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*Issues and  
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# Private Employment of Public Police

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**James K. Stewart**

*Director*

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# Private Employment of Public Police

by

**Albert J. Reiss, Jr.**

Yale University

February 1988

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**National Institute of Justice**

James K. Stewart

*Director*

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## Preface

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Police departments are exciting organizations that exist in a turbulent environment. Many are trying new practices to find ways of dealing with change. Some have been doing randomized field experiments to determine whether or not current practices are the best ways to meet their policy goals. Most police administrators, moreover, seem willing to open their departments to outsiders who evince an interest in helping them solve problems of policy and administration.

Some years ago I became interested in the ways that the private sector and public police departments might enhance the effectiveness of public policing through joint efforts. The Director of the National Institute of Justice, James K. ("Chips") Stewart, encouraged me to explore and report on some of the ways that police departments and the private sector had developed mutually supporting efforts that seemed worthy of examination by the larger police community. My first report, *Policing a City's Central District: The Oakland Story*, was published in 1984 by the National Institute of Justice. It describes how one police department dealt with fear of crime in its central business district by securing private funding in support of additional foot, mounted, dirtbike, and Cushman vehicle patrol to augment its police forces in the central district.

Reviewing other examples of ways that private organizations augment public policing, during an observational study of the effects of augmented foot patrol on crime in Boston, Massachusetts, my attention was drawn to the fact that the foot patrol officer often was indistinguishable from the uniformed officer employed off-duty by a private employer. It was difficult, therefore, to distinguish the visible effects of each type of uniformed officer on crime, especially since quite often there were more off-duty officers working in a foot patrol area. With that interest aroused, I turned to look more closely at the potential effect off-duty officers have on crime and the ways departments organize and manage off-duty employment in the private sector. It soon became clear that there was considerable diversity. Thirteen departments eventually provided information for this report.

Among those to whom I am especially indebted are Lt. Mike McCampbell of the Arlington County, Virginia, Police Department; Chief George Napper and Sgt. Louis Arcangeli of the Atlanta, Georgia, Police Department; Lt. Earle of the Boston Police Department and Glenn L. Pierce of Northeastern University; Tom N. Kiser, Assistant Chief of Administration, Charlotte Police Department; Chief Lawrence E. Whalen and Sgt. Daniel Bareswilt of the Cincinnati, Ohio, Police Department; Deputy Chief of Administration James G. Vetter of the Colorado Springs Police Department; Tom Arnold, Chief of Support Services of the Metro-Dade Police Department, Miami, Florida; Chief Anthony V. Bouza of the Minneapolis, Minnesota, Police

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Department; Chief William T. Farrell and Sgt. Raymond Alberino of the New Haven, Connecticut, Police Department; Chief Robert C. Wadman of the Omaha, Nebraska, Police Department; Chief Allen H. Andrews and Capt. Richard J. Scovil of the Peoria, Illinois, Police Department; Lt. R. Gil Kerlikowske, formerly of the St. Petersburg, Florida, Police Department, now Chief, Fort Lucie, Florida; and Chief Patrick S. Fitzsimons and Major M.D. Brasfield, Inspectional Services Division, Seattle, Washington, Police Department.

I also am grateful to the three anonymous reviewers who provided many helpful comments for revising a draft of this report. A special debt is owed Virginia Baldau of the National Institute of Justice for her advice on the manuscript and for encouragement, patience, and support for this undertaking.

New Haven, Connecticut

April 1, 1987

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# Introduction

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As citizens go about their daily routines, they encounter uniformed police officers performing duties ordinarily associated with foot or traffic patrol or with guard or private security duty. They see them directing traffic around construction sites and at places of business. They encounter them patrolling or standing guard in shopping malls, stores, and banks. They note them at public events such as rock concerts, sporting contests, or political gatherings and at private ceremonies. Although in most communities citizens have become used to seeing their public police in these roles, many also seem puzzled by it—wondering why, with so many serious demands for police service, the police department would assign officers to these jobs.

