant, the university itself has undergone dramatic changes to its size and reach. BYU first emerged as a nationally competitive research institution in the post-World War II period, a time of transformation in both higher education and the LDS Church. The postwar years brought surging student enrollment and increased federal and state funding for higher education.<sup>79</sup> In response, universities greatly expanded their campus facilities and degree offerings.<sup>80</sup> During the same period, LDS leadership ushered in a new public image for the Church centered on family values and civic engagement.<sup>81</sup> Amid these parallel developments, the LDS

77. *Id.*

78. *Honor Code and Honor Code Office: Dress and Grooming*, BYU, <https://honorcode.byu.edu/dress-and-grooming> [<https://perma.cc/W2DM-A3NW>].

79. See PHILO A. HUTCHESON, *A PEOPLE'S HISTORY OF AMERICAN HIGHER EDUCATION* 191 (2019) ("There is no denying the stunning growth of undergraduate populations in the post-World War II era, both in terms of sheer size and diversification . . ."); *id.* at 165 ("In the midst of a booming economy, the federal government expanded support, with the foundation of the National Endowment for the Humanities and the National Endowment for the Arts as well as the 1968 addition of the social sciences to National Science Foundation funding . . . [W]hile the federal research budget increased, the federal commitment to supporting higher education had far more rapid growth in support of campuses and students . . . 'By 1968 federal assistance in some direct form reached 92 percent of the nation's 2,734 colleges and universities . . . [.] Yet most institutions in most states received no research funding.'" (fourth alteration in original) (quoting HUGH DAVIS GRAHAM & NANCY DIAMOND, *THE RISE OF AMERICAN RESEARCH UNIVERSITIES: ELITES & CHALLENGERS IN THE POSTWAR ERA* 48 (1997))); Steven Mintz, *How the 1960s Created the Colleges and Universities of Today*, *INSIDE HIGHER ED* (June 22, 2022), <https://www.insidehighered.com/blogs/higher-ed-gamma/how-1960s-created-colleges-and-universities-today> [<https://perma.cc/6FXL-SVJ4>] (noting that "public flagships and land-grant campuses grew substantially in size" due to "increased federal and state support").

80. See JOHN R. THELIN, *A HISTORY OF AMERICAN HIGHER EDUCATION* 260 (3d ed. 2019) ("American colleges and universities showed increasing capacity to add advanced, academically selective programs, from the undergraduate level on up through the professional schools and doctoral programs."); ELLEN SCHRECKER, *THE LOST PROMISE: AMERICAN UNIVERSITIES IN THE 1960S* 11 (2021) ("Muddy, barren, and cluttered with cranes, the school seemed to be one huge construction site, an 'instant campus' that Dunham considered architecturally 'unimpressive . . . largely because the buildings look alike and are crowded together.' Of course, aesthetics was hardly at issue for Brockport's ambitious leaders as they struggled to accommodate their school's exploding student body and growing faculty." (alteration in original) (quoting E. ALDEN DUNHAM, *COLLEGES OF THE FORGOTTEN AMERICAS: A PROFILE OF STATE COLLEGES AND REGIONAL UNIVERSITIES* 7-11 (1969))).

81. See PETREY, *supra* note 2, at 5 ("[David O. McKay] reformed the church by redesigning its rituals, consolidating power in the male leadership, and redefining the message of Mormonism to be about neighborliness, strong families, and civil and social goodness."); GREGORY

Church provided BYU with tens of millions of dollars in annual funding.<sup>82</sup> This financial support fueled dramatic growth: student enrollment boomed, the size of campus doubled, and the university established a law school and numerous doctoral programs.<sup>83</sup> By 1974, BYU president Ernest L. Wilkinson described the institution as “the largest Church-related university” in the United States.<sup>84</sup>

To manage this rapidly expanding campus, the BYU administration joined many other universities in establishing its own campus police force.<sup>85</sup> The BYUPD was founded in 1952, replacing “a crew of part-time night-watchmen and custodians who doubled as law enforcement personnel.”<sup>86</sup> The department

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PRINCE & WM. ROBERT WRIGHT, DAVID O. MCKAY AND THE RISE OF MODERN MOR-MONISM 107 (2005) (quoting a *Time* magazine obituary of David O. McKay, president of the LDS Church from 1951 through 1970, which described him as “an affable new image of Mormonism to a world that had previously seen the Mormon leaders as dour, dark-suited figures. He was perhaps the first Mormon president to treat non-Mormons as generously as members of his own faith . . . In his own generous, enthusiastic way, McKay had expanded his Church’s horizons and involvement far beyond the abilities of any successor to contract them. If he had not completely destroyed Mormon exclusivism, he has certainly tempered it with his own remarkable vision of a much wider, friendlier world.”).

82. Gary James Bergera, *Ernest L. Wilkinson and the Office of Church Commissioner of Education*, 22 J. MORMON HIST. 137, 171 (1996) (“In terms of sheer growth, Wilkinson’s twenty years at BYU had indeed been phenomenal. During the space of two decades the student body had grown five-fold to more than 25,000, the number of full-time faculty had tripled to 932, the number of faculty holding Ph.D.s had jumped 900 percent to 500, faculty salaries had more than doubled to an average of nearly \$9,000 per year, the number of undergraduate colleges had nearly tripled, the number of academic departments had doubled, the first of some twenty doctoral programs had been authorized, library holdings had risen nearly 500 percent, use of the library had climbed ten fold, the physical size of the campus had more than doubled, the number of buildings had grown more than twenty fold, the amount of floor space had increased 500 percent (with a total of over \$143 million invested in land, permanent structures, and landscaping), and Church appropriations had risen twenty-one fold, from \$1 million to \$22 million annually, while university expenditures had soared thirty fold, from \$2 million to \$65 million annually.”).
83. *Id.*; see also Danae Friel, *Ernest L. Wilkinson, University Builder*, Y MAG. (Fall 1999), <https://magazine.byu.edu/article/ernest-l-wilkinson-university-builder> [https://perma.cc/H7U8-XTR6] (describing Wilkinson’s efforts to boost enrollment and campus construction projects).
84. Ernest L. Wilkinson, *Founder’s Day Address: Highlights in the Ninety-Nine-Year History of BYU* 11 (Oct. 10, 1974), [https://speeches.byu.edu/wp-content/uploads/pdf/Wilkinson\\_Ernest\\_1974\\_10.pdf](https://speeches.byu.edu/wp-content/uploads/pdf/Wilkinson_Ernest_1974_10.pdf) [https://perma.cc/Z8V4-JKR8].
85. For more on this history, see generally Miller & Russell-Brown, *supra* note 58, which charts the development of campus policing on college campuses.
86. BERGERA & PRIDDIS, *supra* note 33, at 123; see also *Ruling and Order on Cross Motions for Summary Judgment* at 6, Salt Lake Trib. v. Utah State Recs. Comm., No. 160904365 (Utah Jud. Dist. Ct. July 16, 2018), <https://splc.org/wp-content/uploads/2018/08/odf842fb-b7c1-4de8-b3d2-6b3712778e77.original.pdf> [https://perma.cc/BLN2-82LP] (authorizing university police to exercise all powers “possessed by policemen in cities and by sheriffs”).

was initially led by Chief Leonard Christensen, an LDS Church member and former Los Angeles Police Department (LAPD) captain, who maintained such close ties with Provo that the city contributed half his salary.<sup>87</sup> In 1961, Swen Nielsen succeeded Christensen as chief.<sup>88</sup> Nielsen, also an LDS member, had previously served on the LAPD's vice squad, notorious for its gay-bar raids and undercover operations.<sup>89</sup> His time with the LAPD would come to inform his approach to campus policing.<sup>90</sup>

Upon taking office, Chief Nielsen immediately prioritized expanding the department's operational capacity and off-campus jurisdiction.<sup>91</sup> The year he took office, the Utah County Sheriff's Office deputized eight BYUPD officers to give them official law-enforcement authority.<sup>92</sup> Then, in 1964, the BYUPD was sworn in by the Provo Police Department to "facilitate cooperation" and allow

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87. ERNEST L. WILKINSON & LEONARD J. ARRINGTON, *BRIGHAM YOUNG UNIVERSITY: THE FIRST ONE HUNDRED YEARS 269-70* (1975); Letter from Steven M. Sandberg, Ass't to the President & Gen. Couns., Off. of the Gen. Couns., Brigham Young Univ., to Jess L. Anderson, Comm'r, Utah Dep't of Pub. Safety 3 (Mar. 22, 2019), <https://brightspotcdn.byu.edu/08/38/20bd140940bbb6f88e2ed8005704/2019-0322-byus-response-to-notice-to-decertify-university-police.pdf> [<https://perma.cc/X7SX-B6R2>]; Ruling and Order on Cross Motions for Summary Judgment, *supra* note 86, at 3; *Obituary: Maureen Christensen*, *DESERET NEWS* (Feb. 20, 2001, 2:51 PM MST), <https://www.deseret.com/2001/2/20/19570092/obituary-maurine-christensen> [<https://perma.cc/AAJ4-AZLU>].

88. WILKINSON & ARRINGTON, *supra* note 87, at 270.

89. LVOVSKY, *supra* note 16, at 154 ("The LAPD, known for its robust vice campaigns in the 1960s, offered all new officers a multiday introduction to effective investigation, including several hours on the problem of the homosexual."). For more on the history of the Los Angeles Police Department (LAPD) vice squad, see generally LILLIAN FADERMAN & STUART TIMMONS, *GAY L.A.: A HISTORY OF SEXUAL OUTLAWS, POWER POLITICS, AND LIPSTICK LESBIANS* (2006). For information on Swen Nielsen's background, see WILKINSON & ARRINGTON, *supra* note 87, at 270; Jim Rayburn, *Provo Police Chief to Retire in July*, *DESERET NEWS* (June 7, 1995, 12:00 AM MDT), <https://www.deseret.com/1995/6/7/19216872/provo-police-chief-to-retire-in-july> [<https://perma.cc/AKY5-WL2D>]; Press Release, Dennis Crandall, Cops Raid BYU 'Pot' Party (July 24, 1968) (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); and *Provo Chief to Address Fireside*, *SPRINGVILLE HERALD*, April 4, 1974, at 9, 9.

90. Nielsen would note that his views on campus policing were "influenced by [his] experience as a police officer" with the LAPD. SWEN C. NIELSEN, *GENERAL ORGANIZATIONAL AND ADMINISTRATIVE CONCEPTS FOR UNIVERSITY POLICE*, at v (1971).

91. The chief of the BYUPD was sometimes referred to as "Captain." For clarity about rank, however, this Note will refer to officers in this position as "Chief." See, e.g., *Drug Situation Improving BYU Security Chief Says*, *SALT LAKE TRIB.*, Dec. 29, 1969 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

92. *Sheriff Gives Powers to BYU Police*, *SALT LAKE TRIB.*, Sept. 12, 1961 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

the campus police to “cross city lines ‘in pursuit’ without disturbing existing police authority.”<sup>93</sup> Nielsen organized the department into three divisions – investigative, patrol, and auxiliary – and equipped officers with new guns, handcuffs, and uniforms.<sup>94</sup>

As an official history of the university proclaimed, “Nielsen’s administration marked an era of growth and professionalism” for the BYUPD.<sup>95</sup> With these changes, BYUPD officers received off-campus jurisdiction within Utah County and were required to complete training at the Utah State Police Academy like city police officers.<sup>96</sup> In addition, the BYUPD’s “formal relationship with Provo City was severed, but a close working arrangement was retained.”<sup>97</sup>

The BYUPD’s expansion reflected not only practical operational needs, but also officers’ desire for professional legitimacy.<sup>98</sup> Nielsen explicitly acknowledged that his efforts to professionalize the department were partly meant to “add prestige,” distancing the BYUPD from its origins as night watchmen.<sup>99</sup> This motivation was reflected in officers’ reports that their new uniforms improved their “morale” and helped “demand respect” from the public.<sup>100</sup> The BYUPD’s pursuit of legitimacy demonstrates how police practices are not solely driven by penological objectives, but also by more mundane workplace dynamics and professional-identity concerns.<sup>101</sup>

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93. *Security Police Join City Force*, DAILY UNIVERSE (Provo), Apr. 29, 1964 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); BERGERA & PRIDDIS, *supra* note 33, at 124.

94. Press Release, Swen Nielsen, The Role of B.Y.U. Security (1968) (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); Sandee Carter, *Security Crew ‘Shines’ with New Uniforms*, DAILY UNIVERSE (Provo), Mar. 30, 1962 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); BERGERA & PRIDDIS, *supra* note 33, at 124.

95. WILKINSON & ARRINGTON, *supra* note 87, at 270.

96. BERGERA & PRIDDIS, *supra* note 33, at 124.

97. WILKINSON & ARRINGTON, *supra* note 87, at 270.

98. *Security Chief Returns After Polygraph School*, DAILY UNIVERSE (Provo), Nov. 23, 1963 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); Press Release, *supra* note 94.

99. Carter, *supra* note 94 (“The uniforms . . . coupled with professional and efficient performance will add prestige to Security.”).

100. *Id.*

101. For more on the perceived legitimacy of campus policing, see generally James C. Wada, Ryan Patten & Kimberlee Candela, *Betwixt and Between: The Perceived Legitimacy of Campus Police*, 33 POLICING 114 (2010); and Michael Aiello, *Legitimacy Invariance and Campus Crime: The Impact of Campus Police Legitimacy in Different Reporting Contexts*, 21 POLICE PRAC. & RSCH. 297 (2019).

These efforts proved remarkably successful. Within a decade under Nielsen's leadership, the BYUPD became "Utah County's second largest police force" with "some of the most modern crime fighting and detection equipment in the state."<sup>102</sup> A university-commissioned history proudly described Nielsen's department as "one of the model units in the nation in motivation, organization, training, equipment, and ability."<sup>103</sup> This built-up department included "full-time and part-time officers, traffic clerks, dispatchers, and secretaries."<sup>104</sup> By 1966, the University of Utah student newspaper jokingly warned that the BYUPD was "bigger, meaner, and faster than the local variety."<sup>105</sup>

The BYUPD operated within a reporting structure that created competing obligations. While the department received its police powers from the state, it also reported to university administrators who could dissolve the department or modify its funding.<sup>106</sup> This arrangement reflected a broader postwar shift in university governance, in which traditional faculty control gave way to administrative bureaucracies managed by increasingly powerful university presidents.<sup>107</sup> While trustees managed endowments and long-term strategic planning, university presidents were responsible for operationalizing these goals. At BYU, the university president also received direction from the LDS Church Educational System.<sup>108</sup>

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102. *Provo Will Swear in 'Y' Police*, DAILY HERALD (Provo), Apr. 15, 1965 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); Alf Pratte, *BYU Security Sniffs Out Trouble*, DESERET NEWS, July 29, 1964 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

103. EDWIN BUTTERWORTH, JR., BRIGHAM YOUNG UNIVERSITY: 1,000 VIEWS OF 100 YEARS 212 (1975).

104. *Id.*

105. *But Don't Get Caught*, DAILY UTAH CHRON., Nov. 2, 1966 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

106. *Model Policy: Standards of Conduct*, INT'L ASS'N OF CHIEFS OF POLICE 3 (July 2019), <https://www.theiacp.org/sites/default/files/2020-06/Standards%20of%20Conduct%20June%202020.pdf> [<https://perma.cc/LGS5-5H36>]; Nate Carlisle & Jessica Miller Schreifels, *Utah Moves to Decertify Brigham Young University's Police Department; School Plans to Appeal*, SALT LAKE TRIB. (Feb. 26, 2019, 8:46 PM), <https://www.sltrib.com/news/politics/2019/02/26/utah-moves-decertify-byu> [<https://perma.cc/QA2C-L4AP>] ("In its statement Tuesday, BYU noted that the university has run and funded its state-certified police force for nearly 40 years.").

107. EDDIE R. COLE, *THE CAMPUS COLOR LINE: COLLEGE PRESIDENTS AND THE STRUGGLE FOR BLACK FREEDOM* 11 (2020).

108. See Bergera, *supra* note 82, at 144 ("As [David O.] McKay's diary summarized Brown's report to the First Presidency, the executive committee felt 'it should be clearly understood that the



Meanwhile, Chief Nielsen envisioned campus police as a “new, emerging field of specialized law enforcement” with unique educational responsibilities.<sup>109</sup> He required officers to take classes to understand the student perspective and emphasized his department’s pedagogical role: “The attitudes that students form through contact with school police are the attitudes they’ll take into society.”<sup>110</sup> Nielsen and Christensen would spread their vision for campus policing across the nation as leaders of the primary professional organization for campus police that became the International Association of Campus Law Enforcement Administrators (IACLEA).<sup>111</sup>

Beyond traditional law enforcement, the BYUPD was also explicitly charged with “enforcing all laws and ordinances as well as University regulations.”<sup>112</sup> In particular, the department earned a reputation for aggressive enforcement of the Honor Code, becoming “[e]ven more ardent disciplinarians in some cases than the Office of University Standards personnel.”<sup>113</sup> Their enforcement included monitoring students for violations like premarital sex; the student newspaper described officers as “creep[ing] around the sides of parked cars, removing courting couples from the interior.”<sup>114</sup> As one officer confirmed, “It’s true that we

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Chancellor of the Unified Church School System, Brother Taylor, should have jurisdiction such as the title indicates, that he is the Chancellor of the whole system, including the Brigham Young University’ . . . Eventually, trustees would redefine the relationship between BYU president and chancellor of Church education by unifying the entire Church education system under one administrator — a Commissioner of Education.”).

109. Andrew H. Malcolm, *Disorders Spur Larger College Security Forces*, N.Y. TIMES, May 17, 1970, at 68, 68.

110. *Id.*

111. Nielsen authored a national guide for campus police officers, using the BYUPD as a model. See generally NIELSEN, *supra* note 90 (explaining how to organize and run a campus police department). In 1958, Leonard Christensen was a founding member and the first president of the forerunner organization of the International Association of Campus Law Enforcement Administrators (IACLEA). Edwin J. Butterworth, *Leonard E. Christensen*, INT’L ASS’N COLL. & UNIV. SEC. DIRS. NEWSL., Feb. 1971, at 11, 11 (on file with La. State Univ. Archives, LSU Police Dep’t Recs., Rec. Grp. A0205, Series 1, Box 9, Folder 1). Nielsen later served as president of the organization as well. NIELSEN, *supra* note 90, at v.

112. Larry Wright, *Security Defended by Captain Nielsen*, DAILY UNIVERSE (Provo), Feb. 21, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); see also BERGERA & PRIDDIS, *supra* note 33, at 124 (“In November of that year [1961], Chief Nielsen announced that his department has been charged with enforcing federal and state laws, as well as campus regulations . . .”).

113. BERGERA & PRIDDIS, *supra* note 33, at 123.

114. *Campus Police: (Oculus, Acutis)*, DAILY UNIVERSE (Provo), Apr. 13, 1965 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

have to check on parked cars, but when I shine my flashlight around, I think it embarrasses me more than anyone.”<sup>115</sup>

At times, the BYUPD exploited its role in student disciplinary enforcement to enhance its criminal investigations. In a 1968 case, a student reported being pressured by the BYUPD to submit to a polygraph test under threat of being barred from taking final exams.<sup>116</sup> That same year, BYU administrators even attempted to modify student-housing contracts to allow campus police to “enter without a warrant” and conduct searches when they had “reasonable cause to believe that personal properties or materials which are prohibited on campus are located in apartments.”<sup>117</sup> While this policy was eventually withdrawn following disapproval from the Board of Trustees, it exemplifies how campus police involvement in student discipline was wielded to advance their investigations while circumventing traditional constitutional protections.

### *B. Students as Undercover Agents*

The first opportunity for the BYUPD to flex its considerable powers arose out of the societal and political changes of the 1960s, including the student protest movement. While the protest scene at BYU was far less active than at other universities, administrators were nevertheless concerned that the counterculture might infiltrate their campus.<sup>118</sup> President Ernest L. Wilkinson made clear that students would be disciplined for growing out their hair or participating in activities associated with hippies. In 1965, he warned the student body, “[W]e do not want on our campus any beatles, beatniks, or buzzards.”<sup>119</sup> The administration also implemented new policies that deterred Black students from enrolling,

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115. Jaron Summers, *Security Is a Warm Blanket*, DAILY UNIVERSE (Provo), Dec. 2, 1965 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

116. Max C. Garrick, Letter to the Editor, *Lies*, DAILY UNIVERSE (Provo), Feb. 29, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

117. BERGERA & PRIDDIS, *supra* note 33, at 125.

118. See Bryan Waterman, *Ernest Wilkinson and the Transformation of BYU's Honor Code, 1965-1971*, 31 DIALOGUE 85, 85-88, 98-100 (1998); Hayden Hall & Gabi Svozil, *The History of BYU and LGBTQ Issues*, USGA, <https://www.usgabyu.com/single-post/byuhistory> [<https://perma.cc/4VJM-M4GT>] (“BYU was repeatedly praised by national media sources as being one of few ‘peaceful campuses’ in the nation with ‘well-behaved students.’”); Nancy Stowe Kader, *The Young Democrats and Hugh Nibley at BYU*, 41 J. MORMON HIST. 43, 43 (2015).

119. Waterman, *supra* note 118, at 88 (citing Ernest L. Wilkinson, Make Honor Your Standard: An Address Given to the Brigham Young University Student Body 9-10 (Sept. 23, 1965), <https://lattergaystories.org/wp-content/uploads/2020/03/Make-Honor-Your-Standard-Ernest-Wilkinson.pdf> [<https://perma.cc/V94V-DY9D>]).



such as sending letters to Black applicants warning that interracial dating was “frown[ed] upon” at their institution.<sup>120</sup> As a result of these policies—likely compounded by racial harassment and housing discrimination in Provo—the Black student population remained extremely low; university administrators noted the presence of just one Black American student in 1968.<sup>121</sup>

Chief Nielsen stated that his department’s “major concern [was] to keep the professional criminal from moving into the university community.”<sup>122</sup> The BYUPD enforced this mission by tightly controlling the borders of university grounds. Chief Nielsen instructed students to “watch for people who look like they don’t fit on campus and call Security.”<sup>123</sup> In practice, this approach targeted anyone whose appearance fell outside of dominant norms of race, sexuality, and class.<sup>124</sup> A 1969 cartoon in the BYU student newspaper satirized these policing

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120. Gary James Bergera, “*This Time of Crisis*”: *The Race-Based Anti-BYU Athletic Protests of 1968-1971*, 81 UTAH HIST. Q. 204, 210 (2013).

121. See *id.* at 206 (“Two months later, the president of the Salt Lake City branch of the National Association for the Advancement of Colored People (NAACP), Albert B. Fritz, asserted that a Nigerian BYU student a few years earlier had been forced to live in the attic of a Protestant church because ‘the people of Provo would not rent their apartments’ to black students, and that ‘Negro entertainers were not signed for [the 1959] junior prom because no motel or hotel’ would lodge them.” (quoting America—All Races and Religions, DAILY UNIVERSE (Provo), Mar. 23, 1960)); *id.* at 213 (discussing “BYU’s sole ‘American Negro’ student” in 1968); see also Jessica Nelson, *The “Mississippi of the West”: Religion, Conservatism, and Racial Politics in Utah, 1960-1978*, at 74 (2017) (M.S. thesis, Utah State University), <https://digitalcommons.usu.edu/cgi/viewcontent.cgi?article=7826&context=etd> [<https://perma.cc/E784-MYJF>] (describing attempts made by a prominent Japanese American Utahan and the president of the Salt Lake City chapter of the NAACP to speak with the LDS president about the need for civil-rights protections “[b]ecause in Provo and in any of these little outlying areas, you couldn’t eat in the cafe. You couldn’t sleep in a motel”).