What the public is unaware of is that in many instances these officers are privately employed—that they are working on their off-duty time for a private employer or a public agency other than the police department. Citizens' confusion is understandable. They aren't able to distinguish who is paying for the officer's services. The officer is fully uniformed, armed, and usually equipped with a two-way radio. Moreover, the officer, to all appearances, is performing police duties of surveillance, control, and patrol.

Even when aware that police officers are employed off duty as uniformed officers with full police powers, members of the public are unable to distinguish when officers are on the department's payroll and when they are not. The public correctly assumes that whatever the source of the officer's pay, the officer is fully empowered with authority to enforce the law.

The public is experiencing a growing awareness that public police officers are increasingly found serving private interests. A growing industry is emerging in which public police officers are employed off duty by private employers—what some dub a "rent-a-cop" industry.

At the same time, members of the public are aware of a private security industry whose employees are similarly found in these private settings—at banks, supermarkets, sports events, and a host of other places. They are familiar with names of security firms such as Burns, Ogden, Pinkerton's, and Wells-Fargo, and they are becoming familiar with newer or local ones—names like Allsafe, Ace, Danza's, Marston's, United, and Wackenhut. The public has no doubt that some private corporation or interest is employing these officers to provide protection and security.<sup>1</sup>

Despite an inability to determine who is paying the public police officer for work in private or other settings, the public perceives that private security personnel are there to protect private interests rather than to serve as their moral protectors.<sup>2</sup> They are likely to regard security officers as "low level, inept persons" in contrast with a higher regard for the public police officers

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in those same settings.<sup>3</sup> Although we know too little about the public's comparative judgments about the value of a public police officer or a private security agent in such settings, it is abundantly clear that public police are accorded higher prestige and efficacy in those settings—even when performing routine protection or security functions.

Private security has outstripped the growth of the public police in recent decades. Their numbers now exceed those of the public police. Yet, those relative magnitudes of number of employees fail to take into account the substantial growth in the off-duty employment of public police officers by private employers. What we are witnessing is a growing sector of secondary employment of public police officers—one, as we will show, which has emerged from the status of moonlighting to department contract employment.

This interfacing of public and private employment of the same uniformed police officers is the object of this inquiry. The main goal is to examine the major organizational and management issues that arise when police departments permit their officers to be privately employed, uniformed, and with full police powers. These issues are raised by exploring how a small sample of police departments in the United States currently organize and manage the off-duty employment of their officers.

### **An exploratory study**

This inquiry began as part of a broader one into the ways that private sector organizations interface with public police. In the course of that inquiry it became clear that in many police departments the actual number of off-duty uniformed officers performing police duties exceeded by a substantial number those officially on duty. Furthermore, while investigating whether or not the expansion of foot patrol had major effects on the crime rate, it became apparent that any effects of a visible foot patrol often were confounded by the fact that their privately employed fellow officers were visible in the same areas and locations. This raised the question of whether any preventive or deterrent effects or, correlatively, any increase in arrest rates might be attributed to off-duty police officers as well as to an enhanced foot patrol. From the perspective of policymakers and managers, an interesting question arose: What, if any, are the effects of augmenting a police force with privately employed uniformed police officers during their off-duty hours?

As exploration of that question began, it became clear that relatively little is known about how to organize and manage off-duty employment of police officers. We found considerable diversity in how departments organize, permit, and manage off-duty employment. Police managers, in turn, began to ask questions about how they might organize off-duty employment; what liabilities are incurred when uniformed officers are given a permit to work off-duty; what policies should they have for injury or disability incurred when working off-duty with the department's permission; and on what

matters of secondary employment might they enter into a collective bargaining agreement with the police officers' bargaining unit.

With these questions in mind, an exploratory inquiry was begun that eventually led to gathering information from 13 police departments. From these departments, documentary materials were obtained about the way they administered secondary employment; e.g., general and special orders, union contract provisions governing off-duty employment, administrative memoranda regarding the organization of off-duty employment, and copies of employer and officer permit forms for secondary employment. In addition, one or more principal administrators who had responsibility for secondary employment and/or the chief were interviewed in each department to gather information about administrative and management problems stemming from the particular way that their department organized off-duty employment.