122. Alf Pratte, *BYU Security Sniffs Out Trouble*, DESERET NEWS-TELEGRAM, July 29, 1964 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

123. *Security Reports Arrests*, DAILY UNIVERSE (Provo), May 9, 1967 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

124. For example, in 1967 the BYUPD arrested “three ‘hippie’ transients from California” after being “aroused by the ‘hippie’ dress and alerted by an unidentified student caller.” *Security Nabs Burglary Suspects*, DAILY UNIVERSE (Provo), Nov. 19, 1967 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1). The following year, a BYU student-newspaper writer accompanied two campus police officers on their nightly patrol, which entailed stopping and questioning “a wanderer who has been variously identified as a vagrant to a homosexual.” Jack McCann, *Night Patrol—Security’s Job*, DAILY UNIVERSE (Provo), Jan. 8, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1). For a discussion of similar practices by municipal police, see Monica C. Bell, *Anti-Segregation Policing*, 95 NYU L. REV. 650, 696-701 (2020).

priorities. In the comic, two campus police officers stand next to a holding cell containing a flower-adorned hippie. One officer explains: “I don’t know what it is, but we caught it when it walked across campus.”<sup>125</sup>

The drug use associated with the counterculture movement became a primary concern for administrators, as it conflicted with LDS values of temperance and sobriety. University president Ernest L. Wilkinson instructed campus police to be “unusually diligent in reporting any [drug-related] offenses,”<sup>126</sup> a directive that Nielsen eagerly embraced. Drug enforcement became a central focus of Nielsen’s career. While chief of the BYUPD, he established himself as a drug-enforcement expert and traveled nationwide to give presentations sponsored by federal drug-enforcement agencies.<sup>127</sup> In 1970, Nielsen remarked, “What about drugs? . . . You don’t hear anyone yelling for tougher drug laws, but they’re sure up in arms about the four deaths at Kent State University.”<sup>128</sup>

At Nielsen’s instruction to pursue the “aggressive enforcement” of drug laws, the BYUPD began arresting both students and nonstudents for drug possession—primarily marijuana—some off campus and sometimes after days of surveillance.<sup>129</sup> During the 1969-1970 school year, they made thirty-five drug-

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125. Comic, *DAILY UNIVERSE* (Provo), Feb. 24, 1969 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

126. Ernest L. Wilkinson, *President Wilkinson Sounds Off on Drugs*, *DAILY UNIVERSE*, Jan. 31, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

127. *Security Chief Attends Narcotics Conference*, *DAILY UNIVERSE* (Provo), Mar. 26, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); *Captain Swen C. Nielsen*, *DAILY HERALD* (Provo), Feb. 5, 1969 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collection, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); *Centenary Slates Lecture on Drugs*, *SHREVEPORT J.*, Sept. 25, 1970, at 34, 34.

128. Crismon Lewis, *Chief Affirms Crime Down*, *DAILY UNIVERSE* (Provo), July 25, 1970 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

129. See *Drug Situation Improving BYU Security Chief Says*, *supra* note 91. For examples of drug arrests, see *Drug Charge Files After Police Raid*, *DAILY HERALD* (Provo), June 28, 1970 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); *Two Face Drug Charges*, *DAILY HERALD* (Provo), May 2, 1970 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); *Suspects Appear in Court*, *DAILY UNIVERSE* (Provo), Dec. 5, 1967 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); *BYU Co-Ed Charged on Drug Count*, *DAILY HERALD* (Provo), Nov. 30, 1967 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); *Police Find Marijuana*,

related arrests.<sup>130</sup> They also collaborated with external law enforcement to make arrests and monitored drug trafficking throughout the state.<sup>131</sup> Even so, the BYUPD encountered a limit on their drug investigations. In 1968, Nielsen complained that “the [drug] pusher isn’t going to report anything and the user certainly isn’t.”<sup>132</sup>

To solve this problem, Nielsen turned to a clandestine method that was familiar to him from his time on the LAPD vice squad: undercover operations.<sup>133</sup> In 1962, Nielsen experimented with using undercover agents to catch sports betting at campus basketball games; he then expanded these operations in scope and scale to focus on drugs.<sup>134</sup>

The BYUPD staffed many of these undercover operations with students. This practice was not uncommon. Starting in the late 1950s, many campus police forces formed units of student employees, often called student patrols.<sup>135</sup> These student units served as the “eyes and ears” of the departments on stakeouts and

DAILY UNIVERSE (Provo), Jan. 8, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); *Marijuana Arrests*, DAILY UNIVERSE (Provo), Mar. 15, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); Wilkinson, *supra* note 126; *Security Apprehends 3*, DAILY UNIVERSE (Provo), July 22, 1969 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); and *Drug Count Names BYU Student*, SALT LAKE TRIB., Oct. 6, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

130. BERGERA & PRIDDIS, *supra* note 33, at 127.

131. See *Police Teamwork in Dope Case*, DAILY HERALD (Provo), Jan. 30, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); Wilkinson, *supra* note 126.

132. John Apgar, *The Interviewer: Capt. Nielson*, DAILY UNIVERSE (Provo), Feb. 23, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

133. *Id.* For an account of Chief Nielsen’s past experience with undercover work on the LAPD vice squad, see generally Eddington, *supra* note 4.

134. See *Bookies Taken at Game*, DAILY UNIVERSE (Provo), Mar. 13, 1962 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1); Apgar, *supra* note 132.

135. Asa T. Boynton, *Public Safety: The Cutting Edge of Modern, Cost-Effective Community Protection*, 25 CAMPUS L. ENF’T J., no. 2, 1995, at 3, 4 (“In the late 70’s, the [University of Georgia] Police Department increasingly employed student workers for office administrative and clerical tasks . . . . It was a cost-efficient move that is being practiced by many police departments today.”); Interview by John Newman with Wayne Teegarden, Chief of Police, in Boulder, Colo. (Aug. 14, 1984) (on file with Colo. State Univ. Libr., Archives & Special Collections, Recs. of the Colo. State Univ. Police Dep’t, Subseries 1.2, Box 11, Folder 3) (describing efforts to start a student patrol in 1958); *Students Work with University Police*, CAL. AGGIE, Nov. 17, 1971, at 12, 12.

foot patrols.<sup>136</sup> In addition to supporting surveillance efforts, these patrols were intended to cultivate a public-service image and build rapport with students during the tensions and protests of the 1960s.<sup>137</sup> In theory, the arrangement benefited both parties: students gained practical experience and, in some cases, compensation, while departments gained a cheap source of labor to alleviate financial and personnel limitations.<sup>138</sup>

Crucially, students provided campus police with enhanced surveillance abilities beyond what was typically available to municipal police departments. These student operatives were likely more difficult to detect than officer plants due to their young age, familiarity with campus, and existing social ties with peers. Their operations supplemented the vast but little-known intelligence networks that campus police established during the student protest movement through paid informants, covert recording, wiretaps, and information sharing with outside agencies like the FBI.<sup>139</sup> Campus police leadership apparently determined these benefits outweighed potential risks, including students' lack of training and experience compared to that of uniformed officers.

At BYU, students were integral to campus police operations, serving in three capacities. First, many worked part-time in the student patrol, performing a range of duties for the department, and some students were even armed.<sup>140</sup> Others were law-enforcement majors who received course credit for field

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136. James A. Huff, *Campus Security: The Mule Patrol*, 59 FBI L. ENF'T BULL., no. 7, 1990, at 16, 16-17.

137. Frank Macomber, *New Police Look Quiets Campus*, LA GACETA, Mar. 16, 1973, at 10, 10.

138. See, e.g., Richard Gordon & Jonathan Greer, *U. Security Used Paid Student in 'Drug Bust,' Shabel Says*, DAILY PENNSYLVANIAN, Apr. 13, 1977, at 1, 1; see also Rodger L. Hardy, *Change at the Top for BYU Police: Kelshaw Cites Health Reasons for Decision to Retire After 38 Years*, DESERET NEWS (Jan. 7, 2000), <https://www.deseret.com/2000/1/7/19484419/change-at-the-top-for-byu-police-br-kelshaw-cites-health-reasons-for-decision-to-retire-after-38-yea> [<https://perma.cc/C853-EV38>] (quoting BYUPD member Robert Kelshaw, who stated it was "next to impossible" to hire more full-time officers, so "[w]e have always used as many students as we can").

139. See, e.g., Grace Watkins, *FBI and Campus Police*, in THE FEDERAL BUREAU OF INVESTIGATION: HISTORY, POWERS, AND CONTROVERSIES OF THE FBI 49, 49 (2020); Yalile Suriel, *The Making of a University Police Department in an Era of Student Activism*, 8 J. CIV. HUM. RTS., no. 2, 2022, at 1, 15-17, 21-23; Yalile Suriel, *Campus Eyes: University Surveillance and the Policing of Black and Latinx Student Activism in the Age of Mass Incarceration, 1960-1990*, at 92 (Dec. 2021) (Ph.D. dissertation, Stony Brook University) (on file with author); KENNETH HEINEMAN, *CAMPUS WARS: THE PEACE MOVEMENT AT AMERICAN STATE UNIVERSITIES IN THE VIETNAM ERA* 118 (1992) (describing a campus police officer who taped anti-Vietnam War activists' conversations); John Geesman, *University Policeman Accused of Asking Student to Plant Bug*, YALE DAILY NEWS, Sept. 30, 1971, at 1, 1.

140. Carter, *supra* note 94, at 65 (identifying three "[s]ecurity officers" by their class year and major).

assignments.<sup>141</sup> A third group participated in undercover assignments on an unpaid, volunteer basis.<sup>142</sup> Chief Nielsen maintained that students were “replaced by one of the regular officers if things get rough.”<sup>143</sup> But reports of how undercover student operations were carried out in practice call this claim into question.

One notable incident illustrates the risks that these undercover operations posed to both student participants and subjects. In January 1968, the BYUPD led what at the time was the largest narcotics raid by number of arrests in Provo’s history.<sup>144</sup> The campus police spent three weeks staking out an off-campus house with student residents where there was suspected drug use.<sup>145</sup> Then, they coordinated with local law enforcement to execute the raid.<sup>146</sup> The BYUPD allegedly planted an undercover student in the house who supplied drugs and encouraged students to use them.<sup>147</sup> In subsequent reporting, Nielsen refused to comment on these allegations, citing ongoing legal proceedings.<sup>148</sup> The undercover student, however, testified that he signaled officers using a concealed one-way radio transmitter when a package of marijuana was opened in the apartment.<sup>149</sup> Then, according to a friend of the people arrested, fourteen officers—including BYUPD and city police—smashed in the front door with a sledgehammer, weapons drawn and without a warrant.<sup>150</sup> They reportedly threatened to shoot the occupants and raided the house, seizing innocuous household items like vitamin bottles as evidence.<sup>151</sup> In a statement to the student body, the

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141. See discussion *infra* Section II.B.

142. Apgar, *supra* note 132.

143. *Id.*

144. *Narcotics . . . Security Catches Eight*, DAILY UNIVERSE (Provo), Jan. 30, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

145. *Id.*

146. *Id.*

147. Larry Wright, *Defense Attorneys Blast Suspensions*, DAILY UNIVERSE (Provo), Feb. 2, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

148. *Id.*

149. *Security Officer Testifies in Court*, DAILY UNIVERSE (Provo), Feb. 16, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

150. Joseph Naylor, *Rights*, DAILY UNIVERSE (Provo), Feb. 5, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

151. *Id.*

university president declared that nine people were arrested on drug charges, including six students.<sup>152</sup>

In the aftermath of this incident, one defense attorney complained that BYU officials used their influence to cover those arrested in a “cloak of guilt.”<sup>153</sup> He also criticized the “gestapo tactics” of the BYUPD, particularly their use of undercover students.<sup>154</sup> Chief Nielsen responded to public disapproval by stating that his department trained these student agents “as much as [the department] can but [the students are] not professionals.”<sup>155</sup>

Some students objected that the use of their peers as undercover agents created an “atmosphere of mistrust.”<sup>156</sup> A 1974 account in the BYU newspaper confirmed these concerns when a student described his undercover assignment to attend a party while posing as a drug user.<sup>157</sup> There, he encountered numerous acquaintances, including a friend and a former romantic interest.<sup>158</sup> After observing drug offenses, he summoned BYUPD officers to make arrests, later claiming that his deception was “nothing compared to the hypocrisy of those” arrested.<sup>159</sup> But regardless of that student’s claims, the practical effect of these undercover operations must have been clear: students were being surveilled by their own classmates and, in some cases, by peers they had close relationships with.

Nevertheless, Chief Nielsen advised other campus police to adopt these tactics.<sup>160</sup> In 1970, he urged attendees of a university-administration conference to use campus police surveillance in response to the unrest of the student protest movement. As support, he described a confidential informant the BYUPD had used to make “the arrest of 14 [drug] pushers” in the span of three months.<sup>161</sup>

The BYUPD’s use of student undercover agents reveals how the department leveraged university resources to conduct in-depth operations that likely would

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152. Wilkinson, *supra* note 126; ‘Pot’ Trial Set for Mar. 1, DAILY UNIVERSE (Provo), Feb. 21, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

153. BERGERA & PRIDDIS, *supra* note 33, at 125.

154. Wright, *supra* note 147.

155. Apgar, *supra* note 132.

156. Larry Vollintine, Bill Bagley & Hans Hansen, 20,000 Officers?, DAILY UNIVERSE (Provo), Feb. 2, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

157. BERGERA & PRIDDIS, *supra* note 33, at 126.

158. *Id.*

159. *Id.*

160. Mary Anne Corpin, *Drugs Said Core of Campus Rioters*, TAMPA TRIB., Apr. 23, 1970, at 2B, 2B.

161. *Id.*



have been more difficult for municipal departments to achieve. But these operations came at the cost of student privacy and strained peer relationships. The next Section reveals another way that the BYUPD experimented with using academic resources for vice operations, which again came at the expense of careful police work and extended off campus to affect nonstudents.

### C. Professors as Forensic Scientists

Collaborating with academic departments was a boon for private campus police departments, which were sometimes excluded from resources for public police.<sup>162</sup> For example, the BYUPD was not eligible for assistance from the FBI Laboratory, which provided evidence-testing services for municipal police departments.<sup>163</sup> Instead, the BYUPD turned to another university resource to support their undercover drug operations: professors.<sup>164</sup> In Nielsen's published guide for campus police, he encouraged other university police departments to do the same: "[T]he university chemistry or physics departments can be of great

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162. Campus police often had to lobby to be eligible for external resources. *President Slamons' Key-note Speech*, 10 CAMPUS L. ENF'T J., no. 4, 1980, at 12, 12 (showing that IACLEA was responsible for lobbying the Law Enforcement Assistance Administration (LEAA) to allow campus police to receive grants); President's Comm'n on Campus Unrest, Report to the President (Draft, Late Sept. 1970), at 5/27 (Sept. 21, 1970) (on file with Nat'l Archives, President's Comm'n on Campus Unrest, Part 1: Exec. Files, Rep. to the President (Drafts), Draft—Late Sept. 1970, Sept. 21-23, 1970) ("The Law Enforcement Assistance Administration of the Department of Justice has extended educational benefits under its programs to campus police officers: these might usefully be expanded to include the personnel of private universities who are sworn officers of the State."); Minutes of the Mid-Winter Board Meeting of the IACUSD 6 (Jan. 11, 1976) (on file with La. State Univ. Archives, LSU Police Dep't Recs., Rec. Grp. A0205, Series 1, Box 2, Folder 7) (explaining that the Government Relations Committee reported: "[T]here is little progress with the LEAA and recommended that the Association take positions on government legislation which affects campus law enforcement.").

163. Swen Nielsen, *The Role of B.Y.U. Security* (1968) (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1) ("[M]any of the criminalistic functions performed by the FBI as a service to municipal departments must be carried on by the [BYUPD]. It is for this reason that the [BYUPD] is equipped to handle many criminalistic examinations that are generally not carried on by departments of this size.").

164. In 1967, the *Utah Daily Chronicle*, the student newspaper for the University of Utah, reported from "a reliable source that the Biochemistry Department at [BYU] has been asked to procure the necessary materials so that blood tests may be run for LSD and marijuana content on students. This request I believe was made by Campus Security." Ron Scott, *Utah Scribe Comments on "Pot" Issue*, UTAH DAILY CHRON., Apr. 12, 1967 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

value in analyzing evidence. I am personally indebted to several professors who have analyzed evidence and later testified in court.”<sup>165</sup>

A case that reached the Utah Supreme Court—*State v. Madsen*—demonstrates the perils of using professors to test evidence. In 1971, the BYUPD was using a recent BYU graduate to buy drugs from Provo residents.<sup>166</sup> One night in March, this former student accompanied undercover BYUPD officer Daran Carr to buy drugs from two men at a Provo cafe.<sup>167</sup> Carr initiated the exchange by passing ten dollars under the table.<sup>168</sup> One of the men, forty-seven-year-old Thomas Madsen, then handed over a small plastic bag containing a “whitish-yellow substance.”<sup>169</sup> Madsen and his companion were subsequently arrested and charged with selling methamphetamines.<sup>170</sup>

A BYU chemistry professor, Albert Swensen, tested the contents of the plastic bag.<sup>171</sup> Madsen’s defense counsel objected to the admission of the plastic bag as evidence on two grounds. First, Swensen did not actually test the drug for identification as methamphetamine; instead, he merely confirmed that it was “one of the amphetamines. Probably methamphetamine,” and that, as a matter of routine, “I usually let it go at that.”<sup>172</sup> Second, there was potentially a break in the chain of custody when handling the evidence. The bag was passed between several officers and evidence lockers before being stored in Swensen’s laboratory.<sup>173</sup> According to the defense attorney, the sample Swensen received had different markings than the ones recorded by the BYUPD officers.<sup>174</sup> Madsen’s counsel also claimed that, at trial six months later, Swensen admitted, “[H]e had handled so many other specimens in the interim, that he couldn’t remember the appearance of the items as they were when he examined them.”<sup>175</sup>

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165. NIELSEN, *supra* note 90, at 49.

166. Appellant’s Brief at 2-3, *State v. Madsen*, 498 P.2d 670 (Utah 1972) (No. 12700), [https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=6094&context=uofu\\_sc2](https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=6094&context=uofu_sc2) [<https://perma.cc/LH9L-B9FH>]; 1969 BANYAN: THE YEARBOOK OF THE ASSOCIATED STUDENTS OF BRIGHAM YOUNG UNIVERSITY 351 (1969).

167. Appellant’s Brief, *supra* note 166, at 2-3.

168. *Id.* at 2.

169. *Id.* at 2-3, 10.

170. *Id.* at 1; *Thomas Madsen Arraignment Slated April 16*, DAILY HERALD (Provo), April 5, 1971, at 2, 2.

171. Appellant’s Brief, *supra* note 166, at 4-5.

172. *Id.* at 7.

173. *Id.* at 3-5.

174. *Id.* at 10-11. These facts were disputed by the State. Brief for Respondent at 2, *State v. Madsen*, 498 P.2d 670 (Utah 1972) (No. 12700), [https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=6095&context=uofu\\_sc2](https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=6095&context=uofu_sc2) [<https://perma.cc/3FG7-DT4E>].

175. Appellant’s Brief, *supra* note 166, at 5.



While Madsen's defense did not explicitly object to the use of a BYU chemistry professor to test evidence, they did emphasize that Swensen deviated from proper procedure used by forensic labs.<sup>176</sup> Madsen's defense also argued that "[t]he police involved seemed to know little more," and that they had processed the evidence with few procedural safeguards.<sup>177</sup>

The judge overruled these objections, and Madsen was convicted.<sup>178</sup> On appeal, the Utah Supreme Court held that there was no abuse of discretion by the trial court in admitting the evidence and affirmed Madsen's conviction, signaling at least tolerance of the BYUPD's evidentiary practices.<sup>179</sup> This case represented another success for the BYUPD's investigative unit, which boasted what Chief Nielsen described as an "enviable" ninety-eight percent conviction rate at least one five-year period prior to 1968.<sup>180</sup> Tragically, Madsen died in 1974 after an operation at the Utah State Prison hospital, leaving behind a wife and young daughter.<sup>181</sup>

Though the BYUPD deployed unusual methods, the resulting decision in *Madsen* might be considered typical, given how courts have generally responded to challenges against municipal police practices for gathering and storing evidence; the standard for establishing an adequate chain of custody is low.<sup>182</sup> But it is still significant that, at least in Utah, a campus police case contributed to building a body of case law that cemented lenient evidentiary requirements for all law enforcement. Indeed, the Utah Supreme Court and Court of Appeals have

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176. *Id.* at 17. The defense argued that "Dr. Swensen made no known effort to record the condition of Exhibit 2 when he got it. He had no set procedure to note on his records that the bottle was sealed or to open the bottle without damaging the seal." *Id.*

177. *Id.*

178. *Id.* at 1; Motion for Rehearing at 3, *Madsen*, 498 P.2d 670 (No. 12700), [https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=6096&context=uofu\\_sc2](https://digitalcommons.law.byu.edu/cgi/viewcontent.cgi?article=6096&context=uofu_sc2) [<https://perma.cc/ER55-GNN7>].

179. *Madsen*, 498 P.2d at 672.

180. Nielsen, *supra* note 163.

181. See *Madsen v. State*, 583 P.2d 92, 92 (Utah 1978) (describing the basis of the wrongful-death suit brought by Madsen's wife and daughter); *Prison Death Prompts Suit by County Woman*, DAILY HERALD (Provo), Feb. 17, 1976, at 3, 3.

182. See, e.g., *United States v. Lott*, 854 F.2d 244, 250 (7th Cir. 1988) ("[T]he government need not prove a perfect chain of custody for evidence to be admitted at trial; gaps in the chain normally go to the weight of the evidence rather than its admissibility." (citing *United States v. Jefferson*, 714 F.2d 689, 696 (7th Cir. 1983); *United States v. Lampson*, 627 F.2d 62, 65 (7th Cir. 1980))).

repeatedly cited *Madsen* in cases upholding evidence collected by municipal police.<sup>183</sup>

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This Part has demonstrated that the BYUPD's use of university resources gave it surveillance and investigative abilities that rivaled those of municipal police. The BYUPD exercised these powers haphazardly and without many procedural safeguards. Moreover, the BYUPD chief promoted these practices for adoption at other universities. The next Part examines how these unique powers were deployed to serve religious interests at BYU through morals policing.

## II. MORAL MANDATES: SHAPING POLICE PRIORITIES TO REFLECT RELIGIOUS INTERESTS

The expansive powers canvassed in Part I pose problems on their own terms: by leveraging university resources, the BYUPD deployed investigative tactics that delegated key policing functions to untrained professors and students. Part II situates this story within the BYUPD's unique role at a religious institution. The department's access to university resources was used not only for traditional "crime-fighting," but also to advance and enforce religious doctrine. And these operations were directed by university administrators acting upon instructions from the LDS Church.

This Part examines how the Gay Purges at BYU evolved through two distinct phases. First, from the mid-1960s to the early 1970s, campus police enforced the Honor Code against gay students, utilizing their informal authority and training as police. This first phase gave rise to the second, from the early 1970s through the early 1980s, in which administrators directed campus police to target non-students through the enforcement of criminal law. Heeding this call, the BYUPD conducted extensive off-campus operations in a campaign to drive out same-sex relationships from the college grounds and surrounding neighborhoods. The 1979 arrest of David Chipman during an operation by an undercover BYU student officer — resulting in the 1980 Utah Supreme Court case *State v. Chipman* — exemplifies the reach of this religious campaign beyond campus boundaries.

While universities sometimes have incentives to "sweep cases under the rug" to avoid negative publicity,<sup>184</sup> the opposite dynamic played out at BYU during

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183. See, e.g., *State v. Turner*, 731 P.2d 493, 494 (Utah 1986); *State v. Bradshaw*, 680 P.2d 1036, 1039 (Utah 1984); *State v. Ricci*, 655 P.2d 690, 692 (Utah 1982); *State v. Eagle Book, Inc.*, 583 P.2d 73, 74 (Utah 1978); *State v. Torres*, 69 P.3d 314, 316 (Utah Ct. App. 2003); *State v. Wynia*, 754 P.2d 667, 671 (Utah Ct. App. 1988).

184. Danielle DeBold, *The Decriminalization of Rape on America's College Campuses*, 99 WOMEN LAWS. J., no. 3, 2014, at 10, 17.

the Gay Purges: administrators directed campus police to aggressively *enforce* laws related to sexuality. This Part reveals how the BYUPD's policing priorities were influenced by LDS Church doctrine, with devastating consequences for gay students and local residents.

The BYUPD's dual commitments to law enforcement and BYU's religious mission were visually represented in its shoulder patch, which Chief Nielsen designed in the early 1970s.<sup>185</sup> The patch was intended to symbolize the role a police department should serve within a religiously affiliated university.<sup>186</sup> Central to its design is the Sword of Laban from the Book of Mormon, nestled between the scales of justice and the lamp of learning; Nielsen included the sword as a depiction of the use of "righteous force."<sup>187</sup> The BYUPD handbook further explained that the Sword of Laban represented the defense of the LDS people against oppression.<sup>188</sup> After completing the design, Nielsen submitted the patch for approval by the BYU religion department.<sup>189</sup> In reflecting on the patch, a BYUPD lieutenant remarked, "I think it represents our mission and what we are all about."<sup>190</sup> The patch illustrates how the BYUPD was beholden to interests other than protecting public safety, including high-level administrators who were interested in advancing the university's religious values.<sup>191</sup>

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185. See Jennifer Balmforth, *Police Sport Scripture Symbol*, DAILY UNIVERSE (Mar. 28, 2002), <https://universe.byu.edu/2002/03/28/police-sport-scripture-symbol> [https://perma.cc/L9JN-JAWA]; BYU Police Dep't, *BYU Police Now Has a New Uniform Patch*, FACEBOOK (July 2, 2022), <https://www.facebook.com/BYUPD/posts/byu-police-now-has-a-new-uniform-patch/338086431852268> [https://perma.cc/A4RE-QZG4]; BYU Police Dep't, *BYU Police Collectible Patches and Coins Are Now Live and for Sale!*, FACEBOOK (Dec. 9, 2023), <https://www.facebook.com/photo.php?fbid=656658063344902&id=100070021414893&set=a.546404271036949> [https://perma.cc/Y682-CXBM].

186. Jennifer Balmforth, *University Police Shoulder the Sword of Laban*, DAILY UNIVERSE (Apr. 1, 2002), <https://universe.byu.edu/2002/04/01/university-police-shoulder-the-sword-of-laban> [https://perma.cc/44LN-SAJZ].

187. *Id.*; see also Suzanne Gerhart, *The Sword of Laban*, CHURCH JESUS CHRIST LATTER-DAY SAINTS (2006), <https://history.churchofjesuschrist.org/media/gerhart-s> [https://perma.cc/K8AW-J4T3] (explaining that, in the Book of Mormon, the sword was used by a scriptural figure to slay another in possession of sacred brass plates).

188. See Balmforth, *supra* note 185. In the Book of Mormon, a passage about the Sword of Laban states, "Behold the Lord slayeth the wicked to bring forth his righteous purposes. It is better that one man should perish than that a nation should dwindle and perish in unbelief." 1 *Nephi*, in THE BOOK OF MORMON 4:13.

189. Balmforth, *supra* note 186.

190. *Id.*

191. Challenges to religious imagery on police shoulder patches and police chaplain badges have resulted in settlements that included the removal of these symbols. See, e.g., *Star of David or Six-Pointed Star No Matter: Logo to Go*, JEWISH NEWS N. CAL. (Mar. 1, 2002), <https://jweekly>

The BYUPD's actions were troubling not only for their religious motivation, but also for the methods they employed. The cases discussed in this Part reveal a porousness between boundaries typically understood as separate: church and state, city and campus, student and police, criminal statute and Honor Code. These factors distinguish the BYUPD's morals policing from both state animus toward gay men and discriminatory policies adopted by secular institutions during the same period.<sup>192</sup> Rather than simply reflecting then-dominant societal attitudes about sexuality, the Gay Purges at BYU demonstrate how the campus police used their unique institutional affiliation to extend the reach and effectiveness of their morals policing. While other institutions may have held similar antigay views, few possessed this combination of religious authority, police powers, and university resources.

*A. Phase One: The BYUPD Enforces the University's Ban on Gay Students*

During the postwar period, several large public universities waged what have since become known as the Gay Purges – the systematic removal of gay students, professors, and staff – as part of the broader Lavender Scare during the postwar period.<sup>193</sup> At most universities, the Purges ended by the mid-1960s amid a shift toward greater sexual and political freedoms for students.<sup>194</sup> Not so at BYU. There, the Purges were only just beginning.

In the late 1950s and early 1960s, LDS apostles and the Church Board of Education directed BYU administrators to prevent homosexuality from spreading among the student body.<sup>195</sup> In 1965, university president Ernest L.

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.com/2002/03/01/star-of-david-or-six-pointed-star-no-matter-logo-to-go [https://perma.cc/MWX4-5HNV]; Associated Press, *Police Must Remove Badge Crosses*, CT INSIDER (Dec. 6, 2007), <https://www.ctinsider.com/seattlenews/article/police-must-remove-badge-crosses-1257897.php> [https://perma.cc/F79Q-U9KC].

192. For the history of the federal regulation of sexuality, see generally MARGOT CANADAY, *THE STRAIGHT STATE: SEXUALITY AND CITIZENSHIP IN TWENTIETH-CENTURY AMERICA* (2009).

193. See HUTCHESON, *supra* note 79, at 136 (“Later, during World War II and shortly thereafter, administrators at the University of Texas, the University of Wisconsin, and the University of Missouri not only identified gay men or, consonant with the vague identification of un-American evident in McCarthyism, men who were suspected of homosexual behaviors.”). See generally Nash & Silverman, *supra* note 51 (describing the 1940s Gay Purges in higher education).

194. See generally STACY BRAUKMAN, *COMMUNISTS AND PERVERTS UNDER THE PALMS: THE JOHNS COMMITTEE IN FLORIDA, 1956-1965* (2012) (describing the trend toward greater freedoms for students at the end of the Purges); Nash & Silverman, *supra* note 51 (describing the 1940s Gay Purges in higher education).

195. D. MICHAEL QUINN, *SAME-SEX DYNAMICS AMONG NINETEENTH-CENTURY AMERICANS: A MORMON EXAMPLE* 379 (2001) (“In connection with this aversion therapy program,

Wilkinson announced a new policy that BYU will not “admit to our campus any homosexuals.”<sup>196</sup> In a speech to the student body, President Wilkinson proclaimed that homosexuals should “leave the university immediately. . . . We do not want others on this campus to be contaminated by your presence.”<sup>197</sup> As the director of university standards, R. Michael Whitaker, later explained, “A student involved in homosexual acts is subject to termination at BYU” as a violation of the Honor Code.<sup>198</sup> However, Wilkinson’s ban also applied to students who were not sexually active but merely identified as gay.<sup>199</sup> This religious campaign launched the first phase of the Gay Purges at BYU, which spanned the second half of the 1960s and focused on Honor Code enforcement. In 1967 alone, seventy-two students were reportedly investigated for same-sex intimacy.<sup>200</sup>

The BYUPD was heavily involved with enforcing the Honor Code’s ban on gay students.<sup>201</sup> A former student recounted, “BYU security would catch people

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Apostles Spencer W. Kimball and Mark E. Petersen informed [Ernest] Wilkinson in 1962 that ‘no one will be admitted as a student at the B.Y.U. whom we have convincing evidence is a homosexual.’”); Ernest L. Wilkinson, Private Journal Recording the Decision to Suspend Homosexual BYU Students That Are Not “Unrepentant” and “Working on the Problems” (May 21, 1959) (on file with Univ. of Utah, Marriott Libr., Wilkinson Collection, [https://bhroberts.org/records/6QeGQb-oeR1vh/ernest\\_l\\_wilkinson\\_records\\_the\\_decision\\_to\\_suspend\\_homosexual\\_byu\\_students\\_that\\_are\\_not\\_unrepentant\\_and\\_working\\_on\\_their\\_problems](https://bhroberts.org/records/6QeGQb-oeR1vh/ernest_l_wilkinson_records_the_decision_to_suspend_homosexual_byu_students_that_are_not_unrepentant_and_working_on_their_problems) [<https://perma.cc/QND8-K36S>]); Seth Anderson, *Timeline of Mormon Thinking About Homosexuality*, NOMORESTRANGERS.ORG (Dec. 8, 2013), <https://www.nomorestrangers.org/timeline-of-mormon-thinking-about-homosexuality> [<https://perma.cc/4P8S-B6W3>].

196. Ernest L. Wilkinson, President, Brigham Young Univ., Make Honor Your Standard: An Address Given to the Brigham Young University Student Body 8 (Sept. 23, 1965), <https://latertgaystories.org/wp-content/uploads/2020/03/Make-Honor-Your-Standard-Ernest-Wilkinson.pdf> [<https://perma.cc/V94V-DY9D>].

197. *Id.*

198. Huffaker, *supra* note 2, at 12–13.

199. *Prince Research Excerpts on Gay Rights & Mormonism* — “06 — BYU,” U. VA. MORMON STUD. [hereinafter *Prince Research Excerpts*], <https://mormonstudies.as.virginia.edu/gay-rights-and-mormonism/06-byu> [<https://perma.cc/KD6D-EML7>] (quoting Ernest L. Wilkinson’s journal entry from September 12, 1962, about his meeting with BYU general counsel, the dean of students, and LDS Church apostles, describing that “as a general policy . . . no one will be admitted as a student at the BYU whom we have convincing evidence is a homosexual”); *id.* (quoting David O. McKay’s diary entry from August 18, 1967, describing the process of drafting the Honor Code language: “After some discussion on the matter, the Brethren were in agreement that the paragraph should read as follows: . . . ‘Homosexuality will not be tolerated’ (alteration in original)).

200. PETREY, *supra* note 2, at 65.

201. Ben Williams, *One-Way Ticket to Provo*, QSALT LAKE MAG. (Oct. 23, 2014), <https://www.qsaltlake.com/news/2014/10/23/one-way-ticket-provo> [<https://perma.cc/7BCW-D8NV>] (“Under BYU’s President, Dallin Oaks, campus security was instructed to find homosexual students and bring them before standards to be treated or expelled.”).

in compromising positions.”<sup>202</sup> The campus police enforced the Honor Code as part of their broader mandate to uphold university rules. As Chief Nielsen explained, “We are established for the purpose of enforcing all laws and ordinances as well as University regulations.”<sup>203</sup> In 1969, an interoffice memo revealed that the only evidence needed to suspend a student was a report from the campus police “indicating that he was a homosexual.”<sup>204</sup> (Like city police during this period, the BYUPD focused on gay men rather than lesbian women, whose presence was rendered largely invisible, at least to law enforcement.<sup>205</sup>)

The BYUPD drew on their police training and informal authority as law enforcement to enforce the Honor Code. They allegedly kept intelligence files on students suspected of being gay.<sup>206</sup> Reports suggest that officers surveilled areas where they believed gay students might congregate, pulling men out of their drama and ballet classes for questioning.<sup>207</sup> One former student recalled how “security officers interrogated students majoring in fine arts, drama and dance, and placed electronic recording devices on decoy students.”<sup>208</sup> When BYUPD officers brought students in for questioning, they leveraged students’ perception of their authority as uniformed, armed officers. A former student, Lee Paulsen, described that in 1965, campus police officers “came to my dorm, took me in and interviewed me in a really gestapo-like fashion.”<sup>209</sup>

The sweeping investigations instilled fear among gay students. Despite these conditions, students still tried to protect each other by refusing to give up the names of their friends during questioning.<sup>210</sup> Moments of humor also surfaced amid the stress. A former student recalled that members of the drama

202. LEGACIES, at 13:55 (Gentile Pictures 1996).

203. This statement was made while Chief Nielsen was defending the BYUPD from criticism about the 1968 drug raid discussed in Section I.B. Larry Wright, *Security Defended by Captain Nielsen*, DAILY UNIVERSE (Provo), Feb. 21, 1968 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1).

204. Memorandum from K.A. Lauritzen to President E.L. Wilkinson (June 18, 1969), in O’DONOVAN, *supra* note 1, at n.146.

205. See Regina Kunzel, *The Power of Queer History*, 123 AM. HIST. REV. 1560, 1578 (2018) (describing how police had little interest in policing lesbianism relative to the explicit state persecution of gay men).

206. Hall & Svozil, *supra* note 118.

207. O’DONOVAN, *supra* note 1, at n.152.

208. Ben Williams, *Lambda Lore: Trapped by the Mormons*, QSALT LAKE MAG. (Apr. 14, 2011), <https://www.qsaltlake.com/news/2011/04/14/lambda-lore-trapped-by-the-mormons> [https://perma.cc/4JDE-9DLU].

209. Douglas A. Winkler, *Lavender Sons of Zion: A History of Gay Men in Salt Lake City, 1950-79*, at 112 (May 2008) (Ph.D. dissertation, University of Utah) (ProQuest).

210. *Id.* at 111-12; O’DONOVAN, *supra* note 1.



department printed t-shirts with the words “I’m on the list— are you?” as a way to mock the BYUPD’s intrusive tactics.<sup>211</sup>

But the consequences of being on the BYUPD’s list were severe. Students were often forced to choose between being “kicked out of school and hav[ing] their families notified about what they had done,” or undergoing painful electric shock treatments and other harmful, so-called “conversion” and “aversion” therapies, some of which were conducted at BYU.<sup>212</sup> The consequences of being caught also extended beyond their standing at the university. Intelligence files compiled by BYUPD officers were reportedly shared with LDS Church leaders, which sometimes led to excommunication.<sup>213</sup> In addition, some students were coerced into acting as undercover informants for the BYUPD under threat of expulsion.<sup>214</sup> A former student recalled that “[BYU] Security was obnoxious and knew how to push people into things they didn’t want to do.”<sup>215</sup> Throughout, the entity taking these steps to enforce a religious directive was a police force with the authority of state law.

In this first phase of the Purges, campus officers’ informal authority as police was infused with their Honor Code enforcement activities. These blurred lines will be further explored in the context of other, more contemporary incidents in Part III.<sup>216</sup> For now, it is worth noting how the BYUPD’s ambiguous role advanced religious aims. The focus of the rest of this Part is how these religious directives guided the BYUPD’s enforcement of the *criminal law*, namely whom the campus police arrested for what offenses. The next Section describes how, during the second phase of the Gay Purges, the BYUPD’s operations escalated to target nonstudents in off-campus stings.

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211. Huffaker, *supra* note 2, at 1.

212. O’DONOVAN, *supra* note 1, at n.166; *see also* PRINCE, *supra* note 2, at 90–93 (“In spite of former BYU president Merrill Bateman insisting, ‘We have not been able to verify . . . that electric shock was ever used on gay and lesbian students at BYU,’ its use has been repeatedly documented, never more convincingly than in a doctoral dissertation written by the graduate student who used the technique on campus and under the direction of a BYU professor.” (quoting Letter from Merrill J. Bateman, President, Brigham Young Univ, to Connell O’Donovan (Apr. 9, 1997))); Huffaker, *supra* note 2, at 1 (reporting about a student who received “the shock treatment” during which the student “experienc[ed] an electrical shock while viewing a pornographic picture of a male”); PETREY, *supra* note 2, at 84 (discussing research on aversion therapies conducted by psychology professors at BYU and how “[t]he BYU Standards Office referred uncooperative gay students for such therapies administered by BYU researchers”).

213. O’DONOVAN, *supra* note 1, at n.185.

214. Huffaker, *supra* note 2, at 1.

215. *Id.*

216. *See* discussion *infra* Part III.

*B. Phase Two: The BYUPD Charges Nonstudents in Off-Campus Sting Operations*

In the 1970s, the focus on homosexuality at BYU narrowed, but enforcement activity intensified and targeted nonstudents in off-campus operations. In 1971, Dallin H. Oaks succeeded Ernest L. Wilkinson as university president.<sup>217</sup> Early in Oaks's presidency, he amended BYU policy to allow students identified as gay to remain enrolled if they "repented" of their sexuality.<sup>218</sup> However, this ostensible softening toward homosexual *identity* coincided with an intensified campaign to police criminalized same-sex *activity*.

President Oaks explicitly instructed the BYUPD to enforce laws policing sex. In 1979, he explained, "We are not going to stand for solicitation of sexual acts — homosexual or heterosexual — on this campus and among its students . . . We ask Security to be especially watchful for that kind of crime."<sup>219</sup> The campus police were apparently eager to comply. Writing in support of the BYUPD, Edward Kimball (son of former LDS Church president Spencer Kimball) described the campus police as "energetically" engaged in the enforcement of laws banning "homosexual activities," even as such laws were "increasingly ignored elsewhere."<sup>220</sup>

Under Oaks, the BYUPD expanded its sexual policing to include gay residents of Provo. In 1975, President Oaks declared, "Our security force is charged with helping protect our university from influences that we try to exclude from our university community," namely "active homosexuals and drug users."<sup>221</sup>

A new campus police chief spearheaded this campaign. Swen Nielsen left the BYUPD in 1974 to become the police chief of Provo (providing the campus police with a likely ally in the city department).<sup>222</sup> The new BYUPD chief, Robert Kelshaw, began his nearly forty-year tenure with the BYUPD in 1961 as a freshman

217. Friel, *supra* note 83.

218. *Prince Research Excerpts*, *supra* note 199; River Cook, "I'm on the List—Are You?" *Homosexual Purges on College Campuses*, GENDER & SEXUALITY WORLD HIST. (Nov. 29, 2019), <https://genderhistory.pubpub.org/pub/z8wpkd9b/release/1> [<https://perma.cc/643X-CQ5S>].

219. *BYU President Ordered Halt to Covert Acts in Gay Probe*, TIMES-NEWS (Nephi), Sept. 27, 1979, at 24, 24; Huffaker, *supra* note 2, at 1.

220. *Prince Research Excerpts*, *supra* note 199; see Tad Walch, *Edward L. Kimball, Son and Biographer of Late LDS President Spencer W. Kimball, Dies at Age 86*, DESERET NEWS (Nov. 22, 2016, 8:40 PM MST), <https://www.deseret.com/2016/11/22/20601064/edward-l-kimball-son-and-biographer-of-late-lds-president-spencer-w-kimball-dies-at-age-86> [<https://perma.cc/79LV-6X4H>].

221. Garry J. Moes, *Ex-BYU Security Officer Tells of Intrigue, Spying*, SALT LAKE TRIB., Mar. 22, 1975, at 10, 10.

222. WILKINSON & ARRINGTON, *supra* note 87, at 270.



student-patrol officer.<sup>223</sup> After graduation, he rose up the ranks of the BYUPD to become assistant chief in 1965 before being named the campus police chief.<sup>224</sup>

Even as city police raids of gay bars declined in the 1970s, the BYUPD redoubled their sexual-policing efforts under Chief Kelshaw.<sup>225</sup> They sent officers off campus to locations like a local park where men were suspected of cruising for sex in public restrooms.<sup>226</sup> Kelshaw's embrace of sexual policing seemed to be rooted in both his personal support of the university's mission and his understanding of his obligations to protect the campus community: "It is a violation of University policy and members of my staff will aggressively enforce these laws," he said.<sup>227</sup> "I will do everything in my power to protect the students of BYU who want nothing to do with this problem."<sup>228</sup> Kelshaw elaborated, "Our purpose is to seek out and identify those persons who have such tendencies and are not capable of controlling themselves."<sup>229</sup>

This campaign appears to have used a range of surveillance tactics that the department first employed for vice policing in the 1960s. One student, Joseph "Skip" Morrow, alleged that while working as an informant for the BYUPD, he witnessed officers use electronic recording devices and search student housing without warrants during investigations of gay men and drug use.<sup>230</sup> He

223. Hardy, *supra* note 138.

224. WILKINSON & ARRINGTON, *supra* note 87, at 270.

225. The decline in municipal raids reflected increased public support for sexual privacy, acceptance of queer sexuality, and criticism of police practices by judges and activists alike. See generally Timothy Stewart-Winter, *Queer Law and Order: Sex, Criminality, and Policing in the Late Twentieth-Century United States*, 102 J. AM. HIST. 61 (2015) (arguing that the gay-rights movement successfully won a decrease in police harassment in gay bars in the 1970s); LVOVSKY, *supra* note 16 (asserting that the fight over policing gay life was a struggle over boundaries of the criminal justice system and the meaning of sexual difference).

226. Ben Williams, *The '70s Mormon Crusade Against Homosexuals*, QSALT LAKE MAG. (Jan. 18, 2018), <https://www.ksaltlake.com/news/2018/01/18/70s-mormon-crusade-homosexuals> [<https://perma.cc/5UF5-F9F2>]; Huffaker, *supra* note 2, at 13.

227. Huffaker, *supra* note 2, at 13.

228. *Id.* One example of how Chief Kelshaw incorporated the university's religious mission into his daily policing practices took place in 1966 while he was still a lieutenant: "He reports that he has, experimentally, let students brought into his office for disciplinary action read [a satirical list 'for parents on how to raise a delinquent'] and then comment on the principles." *Recipe for Rearing Delinquent*, SUNDAY HERALD (Provo), Jan. 9, 1966 (on file with Brigham Young Univ., Harold B. Lee Libr., L. Tom Perry Special Collections, Univ. Police Media Releases, UA 5544 1960-1969, Carton 1). One of these principles was: "Never give [the child] any spiritual training. Wait until he is 21 and then let him 'decide for himself.'" *Id.*

229. Huffaker, *supra* note 2, at 13.

230. *Prince Research Excerpts*, *supra* note 199; *Officer Says No Validity in 'Bug' Charges*, DAILY UNIVERSE (Provo), Mar. 27, 1975, at 1, 1. In 1975, the FBI investigated Morrow's claims and cleared

described how BYUPD officers “harass innocent people. Everybody can be under investigation. It’s the atmosphere. They keep files on everybody for any reason.”<sup>231</sup> Morrow reported that he was so disturbed by the BYUPD’s practices that he ended his involvement with the force in 1973.<sup>232</sup>

University officials vehemently denied Morrow’s claims, though Chief Kelshaw did concede that “a self-contained body microphone has been used on officers and informants,” and that students’ signed agreement to follow university rules was considered “permission enough” to search dorm rooms.<sup>233</sup> The *Salt Lake Tribune* reported that Kelshaw also “[admitted] that electronic recording devices have been planted on students in order to gather information on roommates and acquaintances.”<sup>234</sup> A student who spent two months shadowing the force for the campus newspaper in 1974 confirmed that the BYUPD had “sophisticated recording and monitoring devices (both audio and video)” and used “confidential informers.”<sup>235</sup> Kelshaw stated in his department’s defense that they had not “done anything any other police department hasn’t done.”<sup>236</sup> Public criticism temporarily dampened the BYUPD’s sexual-policing activities, but the department soon resumed its aggressive tactics.<sup>237</sup>

The BYUPD also used student officers in these undercover operations. One former student recalled that “scores of students working undercover for Security acted as foot-tapping decoys arresting those who responded to their pseudo-advances” in campus bathrooms, where BYUPD officers believed gay men were cruising.<sup>238</sup> Some students developed methods for detecting BYUPD officers. For example, one anonymous student explained, “Most of the time you can tell

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the department. It is unclear how in-depth their investigation was, and it is important to note that the FBI had preexisting ties to the BYUPD. See *Biggest Items Reviewed*, DAILY UNIVERSE (Provo), Jan. 6, 1976, at 13, 13. For records demonstrating BYUPD’s correspondence with the FBI, see REGISTER TO THE SECURITY OFFICE RECORDS, 1965-1975, *supra* note 68 (noting correspondence between the FBI and the BYUPD from 1970-1972, although original correspondence has been deaccessioned).

231. Moes, *supra* note 221, at 10.

232. *Id.*

233. *Prince Research Excerpts*, *supra* note 199; see *Officer Says No Validity in ‘Bug’ Charges*, *supra* note 230, at 1; *Biggest Items Reviewed*, *supra* note 230, at 13.

234. Moes, *supra* note 221, at 10.

235. Rand Taylor, *Security Enforces Justice*, DAILY UNIVERSE (Provo), Jan. 14, 1974, at 3, 3.

236. Moes, *supra* note 221, at 10.

237. Huffaker, *supra* note 2, at 1 (“Apparently a few of the spies became fed up with such tactics and went to TV stations in Salt Lake City to tell their story publicly. ‘After that blew over things were quiet for a while,’ said [a former BYU student].”).