### Selecting departments for study

In all, information was gathered from 13 departments. Two of these—Arlington County, Virginia, and Metro-Dade, Florida—are county departments. The remaining 11 are municipal departments in cities with 125,000 or more inhabitants.

These departments are not a probability sample of police departments in the United States. They were selected by the author of this report as he made

Name of department	Number of employees		
	Total	Sworn officers	Civilians
Arlington County, Virginia	348	288	60
Atlanta, Georgia	1,567	1,278	289
Boston, Massachusetts	2,202	1,829	373
Charlotte, North Carolina	802	608	194
Cincinnati, Ohio	1,051	883	168
Colorado Springs, Colorado	535	386	149
Metro-Dade, Florida	1,431	1,040	391
Minneapolis, Minnesota	768	677	91
New Haven, Connecticut	396	351	45
Omaha, Nebraska	738	574	164
Peoria, Illinois	273	194	79
St. Petersburg, Florida	597	419	178
Seattle, Washington	1,414	1,039	375

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contacts through other research projects. An effort was made to include departments from each major region of the country, although no Southwest or South Central department is represented. The object of the inquiry was to explore the major dimensions of secondary employment and the ways that it is organized in major police departments. No claim is made that we have covered the full range of ways secondary employment is organized, or of the problems in administering secondary employment. Rather, this report was prepared to initiate a dialog among police policymakers and administrators that might lead to renewed interest in the problems of off-duty employment.

The 13 departments and information about their size (based on information reported in Table 77, *Uniform Crime Reports for the United States, 1985*), are presented on the preceding page.

## **Changing nature of secondary employment of public police**

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### **Evolution of secondary employment of public police**

With the emergence of full-time police forces, policing became more than a watch or shift occupation. Officers were obliged to uphold and enforce the law at all times and in all places. Moreover, with the arming of police officers in late 19th-century American cities, officers also were expected to at all times fully enforce the law. Even when an officer was off duty, the responsibilities of police duty remained.

Despite challenge on a number of grounds, the doctrine remains a cornerstone of American policing. The policy has been most closely scrutinized when off-duty police officers have been involved in the use of deadly force under questionable circumstances or when other police officers have mistakenly injured or killed an off-duty officer who responded to the call of duty. Scrutiny in most municipal police departments invariably is followed by reaffirmation, attesting to the vitality of the belief in around-the-clock duty.

### **Historical overview of private employment of public police**

The idea that every salaried police officer is at all times to respond to policing matters goes hand in hand with a policy prohibiting off-duty employment. Gradually police departments have lifted that prohibition and a variety of employment opportunities have been approved. We begin by exploring the evolution of extra-duty employment of public police officers.

#### **From moonlighting to permit employment**

For much of their history, police officers worked long tours without additional pay, and supplementary employment was prohibited. With the growth of police brotherhoods and unions, the length of tours were reduced to the conventional three shifts of 8 hours each, the work week to five tours, and extra pay for any additional hours (overtime) was added. Shorter tours and a reduced workweek created the possibility for supplementary earnings from secondary employment. However, many departments refused to permit it, largely on the grounds that an officer was obliged at all times to enforce the law and to be available for duty when summoned.

Despite prohibitions against secondary employment, a sizable minority of police officers began in the 1930's to take a second job—a practice commonly known as moonlighting. Many police departments tolerated moonlighting if there was no conflict of interest for the officer or the police department. Specifically, this meant that secondary employment was tacitly permitted if it involved manual or other forms of work altogether unrelated to protective

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services or to public morals. Suspension and possible discharge awaited the moonlighter caught violating these informal conventions.

Gradually police officials recognized that they had no means to control secondary employment other than to sanction violators. Sanctioning violators was difficult not only because it was hard to detect who was moonlighting but also because there was growing resistance to sanctioning violators. Departments, consequently, moved to control rather than prohibit outside employment by requiring a work permit. In permitting employment, police officials were able to specify what kind of outside employment was acceptable to the department and to approve work on a specific job for a specific employer.

### **From civilian to police-duty employment**

The work permit was originally based on the idea that a police officer could hold a second job provided it was a regular part-time civilian job with the same employer who was responsible for supervising and paying the employee. The police department simply controlled the kind of employment to ensure there was no conflict of interest for the officer holding that position. There was a clear presumption that the officer would not be called on to enforce the law in his work.

Gradually, however, demand arose for police service and security. This demand was met by the growth of private security businesses. But private security agencies lacked the essential police powers to carry out the duties demanded by private interests; for example, controlling crowds. Other public authorities found it in their interest to secure their police service from the public police rather than employ their own police or private security agents. Among the public and quasi-public authorities demanding police service were public housing authorities, civic and sports centers, and public utilities. Both public and private corporations and agencies sought such service. Although many police departments regularly provided this service, over time they were less able to meet this demand by assignment from their regular police force because the growth of police personnel lagged behind the growth in demand for regular police services. The large untapped reserve workforce available for meeting this sporadic and variable demand was the off-duty police employee with sworn authority. Supply and demand merged when public police departments permitted officers to work on permit as off-duty police officers with full police authority.

### **From police permit duty to contract employment**

Although a permit service could meet daily and weekly variation in demand for police service, it was difficult to administer without administrative support from the police department. Accordingly, there grew a variety of administrative arrangements to coordinate private employer demand with the supply of off-duty police officers seeking secondary employment. In

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larger police departments this typically meant assigning one or more department employees as coordinators.

Other administrative problems remained, especially those of determining how many officers should be assigned to a particular public or private employer; how they should be compensated, and at what rate; and, who should be responsible for injury to officers or liability damages resulting from their exercise of public authority. These problems have been resolved in a number of different ways, but generally they have involved moving from a simple permit employment system to a contract system in which the municipality permits private employers and other public authorities to contract for police service. The form such contracts take is considered later in this report, but noted here because their provisions vary.

When a police union or fraternal organization represents the officers of a department, they enter as a third party into the supply of police labor for private employment. Typically when there are strong unions, the selection and payment of officers are part of the union's contract with the governing authority representing the police department.

We have seen then an evolution of the secondary employment of off-duty police officers from moonlighting to contractual secondary employment. Accompanying this evolution is a transition from officer employment in nonpolicing jobs to employment as sworn uniformed or plainclothes personnel allowed to perform police duties.

### **Accounting for the evolution of secondary employment of public police**

These substantial changes in the secondary employment of public police have three primary causes that lie primarily in the period beginning in the 1950's.

The first of these sources is rooted in the demand by police officers for increased compensation. These demands often were forcefully expressed by police union bargaining agents. One way police departments found to increase the income of police officers was to permit their off-duty employment. Police unions began to bargain for a uniform payscale for off-duty employment, typically one that ensured wages above those the market might otherwise offer. Currently, a substantial proportion of officers in many large police departments supplement their income by off-duty employment under collective bargaining rates of pay.

A second major source of increased off-duty employment is attributable to a change in the conception of police responsibility for service to public and private events. Traditionally the public police provided policing for major private and quasi-private events ranging from traffic control for weddings and funerals, to protection, security, and law enforcement at professional sporting and entertainment events. With the rapid growth in demand for

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police services beginning in the 1950's, the supply of police resources lagged behind the growth in demand for police services. Consequently, in seeking ways to allocate scarce resources, police administrators ranked these services of lower priority, especially since their cost could be shifted from public to private expenditure. This withdrawal left private or quasi-public agencies requiring such services with the option of employing either private security agents or the public police to perform them. In practice, some opted to employ both public and private police when a public police service seemed essential, such as at mass public events.

The third major source of these changes is closely related to the second. Private demand for police service increased substantially. The demand was fueled by the rapid escalation in crime rates in the 1960's and 1970's, an increase that spurred the demand for protecting persons and property at workplaces and retail establishments and for crowd control at mass events. Much of that demand was met by a rapid expansion of the private security industry. Yet there were limits to the services private security could supply, especially when there was a demand for law enforcement as well. Rock concerts, for example, demanded more than security. Crowds had to be controlled and order maintained. Private security agents lacked sworn authority in most instances; off-duty police were a ready supply.