238. *Id.*

when the tapping feet belong to Security officers since most of them wear ugly black forward-thrust type shoes.”<sup>239</sup> But many people were still caught.<sup>240</sup>

This campaign was not restricted to campus. In service of President Oaks’s directives, BYU Police surveilled and arrested nonstudents far beyond university grounds. In 1976, the department partnered with the Utah County Sheriff’s Office to carry out sting operations at a freeway rest stop in search of men cruising.<sup>241</sup> BYUPD officers also regularly traveled to Salt Lake City—roughly an hour’s drive—to “check for BYU parking permits on cars” in the parking lots of gay bars.<sup>242</sup> One patron recalled, “I’ve seen BYU Security officers in Salt Lake City at the cruise areas driving past lines of cars leaning out the window taking pictures of not only the license and cars, but of the passengers inside of them also.”<sup>243</sup> BYUPD officers were spotted as far away as St. George, a four-hour drive from campus.<sup>244</sup> Chief Kelshaw justified his officers’ actions by stating, “You don’t even need police power to take pictures or write down license plate numbers.”<sup>245</sup>

This sexual-policing campaign continued to escalate until 1979, when one arrest sparked a case that ultimately reached the Utah Supreme Court. As mentioned in the Introduction, a BYU sophomore received course credits as a law-enforcement major to carry out “undercover work and general surveillance and observation” for the BYUPD under the alias “John Friday.”<sup>246</sup> On his undercover assignments, Friday was reported to have searched areas of campus like men’s restrooms and saunas for signs of cruising and attempted to solicit sex.<sup>247</sup> One former student alleged that Friday would come into the campus sauna and

<sup>239</sup>. *Id.* at 13.

<sup>240</sup>. O’DONOVAN, *supra* note 1.

<sup>241</sup>. *Id.*

<sup>242</sup>. Huffaker, *supra* note 2, at 12; *Prince Research Excerpts*, *supra* note 191.

<sup>243</sup>. Huffaker, *supra* note 2, at 12–13; Ben Williams, *This Day in Gay Utah History December 31st*, UTAH STONEWALL HIST. SOC’Y ARCHIVES (Dec. 3, 2013), [https://benwilliamsblogger.blogspot.com/2013/12/this-day-in-gay-utah-history-december\\_31.html](https://benwilliamsblogger.blogspot.com/2013/12/this-day-in-gay-utah-history-december_31.html) [https://perma.cc/5DHF-CY67].

<sup>244</sup>. Huffaker, *supra* note 2, at 12.

<sup>245</sup>. *Id.*; Moes, *supra* note 221, at 10. In a 1979 interview, Chief Kelshaw contended that he only approved one surveillance investigation at a gay bar in Salt Lake City and denied others. See *Homosexuals Level Charges at Mormon Church*, KOKOMO TRIB., Oct. 27, 1979, at 15, 15. However, in an earlier interview with *The Advocate* in June 1975, Kelshaw acknowledged officer visits to “homosexual haunts” in Salt Lake City. *Prince Research Excerpts*, *supra* note 199.

<sup>246</sup>. Brief of Defendant-Appellant, *supra* note 4, at 7; *Brigham Young University. Law Enforcement and Justice Administration Program*, ORGANIZATIONAL HIST. PROJECT (Dec. 29, 2011), [https://byuorg.lib.byu.edu/index.php/Brigham\\_Young\\_University.\\_Law\\_Enforcement\\_and\\_Justice\\_Administration\\_Program](https://byuorg.lib.byu.edu/index.php/Brigham_Young_University._Law_Enforcement_and_Justice_Administration_Program) [https://perma.cc/33EM-VUEC].

<sup>247</sup>. O’DONOVAN, *supra* note 1.

“stand right in front of me naked.”<sup>248</sup> Friday also ran fake ads in the classifieds of *The Open Door*, pretending to be a gay man in search of community.<sup>249</sup> (BYU leadership would later claim that Friday had posted these ads on his own initiative and without the permission of his supervisors.<sup>250</sup>)

In early 1979, Friday was connected to David Chipman, a Stevens-Henager College student living in Provo.<sup>251</sup> Friday later reported that he was instructed by the BYUPD to “pose in an undercover role as a homosexual” to gain Chipman’s trust because “[w]e had no evidence against [him], so it was a means of gathering evidence.”<sup>252</sup> This operation was planned despite the fact that Chipman was not a BYU student, nor did he live on BYU’s campus.<sup>253</sup>

After several meetings, Chipman drove with Friday—who was secretly wearing a wire—outside of Utah County to a nature preserve.<sup>254</sup> The BYU police tailed them in unmarked cars.<sup>255</sup> Friday proposed meeting at a friend’s house for more privacy, as their location was too public for sexual activity; Chipman testified that he then reached over and touched Friday’s thigh.<sup>256</sup> (However, Friday alleged that Chipman had groped his groin without consent.<sup>257</sup>) Friday then gave the signal—“your ass is grass”—for the BYUPD officers to arrest Chipman.<sup>258</sup> Prosecutors then charged Chipman with felony forcible sexual abuse.<sup>259</sup> The police reportedly pressured Chipman to give up the identity of gay students at BYU, but he refused.<sup>260</sup>

While Chipman’s arrest was similar to many others made by the BYUPD, his case stood out because he chose to fight the charges—a decision that was rare among those targeted by the BYUPD.<sup>261</sup> The men caught in BYU’s Gay Purges faced immense pressure to accept the charges in an attempt to minimize their

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248. *Id.*

249. *Id.*

250. *Id.*

251. Brief of Defendant-Appellant, *supra* note 4, at 7.

252. *Id.* at 5.

253. *Id.* at 7.

254. *Id.* at 8–9.

255. *Id.* at 11.

256. *Id.* at 10–12.

257. *Id.* at 11–12.

258. *Id.* at 12.

259. *Id.*

260. O’DONOVAN, *supra* note 1.

261. This rarity is reflected in the absence of other cases of defendants challenging their arrests, as well as Gay Mormons United’s (GMU’s) discussion of the unusual nature of the case. O’DONOVAN, *supra* note 1.

reputational damage. The organization Gay Mormons United (GMU) described this dynamic in 1979, writing that members were already “familiar with BYU security tactics in dealing with gay people and [were] also aware that such incidents happened regularly in the BYU area. This time, however, the entrapped person has come forward and is willing to fight it . . . .”<sup>262</sup> In their appeal for donations to support Chipman’s legal defense, GMU wrote, “When any brother is being treated badly by the Church we are all diminished.”<sup>263</sup>

Chipman’s case garnered local press coverage that drew attention to the BYUPD’s controversial tactics. Many Provo residents voiced their concerns about the department, which was sometimes referred to as the “Mormon Militia.”<sup>264</sup> One scholarly account described how “the adverse publicity . . . did little to improve [the BYUPD’s] already humorless image among a non-Mormon public.”<sup>265</sup> But members of the LDS Church were also concerned. The case drew the attention of Ronald Stanger, a local attorney and LDS member, who was troubled by the BYUPD practices.<sup>266</sup> He agreed to take on Chipman’s case.<sup>267</sup>

Still, while there was some public sympathy for his plight, Chipman fought an uphill legal battle. The case pitted the credibility of Chipman, suspected of being gay, against that of Friday, a student in good standing at BYU who worked for the campus police. The judge assigned to the trial – David Sam of the Fourth Judicial District of Utah – also was involved in a previous case where Chipman was convicted for writing bad checks.<sup>268</sup> Judge Sam refused to recuse himself from the case despite being employed as a part-time instructor at BYU.<sup>269</sup>

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262. *Id.* For more on GMU, see PETREY, *supra* note 2, at 87. The organization is now known as Affirmation: LGBTQ Mormons Families & Friends. *Our History*, AFFIRMATION, <https://affirmation.org/about/history> [<https://perma.cc/87HE-7EM9>].

263. O’DONOVAN, *supra* note 1.

264. *Id.*; Larry Werner, *Attorney Challenging Arrest by Y. Campus Police*, SALT LAKE TRIB., Sept. 8, 1979, at 29, 29; *Homosexuals Level Charges at Mormon Church*, *supra* note 245, at 15; Winkler, *supra* note 209, at 217–18. The term “Mormon Militia” references the nineteenth century Nauvoo Legion. See RICHARD E. BENNETT, SUSAN EASTON BLACK & DONALD Q. CANNON, *THE NAUVOO LEGION IN ILLINOIS: A HISTORY OF THE MORMON MILITIA, 1841–1846*, at 15 (2010).

265. BERGERA & PRIDDIS, *supra* note 33, at 126.

266. Peter Gillins, *Lunnen, Oaks Refute Critics of ‘Y’ Security Powers*, DAILY HERALD (Provo) Sept. 23, 1979, at 47, 47; O’DONOVAN, *supra* note 1.

267. See Gillins, *supra* note 266, at 47; O’DONOVAN, *supra* note 1.

268. *David Sam*, PRABOOK, <https://prabook.com/web/david.sam/915976> [<https://perma.cc/23CD-4VKA>]; *State v. Chipman*, No. 6261 (Utah June 20, 1978) (on file with Utah Dep’t of Gov’t Operations, Div. of Archives & Recs. Serv., Dist. Ct. (Fourth Dist: Utah Cnty.)).

269. O’DONOVAN, *supra* note 1; see also *David Sam*, FED. JUD. CTR., <https://www.fjc.gov/history/judges/sam-david> [<https://perma.cc/457Z-3786>] (noting that Sam is “[p]art-time faculty, Brigham Young University, 1977–1985”).

Instead, according to Connell O'Donovan, the judge stated that his "religious training enforces and strengthens my professional duty to be entirely unbiased and unprejudiced in any matter brought before me as a judge."<sup>270</sup>

During pretrial proceedings, Judge Sam granted a motion to suppress "all references at the trial to the defendant's alleged homosexual tendencies," as this was not an element of the charge.<sup>271</sup> But this suppression ruling had limited practical effect. Even if explicit references to Chipman's alleged sexuality were suppressed, the implication would still have been apparent from the circumstances of his arrest.<sup>272</sup>

Chipman's defense centered on the argument that he had been entrapped by Friday, who testified that his nonverbal cues "might have" given Chipman the impression that Chipman had permission to touch him.<sup>273</sup> Friday confirmed in his testimony that his purpose was to gain Chipman's trust over the course of the six telephone conversations and one in-person meeting that preceded the incident in the car.<sup>274</sup> Friday testified that "since [Chipman] hadn't had any sexual contact before . . . Dave was quite timid and very shy and seemed unwilling to make the first move."<sup>275</sup>

Despite this testimony, Judge Sam found Chipman guilty of misdemeanor attempted forcible sexual abuse.<sup>276</sup> Sam reasoned that there was "insufficient evidence to support a conviction for the offense charged, but there is sufficient evidence to support a conviction for a [lesser] included offense of an attempt to commit the offense."<sup>277</sup> Following the verdict, Chipman's counsel announced their intention to appeal.<sup>278</sup> One basis for appeal was the argument that the BYUPD lacked jurisdiction to arrest Chipman outside of Utah County—which was the boundary of their authority as special deputies of the Utah County

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270. O'DONOVAN, *supra* note 1.

271. *Judge Upholds Sexual Abuse Charge*, DAILY UNIVERSE (Provo), Feb. 20, 1980, at 2, 2.

272. Brief of Defendant-Appellant, *supra* note 4, at 2.

273. *Id.* at 11. In pretrial proceedings, Judge Sam rejected a motion to dismiss based on Chipman's entrapment defense on the grounds that Chipman had made the "initial contacts" with Friday and that Friday "was an invitee and passenger" in Chipman's vehicle. *Chipman Found Guilty of Attempted Abuse*, DAILY UNIVERSE (Provo), Apr. 8, 1980, at 1, 1.

274. See Brief of Defendant-Appellant, *supra* note 4, at 5-6, 16.

275. *Id.* at 9-10.

276. *Y. Decoy Sex Case Leads to \$450 Fine*, SALT LAKE TRIB., Apr. 12, 1980, at 33, 33; *Conviction Reversal Sought in Sex Case*, SALT LAKE TRIB., Aug. 29, 1980, at F7, F7; *Appeals Sex Case*, SALT LAKE TRIB., May 14, 1980, at B6, B6; O'DONOVAN, *supra* note 1.

277. *Chipman Found Guilty of Attempted Abuse*, *supra* note 273, at 1.

278. See *Y. Decoy Sex Case Leads to \$450 Fine*, *supra* note 276, at 33.

Sheriff's Office—but this claim was later resolved because a state police officer was also involved in the case.<sup>279</sup>

The case drew the attention of the Utah chapter of the American Civil Liberties Union (ACLU).<sup>280</sup> They took on Chipman's case and represented him in his appeal to the Utah Supreme Court,<sup>281</sup> which brought further scrutiny to the BYUPD's investigative tactics and the university administration's role in his arrest.

At the Utah Supreme Court, there was once again a connection to BYU. The year of Chipman's case, BYU president Dallin H. Oaks—who presided over the second phase of the university's Gay Purges—resigned from the university to be appointed as a justice on the court.<sup>282</sup> Though Oaks did not hear Chipman's case,<sup>283</sup> his opinion on the matter would likely have been clear to the other justices. As university president, Oaks had previously issued statements related to Chipman's case. He defended the BYUPD's actions by drawing on antigay tropes that strayed far from the actual details of the case.<sup>284</sup> For example, in one statement, he claimed that “people should be able to walk down the street without someone seizing them and soliciting sexual relations.”<sup>285</sup> While Oaks did not have a vote on Chipman's appeal, his statements may indicate the climate in which Chipman's case was heard.

In their appeal to the Utah Supreme Court, the ACLU contended that Chipman had consent to touch Friday, arguing that the mere existence of “homosexuality, however disgusting and unacceptable . . . is not against the law.”<sup>286</sup> The ACLU emphasized that Chipman, who was not a BYU student, was deliberately

279. See *Chipman Case Appealed; Insufficient Evidence Cited*, DAILY UNIVERSE (Provo), May 13, 1980, at 2, 2; *ACLU Appeals Provo Sex Crime Conviction*, *supra* note 5, at 19.

280. *ACLU Appeals Provo Sex Crime Conviction*, *supra* note 5, at 19.

281. *Id.*

282. Marianne Holman Prescott, *Getting to Know President Dallin H. Oaks of the First Presidency*, CHURCH NEWS (Jan. 25, 2018, 12:50 PM MST), <https://www.thechurchnews.com/2018/1/25/23213455/getting-to-know-president-dallin-h-oaks-of-the-first-presidency> [<https://perma.cc/MJ62-M3VF>]. Oaks later played a role in the LDS Church's campaign to support the Proposition 8 ban on same-sex marriage in California. See PETREY, *supra* note 2, at 201. He is now “next in line to lead The Church of Jesus Christ of Latter-day Saints.” Tamarra Kemsley, *LDS Apostle Dallin Oaks Issues Rebuke to Some of the Faith's Parents*, SALT LAKE TRIB. (Dec. 31, 2024, 12:30 PM), <https://www.sltrib.com/religion/2024/12/10/lds-christmas-devotional-oaks> [<https://perma.cc/6EWC-4BLH>].

283. O'DONOVAN, *supra* note 1.

284. *Homosexuals Level Charges at Mormon Church*, *supra* note 245, at 15.

285. *Homosexuals Say BYU Harasses Them*, CORVALLIS GAZETTE TIMES, Oct. 23, 1979, at 40, 40.

286. Brief of Defendant-Appellant, *supra* note 4, at 15.



targeted by Friday.<sup>287</sup> Despite BYUPD chief Robert Kelshaw's claim that the campus police did not seek out gay men more than "any other type of criminal," Friday's fake ad explicitly invited nonstudents to respond.<sup>288</sup> Utah ACLU director Shirley Pedler noted, "[Chipman] went onto the BYU campus only because [John Friday] insisted that he go there, so it wasn't a case of the campus security force investigating a crime on campus."<sup>289</sup> The ACLU also objected to the BYUPD's use of student agents, noting that Friday received course credit for his undercover work. As Chipman's brief put it, Friday may have been incentivized to make arrests "to get a good grade."<sup>290</sup>

The ACLU was cognizant that Chipman's arrest was more than just a routine instance of police entrapment; the BYUPD investigated Chipman as part of a religiously motivated campaign against homosexuality. Accordingly, in the closing remarks of its brief, the ACLU alluded to the "obvious and flagrant violation of the proscriptions against entanglement of Church and State."<sup>291</sup> In other words, they saw Chipman's arrest as a product of the university's religious mission, enforced by its police department. Even so, the ACLU's treatment of this issue in their brief was limited, possibly because the issue had not been preserved for appeal. Referring to it as a "highly sensitive" matter, the ACLU only gestured to the possibility of an Establishment Clause challenge, characterizing Chipman's arrest as "police-state-church exploitation."<sup>292</sup> Pedler stated, "We'll raise that issue in a separate civil suit we plan to file in federal court," though these plans never materialized.<sup>293</sup>

In its public statements, however, the ACLU was clear: the motivating force behind Chipman's arrest was a campaign rooted in church doctrine and the BYU Honor Code, even as it stretched far beyond the bounds of campus. As the ACLU director commented to the press, the BYUPD was "a hostile police force which singled out a special segment of society for punishment" at the behest of university administrators and the LDS Church.<sup>294</sup> This concern was echoed by members of the public, including a reverend in Salt Lake City who explained that his

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287. *Id.* at 7.

288. Ron Barker, *BYU Security Personnel Can Operate Off Campus*, SALT LAKE TRIB., Oct. 23, 1979, at 2D, 2D; *BYU President Ordered Halt to Covert Acts in Gay Probe*, TIMES-NEWS (Twin Falls, Idaho), Sept. 27, 1979, at 24, 24; Brief of Defendant-Appellant, *supra* note 4, at 4-5.

289. *ACLU Appeals Provo Sex Crime Conviction*, *supra* note 5, at 19.

290. Brief of Defendant-Appellant, *supra* note 4, at 16.

291. *Id.* at 20.

292. *Id.* at 20, 27.

293. *ACLU Appeals Provo Sex Crime Conviction*, *supra* note 55, at 19.

294. *Id.*

objection was not with the Church's stance that homosexuality is a sin, but rather with its decision to use "its own militia" to enforce that religious doctrine.<sup>295</sup>

Without examining the BYUPD's history of morals policing, the religious underpinnings of Chipman's arrest might have remained obscured behind the veneer of routine police work. After all, on the surface, the BYUPD's pursuit of Chipman seemed to be a standard investigation of potential sexual misconduct. However, closer scrutiny of the BYUPD's institutional culture and history reveals the underlying motivations driving their actions. University administrators played a role in directing the BYUPD's policing priorities. And their sexual-policing campaign originated in Honor Code enforcement during the first phase of the Gay Purges. These circumstances all point to enforcement priorities that were driven by LDS religious doctrine more than conventional public-safety concerns. The challenge lies in connecting this institutional history to a case that, technically, involved an arrest for violating state law.

Ultimately, the Utah Supreme Court affirmed Chipman's conviction, which carried a "\$450 fine and one year probation."<sup>296</sup> During this time, Chipman lost his housing and was described by a friend as "very emotionally distressed."<sup>297</sup> Seeking guidance, Chipman went to a church elder, who counseled him to marry a woman, change his name, and keep a low profile.<sup>298</sup>

The BYUPD devastated the lives of many men they arrested and surveilled during the Gay Purges. A former student, Ben Williams, documented in a diary how, during this period, the BYUPD instilled fear and suspicion among gay men.<sup>299</sup> He wrote that he was "just sick about wondering whether security will come and pick me up."<sup>300</sup> The BYUPD's tactics isolated gay students and strained bonds between them. Williams recalled meeting a man in 1976 who "was so

295. Winkler, *supra* note 209, at 217-18.

296. Brief of Defendant-Appellant, *supra* note 4, at 1; BERGERA & PRIDDIS, *supra* note 33, at 126; O'DONOVAN, *supra* note 1.

297. *Personal Diary Entries of Donald Attridge: July 5, 1979*, UTAH STONEWALL HIST. SOC'Y ARCHIVES (July 5, 2014), <https://benwilliamsblogger.blogspot.com/2014/07/this-day-in-gay-utah-history-july-5thde.html> [<https://perma.cc/C7VE-PCLA>].

298. *Id.* ("[Chipman] was told to change his name . . . and was reported to be married . . ."); *ACLU Appeals Provo Sex Crime Conviction*, *supra* note 5, at 19 ("Chipman has said he is not a homosexual, and has since married in the Mormon Temple").

299. Ben Williams is a historian of LGBTQ+ Utah. See Palak Jayswal, *Stonewall, AIDS and Gay Liberation: One Historian Shares How These Cultural Moments Shaped Utah's LGBTQ Community*, SALT LAKE TRIB. (Dec. 19, 2022, 4:52 PM), <https://www.sltrib.com/artsliving/2022/12/19/meet-ben-williams-who-has> [<https://perma.cc/9PGE-Q89V>]. In personal correspondence with this Note's author, he sent diary entries he had transcribed and made available as an online record.

300. Benedgar Williams, *The Spring Purge at BYU 1976*, FACEBOOK (Feb. 28, 2020), <https://www.facebook.com/legacy/notes/2306373056327752> [<https://perma.cc/9CB2-P7UT>].

worried about me being security and afraid that I had been sent to entrap him.”<sup>301</sup> Another gay man remarked in 1982, “The center of the BYU gay scene is not in Provo at all. With security actively hunting out gays, it is very dumb and risky to attempt to make contacts in Provo.”<sup>302</sup> Several students and at least one professor were reported to have died by suicide after being caught during the Gay Purges.<sup>303</sup> Others—including Chipman—reportedly attempted to die by suicide as well.<sup>304</sup>

The BYUPD’s tactics were alarmingly effective at their intended purpose of driving gay men away from the school and the Provo area. One newspaper article summarized reports it received from “Utah homosexuals [who] say the Mormon Church is trying to stamp them out, using a private police force . . . to harass them throughout the state.”<sup>305</sup> A reverend based in Salt Lake City noted in 1979: “A year ago, I knew about 20 gays at BYU, but this year, I only know of two.”<sup>306</sup>

In the aftermath of the *Chipman* case, Chief Kelshaw defended his department by stating that sex-related offenses accounted for only five percent of their campus arrests.<sup>307</sup> However, Kelshaw did not clarify what period of time this statistic referred to and whether off-campus arrests counted, such as Chipman’s and those at the freeway rest stop or local park. Nor does this figure account for the regime of surveillance that did not necessarily result in arrests but nevertheless forced gay men to hide.

In response to public criticism, Chief Kelshaw announced that his department had stopped using undercover students in bathroom operations and no longer went off campus to look for gay men “although we do communicate with other law enforcement agencies and check court records periodically.”<sup>308</sup> The university’s public-relations director, Paul Richards, claimed that when President Oaks learned of the BYUPD’s actions in the *Chipman* case, he told the department to “[c]ut that out right now.”<sup>309</sup> Richards maintained that while the

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301. *Id.*

302. Cook, *supra* note 218.

303. See O’DONOVAN, *supra* note 1; *Prince Research Excerpts*, *supra* note 199; Larry Weist, *Homosexual Suspects Arrested in Utah County*, DAILY HERALD (Provo), Mar. 16, 1976, at 1, 1.

304. See O’DONOVAN, *supra* note 1 (describing the account of Chipman’s friend, Wendell Ballantyne).

305. *Homosexuals Level Charges at Mormon Church*, *supra* note 245, at 15.

306. Barker, *supra* note 288, at 2D.

307. *Homosexuals Level Charges at Mormon Church*, *supra* note 245, at 15.

308. Huffaker, *supra* note 2, at 12–13; *Prince Research Excerpts*, *supra* note 199.

309. *Prince Research Excerpts*, *supra* note 199.

BYUPD had done nothing unlawful, Oaks found their conduct improper.<sup>310</sup> Despite these claims that Oaks opposed the BYUPD's tactics, evidence suggests he had long been aware of the department's reputation for aggressive sexual policing. In 1975, the *Salt Lake Tribune* asked Oaks if the BYUPD "checked known homosexual haunts looking for BYU students" and reported that he "personally didn't know of any incidents but he wouldn't be surprised."<sup>311</sup>

These public pledges to scale back surveillance belied the reality on the ground. The BYUPD quietly continued many of its previous tactics in the following years. In 1983, Chief Kelshaw claimed that the BYUPD no longer "ha[d] the time" to "investigate questionable (moral) offenses," though he acknowledged that his officers still patrolled gay bars in the course of drug investigations.<sup>312</sup> He conceded that if officers then encountered a "moral offense violation, such as homosexuality or fornication, the officer would arrest the persons involved."<sup>313</sup> And there were still reports of undercover officers in campus restrooms in the early 1980s.<sup>314</sup>

The use of student officers also continued. During his tenure, Kelshaw continued to expand the student patrol program until there were over one hundred students assisting his twenty-five officers.<sup>315</sup> (The BYUPD reported in 2019 that there were "hundreds of part-time student employees."<sup>316</sup>) When he retired in 2000, Kelshaw was the longest-serving police chief in Utah.<sup>317</sup>

The *Chipman* case is the earliest documented challenge to the constitutionality of religiously affiliated campus policing.<sup>318</sup> This case demonstrates how the BYU administration used its campus police to achieve religious goals, including to drive gay people out of the areas surrounding the campus. While BYU may object that its students agreed to live under stringent enforcement of the Honor Code, the BYUPD's sexual-policing campaigns also targeted nonstudents who never consented to be governed by these religious standards.

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310. *Morman [sic] Police Ordered to Halt Probe of Gays*, DESERT SUN (Palm Springs), Sept. 27, 1979, at A1, A1, <https://cdnc.ucr.edu/?a=d&d=DS19790927.2.7&srpos=85&e> [<https://perma.cc/SS7T-LRTR>].

311. Moes, *supra* note 221, at 10.

312. Matt Adelman, *Police Have Jurisdiction out of Own Area*, UTAH DAILY CHRON., Apr. 18, 1983, at 1, 4.

313. *Id.*

314. Huffaker, *supra* note 2, at 12-13.

315. Hardy, *supra* note 138.

316. Letter from Steven M. Sandberg to Jess L. Anderson, *supra* note 87, at 3.

317. Hardy, *supra* note 138.

318. See *infra* Section IV.A.

Indeed, this case raises new questions about the off-campus jurisdiction of campus police. Policy objections to this practice have typically been rooted in the idea that university police exceed their stated purpose to protect the campus community when they patrol outside of the college grounds. But this objection has limited utility against the practical realities of policing; officers can point to issues of hot pursuit, as well as the fuzzy boundaries between university grounds and surrounding neighborhoods. However, the BYUPD's history introduces a new objection to off-campus jurisdiction: it forces thousands of local residents to live under the jurisdiction of multiple departments *each with different policing priorities*.<sup>319</sup> In towns near colleges, residents may be subject to patrol under a department whose records may be private and whose policing priorities could be influenced by university interests.

### III. DISCIPLINARY DEPUTIES: USING POLICE POWERS TO ENFORCE THE HONOR CODE

In 1991, a university attorney at Pembroke State University, Terry Hutchins, wrote an article titled “The Role of Law Enforcement on Campus – Student Courts? Jail? Both?” in an issue of the *Campus Law Enforcement Journal*. In this article, Hutchins posed the “ridiculous hypothetical” of a campus police officer at a religiously affiliated university who pulls a student over in his squad car and then handcuffs him for breaking a rule in the school’s code of conduct.<sup>320</sup> This scenario was intended to highlight the potential “abuse of police power to enforce campus regulations” when campus police “are charged with enforcing the laws of the state and the regulations of the University.”<sup>321</sup> Hutchins was skeptical that a situation like the one described in his hypothetical would ever occur in practice, noting that it would be a flagrant violation of the law. However, the history of the BYUPD demonstrates that such an instance is not impossible and arguably has already happened.

This Part demonstrates how the BYUPD eroded the boundary between the enforcement of student discipline and its use of the state police power. While the *Chipman* case represents one manifestation of religious entanglement through policing priorities, this Part documents a different mechanism of religious influence: the use of formal police powers and resources to enforce the Honor Code, similar to the scenario Hutchins dismissed as a “ridiculous hypothetical.” Just

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319. For a discussion of the similar impact of different city police districts, see Bell, *supra* note 124, at 705.

320. Terry Hutchins, *The Role of Law Enforcement on Campus – Student Courts? Jail? Both?*, 21 CAM-PUS L. ENF'T J., no. 2, 1991, at 16, 17.

321. *Id.*

months after Chipman's arrest, a new state law went into effect that expanded the BYUPD's statutory powers by conferring statewide jurisdiction and codifying their ability to enforce university rules and regulations. It was unclear – even to some state officials – whether this new law authorized the BYUPD to enforce the Honor Code and, if so, whether that enforcement could extend beyond campus boundaries.

The 1989 Utah Court of Appeals case *State in the Interest of M.S.* challenged the BYUPD's statutory powers but ultimately failed to limit the department's authority or clarify the scope of its ability to enforce the Honor Code. And the consequences of this uncertainty were severe: after years of reports alleging that the BYUPD misused departmental resources and state-granted authority to investigate Honor Code violations, it came to light in 2016 that an officer had used police databases to scrutinize rape victims for potential infractions. In 2019, the *Salt Lake Tribune* case – a lawsuit seeking public access to BYUPD records documenting these practices – reached the Utah Supreme Court and brought renewed public attention to the BYUPD. The case sparked new legislation that increased state oversight and made clear that private campus police cannot enforce university rules. However, questions remain about how the reformed department operates now. This Part reveals how the BYUPD struggled to maintain a meaningful distinction between enforcing state law and religious conduct codes, despite repeated public commitments to separate these functions.

#### A. Gaining Statutory Powers to Enforce University Rules

Shortly after Chipman's arrest in 1979, House Bill 80 (H.B. 80) went into effect, amending section 53-45-5 of the Utah state code to recognize campus police as peace officers with “all of the powers possessed by police men in cities and by sheriffs,” including statewide jurisdiction.<sup>322</sup> H.B. 80 was the culmination of a study from 1977 to 1978 led by Public Safety Commissioner Larry Lunnen in the Utah State Legislature's Transportation and Public Safety Study

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322. Ruling and Order on Cross Motions for Summary Judgment, *supra* note 86, at 6; see also *New Utah Law Goes into Effect Regarding BYU Security Team*, DAILY HERALD (Provo), May 9, 1979, at 4, 4 (describing the swearing-in of BYU peace officers as official Utah law-enforcement officers); *Prince Research Excerpts*, *supra* note 199 (showing the minutes from a BYU Board of Trustees meeting on May 2, 1979, during which the Board discussed the change); Denise Wadsworth & Wendy Ogata, *Disasters Dominate “79 Headlines,”* DAILY UNIVERSE (Provo), Dec. 13, 1979, at 10, 10 (“In early May, BYU security was given statewide jurisdiction . . .”). Public Safety Commissioner Larry Lunnen disagreed with the characterization of the law as conferring statewide jurisdiction, because although private campus police were authorized to operate off campus, it had to be in hot pursuit or investigating an on-campus crime, and the officers were required to notify law enforcement in any jurisdiction they entered. See Gillins, *supra* note 266, at 47.



Committee.<sup>323</sup> Crucially, the state code included a provision granting campus police the authority to enforce school rules: “Members of the police and security department of any institution also have the power to enforce all rules and regulations that the institution or the board promulgates as related to the institution.”<sup>324</sup>

Behind the scenes, this rules-and-regulations provision caused controversy. In 1980, a law student, John Waldo, interviewed a Utah assistant attorney general, William W. Barrett, about the process of drafting H.B. 80.<sup>325</sup> Based on an internal memo, Waldo learned that “[t]he possible enforcement of university regulations beyond the limits of the campus apparently concerned Utah Governor Scott M. Matheson, but Public Safety Commissioner Larry Lunnen assured him that no such enforcement power was intended.”<sup>326</sup> Barrett agreed with Lunnen in a letter to Governor Matheson in 1979, which expressed his legal opinion that H.B. 80’s granting of statewide jurisdiction would have no effect on university rule enforcement because these regulations were only enforced on campus.<sup>327</sup> Yet Barrett also admitted during his interview with Waldo that when “he wrote the opinion [to Governor Matheson], he did not have in mind the Brigham Young University Honor Code, which applies both on and off campus.”<sup>328</sup> Indeed, Barrett “agreed that the legislation, as written, appears to give BYU police the power to enforce that university’s rules off campus.”<sup>329</sup>

Members of the public perceived H.B. 80 to be a power grab by the BYU police to expand their off-campus jurisdiction and to enforce the Honor Code.<sup>330</sup> For example, a citizens group of sixty LDS Church members publicly criticized H.B. 80, arguing that it went against their faith and the separation of church and

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323. Cook, *supra* note 218. One function of House Bill 80 was to resolve the jurisdictional issues that campus police in Utah faced. In the years leading up to the *Chipman* case, the Utah Supreme Court had twice vacated convictions because it determined that university police officers had improperly made arrests outside of their jurisdiction. See *State in re Hurley*, 501 P.2d 111, 113 (Utah 1972); *State v. Lyon*, 584 P.2d 844, 846 (Utah 1978) (per curiam); John Waldo, *The Lawmen and the Prophets: Sectarian Exercise of Police Authority in Utah and New Jersey*, 1980 UTAH. L. REV. 447, 447 n.5. As discussed above, the *Chipman* case itself also raised the question of the BYUPD’s authority to make arrests outside of Utah County. Accordingly, Chief Swen C. Nielsen and many of his colleagues in campus law enforcement were strong proponents of increasing their departments’ official jurisdiction. See NIELSEN, *supra* note 90, at 5; Adelman, *supra* note 312, at 1.

324. UTAH CODE ANN. § 53B-3-105 (LexisNexis 2025); Waldo, *supra* note 323, at 448 n.7.

325. Waldo, *supra* note 323, at 448 n.7.

326. *Id.*

327. *Id.*

328. *Id.*

329. *Id.*

330. Gillins, *supra* note 266, at 47.

state.<sup>331</sup> Chipman's former lawyer, Ron Stanger, described the law as "giv[ing] state police powers to a private institution that is not accountable to the public. . . . [T]hat's a scary thing."<sup>332</sup>

The ACLU was particularly opposed to H.B. 80. The lawyer that the ACLU hired to represent David Chipman, Herschel Bullen, commented that the law was "clearly a violation of church and state."<sup>333</sup> In particular, the director of the ACLU's state affiliate, Shirley Pedler, argued that it "is blatantly unconstitutional for allowing police power to be used to enforce views, if not exclusively limited to, at least included in church doctrine."<sup>334</sup>

In response to public criticism of H.B. 80, President Oaks downplayed BYU's involvement in promoting the bill.<sup>335</sup> However, a local reporter found legislative records of BYUPD chief Robert Kelshaw (along with former Chief Swen Nielsen) testifying in 1978 at the state legislature in support of the bill.<sup>336</sup> Oaks also accused critics of the BYUPD of "engaging in an overt form of religious discrimination."<sup>337</sup> He contended that "critics are not trying to separate church and state as much as they are trying to say any person with religious beliefs should not participate in government."<sup>338</sup> Oaks went on to declare that the campus police had no plans to enforce the Honor Code and would only do so in cases where there were also violations of law.<sup>339</sup>

These claims, too, were inconsistent with later practice. In the years following H.B. 80's passage, the ACLU reported "frequent and persistent" complaints about the behavior of the BYUPD.<sup>340</sup> Most concerning were reports of the BYUPD going off campus to conduct "house-to-house investigations on

331. See Letter to the Editor, *Citizens Group Sees Police Danger*, AM. FORK CITIZEN, May 31, 1979, at 3, 3 ("We believe that the United States Constitution is divinely inspired and that for Utah to violate this constitutional provision is not in keeping with the image of the State of Utah that we want to create.").

332. Gillins, *supra* note 266, at 47.

333. *Id.*

334. Williams, *supra* note 226.

335. Gillins, *supra* note 266, at 47 (quoting President Oaks as telling the press that BYU "did not initiate efforts to have the legislation changed").

336. *Id.* Another article refers to university lobbyists testifying at legislative hearings. See *Homosexuals Level Charges at Mormon Church*, *supra* note 245, at 15.

337. *Discrimination Accusation Leveled at BYU Cop Critics*, S. IDAHO PRESS, Sept. 19, 1979, at 8, 8.

338. *Id.*

339. *Id.*

340. *Suit Attacks Off-Campus Arrests by B.Y.U. Police*, N.Y. TIMES, July 2, 1989, at 27, 27.

‘religious matters.’”<sup>341</sup> The university denied these reports in a statement, which reiterated that the BYUPD only operated off campus with the express permission of the local authorities and were “saving taxpayers’ money” in the process.<sup>342</sup>

Eventually, the ACLU brought a challenge to the BYUPD’s statutory powers. In 1988, a BYU police officer approached a group of teenagers sitting in the bed of a pickup truck at around 1:00 AM in downtown Provo.<sup>343</sup> The officer issued a misdemeanor citation to a sixteen-year-old boy, referred to as M.S., for under-age drinking.<sup>344</sup> M.S. was originally represented by his father during his hearings before the juvenile court.<sup>345</sup> His father “questioned” how the BYU police were able to operate off-campus, but M.S. failed to renew this objection during a subsequent *de novo* hearing.<sup>346</sup> The ACLU became involved with M.S.’s legal representation once the case reached the Utah Court of Appeals.<sup>347</sup>

At the Court of Appeals, the ACLU argued that the state law granting the BYUPD police power amounted to an “incurable entanglement between church and state.”<sup>348</sup> Specifically, the acting director of the ACLU of Utah, Michele Parish-Pixler, claimed that “the statu[t]es give BYU police the aura of state authority when they are enforcing BYU rules and regulations.”<sup>349</sup> As a result, “[t]he effect of these statutes is to establish a private religious police force, accountable to the religious entity that operates it, yet unconstitutionally authorized to enforce laws throughout the state.”<sup>350</sup> Parish-Pixler also stated, “BYU and the state of Utah cannot have it both ways.”<sup>351</sup> She continued, “Police officers cannot serve two masters: They are accountable to the church or to the state.”<sup>352</sup>

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341. *Id.*; see Dan Harrie, *ACLU Challenges Utah Law Permitting Religious Police Force*, UPI (May 31, 1989), <https://www.upi.com/Archives/1989/05/31/ACLU-challenges-Utah-law-permitting-religious-police-force/4712612590400> [<https://perma.cc/E2F2-2B9X>] (“Parish-Pixler said the ACLU has received ‘a lot of complaints’ concerning allegations of BYU security officers taking enforcement activity off campus.”).

342. *Suit Attacks Off-Campus Arrests by B.Y.U. Police*, *supra* note 340, at 27.

343. *State in re M.S.*, 781 P.2d 1289, 1290 (Utah Ct. App. 1989).

344. *Id.*

345. *Id.*

346. *Id.* at 1290-91.

347. Harrie, *supra* note 341.

348. *Suit Attacks Off-Campus Arrests by B.Y.U. Police*, *supra* note 340, at 27 (quoting the American Civil Liberties Union’s (ACLU’s) Utah chapter).

349. Harrie, *supra* note 341 (quoting Michele Parish-Pixler, acting director of the ACLU’s Utah chapter).

350. *Id.*

351. *Id.*

352. *Id.*

Ultimately, the Court of Appeals affirmed M.S.'s conviction and ruled that the constitutional challenge had not been preserved for appeal.<sup>353</sup> The court declined to address the First Amendment issue and emphasized both the "sparse" factual record and the absence of a facial violation in the language of the statute.<sup>354</sup> However, the opinion referred to "the constitutionality of various provisions in the Utah Code delegating police power to church employees" as an "important issue" and "by no means a clear question."<sup>355</sup> And, indeed, the next Section presents one such example from BYU: the express use of law-enforcement authority to enforce the Honor Code.

*B. Searching for Honor Code Violations in Police Databases*

In 2016, reporters with the *Salt Lake Tribune* "began investigating allegations that [the BYUPD] . . . was mishandling victims' reports of sexual abuse" to "aid[] the BYU Honor Code Office in investigating and disciplining" violations.<sup>356</sup> The *Tribune's* research was soon stalled because of the BYUPD's "refusal" to turn over certain records, resulting in a legal battle that ultimately reached the Utah Supreme Court.<sup>357</sup>

During these proceedings, limited records were released that illuminated the inner workings of the relationship between the BYUPD and the university's Honor Code Office. In a deposition, an Honor Code Office employee stated it was "standard practice in the office" to call BYUPD lieutenant Aaron Rhoades to gain information on students.<sup>358</sup> The *Salt Lake Tribune* found that "Rhoades' surveillance of students was part of a de facto system, with university employees in several school departments asking him for information and welcoming his reports," and that Rhoades would share "records that were not available to the public."<sup>359</sup> Importantly, these were not the actions of "a single rogue BYU police

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353. *State in re M.S.*, 781 P.2d 1289, 1290-91 (Utah Ct. App. 1989).

354. *Id.*

355. *Id.* at 1291.

356. *Salt Lake Trib. v. State Recs. Comm.* 456 P.3d 728, 729 (Utah 2019); see also Jessica Miller Schreifels & Erin Alberty, *Newly Released Records Show It Was 'Standard Practice' for BYU Police to Help with Honor Code Surveillance*, SALT LAKE TRIB. (Dec. 16, 2021, 4:52 PM), <https://www.sltrib.com/news/2021/12/16/newly-released-records> [<https://perma.cc/BJ8N-4Z5U>].

357. *Salt Lake Trib.*, 456 P.3d at 729.

358. Schreifels & Alberty, *supra* note 356.

359. *Id.*

officer” — as BYU has maintained — but rather “an established procedure at the school.”<sup>360</sup>

Rhoades himself stated in a deposition that, for years, his “assignment as the investigations lieutenant was to provide information to the Honor Code Office from the Utah County jail booking system on students that were booked.”<sup>361</sup> But he went far beyond public booking information. In a two-year span, “Rhoades had accessed around 16,000 police reports from other Utah County police agencies,” which by law requires a “legitimate law enforcement reason.”<sup>362</sup> He gave private student information to university offices over twenty times.<sup>363</sup> In one example, Rhoades “accessed” and shared the “information” of a student who publicly criticized the BYU Honor Code rule banning premarital sex.<sup>364</sup> Even more concerning, the BYUPD also sent administrators information about students who reported sexual violence to punish them for Honor Code violations. For example, Rhoades sent “intimate, nonpublic details” from a student’s “sexual assault medical exam — to the Honor Code counselor.”<sup>365</sup> As a result, after women reported sexual violence, they “found themselves on the defensive when the BYU Honor Code office somehow had knowledge of details of their case and used them to charge the victims of violations such as drinking alcohol or being in their rooms with men they were not married to.”<sup>366</sup>

Lieutenant Rhoades’s actions created barriers for students to report gender-based violence to any entity. In one 2015 case, a student named Madi Barney reported a rape to the Provo Police Department.<sup>367</sup> Administrators eventually received her police report through Rhoades and barred her from enrolling in

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360. Salt Lake Trib. Ed. Bd., *BYU’s 5-Year Cover-Up of Its Abuse of Police Power Can’t Be Excused or Forgotten, Editorial Board Writes*, SALT LAKE TRIB. (Dec. 17, 2021), <https://www.sltrib.com/opinion/editorial/2021/12/17/byus-year-cover-up-its> [https://perma.cc/9T75-G4HU].

361. Schreifels & Alberty, *supra* note 356.

362. Jessica Miller Schreifels, *Why Utah Officials Decided BYU’s Police Department Couldn’t Be Saved*, SALT LAKE TRIB. (Dec. 17, 2021), <https://www.sltrib.com/news/2021/12/17/why-utah-officials> [https://perma.cc/U6ZS-HKH6].

363. Jessica Miller Schreifels, *BYU Will Keep Its Police Department, After a Judge Dismisses Utah’s Decertification Efforts*, SALT LAKE TRIB. (Jan. 6, 2021), <https://www.sltrib.com/news/2021/01/05/byu-will-keep-its-police> [https://perma.cc/MTD6-XGPF].

364. Schreifels & Alberty, *supra* note 356.

365. *Id.*

366. Salt Lake Trib. Ed. Bd., *supra* note 360.

367. Mark Oliver, *Here’s Why the Brigham Young Police Department Is Getting Decertified*, KSL NEWS RADIO (Dec. 30, 2022), <https://kslnnewsradio.com/utah/byu-pd-decertified/1902205> [https://perma.cc/L6NW-YDG4]; see also Jessica Miller Schreifels, *Utah Man Accused of Raping BYU Student Is Acquitted*, SALT LAKE TRIB. (Oct. 19, 2017), <https://www.sltrib.com/news/2017/10/19/utah-man-acquitted-of-raping-byu-student> [https://perma.cc/P37P-ZJQZ] (reporting that the accused was acquitted of criminal rape charges).

classes while they conducted an Honor Code investigation into the fact that she had allowed a man to enter her dorm room.<sup>368</sup> In another case, BYU administrators used details of a sexual assault that a student reported to the Provo Police Department as the basis for an Honor Code investigation into immodest dress and premarital sexual activity.<sup>369</sup> She said she was informed by an associate dean that she “wasn’t welcome to sign up for classes [at BYU] again.”<sup>370</sup> This (since-discontinued) practice had a chilling effect on reports of sexual violence: in the 2017 Campus Climate Survey, twenty-one percent of respondents who chose to not report incidents indicated that they did so because they “were worried about Honor Code discipline or their ecclesiastical endorsement being questioned.”<sup>371</sup>

Internal BYUPD records made available during the *Salt Lake Tribune* case demonstrated that the campus police had engaged in this form of information-sharing decades earlier. In 1977, the assistant BYUPD chief, J. Wesley Sherwood, sent a letter to a U.S. Attorney asking for advice on a question “that probably is quite unique to our department.”<sup>372</sup> Sherwood described how “we have access to criminal justice information specifically, police reports, arrest reports, statements, etc. which would probably not be made available to private citizens. We have in select instances in the past forwarded some of this information to the Dean of Students for disciplinary actions against a student.”<sup>373</sup> This record

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368. Schreifels, *supra* note 367; see Dora Scheidell, *Former Student Banned from Taking Classes After Rape Investigation Reacts to Policy Changes*, FOX13 (Oct. 27, 2016, 3:50 PM), <https://www.fox13now.com/2016/10/27/former-student-banned-from-taking-classes-after-rape-investigation-reacts-to-byu-policy-changes> [https://perma.cc/4PNA-NARW]; Corky Siemaszko, *BYU Student Says School Is Punishing Her for Reporting Rape*, NBC NEWS (Apr. 20, 2016, 3:49 AM EDT), <https://www.nbcnews.com/news/us-news/byu-student-says-school-punishing-her-reporting-rape-n558511> [https://perma.cc/E8RA-WZW4] (“‘A victim of a sexual assault will never be referred to the Honor Code Office for being a victim of sexual assault,’ [BYU president Kevin] Worthen said in a statement. But, he added, ‘sometimes in the course of an investigation, facts come to light that a victim has engaged in prior Honor Code violations.’”).

369. Schreifels & Alberty, *supra* note 358.

370. *Id.*

371. *Report on the Campus Climate Survey on Sexual Assault*, BRIGHAM YOUNG UNIV. 8 (Nov. 2017), <https://brightspotcdn.byu.edu/1e/9f/3cfd38434e508ab9d421bf55f7ed/campus-climate-report-f2017.pdf> [https://perma.cc/AK75-ZB9K]; see Erin Alberty, *Students: BYU Honor Code Leaves LGBT Victims of Sexual Assault Vulnerable and Alone*, SALT LAKE TRIB. (July 27, 2017, 9:23 PM), <https://www.sltrib.com/news/crime/2016/09/01/students-byu-honor-code-leaves-lgbt-victims-of-sexual-assault-vulnerable-and-alone> [https://perma.cc/D4XY-AEQB]. For changes to BYU policy, see Jessica Miller Schreifels, Matthew Piper & Erin Alberty, *Honor Code Amnesty Is Just One Part of BYU’s 23 Steps for Addressing Sexual Assault*, SALT LAKE TRIB. (Aug. 1, 2017, 11:43 AM), <https://www.sltrib.com/news/education/2016/11/16/honor-code-amnesty-is-just-one-part-of-byus-23-steps-for-addressing-sexual-assault> [https://perma.cc/4F4T-JCXS].