Municipalities and their police generally were not averse to meeting the demand of these private interests, especially since by supplying off-duty police they were increasing the individual welfare of officers at the same time that they were enhancing the collective welfare for public order. A public good seemingly was supplied at private cost.

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## Organization of secondary employment and paid-detail assignment

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The preceding section traced the evolution of secondary employment in police departments from moonlighting to contract policing and from prohibited to departmentally organized extra-duty employment. Although almost all police departments in the United States with 50 or more employed police officers now permit secondary employment, there is considerable diversity among them about how it is organized and managed. This section describes management models upon which secondary employment of police officers is based.

### Major management models for secondary employment

There are three major management models for secondary employment of police officers. The more traditional model we shall characterize as the *officer contract model* where each officer is a principal who independently contracts with an employer for a particular job. With the advent of police associations and unions, the *union brokerage model* emerged, so-called because an officer's union or association brokers the employment for its members so that they need not search for their own job and negotiate pay. Under the *department contract model* the department is the principal agent for officers and contracts their secondary employment.

The management of the police department is administratively involved in each of these secondary employment models, although it is principally involved only in the department contract model. In each of the models it must promulgate and enforce rules for secondary employment and approve jobs and issue permits for officers to work particular jobs. When the officers of a police department are organized in some form of guild or union, that organization also ordinarily will be involved either as a principal or as a third party in each of the secondary employment models. Minimally, the union will be involved as a third party in negotiating conditions and pay for secondary employment in collective bargaining agreements, but in the union brokerage model it is the principal agent for organizing and managing secondary employment.

Each of these models is represented among the police departments in the survey, but not all of them purely conform to these types. Some may be characterized as hybrids in the sense that secondary employment is organized under two of the models. For example, the department may both contract the services of officers and permit officers to contract independently.

#### Officer contract model

Core features of the officer contract model are (1) each officer searches for his or her own secondary employment; (2) the officer independently contracts

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with the employer regarding conditions of work, hours of employment, and rate of pay; (3) the officer applies for permission to work the particular off-duty job that has been negotiated with the prospective employer; (4) the department grants permission to work that job, provided the job meets minimum standards for off-duty work; and (5) the employer pays the officer in cash for his work—hence it is often called a cash detail. Employers ordinarily do not withhold taxes from cash details and the transactions are not always reported to the Internal Revenue Service; neither are payments made to the Social Security Administration. Compensation for cash details ordinarily does not include fringe benefits.

Seven of the survey departments conform more or less to the officer contract model: Arlington County, Atlanta, Charlotte, Cincinnati, Minneapolis, Omaha, and Peoria. They differ substantially, however, in what contracting is permitted and the extent to which they are hybrids.

Arlington County, Virginia, is the most restrictive with respect to permitting secondary employment by uniformed officers. It permits uniformed employment only by exception granted by the chief of police and only for programs or activities funded or sponsored by the County of Arlington, the Commonwealth of Virginia, or the U.S. Government.<sup>4</sup> Almost all secondary employment is in nonpolice jobs where the officer does not perform uniformed or plainclothes police duties for the employer. All the other independent contract departments in the survey permit uniformed employment.

Peoria and Cincinnati are hybrid cases. Although most secondary employment of Peoria police officers is independently contracted, the Peoria department contracts for some services, brokers others, and permits subcontracting of officer services. Peoria contracts for police service on an overtime basis for all civic center events where public order is potentially problematic.<sup>5</sup> Department commanders broker jobs if employers contact them for the services of officers. In addition, the department permits officers to be agents for their fellow officers, thereby permitting the subcontracting of employment of fellow officers.<sup>6</sup> The dominant form of contracting in Cincinnati is independent contracting by each officer when the employer is a private party or organization. When, however, the employment is for an extension of police services to a city agency or a city-sponsored or cosponsored event, such as its Octoberfest, or if work is being performed for an outside agency of the city, county, or State, the department handles the billing and compensation of officers.<sup>7</sup>

The main role of the department in the independent contractor model is to specify rules and regulations for off-duty employment and to issue a permit for employment. The granting or revoking of the work permit is the primary means the department has to sanction violations of rules and regulations for off-duty employment—the only other means available is disciplinary proceedings.