372. Ruling and Order on Cross Motions for Summary Judgment, *supra* note 86, at 12.

373. *Id.*



suggests that the BYUPD was aware of the dubious legality of this practice. Sherwood's reason for writing to the U.S. Attorney was to ask whether this practice violated the Federal Privacy Act, "since [they were] sharing the information with someone outside the 'criminal justice agencies.'"<sup>374</sup> Though the court records mention no response from the consulted attorney, this practice continued long after 1977 through Lieutenant Rhoades's actions.

The *Salt Lake Tribune* case hinged on whether the BYUPD was a "governmental agency" and therefore subject to the Utah public-records law, the Government Records Access and Management Act (GRAMA).<sup>375</sup> The *Tribune* argued that the BYUPD is a governmental agency whether or not it is sponsored by the university.<sup>376</sup> It noted that the BYUPD has full, statutorily authorized law-enforcement authority.<sup>377</sup> And it pointed out that in other situations BYU itself had argued – when it was to its benefit – that "its employees are state actors when they 'perform a governmental function.'"<sup>378</sup>

BYU and the Utah State Records Committee responded that while private police perform a public function, that does not in itself make them a public entity.<sup>379</sup> BYU's position was supported by the practice of a majority of states, which allow private campus police to keep private records.<sup>380</sup> The lower court sided with the *Tribune*, but while the case was being heard at the Utah Supreme Court, it was rendered moot: the Utah State Legislature passed a law in 2019 subjecting the BYUPD to GRAMA.<sup>381</sup>

The Utah Department of Public Safety (DPS) also attempted to decertify the BYUPD for their refusal to cooperate with police regulators or comply with state

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374. *Id.*

375. Brief of Appellees the Salt Lake Tribune and Matthew Piper at 20, *Salt Lake Trib. v. Utah State Recs. Comm.*, 456 P.3d 728 (Utah 2019) (No. 20180601-SC).

376. *Id.* at 14-15.

377. *Id.* at 17-19.

378. *Id.* at 20-21.

379. Appellant's Opening Brief at 23-25, *Salt Lake Trib.*, 456 P.3d 728 (No. 20180601-SC).

380. See Josh Moore, *Out From the Curtains of Secrecy: Private University Police and State Open Records Laws*, 2 J. CIVIC INFO., no. 2, 2020, at 1, 4-5; Lindsie Rank & Zach Varda, *Public Records Laws as Applied to Private University Police Forces*, FIRE (Mar. 31, 2022), <https://www.thefire.org/news/month-spf-hotline-public-records-laws-applied-private-university-police-forces> [<https://perma.cc/QKA4-AR9A>]; Madeline Will, *Despite Public Interest in Increased Police Transparency, Most Private Universities Shield Police Reports*, STUDENT PRESS L. CTR. (Mar. 16, 2016), <https://splc.org/2016/03/private-campus-police-forces> [<https://perma.cc/6YMD-C9MJ>].

381. *Salt Lake Trib.*, 456 P.3d at 730.

protocol regarding disciplinary action against officers.<sup>382</sup> As an attorney for DPS explained, “We have a police department that doesn’t act like a police department, that says it’s going to be subject to GRAMA except when it doesn’t want to be, doesn’t respond to subpoenas, doesn’t respond with candor and honesty to subpoenas . . . .”<sup>383</sup> (BYU maintained that they had fully cooperated with DPS and that their objections to certain subpoenas were based on valid grounds.<sup>384</sup>)

The Utah State Public Safety Commissioner, Jess Anderson, was particularly concerned about the influence of university leadership on the BYUPD’s operations.<sup>385</sup> Anderson noted that when the BYUPD was first granted law-enforcement authority there were few guardrails placed on how they could operate: “It was just simply granting them authority and saying, ‘OK, you as a private entity, good luck with state power.’”<sup>386</sup> Ultimately, however, an administrative law judge ruled that the BYUPD could remain a certified police force.<sup>387</sup> And Lieutenant Rhoades gave up his policing license and retired from the BYUPD with a payout that was unusually large for the department.<sup>388</sup>

Though the *Salt Lake Tribune* case and DPS proceedings centered on the BYUPD’s private records, there was a deeper issue at play: the role of the LDS Church in the department’s operation. A former Provo city police officer, Robert Kirby, reflected on these dynamics in the *Tribune*: “[T]he worst form of church-and-state violation is when a religion has its own state-authorized police department to enforce secular law—and a little extra.”<sup>389</sup> Kirby continued, “I worked with a lot of BYU cops. Good ones. But it was whom they ultimately answered to that gave me pause.”<sup>390</sup> In his view, BYUPD officers ultimately answered to the LDS Church, as opposed to city officials and the public. He stated, “I never knew BYU cops who looked at themselves as the morality police, but I’m not sure if they were ever ordered to be. I hope it never happens.”<sup>391</sup>

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382. Pat Reavy, *Did BYU Police Engage in ‘Deception’ or Are Utah’s Efforts to Decertify ‘Politically Motivated’?*, KSL (Dec. 1, 2020), <https://www.ksl.com/article/50059277/did-byu-police-engage-in-deception-or-are-utahs-efforts-to-decertify-politically-motivated?> [perma.cc/4VTV-86YW].

383. *Id.*

384. Letter from Steven M. Sandberg to Jess L. Anderson, *supra* note 87, at 2–4.

385. Schreifels, *supra* note 362.

386. *Id.*

387. *Id.*

388. Schreifels & Alberty, *supra* note 358.

389. Robert Kirby, *BYU’s Police — Mormon Rites vs. Miranda Rights*, SALT LAKE TRIB. (July 15, 2018, 9:36 AM), <https://www.sltrib.com/religion/2018/07/14/kirby-byus-police-mormon> [https://perma.cc/6JWS-XZFX].

390. *Id.*

391. *Id.*

In the aftermath of this highly publicized scandal at BYU, there has been measurable progress in the school's treatment of victims of sexual violence, largely due to student-led advocacy. For example, though school officials initially told students they would "not apologize" for Honor Code enforcement, they have since changed their policies to no longer punish those who report sexual violence.<sup>392</sup>

One of the most important outcomes of the *Salt Lake Tribune* case was that BYU officials "agreed that the police database could no longer be used for Honor Code Office purposes."<sup>393</sup> The current BYU police chief, Matthew Andrus, also maintains that his department does not enforce the Honor Code at all.<sup>394</sup> In 2021, the state legislature enacted a law that, through a certification process, placed increased state oversight and restrictions on private campus police in Utah.<sup>395</sup> Private campus police no longer have the statutory ability to enforce university rules, and their jurisdiction is limited to the university grounds, unless in hot pursuit<sup>396</sup> or if they enter into "an interagency agreement with another law enforcement agency."<sup>397</sup>

Despite these developments, however, there are still several open questions regarding the BYUPD's powers. First, portions of the department's records are still exempt from the state public-records law. In response to the 2019 law subjecting them to GRAMA, the BYUPD announced that it would split its department into two entities: the police force and a new, separate security department that would not be subject to the public-records requirement.<sup>398</sup> The department, in the end, may have achieved the best of both worlds: private records for some of its operations, but continued access to state law-enforcement authority.

Second, this new security department – whose actions are shielded by private records – could be involved in Honor Code enforcement. While BYU officials announced that these security officers would not enforce the Honor Code, one

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392. Schreifels et al., *supra* note 371.

393. Schreifels & Alberty, *supra* note 356.

394. *Id.* ("BYU police officers enforce only Utah state laws and Provo City ordinances . . . Not the Honor Code.")

395. Law Enforcement Modifications, ch. 349, § 8, 2021 Utah Laws 2865, 2868-69 (2021) (codified as amended at UTAH CODE ANN. § 53-19-202 (LexisNexis)).

396. UTAH CODE ANN. § 53-19-202(2)(a) (LexisNexis 2025) (referencing UTAH CODE ANN. § 53-13-103(3), which provides the hot-pursuit exception).

397. *Id.* § 53-19-202(2)(b).

398. Courtney Tanner & Jessica Miller Schreifels, *BYU Creates New Security Department That Will Not Be Subject to Utah's Open Records Laws*, SALT LAKE TRIB. (Oct. 1, 2020, 5:28 PM), <https://www.sltrib.com/news/education/2020/10/01/byu-creates-new-security> [https://perma.cc/6GU5-PNFV].

recent incident suggests otherwise.<sup>399</sup> In 2023, a campus security officer at BYU-Hawaii stopped a Black student and ordered him to show his school ID to prove he was a student.<sup>400</sup> The officer informed the student that his hair violated the Honor Code's grooming requirements, threatened him with expulsion if he did not cut his hair, and reported him for disciplinary action.<sup>401</sup>

Honor Code enforcement is perhaps less concerning when done by security officers as opposed to law-enforcement officers. Still, campus security can have a range of police-like powers and weapons, which come with the same issues that have marked the BYUPD's history of Honor Code enforcement. Indeed, some BYU security personnel carry firearms.<sup>402</sup> The BYU-Hawaii case is also indicative of a cycle dating back to the Gay Purges of university officials assuring the public that BYUPD officers would not enforce the Honor Code, only for it to later emerge that they had.

In theory, it is possible for campus police officers to keep their public and private duties separate. But the history of the BYUPD demonstrates a persistent pattern of intertwined enforcement tactics, despite assurances to the contrary. From the surveillance and arrests of the Gay Purges to Lieutenant Rhoades accessing police reports to share with Honor Code administrators, the collective evidence reveals a department that has at times used its law-enforcement authority to enforce religious standards. The next Part examines the broader implications of these lessons within the national landscape of campus policing.

#### IV. SACRED SPHERES: MAPPING RELIGIOUSLY AFFILIATED POLICE IN THE UNITED STATES

In 1988, the *Campus Law Enforcement Journal* ran an issue with a front cover that proclaimed "Combining Law Enforcement with Religion."<sup>403</sup> The cover story profiled the University of Cincinnati's campus police partnership with campus ministries. They created a special police badge—featuring a cross intertwined with the Star of David—for clergy members who served as police

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399. Schreifels & Alberty, *supra* note 356 ("BYU police officers enforce only Utah state laws and Provo City ordinances . . . . Not the Honor Code.").

400. Courtney Tanner, *A Black Student at BYU-Hawaii Was Told His Locs Were Against the Honor Code. This Is What Happened Next.*, SALT LAKE TRIB. (Mar. 19, 2024, 9:15 AM), <https://www.sltrib.com/news/education/2024/03/19/will-black-students-case-byu> [<https://perma.cc/8JQB-VP8U>].

401. *Id.*

402. *Firearms and Weapons Policy*, BYU 1 (Sept. 20, 2021), <https://policy.byu.edu/content/managed/66/FirearmsandWeaponsPolicy.pdf> [<https://perma.cc/5WKM-HS2H>].

403. 19 CAMPUS L. ENF'T J., no. 5, 1988.

chaplains for the department.<sup>404</sup> Even at this secular university, policing came with religion.

This Part expands beyond BYU to map the law and statutory powers of religiously affiliated police across the United States in the present day. Applying lessons from the *Chipman* and *M.S.* cases, it analyzes prior Establishment Clause challenges to religiously affiliated campus police. Additionally, it reveals that statutes granting campus police broad authority to enforce university rules are common across many states and, like Utah's H.B. 80, create the risk of entanglement between the enforcement of public law and religious rules. Finally, this Part explores the recent creation of other religiously affiliated private police forces, including the Briarwood Presbyterian Church police force established in Alabama in 2019. The BYUPD's history stands as a stark warning about the constitutional perils and threats to civil liberties that these new church police departments could present.

### A. Legal Challenges to Religiously Affiliated Campus Police

While the BYUPD's jurisdiction has escaped further constitutional scrutiny, courts in Indiana, Michigan, and North Carolina have addressed similar legal challenges involving off-campus arrests by religiously affiliated campus police.<sup>405</sup> In each case, defendants arrested for driving while under the influence (DUI) during traffic stops on city streets argued that the departments' off-campus jurisdiction over nonstudents violated the Establishment Clause.<sup>406</sup> The courts sided with the campus police and held that religiously affiliated campus police satisfied the three-pronged (and now largely defunct) *Lemon* test: first, a "statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the statute must not foster 'an excessive government entanglement with religion.'"<sup>407</sup>

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404. Edward R. Bridgeman & Greg Hand, *University of Cincinnati Implements Campus Ministries/Police Program*, 19 CAMPUS L. ENF'T J., no. 5, 1988, at 14, 14.

405. See Jamie Hopkins & Kristina Neff, *Jurisdictional Confusion That Rivals Erie: The Jurisdictional Limits of Campus Police*, 75 MONT. L. REV. 123, 125 n.15, 140 (2014); *Myers v. State*, 714 N.E.2d 276, 280 (Ind. Ct. App. 1999); *People v. Van Tubbergen*, 642 N.W.2d 368, 378-79 (Mich. Ct. App. 2002); *State v. Yencer*, 718 S.E.2d 615, 617 (N.C. 2011).

406. Hopkins & Neff, *supra* note 405, at 140.

407. *Lemon v. Kurtzman*, 403 U.S. 602, 612-13 (1971); see *Myers*, 714 N.E.2d at 280 (applying the *Lemon* test); *Van Tubbergen*, 642 N.W.2d at 378-79 (same); *Yencer*, 718 S.E.2d at 617 (same). For the demise of the *Lemon* test, see *Kennedy v. Bremerton School District*, 597 U.S. 507, 535 (2022) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)), which declared that "[i]n place of *Lemon* and the endorsement test, this Court has instructed that the Establishment Clause must be interpreted by 'reference to historical practice and understandings.'"

Importantly, in these DUI cases and the *M.S.* case in Utah, the charges themselves did not indicate religious entanglement. Rather, these instances appeared to involve campus police acting in their law-enforcement capacity to enforce generally applicable laws off campus. But this Note highlights a history of other campus policing operations that intersect more directly with religious doctrine: *Chipman* is one such case, where the impetus for the investigation was a directive rooted in church teachings.<sup>408</sup> Because these arguments have not yet been directly raised in court, it remains unclear whether judicial analysis might shift when presented with cases where campus police actions are more closely tied to religious mandates.

That being said, courts *have* rejected direct attempts by religious organizations to manage municipal policing, even when their law-enforcement activities did not appear to be tied explicitly to religious purposes. For example, in the early twentieth century, the Methodist Church set up a “Christian seaside resort” in Ocean Grove, New Jersey.<sup>409</sup> Through an incorporated association, the Church passed ordinances and “enforce[d] them with their own police departments and courts.”<sup>410</sup> In 1979, the same year as David Chipman’s arrest the New Jersey Supreme Court struck down as unconstitutional the state law authorizing the Ocean Grove police after a man challenged his DUI conviction.<sup>411</sup> Notably, the court was opposed to the existence of this religiously affiliated police force, even though there was no indication that the officers had been engaging in religiously motivated policing. It held that the state law was unconstitutional because

[i]n effect, the Legislature has decreed that in Ocean Grove the Church shall be the State and the State shall be the Church. Individuals chosen by the followers of a particular faith to safeguard their spiritual and cultural way of life have been accorded the authority to determine what shall constitute acceptable modes of conduct for Methodists and non-Methodists alike.<sup>412</sup>

More recently, in 2012, the Department of Justice filed suit alleging that the Fundamentalist Church of Jesus Christ of Latter-Day Saints (a polygamist group that is unaffiliated with the LDS Church) was dictating the operations of the

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408. Brief of Defendant-Appellant, *supra* note 4, at 5-7.

409. *State v. Celmer*, 404 A.2d 1, 3 (N.J. 1979).

410. Waldo, *supra* note 323, at 451 (footnotes omitted).

411. *Celmer*, 404 A.2d at 3, 7.

412. *Id.* at 6.



police departments in Colorado City, Arizona, and Hildale, Utah.<sup>413</sup> In 2017, after a jury found the defendants liable for, among other claims, an Establishment Clause violation, a federal judge ordered that these departments be retrained and monitored.<sup>414</sup>

Courts appear to distinguish between religiously affiliated campus police and religious involvement in municipal policing on the grounds that the primary purpose of campus police is to serve the institution's secular and administrative needs rather than its religious mission.<sup>415</sup> And any challenge to religiously affiliated campus police would meet a Supreme Court that has constrained the application of the Establishment Clause in educational settings.<sup>416</sup>

North Carolina's Campus Police Act exemplifies the arguments offered in favor of authorizing campus police at religiously affiliated universities.<sup>417</sup> In that Act, the general assembly emphasizes that these are accredited institutions serving students of all faith backgrounds.<sup>418</sup> The Act also stresses that the power of arrest can only be used for violations of law.<sup>419</sup> Consistent with this language,

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413. See *United States v. Town of Colorado City*, No. 12-cv-8123, 2017 WL 1384353, at \*8-9, \*11 (D. Ariz. Apr. 18, 2017); Jamie Ross, *Judge Lets Mormon Sect Keep Its Police Force*, COURTHOUSE NEWS SERV. (Apr. 19, 2017), <https://www.courthousenews.com/judge-lets-mormon-sect-keep-police-force> [<https://perma.cc/ND44-J3XG>].

414. See *United States v. Town of Colorado City*, 2017 WL 1384353, at \*13-15.

415. See, e.g., *Myers v. State*, 714 N.E.2d 276, 283 (Ind. Ct. App. 1999) (“[A]lthough closely affiliated with a religious denomination, Valparaiso University does not subordinate secular education to religious doctrine. It functions neither as a church nor as a religious governing body. . . . The police power exercised by Valparaiso University police officers serves not as a standardless vehicle for the advancement or protection of religious interest but as a neutral means of protecting the safety of all citizens and residents at or near the university.”); *State v. Yencer*, 718 S.E.2d 615, 620 (N.C. 2011) (“First, the ‘nature of the aid that the State provided’ in certifying the Davidson College Campus Police is secular. . . . This benefit offers the College a state-certified police agency to enforce federal and state laws, not religious rules. . . . [L]ike those at other colleges and universities, the students, faculty, and staff at Davidson are simply receiving the secular benefit of police protection.” (quoting *Agostini v. Felton*, 521 U.S. 203, 232 (1997))).

416. See Alexander Tsesis, *The Establishment of Religion in Schools*, 76 STAN. L. REV. 1725, 1739 (2024) (“The Court has increasingly relied on reasoning that favors religiosity, discounts disestablishment principles, and threatens to ‘create new controversy,’ which are likely to ‘begin anew the very divisions’ that the Establishment Clause was meant to prevent.” (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 577 (2014))).

417. N.C. GEN. STAT. § 74G-2 (2024).

418. *Id.* § 74G-2(b)(2) to (4).

419. *Id.* § 74G-2(b)(6), (8).

the North Carolina Supreme Court held that campus police could not use their law-enforcement authority to enforce “campus policies or religious rules.”<sup>420</sup>

The BYU case study, however, reveals two critical flaws in this understanding of religious campus police. First, because campus police jurisdiction extends beyond college grounds, religious direction of campus police can affect the public just as much as religious direction of municipal police. Campus police are heavily involved in policing surrounding neighborhoods and frequently assist local police with matters unrelated to campus. The BYUPD police log demonstrates this regular off-campus involvement, and their close working partnership with the Provo Police Department stretches back to the BYUPD’s origins.<sup>421</sup> Indeed, eighty-one percent of campus police departments at four-year institutions maintain mutual-aid agreements with other law-enforcement agencies.<sup>422</sup> Sometimes campus departments have larger budgets and more officers than the municipal police department of the surrounding town.<sup>423</sup> In practice, then, campus police at religious universities will not only police students who choose to enroll, but also nonstudents who live near campus. And the BYU case study demonstrates the clear risks of overlapping jurisdiction.

Second, as Leigh J. Jahnig argues, “When campus police officers have the authority to enforce both local statutes and university regulations, the line between the two can be blurred.”<sup>424</sup> Certainly, these blurred lines recurred throughout the BYUPD’s history, including in the BYU’s Gay Purges and Lieutenant Rhoades’s investigation of Honor Code violations by rape victims.<sup>425</sup> What’s

420. See *Yencer*, 718 S.E.2d at 620; see also N.C. GEN. STAT. § 74G-2(b)(8) (2024) (“In exercising the power of arrest, these officers apply standards established by State and federal law only . . .”).

421. The BYUPD keeps a public record of calls it receives, including agency assist requests from local police departments seeking help from BYUPD officers in responding to incidents. *Police Beat*, BYU POLICE, <https://police.byu.edu/police-beat-list> [<https://perma.cc/2LF5-82SF>]. For examples of agency assist calls unrelated to student matters, see *Police Beat* • 02/07/2024, BYU POLICE (Feb. 7, 2024), <https://police.byu.edu/police-beat-02-07-2024> [<https://perma.cc/9E3K-9G56>]; *Police Beat* • 09/12/2024, BYU POLICE (Sept. 12, 2024), <https://police.byu.edu/police-beat-09-12-2024> [<https://perma.cc/A5VR-X3QF>]; *Police Beat* • 12/24/2024 - 12/25/2024, BYU POLICE (Dec. 25, 2024), <https://police.byu.edu/police-beat-12-24-2024-12-25-2024> [<https://perma.cc/TR8K-VB4K>]; *Police Beat* • 10/25/2024, BYU POLICE (Oct. 25, 2024), <https://police.byu.edu/police-beat-10-25-2024> [<https://perma.cc/E259-XNEN>]. For discussion of the origins of the BYUPD’s partnerships with local police, see *supra* Section I.A.

422. See Davis, *supra* note 50, at 26.

423. Daniel Hopkins, *Defund UMPD*, DIAMONDBACK (June 23, 2020), <https://dbknews.com/2020/06/23/um-d-umpd-police-budget-defund-george-floyd> [<https://perma.cc/MG75-Y7U7>] (“The University of Maryland Police has more officers and a larger budget than any town or city police force in Prince George’s County.”).

424. Jahnig, *supra* note 59, at 274.

425. See discussion *supra* Sections II.A, II.B, III.B.

more, even when the law formally prohibits campus police from enforcing religious rules using state law-enforcement authority—as North Carolina law does—religious universities can circumvent such limitations because campus police officers still possess coercive informal authority.<sup>426</sup> For example, North Carolina-based Belmont Abbey College Campus Security states: “Even though Campus Police Officers do not enforce campus policies, officers do document and report violations to the Dean of Student Life.”<sup>427</sup> This policy raises questions about whether such actions could still exert improper control over students, particularly in a setting where institutional religious values are deeply embedded in the campus culture, and whether campus police could use their surveillance capabilities to document rule violations.

Many police actions short of arrest can become entangled with an institution’s religious mission. For example, consider police commands. Rachel Harmon notes that the law surrounding police commands is unclear, as “courts, legislatures, police departments, and communities misunderstand how commands function and what legal constraints exist or should exist upon them.”<sup>428</sup> In the campus context, students may struggle to discern when an officer is acting in a law-enforcement capacity, a student-disciplinary capacity, or both. This ambiguity can make it difficult for students to know when an officer’s instructions carry the legal force of a command. As Leigh J. Jahnig observes, “Because campus police are representatives of their university, students may feel compelled to obey police directives even if the directives violate[] students’ rights.”<sup>429</sup> These concerns also raise questions under state-action doctrine about when officers act under the color of state law or as private agents.<sup>430</sup>

Campus police enforcement of university rules also results in increased contact with officers over behavior that violates university policy but not criminal law. And increased contact with police comes with a variety of risks, including

426. See *State v. Yencer*, 718 S.E.2d 615, 620 (N.C. 2011).

427. *Campus Safety*, BELMONT ABBEY COLL., <https://belmontabbeycollege.edu/campus-safety> [<https://perma.cc/YKF8-DM73>].

428. Harmon, *supra* note 62, at 948.

429. Jahnig, *supra* note 59, at 274.

430. For more on campus police and state-action doctrine, see Vanessa Miller, *Private Campus Police and the Fourteenth Amendment*, 102 DENVER L. REV. (forthcoming 2025) (manuscript at 11) (on file with author) (“Their status as a police officer *and* a private employee places them in a unique legal position. They have fundamental competing interests between public safety and order all while serving the private capital and organization interests of their institution.”). See also Jahnig, *supra* note 59, at 263–65 (discussing jurisdiction, local law-enforcement coordination, and private-school status as variations on police authority granted to campus police by state enabling laws); M. Rhead Enion, Note, *Constitutional Limits on Private Policing and the State’s Allocation of Force*, 59 DUKE. L.J. 519, 521 (2009) (“The state action doctrine . . . maps poorly onto this mix of public and private supply.”).

physical and emotional harm by officers. In some cases, what begins as the enforcement of university rules can escalate into arrests.<sup>431</sup> These cases underscore the thin line that separates the enforcement of institutional policies from more serious legal implications.

Despite these concerns, an Establishment Clause challenge to religiously affiliated campus police is unlikely to succeed under existing doctrine.<sup>432</sup> However, if such a challenge were to be pursued, the BYUPD case study suggests that litigants should focus on instances where police actions are directly tied to religious mandates, unlike previous approaches that challenged routine law-enforcement activities. Even if these challenges ultimately fail, they could still serve an important normative purpose: to prompt closer examination of the boundaries between church and state in campus policing.

### *B. State Survey of Campus Police Powers*

While this Note has focused on the BYUPD, its lessons are not restricted to BYU or even Utah. As the Appendix catalogues, sixteen states explicitly grant campus police the statutory authority to enforce university rules and regulations as part of their duties. In some of these states, religiously affiliated universities may have their own police forces that enforce both state laws and religious rules. The state survey, summarized in the Appendix, interprets each state's treatment of the issue of rule enforcement. The statutes vary widely in their construction and clarity. As Richard Catten, a Utah administrative law judge, commented on the state of the law regulating BYU's campus police before it was revised in 2021, there was a "startling lack of guidance from the statutes and rules that govern the certification of BYUPD."<sup>433</sup> This statutory ambiguity often works in campus police's favor to operate with minimal oversight.

Fifteen states authorize campus police to enforce university regulations at public institutions, with two of these limiting that power to specific kinds of

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431. See, e.g., Jahnig, *supra* note 59, at 274 & n.144 (citing Asher Klein, *Student Arrested in Reg*, CHI. MAROON (Feb. 26, 2010), <https://chicagomaroon.com/8592/news/student-arrested-in-reg> [<https://perma.cc/XJ8T-FMX5>] (reporting a college student's arrest for trespass and resisting arrest in the library after campus police originally responded to a noise complaint by a library employee)).

432. See Tsisis, *supra* note 416, at 1739, 1747 ("The [Roberts Court's] shift from the muscular definition of antiestablishment to the currently understated, weakened version of the doctrine compromises the historical, constitutional principle of separation.").

433. Ben Winslow, *Judge Won't Decertify BYU PD over Honor Code Investigations*, FOX 13 (Jan. 6, 2021, 11:23 PM), <https://www.fox13now.com/news/local-news/judge-wont-decertify-byu-pd-over-honor-code-investigations> [<https://perma.cc/BPJ6-4866>].

regulations.<sup>434</sup> Notably, section 76-726 of the Kansas state code states that “university police officers shall enforce rules and regulations of the board of regents and rules and policies of the state educational institution, *whether or not violation thereof constitutes a criminal offense*.”<sup>435</sup> This language clearly extends police authority beyond criminal-law enforcement. An additional three states do not explicitly give campus police the authority to enforce university rules, but their statutes are written so broadly that rule enforcement appears to fall within their remit.<sup>436</sup>

Six states specifically authorize private university police to enforce university rules: Oklahoma, South Carolina, Tennessee, Indiana, Illinois, and Ohio.<sup>437</sup> The language in Tennessee’s law merits particular attention, as it states that private campus police “shall have *all the police powers necessary to enforce* all state laws as well as rules and regulations of the institutions.”<sup>438</sup> This phrasing leaves unclear whether state police powers can be used to enforce university rules, or if different enforcement authorities are intended for each context. This ambiguity has real-world implications. Indeed, armed campus-security officers at Lee University, a religious institution in Tennessee, are explicitly tasked with “observ[ing] and detect[ing] . . . violations of campus policies.”<sup>439</sup>

Though the text of these statutes appears to authorize private campus police to enforce school rules, it is unclear how religiously affiliated universities interpret the scope of this power. For example, Oklahoma Baptist University states on its website that its police department “cooperates with the Dean of Students in the enforcement of university regulations as published in the student handbook.”<sup>440</sup> This handbook includes rules related to “deviat[ions] from the biblical standard for sexuality.”<sup>441</sup> Schools rarely specify whether their campus police are tasked with enforcing all university rules included in such student handbooks, or just ones related to campus safety and traffic regulations.

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434. See discussion *infra* Appendix. These fifteen states are Alabama, Indiana, Kansas, Kentucky, Missouri, North Dakota, Ohio, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Virginia, and Washington. Alabama and Missouri grant only limited powers to public campus police to enforce university rules.

435. KAN. STAT. ANN. § 76-726(b) (2024) (emphasis added).

436. See *infra* Appendix. These states are Arkansas, Colorado, and Pennsylvania.

437. See *infra* Appendix.

438. TENN. CODE ANN. § 49-7-118(d) (2024) (emphasis added).

439. *Campus Security*, LEE UNIV., <https://www.leecuniversity.edu/security> [<https://perma.cc/QF2R-CJGF>].

440. *University Police Department*, OKLA. BAPTIST UNIV., <https://www.okbu.edu/police/index.html> [<https://perma.cc/Z6MN-NTCH>].

441. *Student Handbook*, OKLA. BAPTIST UNIV. 22 (Jan. 23, 2025), <https://www.okbu.edu/student-life/documents/student-handbook.pdf> [<https://perma.cc/646J-DLHV>].

It is hard to know what rule enforcement looks like at religious universities due to many of these institutions' ability to keep private records. This secrecy is compounded by students' understandable desire to keep their identities private to avoid further judgment within their communities. However, documented historical cases provide glimpses into potentially widespread practices. In one example, a man named Dorian Woodruff reported being expelled from an unnamed Baptist university after campus police informed the dean's office that he had spent the night in another man's off-campus apartment.<sup>442</sup> In 1998, Bob Jones University banned gay alumni from visiting campus under threat of arrest by campus police for criminal trespass.<sup>443</sup>

Beyond policing sexuality, campus police at religious institutions have also been implicated in disciplining victims of gender-based violence. A 2023 Department of Education investigation found that Liberty University punished women for student-conduct-code violations after they reported sexual violence.<sup>444</sup> During a 2000 interrogation by Liberty University police, a fifteen-year-old girl who reported a sexual assault alleged that an officer told her she could be expelled from the university's debate camp for wearing pants in an academic building, which was a violation of the school's honor code at the time.<sup>445</sup> Other students were "made to sign forms acknowledging possible violations of the [honor code] after they sought to file complaints about sexual assaults."<sup>446</sup> According to its website, the Liberty University Police continues to enforce "university rules and regulations."<sup>447</sup>

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442. Dorian Woodruff, *Gay Student Expelled from Baptist University After Stunning Dean of Students with Sexual Honesty*, I'M FROM DRIFTWOOD, <https://imfromdriftwood.com/story/gay-student-expelled-from-baptist-university-after-stunning-dean-of-students-with-sexual-honesty> [https://perma.cc/S5EQ-STXX].

443. Associated Press, *Christian University Bars Visits by Its Gay Alumni*, N.Y. TIMES (Oct. 25, 1998), <https://www.nytimes.com/1998/10/25/us/national-news-briefs-christian-university-bars-visits-by-its-gay-alumni.html> [https://perma.cc/ZZQ3-L658].

444. Susan Svrluga, *Liberty University Broke Safety Laws for Years, Government Asserts*, WASH. POST (Oct. 3, 2023), <https://www.washingtonpost.com/education/2023/10/03/liberty-university-clery-act> [https://perma.cc/RKW2-6ZH8].

445. Cynthia Beasley, *Former Liberty Police Chief Denies Handling Sexual Assault; Records Match Victim's Claim*, ABC 13 NEWS (July 26, 2021, 8:03 PM), <https://wset.com/news/abc13-investigates/former-liberty-police-chief-denies-handling-sexual-assault-records-match-victims-claim> [https://perma.cc/58ST-UP9K].

446. Hannah Dreyfus, *"The Liberty Way": How Liberty University Discourages and Dismisses Students' Reports of Sexual Assaults*, PROPUBLICA (Oct. 24, 2021, 7:22 PM EDT), <https://www.propublica.org/article/the-liberty-way-how-liberty-university-discourages-and-dismisses-students-reports-of-sexual-assaults> [https://perma.cc/Z4KU-UBXN].

447. LUPD Divisions, LIBERTY UNIV., <https://www.liberty.edu/police/divisions> [https://perma.cc/4WS2-WF93].



Despite these risks of abuse, there are ongoing legislative efforts to create new religiously affiliated campus police. From 2018 to 2020, Republican state legislators in Missouri repeatedly introduced the “Private College Campus Protection Act,” which would allow private universities and colleges to form their own campus police forces with authority to enforce school “rules and regulations” in addition to the law.<sup>448</sup> The College of the Ozarks, a Christian institution, drove this effort.<sup>449</sup> Its student conduct code prohibits “[m]isuses of God’s gift of human sexuality,” including “gender expression inconsistent with sex assigned at birth” and same-sex relations.<sup>450</sup> The college also disciplines nonmarital relations and “indiscreet public displays[s] of affection.”<sup>451</sup> So far the bill has not been successful, but college officials have signaled a strong commitment to securing its passage.<sup>452</sup>

And even in states without explicit statutory authorization, many campus police still enforce university rules and regulations. The websites of both private and public campus police in a number of states declare that they enforce university rules, regulations, and/or policies, including Georgia, Louisiana, Massachusetts, Montana, Nebraska, New Jersey, New Mexico, South Dakota, Virginia, West Virginia, and Wyoming.<sup>453</sup> This list includes religious institutions, such as

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448. See H.B. 2495, 99th Gen. Assemb., 2d Reg. Sess. (Mo. 2018); H.B. 105, 100th Gen. Assemb., 1st Reg. Sess. (Mo. 2019); H.B. 1282, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2020); S.B. 729, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2020); S.B. 774, 100th Gen. Assemb., 2d Reg. Sess. (Mo. 2020).

449. See Huguelet, *supra* note 45.

450. 2024-2025 *Student Handbook: Lifestyle/Sexuality Policy*, COLL. OZARKS, <https://catalog.cofo.edu/content.php?catoid=22&navoid=1009> [<https://perma.cc/TT6W-KQGU>].

451. *Id.*

452. Cf. *College of the Ozarks Backs Bill Allowing Private Colleges to Have Campus Police Departments*, KY3 (Jan. 15, 2019, 4:25 PM EST), <https://www.ky3.com/content/news/C-of-O-backs-bill-that-would-allow-private-colleges-to-have-campus-police-departments-504389561.html> [<https://perma.cc/R3N4-9V59>] (citing a College of the Ozarks administrator articulating strong support for the bill and a desire to be “on the offensive”).

453. See, e.g., *About Department of Public Safety/University of New Orleans Police*, UNIV. NEW ORLEANS, <https://www.uno.edu/upd> [<https://perma.cc/A2G8-UZRN>] (declaring this on the website for a Louisiana campus police department); *University Police*, LSU HEALTH: NEW ORLEANS, <https://www.lsuhs.edu/administration/vcgcsa/police/default.aspx> [<https://perma.cc/38KF-6NVM>] (same); *Boston College Police—Functions and Responsibilities*, BOS. COLL. [1], <https://www.bc.edu/content/dam/files/offices/policies/pdf/policies/V/5-350-001.pdf> [<https://perma.cc/4T2B-G6HC>] (declaring this on the website for a Massachusetts campus police department); *University Police*, WORCESTER STATE UNIV., <https://www.worcester.edu/university-police> [<https://perma.cc/8TC9-C45Z>] (same); *About University Police*, MONT. STATE UNIV., <https://www.montana.edu/police/about.html> [<https://perma.cc/E5H2-3EJM>] (declaring this on the website for a Montana campus police department); *Annual Campus Safety & Fire Report 2023*, UNIV. OF NEB. AT OMAHA 8 (2023),



Gordon College in Massachusetts, whose campus police website states that its officers are “fellow followers of Christ” with a mission to “enforc[e] proper campus conduct . . . in a spirit of Christian love and to the glory of God.”<sup>454</sup>

Proponents of campus police at religious institutions might argue that these arrangements benefit the campus community by providing police services tailored to their distinct culture and needs.<sup>455</sup> On this view, university-specific police forces can enforce rules and laws in ways that align with the student body’s norms and practices, offering an alternative to municipal police who may be less sensitive to campus contexts. But, as the BYU case study illustrates, the burden of such policing falls disproportionately on marginalized community members who do not conform to religious expectations. Nor does “community-specific” policing justify the religious direction of forces that, by practical necessity, will also police nonstudents in surrounding communities who never consented to religious governance.

The risks of campus officers’ “dual role” also extend to public campus police. As Anne Walther notes, campus officers often serve on “a college or university’s Threat Assessment Team or internal disciplinary council.”<sup>456</sup> She notes that, in this latter capacity, campus officers can access student records protected by the Family Educational Rights and Privacy Act and even enter dorm rooms without a warrant for administrative purposes, which creates the risk that an “officer could learn information during this type of search and be unable to separate that knowledge and stop themselves from applying it to law enforcement matters.”<sup>457</sup> As Walther aptly asks: “How can a campus police officer or department internally create a wall between information they gained access to while completing

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<https://nebraska.edu/-/media/projects/unca/docs/transparency/safety/2023/uno-fire-and-campus-safety-report-2023.pdf> [<https://perma.cc/A9F5-5YCR>] (declaring this on the website for a Nebraska campus police department); *Police Authority*, MONMOUTH UNIV., <https://www.monmouth.edu/safety-guide/clery/police-authority> [<https://perma.cc/3JCC-VXA7>] (declaring this on the website for a New Jersey campus police department); *University of South Dakota Annual Security and Fire Safety Report*, UNIV. OF S.D. 3 (2024), <https://www.usd.edu/-/media/Project/USD/DotEdu/About/Departments-Offices-and-Resources/University-Police/usdfiresafetysecurityreport.pdf> [<https://perma.cc/Z4P6-EQQ3>] (declaring this on the website for a South Dakota campus police department); *University Police*, CHRISTOPHER NEWPORT UNIV., <https://cnu.edu/police> [<https://perma.cc/QL7S-VPG9>] (declaring this on the website for a Virginia campus police department); *UW Police Department*, UNIV. WYO., <https://www.uwyo.edu/uwpd/index.html> [<https://perma.cc/M53Z-M5U8>] (declaring this on the website for a Wyoming campus police department).

454. *Gordon Police*, GORDON COLL., <https://www.gordon.edu/police> [<https://perma.cc/G65B-AP3W>].

455. Huguelet, *supra* note 45 (“You bring outsiders in, they don’t understand the culture, and their primary responsibility is back to that sheriff.”).

456. Walther, *supra* note 59, at 58.

457. *Id.*

school official duties and information obtained through methods more consistent with typical law enforcement and criminal investigation requirements? Is that separation possible and practical?”<sup>458</sup>

### C. *The Growing Category of Religiously Affiliated Police*

The proliferation of religiously affiliated police has not stopped at universities. Crucially, the existence of religiously affiliated campus police has paved the way for the creation of other kinds of church-associated private police. Briarwood Presbyterian offers one such example. Briarwood is a megachurch in Alabama that split from the broader Presbyterian denomination in 1973 following its decision to desegregate.<sup>459</sup> Since then, Briarwood has made headlines over its pastors’ connections to neo-Confederate groups and public statements about how “same-sex attraction . . . is a sinful desire to be mortified.”<sup>460</sup>

In 2019, Briarwood successfully lobbied the state legislature for authority to form its own private police force to patrol its large church compound, which includes a seminary and a school for over 1,650 students.<sup>461</sup> The legislature did so by adding the church to the existing Alabama Code provision that gives universities and colleges the ability to maintain their own campus police.<sup>462</sup> A local attorney, Ken Riley, predicted that this phenomenon could spread: “I think that other congregations and academies could be on the fast track.”<sup>463</sup> He continued, “They would at least have the precedent of Briarwood . . . being able to join the ranks of small colleges and universities.”<sup>464</sup>

Presumably, the legislature’s willingness to expand the campus police statute to include this megachurch was rooted in their property’s inclusion of a school. However, as this Note has demonstrated, that educational link does not necessarily change the nature of religiously affiliated policing, which courts have

458. *Id.* at 59.

459. Michael Harriot, *Alabama Quietly Passes Law Allowing Church with History of Racism and Homophobia to Form Its Own Police Force*, ROOT (June 20, 2019), <https://www.theroot.com/alabama-quietly-passes-law-allowing-church-with-history-1835697951> [https://perma.cc/ZWU8-YMUA].

460. *Id.*

461. See Richard Gonzales, *New Alabama Law Permits Church to Hire Its Own Police Force*, NPR (June 20, 2019, 11:34 PM ET), <https://www.npr.org/2019/06/20/734591147/new-alabama-law-permits-church-to-hire-its-own-police-force> [https://perma.cc/Z96A-YU9F]; *Academics*, BRIARWOOD CHRISTIAN SCH., <https://www.briarwoodchristianschool.org/academics> [https://perma.cc/5DXB-S534].

462. ALA. CODE § 16-22-1 (2025).

463. Patterson, *supra* note 66.

464. *Id.*

otherwise found unacceptable in the municipal context. So far, legal arguments and public discussion about the megachurch police have centered on an abstract argument about the separation of church and state.<sup>465</sup> Future research must pay close attention to what this department's daily operations look like and the sort of policing priorities and educational disciplinary measures the officers may be tasked with.

Relatedly, K-12 school policing is the “fastest-growing” area of law enforcement.<sup>466</sup> In response to concerns about mass shootings, many institutions are installing school resource officers (SROs), including parochial schools.<sup>467</sup> For example, the Massachusetts-based Diocese of Fall River installed an SRO for the first time in 2022. When the hiring was announced, the superintendent commented, “We see this person not as a traditional SRO but instead as a diocesan resource for our schools.”<sup>468</sup> Like megachurch police, the BYU case study demonstrates the importance of scrutinizing these departments and their integration with schools' religious direction.<sup>469</sup>

The same constitutional concerns identified in the campus context—entanglement between church and state, religious control of state policing powers, and the targeting of marginalized groups—apply equally to these emerging forms of religiously affiliated police forces. If state legislatures continue to authorize such arrangements, the lessons from the BYU case study should serve as a critical

465. See, e.g., Andrew Gardner, *George R. R. Martin's Faith Militant in Modern America: The Establishment Clause and a State's Ability to Delegate Policing Powers to Private Police Forces Operated by Religious Institutions*, 29 WM. & MARY BILL RTS. J. 213, 226–41 (2020) (applying the Court's Establishment Clause jurisprudence to a state's “delegation of police powers to a religious institution”).

466. About NASRO, NAT'L ASS'N SCH. RES. OFFICERS, <https://www.nasro.org/main/about-nasro> [<https://perma.cc/2YQ8-F2Q5>]; see also *Bylaws of the National Association of School Resource Officers, Inc.*, NAT'L ASS'N SCH. RES. OFFICERS 2 (Sept. 13, 2023), [https://www.nasro.org/clientuploads/NASRO\\_BYLAWS\\_updated\\_format.pdf](https://www.nasro.org/clientuploads/NASRO_BYLAWS_updated_format.pdf) [<https://perma.cc/DXR2-782V>]. For more on the history of K-12 school policing, see generally Noah Remnick, “The Police State in Franklin K. Lane”: *Desegregation, Student Resistance, and the Carceral Turn at a New York City High School*, 49 J. URB. HIST. 867 (2023).

467. Audrey Cooney, *Area Catholic Schools Now Have Their Own Resource Officer. Here Are Her Plans*, HERALD NEWS (Oct. 7, 2022, 3:08 AM ET), <https://www.heraldnews.com/story/news/education/2022/10/07/fall-river-diocese-catholic-schools-now-have-own-resource-officer/8186221001> [<https://perma.cc/JA28-9WNQ>].

468. *Id.*

469. The same is true of armed security officers in churches and other places of worship. See Aaron Earls, *Most US Pastors Use Armed Congregants as Church Security*, CHRISTIANITY TODAY (June 7, 2023), <https://www.christianitytoday.com/2023/06/guns-church-shootings-security-armed-members-lifeway-survey> [<https://perma.cc/NE5H-CYAU>]; Aaron Earls, *Planning and Armed Congregants Top Church Security Measures*, LIFEWAY RSCH. (June, 6, 2023), <https://research.lifeway.com/2023/06/06/planning-and-armed-congregants-top-church-security-measures> [<https://perma.cc/GQ4W-GFWT>].

warning about the dangers of transferring state police powers to religious institutions.<sup>470</sup>

## CONCLUSION

The history of the BYUPD illustrates how one religiously affiliated campus police department blurred the lines between enforcing the law and the Honor Code, resulting in particularly invasive and far-reaching forms of morals policing. Even after their official conclusion, these morals-policing campaigns can continue to cast a shadow over a university's relationship with its students. Nowhere is this more apparent than with the Gay Purges at BYU.<sup>471</sup> The university has never publicly apologized or acknowledged the harm caused by the Purges. Queer BYU students still report living with fear and encountering discrimination on the basis of their sexuality.<sup>472</sup> And while students are now allowed to

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470. For a political-economy perspective on government religious institutions, see generally Elizabeth Sepper & James D. Nelson, *Government's Religious Hospitals*, 109 VA. L. REV. 61 (2023).

471. The student group Understanding Sexuality, Gender, and Allyship includes the Gay Purges in an online history of the school's treatment of LGBTQ issues. See Hall & Svozil, *supra* note 118. For other examples of the university's fraught relationship with LGBTQ students and affiliates, see Kathryn Post, *BYU's Newly Updated Honor Code Is at Odds with LDS Church's LGBTQ Rules*, SALT LAKE TRIB. (Aug. 30, 2023, 6:36 PM), <https://www.sltrib.com/religion/2023/08/30/byus-newly-updated-honor-code-is> [<https://perma.cc/6LD4-DXW2>]; Courtney Tanner, *LGBTQ Students Say Hopes Dashed After Feds Drop BYU Investigation*, SALT LAKE TRIB. (Feb. 11, 2022, 2:46 PM), <https://www.sltrib.com/news/education/2022/02/10/feds-dismiss-complaint> [<https://perma.cc/2BJ2-SDEJ>]; and Courtney Tanner, *BYU Cancels Care for Transgender Clients Receiving Voice Therapy at Its Speech Clinic*, SALT LAKE TRIB. (Feb. 11, 2022, 5:48 PM), <https://www.sltrib.com/news/education/2022/02/10/byu-cancels-care> [<https://perma.cc/P278-5WPQ>].