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## **Union brokerage model**

The union brokerage model is possible only in departments where the officers are organized into a collective bargaining unit, such as a fraternal order, a guild, or a local or national police officers' union. The guild or union becomes a third party, to arrange or broker the independent contracts between officers and their private employer. Typically, the union searches for paid details, assigns officers who volunteer for them, and sets conditions for paid details, including rates of pay. The union also may bargain with the department over the status and conditions of paid details. Employers ordinarily do not withhold taxes for these cash details and typically do not report the transaction to the Internal Revenue Service.

Of our sample departments, the Seattle Police Department conforms most closely to the union brokerage model. Most requests for off-duty employment of Seattle police officers are coordinated by the Seattle Police Officers' Guild, but the officers act as independent contractors.<sup>8</sup> Seattle also is a hybrid model. For special events sponsored by private promoters and held at the Seattle Center complex, off-duty officers are employed by the center's director of security and they are compensated by an outside accounting firm.<sup>9</sup>

## **Department contract model**

The core features of the department contract model are that the department (1) contracts with employers for paid details; (2) assigns officers to details; and (3) pays the officers from reimbursements by employers. Typically, under this model, an off-duty employment coordinator receives requests for employment and selects and assigns volunteer officers to these paid details. The department follows its usual procedures for tax withholding and reporting. It ordinarily negotiates with its police officer unions for off-duty pay and employment conditions and some rules and regulations governing off-duty employment.

Five of the departments surveyed—Boston, Colorado Springs, Metro-Dade, New Haven, and St. Petersburg—operate primarily under the department contract model.

Metro-Dade is an example of a hybrid department that operates with substantial employment contracted independently as well as by the department. All off-duty employment in police-related work is contracted for by the department, but officers are allowed to contract independently for non-police-related work on application for a specific job and under permit for that employment.<sup>10</sup> Unlike the other department contract model departments in this survey, Metro-Dade also subcontracts police services for private security firms.

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## Nature and scope of secondary police employment

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### Nature of secondary employment for police officers

Police departments consider the primary employment of their sworn officers to be assignment to duty, which means doing police work on a regular tour of duty or special assignment. As noted, however, most departments also permit their sworn officers to seek secondary employment when unassigned to duty. Although some departments have parallel requirements for the off-duty employment of their "civilian" or nonsworn employees,<sup>11</sup> our examination of off-duty employment is limited to sworn personnel.

When off duty, officers are expected to be available for emergency mobilization and are obliged to enforce the law for violations occurring in their presence. This is in keeping with traditional notions of around-the-clock employment. Moreover, any and all off-duty employment must be approved by the department to ensure that the work is consistent with departmental standards for conduct becoming a police officer and to ensure the officer's availability for mobilization should conditions warrant.

Secondary employment appears to be a general term covering all approved types of off-duty employment for an officer, including employment in nonpolice as well as police officer roles. Historically, as noted earlier, the outside employment of police officers was limited to jobs where the police officer was prohibited from employment requiring the exercise of their sworn authority. Quite commonly those jobs were part-time manual labor positions. It was not uncommon to find police officers employed at manual labor for moving companies, driving limousines or buses, or extra-shift labor in a factory. Over time the off-duty employment of sworn personnel in most departments grew to include employment as uniformed officers who were expected to operate with full police authority for private, quasi-public, or public employers.

Where secondary employment of sworn personnel is limited to uniformed employment, it commonly is referred to as extra-duty employment or off-regular-duty service. The New Haven Department of Police Service, for example, defines extra-duty work as ". . . those assignments in which a police officer works in a police capacity during his 'off-duty' hours." As used within this general order, officer ". . . means any sworn member of the department regardless of rank."<sup>12</sup> The Metro-Dade Police Department defines off-regular-duty service as "Performance of regularly assigned duties and responsibilities during a period of time not within assigned hours of duty."<sup>13</sup>

Most police departments permit their officers to be employed either as sworn officers who may exercise police powers or as civilians without police

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powers. Among our survey departments only Metro-Dade clearly distinguishes between the two types of employment and has different procedures for each. The off-regular-duty service is distinguished from outside employment, which is defined as "employment of a non-police nature in which vested police powers are not a condition of employment; the work provides no real or implied law enforcement service to the employer and is not performed during assigned hours of duty."<sup>14</sup> Separate permits and guidelines are issued for both types of employment.<sup>15</sup> Consequently, a substantial number of officers hold permits for both off-regular-duty service and outside employment.

Police departments do not usually stipulate the duties of their officers on extra-duty assignment. Given differences in the kinds of police service demanded by private and other public employers, this is understandable. Employer or officer work permits may specify the duties of the assignment in very general terms, but normally there is little specificity for duties in the assignment. Occasionally the general order for secondary employment specifies the primary duty, as is the case for the Colorado Springs Police Department where it is stipulated: "The primary duty of officers working extra duty assignments shall be to protect life and property, keep the peace, and enforce City ordinances and State and Federal laws."<sup>16</sup>

Some departments specify some of the duties of commonly occurring assignments in connection with traffic control and pedestrian safety. Massachusetts, for example, statutorily requires that an officer be stationed for all work that impedes traffic or creates hazards on public roads and walkways. A similar requirement exists in other States so that all work by utilities, construction companies, and public works departments that involve vehicular or pedestrian safety must have a sufficient number of officers in attendance to ensure safety. Most municipal police departments do not provide this type of protection as a regular police service, so that when they do so, it becomes a paid extra-duty assignment.

The New Haven Department of Police Service's general order on extra-duty work, for example, has two specific references to responsibilities in specific kinds of extra-duty work:

Officers assigned to "Extra Duty Work" with primary responsibilities for traffic control, worker and pedestrian safety will station themselves in the best location to perform those function(s) and will concentrate their efforts towards these objectives.<sup>17</sup>

Construction sites will be left in a safe condition upon termination. If there is any doubt with regard to the safety at a particular site, the Traffic and License Unit will be notified. If Traffic and License is closed, a street supervisor will respond.<sup>18</sup>

Similarly, the Seattle Police Department specifies the safety equipment for "each employee working as a flagman at a construction site," including the kind of clothing that must be worn, such as ". . . an orange or fluorescent

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red vest approved by the Department of Labor and Industries . . ."; and "(w)hile working any off-duty job where overhead hazards exist, employees will wear hard hats" that ". . . conform to standards of the Washington Industrial and Safety Act."<sup>19</sup>

## Variability in extra-duty employment

There are great ranges in extra-duty employment tasks, more so than might be expected given modern-day organization of day-to-day work on police patrol or in the department's specialized units. Many extra-duty jobs are typical of police work on stationary posts or foot beats—assignments more characteristic of police work 50 years ago than today. Much of the demand for extra-duty policing arises precisely from the growing reluctance or refusal of municipal police administrators to meet local demands, particularly those that arise from private interests.

The major justifications police chiefs offer for the growing use of their uniformed officers for extra duty are the public and collective benefits gained from extra-duty policing. They offer two related arguments in support of using uniformed officers for extra-duty assignments.

The first of these is based on the presumption that there is a genuine public law enforcement benefit when the department's officers work for other employers. In granting permits for uniformed employment, attention is given to the ways that the goals of law enforcement are to be served and, as we shall have occasion to note, without compromising the department's organizational or professional interests. Permits that compromise those interests are declined, usually on grounds of a "conflict of interest" between private and public law enforcement goals or because the public image of the police will be compromised.

The second justification is related to the first. Because the number of police personnel often is insufficient to meet the demand for service—particularly for emergency mobilization of a large number of officers—officers on extra-duty assignment are viewed as a resource. They can augment the force for public safety and protection, and they contribute to the enforcement of law by their uniformed presence and the exercise of their powers of compliance and arrest.