472. See Palak Jayswal, *Walkout for LGBTQ Students at BYU Is the Latest Part of a 'Queer Revolution,'* SALT LAKE TRIB. (Oct. 11, 2022, 8:03 PM), <https://www.sltrib.com/news/education/2022/10/11/byus-black-menaces-stage> [<https://perma.cc/YU9L-JDJJ>] ("In one letter, a female student spoke of being so 'scared' of being queer that she learned all the 'ins and outs' of the 'LDS doctrine, policies, and cultural rules concerning queerness' to figure out what she could and could not say about herself at BYU."); Courtney Tanner, *LGBTQ Students at BYU March for Progress but Say They Still Have a Lot to Fight*, SALT LAKE TRIB. (May 7, 2024 2:13 PM), <https://www.sltrib.com/news/education/2024/05/07/lgbtq-students-byu-march-progress> [<https://perma.cc/Z4NM-LX6K>] ("Flowers said she has had to fight discrimination at BYU. In 2021, she said, a roommate threatened her with a gun, in part because of her identity. She reported him to the Honor Code Office, but she said nothing happened with her report."); Zachary Jarrell, *Department of Education Investigating BYU LGBTQ+ Discipline Policy*, WASH. BLADE (Jan. 26, 2022), <https://www.washingtonblade.com/2022/01/26/departments-of-education-investigating-byu-lgbtq-discipline-policy> [<https://perma.cc/W5AW-C3SG>] (reporting one former student's statement that BYU's 2022 reversal in its Honor Code policy "instilled a lot of fear").

openly identify as gay, the Honor Code continues to forbid same-sex “romantic behavior.”<sup>473</sup>

Efforts by the university to support queer students have been uneven and inconsistently implemented, creating a dynamic that one student described as “two steps forward, one step back.”<sup>474</sup> And school officials who may be sympathetic to LGBTQ students are constrained by institutional oversight. For example, while Chris Autry, managing director of BYU Police and BYU Security, has attempted outreach efforts to LGBTQ students in recent years, he noted, “I have to be careful. . . . I’m very passionate about my opinions . . . but there are some limitations too for what can happen.”<sup>475</sup>

For many queer students, this creates a paradoxical environment: one that acknowledges their existence (and, in fact, claims they are “a welcomed and valued part of the campus community”), but simultaneously regulates their personal lives and bans their relationships.<sup>476</sup> Many also describe a tension between

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473. Honor Code Off., *supra* note 2. In addition, the Honor Code Office does not “work with students’ ecclesiastical leaders, nor does it weigh in on endorsement decisions made by ecclesiastical leaders.” *Id.* There have also continued to be reports of expulsions for same-sex relationships. See Jarrell, *supra* note 472; see also Associated Press, 2 *Gay Students at Y. Are Forced to Leave*, DESERET NEWS (Mar. 29, 2001, 12:31 PM MST), <https://www.deseret.com/2001/3/29/19577744/2-gay-students-at-y-are-forced-to-leave> [<https://perma.cc/QY6Z-FZ38>] (discussing older examples of suspension and expulsion). In 2010, the ban on “homosexual advocacy” — defined as “seeking to influence others to engage in homosexual behavior or promoting homosexual relations as being morally acceptable” — was removed from the Honor Code. *BYU Removes Pro-Gay Advocacy from Its Honor Code*, QSALT LAKE MAG. (Feb. 2, 2011), <https://www.ksaltlake.com/news/2011/02/02/byu-removes-pro-gay-advocacy-from-its-honor-code> [<https://perma.cc/RHC7-QEW7>]; see also PETREY, *supra* note 2, at 190 (discussing the longer history of Honor Code reform at BYU). However, in 2022, a professor reported being fired for her LGBTQ advocacy. Courtney Tanner, *A BYU Professor Said She Was Fired After LGBTQ Advocacy. Are More Faculty at Risk?*, SALT LAKE TRIB. (Feb. 14, 2022, 9:29 AM), <https://www.sltrib.com/news/education/2022/02/14/byu-professor-says-she> [<https://perma.cc/EVW5-WRGS>].

474. Courtney Tanner, *What BYU’s LGBTQ Students Think of the New Jeffrey Holland Speech Requirement — And How They’re Fighting for Inclusivity*, SALT LAKE TRIB. (May 7, 2024, 2:13 PM), <https://www.sltrib.com/news/education/2024/05/07/lgbtq-students-byu-march-progress> [<https://perma.cc/Z4NM-LX6K>].

475. Joseph Addington, *BYU Security Head Holds Secret Meetings with LGBT Activists, Praises “Brilliant” Rainbow Y Lighting*, COUGAR CHRON. (Apr. 18, 2024), <https://thecougarchronicle.com/byu-security-head-holds-secret-meetings-with-lgbt-activists-praises-brilliant-rainbow-y-lighting> [<https://perma.cc/PF2X-5HJC>].

476. Honor Code Off., *supra* note 2. In 2006 and 2007, the campus police arrested participants in an unapproved protest for LGBTQ rights. Todd Hollingshead, *Gay Activists Escorted Off BYU Campus, Arrested*, SALT LAKE TRIB. (Apr. 11, 2006, 12:40 AM), <https://archive.sltrib.com/article.php?id=3696743&citytype=NGPSID&source=rss> [<https://perma.cc/EA65-SFWN>]; Todd Hollingshead, *Gay-Rights Duo Arrested at BYU*, SALT LAKE TRIB. (Mar. 23, 2007, 1:32 AM),

their deep connection to both the LDS faith and BYU and the restrictive policies imposed by the Church Educational System.<sup>477</sup> One anonymous student described how she “found God at the school, in the cracks between the doctrine. . . . I love BYU, so it must be held accountable.”<sup>478</sup>

Progress at BYU likely can move only as quickly as the LDS Church, which continues to oversee BYU through the Church Educational System. Scholars have argued that church leadership has long oscillated between periods of liberalization and retrenchment, which creates an unpredictable environment for institutional reform.<sup>479</sup> In 2023, a historian of the LDS Church, W. Paul Reeve, observed a growing “conservative retrenchment in church education,” which might signal a shift away from the modest improvements of the past few

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<https://archive.slttrib.com/article.php?id=5502295&ctype=NGPSID/QPD5-R866>].

[<https://perma.cc/>

477. Students have formed informal groups to provide support for queer people at BYU, but these organizations face significant institutional constraints. In 2010, queer BYU students formed an informal club called Understanding Same Gender Attraction; the *Daily Beast* reported that BYU officials asked the student group to stop hosting their meetings on campus, which a school representative disputed. See Emily Shire, *Mormon U. Forces Gays to Be Celibate*, DAILY BEAST (May 13, 2014, 8:45 AM EDT), <https://www.thedailybeast.com/mormon-u-forces-gays-to-be-celibate> [<https://perma.cc/PYS4-WFB4>]. The *Salt Lake Tribune* also reported that BYU did not allow the group to meet on campus. See Courtney Tanner, *LGBTQ Students Wanted to Start a Club. Three Years Later, BYU Still Hasn't Decided if the Group Will Be Recognized*, SALT LAKE TRIB. (July 17, 2018, 5:23 PM), <https://www.slttrib.com/news/education/2018/07/02/lgbtq-students-wanted> [<https://perma.cc/BZ5B-YABZ>]. This group has since changed its name to Understanding Sexuality, Gender, and Allyship. Courtney Tanner, *BYU's Unofficial LGBTQ Club Has Changed Its Name to Reflect 'All Different Types of Sexuality and Gender Identity'*, SALT LAKE TRIB. (July 19, 2018, 4:01 PM), <https://www.slttrib.com/news/education/2018/07/19/byus-unofficial-lgbtq> [<https://perma.cc/SU7D-BWHL>].

In recent years, another LGBTQ student support group called Color the Campus made local headlines in 2021 when they illuminated a well-known campus landmark with rainbow colors. *BYU Students Behind Unofficial “Y” Lighting Say It Wasn't a Protest*, FOX13 SALT LAKE CITY (Mar. 5, 2021, 10:40 PM), <https://www.fox13now.com/news/local-news/byu-students-behind-unofficial-y-lighting-say-it-wasnt-a-protest> [<https://perma.cc/B4J5-L4UD>]. In addition, in 2022, queer students organized a protest regarding religious exemptions from Title IX, in partnership with the Black Menaces, a student activist group addressing racism on campus. See Jayswal, *supra* note 472.

478. *Id.*

479. E.g., PETREY, *supra* note 2, at 8 (“Mauss argues that Mormons have vacillated between trying to gain respectability through assimilation and trying to gain distinctiveness through separatism and retrenchment.”).



years.<sup>480</sup> As historian Benjamin Park notes, “Even if ‘purges’ appear far-fetched today, the underlying tensions remain pressing.”<sup>481</sup>

The historical findings in this Note therefore have continued relevance. The BYUPD continues to exist with many of the same powers, capabilities, and resources that it has previously misused, and federal oversight now appears unlikely. Of course, this is not a “Mormon problem” or an indictment of organized religion more generally. Many, if not most, of the BYUPD’s victims were LDS members themselves, as were the most vocal critics of BYUPD misconduct. Organized religion can accommodate dissenting voices. But, as this Note has suggested, it should not be involved in shaping law-enforcement priorities, nor should law-enforcement powers be used to carry out religious doctrine.

It is crucial to recognize that religiously affiliated campus police are not the only departments that have engaged in morals policing or other concerning behavior. For example, private secular and public campus police have also mishandled reports of sexual violence and caused egregious harm to marginalized people—including queer, trans, and gender-nonconforming students, as evidenced most tragically by the 2017 killing of a nonbinary student, Scout Schultz, by Georgia Tech police officer Tyler Beck.<sup>482</sup> With the rise of anti-trans bathroom bills, there are documented cases of university police arresting and harassing transgender students for using campus restrooms.<sup>483</sup> Two other features of

480. Peggy Fletcher Stack, *30 Years After the “September Six” Purge, Would the LDS Church Do It Again?*, SALT LAKE TRIB. (Sept. 3, 2023, 8:00 AM), <https://www.sltrib.com/religion/2023/09/03/30-years-after-september-six-purge> [https://perma.cc/RQ8L-KEVF]. However, W. Paul Reeve notes that this retrenchment is occurring “at the same time that Deseret Book, the church’s publishing division, appears to be more open to scholarship from academics.” *Id.* Thus, he states, “It is difficult to know what to make of a conservative retrenchment in church education and a simultaneous flowering of open and honest scholarship at Deseret Book . . . but perhaps it is a sign that there is an effort at balance.” *Id.*

481. Benjamin Park, *The Conversation: How September 1993, When LDS Leaders Disciplined Six Dissidents, Continues to Trouble the Church*, SALT LAKE TRIB. (Sept. 18, 2023), <https://www.sltrib.com/religion/2023/09/18/conversation-how-september-1993> [https://perma.cc/ZX3B-66CA].

482. See Liam Stack, *Georgia Tech Student Leader Is Shot Dead by Campus Police*, N.Y. TIMES (Sept. 18, 2017), <https://www.nytimes.com/2017/09/18/us/georgia-tech-killing-student.html> [https://perma.cc/AH66-UPCS]; *Georgia Tech Officer Who Killed Student Won’t Face Charges*, AP NEWS (Mar. 13, 2020, 9:28 PM EDT), <https://apnews.com/national-national-general-news-911404c041d0a3e9a732dc87affc8035> [https://perma.cc/G64U-NJTB]. For an example of campus police mishandling sexual assault reports, see Jane Stancill, *Student Says Campus Police Told Her Accused Rapist ‘Don’t Sweat It’ and Keep Playing Football*, FRESNO BEE (Sept. 14, 2016), <https://www.fresnobee.com/news/nation-world/national/article101625517.html> [https://perma.cc/BY2T-FDAX].

483. See, e.g., *Johnston v. Univ. of Pittsburgh*, 97 F. Supp. 3d 657, 663–64 (W.D. Pa. 2015); Kelli Anne Busey, *Transgender College Student Andraya Williams Humiliated by Piedmont Campus*



campus policing have persisted since the Gay Purges: surveillance and involvement in university discipline. In fact, campus police surveillance continues to become more sophisticated, now tracking students' social media and using "advanced drone surveillance" for aerial monitoring of protests at some universities.<sup>484</sup>

The intention of this Note is not to suggest that public police—which have their own serious challenges—are a preferable alternative to campus police. Rather, it aims to acknowledge that universities, with their massive endowments and resources, wield considerable economic, political, and cultural power within their communities. These powers can be used for positive ends but have also contributed to a legacy of extractive practices and harm, especially to marginalized communities in surrounding neighborhoods.<sup>485</sup> Responsible stewardship requires being responsive to this history, and this Note sheds light on an

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*Police*, TRANSADVOCATE (Apr. 1, 2014), [https://www.transadvocate.com/transgender-college-student-andraya-williams-humiliated-by-piedmont-campus-police-says-enough-is-enough\\_n\\_13275.htm](https://www.transadvocate.com/transgender-college-student-andraya-williams-humiliated-by-piedmont-campus-police-says-enough-is-enough_n_13275.htm) [<https://perma.cc/ZzGD-UE62>].

484. Theia Chatelle, *Inside the Yale Police Department's War on Student Protesters*, JEWISH CURRENTS (Dec. 20, 2024), <https://jewishcurrents.org/inside-yale-police-department-war-student-protesters-palestine> [<https://perma.cc/6K5G-2GQX>]; For more on campus police surveillance, protest management, and involvement in student discipline, see generally RODERICK A. FERGUSON, *WE DEMAND: THE UNIVERSITY AND STUDENT PROTESTS* (2017), which discusses the historical role of campus police in student protests; and *POLICING THE CAMPUS: ACADEMIC REPRESSION, SURVEILLANCE, AND THE OCCUPY MOVEMENT* (Anthony Nocella & David Gabbard eds., 2012), which discusses the contemporary role of campus police in student protests.
485. For more on the history of racism in campus policing, see generally DAVARIAN L. BALDWIN, *IN THE SHADOW OF THE IVORY TOWER: HOW UNIVERSITIES ARE PLUNDERING OUR CITIES* (2021), which discusses racially discriminatory investigation and surveillance practices by campus police forces; Teona Williams, *For "Peace, Quiet, and Respect": Race, Policing, and Land Grabbing on Chicago's South Side*, 53 *ANTIPODE* 497 (2020), which argues that the University of Chicago and peer institutions deploy campus police officers to "racially manage" their surroundings; Dylan Rodríguez, *Beyond "Police Brutality": Racist State Violence and the University of California*, 64 *AM. Q.* 301 (2012), which catalyzes a discussion about racist state violence using an incident where campus police pepper sprayed student protestors at the University of California, Davis; Sunaina Maira & Julie Sze, *Dispatches from Pepper Spray University: Privatization, Repression, and Revolts*, 64 *AM. Q.* 315 (2012), which situates student protests and "the militarized regimes of policing and surveillance at UC Davis and other UC campuses . . . within a transnational and racial framework"; Comment, *The Shooting of Samuel DuBose*, 129 *HARV. L. REV.* 1168 (2016), which discusses a campus police officer shooting and killing a man who did not have an affiliation to the university and was not on university grounds; DeMarcus A. Jenkins, Antar A. Tichavakunda & Justin A. Coles, *The Second ID: Critical Race Counterstories of Campus Police Interactions with Black Men at Historically White Institutions*, 24 *RACE ETHNICITY & EDUC.* 149 (2021), which discusses campus police's disproportionate effect on Black students; and John J. Sloan III, *Race, Violence, Justice, and Campus Police*, 48 *AM. SOCIO. ASS'N FOOTNOTES*, no. 4, 2020, at 9, which discusses the racial impact of campus policing.

important and little-known aspect of it, with pressing implications for how higher education operates today.<sup>486</sup>

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<sup>486</sup> For more on the aims of the Cops Off Campus movement, see *Cops Off Campus Coalition: FAQs*, COPS OFF CAMPUS COAL., <https://copsoffcampuscoalition.com/faq> [<https://perma.cc/67CV-7JWR>]; and Trey A. Duran, *College Campus Police Abolition*, 31 KAN. J.L. & PUB. POL'Y 327, 330 (2022).

APPENDIX

This survey builds on and updates previous research conducted by Max L. Bromley in 1996 and A.W. Geisel in 2023.<sup>487</sup> It does not include states like New Mexico that only allow the enforcement of campus traffic rules.<sup>488</sup>

State	Statute	Public and/or Private
Alabama	§ 16-47-199: “All persons appointed as police officers by the president of the University of Alabama, as provided for by law, are hereby constituted peace officers of the State of Alabama with full and unlimited police power and jurisdiction to enforce the rules and regulations promulgated by virtue of the authority contained in this article.” <sup>489</sup>	Public—limited; only pertaining to the University of Alabama Museum
Arkansas	§ 12-20-201: “A private school or private college or university law enforcement officer shall: (1) Have all the powers, duties, and obligations provided under the law for municipal police departments and county sheriffs . . . together with any other duties that may be assigned by the employing private school or private college or university . . . .” <sup>490</sup>	Broad definition of duties that could be interpreted to include rule enforcement

487. Max L. Bromley, *Policing Our Campuses: A National Review of Statutes*, 15 AM. J. POLICE, no. 3, 1996, at 1, 19-21; Geisel, *supra* note 59, at 1815-20.

488. Geisel, *supra* note 59, at 1818.

489. ALA. CODE § 16-47-199 (2025).

490. ARK. CODE ANN. § 12-20-201 (2025).

State	Statute	Public and/or Private
Colorado	§ 24-7.5-101: “The state institutions of higher education are authorized to employ police officers to provide law enforcement and property protection for the institution employing the officers and to perform other police, emergency planning, community safety, and administrative functions as may be deemed necessary.” <sup>491</sup>	Broad definition of duties that could be interpreted to include rule enforcement
Illinois	Ch. 10, § 1020/1: “The Board [of Trustees of a private college or university] shall assign duties, including the enforcement of college or university regulations . . . .” <sup>492</sup>	Private
Indiana	§ 21-17-5-4: “The duty to enforce and to assist the officials of the educational institutions in the enforcement of the rules and regulations of the educational institution.” <sup>493</sup>	Both
Kansas	§ 76-726: “[U]niversity police officers shall enforce rules and regulations of the board of regents and rules and policies of the state educational institution, whether or not violation thereof constitutes a criminal offense.” <sup>494</sup>	Public

<sup>491</sup>. COLO. REV. STAT. § 24-7.5-101 (2025).  
<sup>492</sup>. 110 ILL. COMP. STAT. 1020/1 (2024).  
<sup>493</sup>. IND. CODE § 21-17-5-4 (2024).  
<sup>494</sup>. KAN. STAT. ANN. § 76-726 (2024).

State	Statute	Public and/or Private
Kentucky	§ 164.955: “To enforce, and to assist the officials of their respective institutions in the enforcement of, the lawful rules and regulations of said institution” <sup>495</sup>	Public
Missouri	§ 172.355: “The university police officer may in addition expel from the public buildings, campuses and grounds, persons violating the rules and regulations that may be prescribed by the board or others under the authority of the board.” <sup>496</sup>	Public—limited
North Dakota	§ 15-10-17: “The state board of higher education . . . [may] [a]uthorize the employment of law enforcement officers having jurisdiction on property owned or leased by the state board of higher education to enforce laws and regulations at its institutions, or as otherwise provided in this subsection.” <sup>497</sup>	Public
Ohio	§ 1713.50: “The board of trustees of a private college or university may establish a campus police department and appoint members of the campus police department to act as police officers. The board shall assign duties to the members of a campus police	Both

495. KY. REV. STAT. ANN. § 164.955 (West 2025).

496. MO. REV. STAT. § 172.355 (2024).

497. N.D. CENT. CODE § 15-10-17 (2025).

State	Statute	Public and/or Private
	department that shall include the enforcement of the regulations of the college or university.” <sup>498</sup>	
	§ 3345.21: “The board of trustees shall provide for the administration and enforcement of its rules and may authorize the use of state university law enforcement officers provided for in section 3345.04 of the Revised Code to assist in enforcing the rules and the law on the campus of the college or university.” <sup>499</sup>	
Oklahoma	<p>Tit. 74, § 360.17: “Campus police officers, commissioned pursuant to Section 360.15 et seq. of this title, shall have the same powers, liabilities, and immunities as sheriffs or police officers within their jurisdiction. . . . [A] CLEET certified campus police officer shall have the authority to enforce . . . state criminal statutes; municipal ordinances . . . and rules and regulations of the school . . . .”<sup>500</sup></p> <p>§ 74-360.17(D): “Campus police departments formed by private institutions of higher education pursuant to Section 360.15 et</p>	Both

<sup>498</sup>. OHIO REV CODE ANN. § 1713.50 (LexisNexis 2025).

<sup>499</sup>. *Id.* § 3345.21.

<sup>500</sup>. OKLA. STAT. tit. 74, § 360.17(A)-(B) (2024).

State	Statute	Public and/or Private
	seq. of this title shall be deemed to be public agencies in the State of Oklahoma for the limited purposes of enforcing the criminal statutes of Oklahoma and making agreements with local law enforcement agencies . . . .” <sup>501</sup>	
Oregon	§ 352.121: “Police officers . . . [m]ay enforce criminal laws and any administrative rules and policies adopted by the governing board[,] and [h]ave all the authority and immunity of a peace officer or police officer of this state.” <sup>502</sup>	Public
Pennsylvania	71 P.S. § 646.1: “(a) Campus police shall have the power and their duty shall be: . . . (4) to adopt whatever means may be necessary for the performance of their duties . . . .” <sup>503</sup>	Broad definition of duties that could be interpreted to include rule enforcement
Rhode Island	§ 16-52-2: “Additionally, any campus police officer observing the violation of any rule or regulation of the board adopted pursuant to this chapter, including but not limited to parking and traffic regulations, may issue a summons in the manner and form set forth in § 31-27-12 or § 31-41.1-1 returnable to the	Public

<sup>501.</sup> *Id.* § 360.17(D).

<sup>502.</sup> OR. REV. STAT. § 352.121 (2023).

<sup>503.</sup> 71 PA. STAT. AND CONS. STAT. ANN. § 646.1 (West 2025).



State	Statute	Public and/or Private
	district court, the police court of the city or town where the violation occurs, or the traffic tribunal as provided by law.” <sup>504</sup>	
South Carolina	§ 59-116-30: “[E]nforce and assist the officials of their respective institutions in the enforcement of the laws of the State and county and municipal ordinances, and the lawful regulations of the institution, and assist and cooperate with other law enforcement agencies and officers.” <sup>505</sup> [Private]	Both
	§ 59-119-340: “The board may appoint one or more special constables who shall exercise all the power of a State constable or of a municipal policeman to enforce obedience to the ordinances of the board and to the laws of the State.” <sup>506</sup> [Public]	
Tennessee	§ 49-7-118: “When properly commissioned and qualified in accordance with the policies of the governing boards of public institutions of higher education, the police officers shall have all the police powers necessary to enforce all state laws as well as	Both  Similar provisions for other private police are included in sections (g)(1) and (h)(1).

<sup>504</sup>. 16 R.I. GEN. LAWS § 16-52-2 (2025).  
<sup>505</sup>. S.C. CODE ANN. § 59-116-30 (2024).  
<sup>506</sup>. *Id.* § 59-119-340.

State	Statute	Public and/or Private
	rules and regulations of the institutions.” <sup>507</sup>  § 49-7-118(f)(1): “Private universities having an enrollment of at least nine thousand (9,000) students and nine thousand (9,000) or more employees, and located within counties having a metropolitan form of government, or private universities or colleges accredited by the Southern Association of Colleges and Schools and located within a county with a population in excess of eight hundred thousand (800,000), according to the 2000 federal census or any subsequent federal census, may also employ and commission police officers under the conditions described in this section; provided, that the chief law enforcement officer of the metropolitan government or municipal law enforcement agency in which the private university or college is located has appointed the police officer a special deputy in accordance with § 8-8-212, or has appointed the police officer a special police officer.” <sup>508</sup>	
Utah	§ 53B-3-105: “Members of the police or security department of any [college or university] also	Public

507. TENN. CODE ANN. § 49-7-118 (2024).

508. *Id.* § 49-7-118(f)(1).

State	Statute	Public and/or Private
	have the power to enforce all rules and regulations that the institution or the board promulgates as related to the institution.” <sup>509</sup>	
Virginia	§ 23.1-2406: “The campus police department of the University, established in accordance with the provisions of Article 3 (§ 23.1-809 et seq.) of Chapter 8, may enforce on Authority property the laws of the Commonwealth and policies and regulations adopted pursuant to subsection A.” <sup>510</sup>	Public
Washington	§ 28B.10.555: “May exercise such powers upon state lands devoted mainly to the educational or research activities of the institution to which they were appointed; and . . . Shall have power to pursue and arrest beyond the limits of such state lands, if necessary, all or any violators of the rules or regulations herein provided for.” <sup>511</sup>	Public

<sup>509</sup>. UTAH CODE ANN. § 53B-3-105 (LexisNexis 2025).  
<sup>510</sup>. VA. CODE ANN. § 23.1-2406 (2024).  
<sup>511</sup>. WASH. REV. CODE § 28B.10.555 (2024).