Just how substantial a resource extra-duty employment is for departments is not known. Most of the departments do not regularly track the hours of extra-duty employment, even when that information could be readily obtained from their contract pay records. A few departments summarize information on the number of work permits issued during a given year. As a crude measure of the extent to which extra-duty employment augments law enforcement, one can conclude it is substantial in some cities. The Seattle Police Department, for example, reported that 467 (47 percent) of their 1,002 officers in 1982 had work permits; 215 or slightly more than one-fifth of the officers held two or more permits.<sup>20</sup> The proportions are

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even higher for the Colorado Springs Police Department where an estimated 225 different officers (53 percent) in a force of 426 sworn officers were permit employees during 1985. It is estimated that these officers will work approximately 20,000 hours during 1986, earning approximately \$300,000 in the aggregate or \$1,333 per officer.<sup>21</sup> The department estimates that extra-duty employment augments their force by 10 full-time officers.<sup>22</sup> The Metro-Dade Police Department estimates that in 1986 off-regular-duty service payments exceeded \$4 million.<sup>23</sup>

Some departments make explicit reference in their general orders to the conflicting interests of private employers and the police department when an officer works extra duty. The Colorado Springs Police Department general order, for example, provides for the diversion of off-duty employees to inprogress calls for service. Nonetheless, recognizing that they are on paid assignment to a private employer, the order stipulates that they shall be diverted “. . . only in life-threatening situations and only where there are *no on-duty units immediately available*.”<sup>24</sup> The order provides for their immediate return to extra duty when the first on-duty officer can be assigned to the scene to take over the call.<sup>25</sup>

A department also may recognize the importance of these private interests by providing for mandatory assignment to a permit. A short supply of extra-duty officers often exists in larger departments, especially where there are statutory requirements for public protection. In Massachusetts, for example, extra-duty officers control traffic on public roads or when a major public event requires large numbers of officers for crowd control. The general order of the St. Petersburg Police Department, for example, states: “If no individuals are available to work a permit, mandatory assignment may be made at the discretion of the Deputy Chief of Patrol Operations Bureau or his designee.”<sup>26</sup>

There is a sense, however, that these justifications for extra-duty employment constitute a rhetoric of command because many departments, although permitting extra-duty officers to have radios when they are on private duty, do not make explicit provision for the communications unit to be advised of this assignment or availability. Dispatchers are not ordinarily apprised of the assignment of officers to an extra-duty location. When they have such information, it usually is disregarded in selecting officers for dispatch. In the study, none of the departments closely integrated extra-duty with on-duty personnel in the communications center in dispatch operations. Indeed, in most departments, extra-duty operations tend to be organizationally divorced from regular field command operations. St. Petersburg is an exception. District, precinct, or patrol area commanders are given a schedule of off-duty officers and their assignments. The officers must check in by radio when they arrive at the assigned site.<sup>27</sup>

None of the command officers interviewed in any of the departments could recall an instance in which their extra-duty officers were mobilized for duty in an emergency situation. While there probably is little occasion for official

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mobilization of extra-duty officers, each remains in radio contact while on assignment and may volunteer for emergency duty or response to a general call for assistance. However, because most are without a police vehicle, their availability following mobilization will be delayed.

The demand for extra-duty uniformed police officers varies widely from city to city—as does their supply. In most larger municipal police departments there are four or five conditions that warrant demand for uniformed officers. They are described briefly as follows:

**Traffic control and pedestrian safety**—Road construction and repair, access to utility lines under public thoroughfares, and construction sites all pose problems of control of traffic and pedestrian movement. In some States, one or more officers must be stationed at such sites. Traffic control also may be required for funerals, business openings or promotions, and other private events.

**Crowd control**—Major private events that attract large paid audiences or public ones sponsored by nonprofit organizations pose problems of crowd control. Some, such as rock concerts and jazz festivals, may require large numbers of officers to prevent disorder as well as to ensure the orderly behavior of the crowd. Others, such as local religious or neighborhood festivals ordinarily require far fewer officers. County and municipal sports arenas, concert halls, and public and private school events likewise demand these services.

**Private security and protection of life and property**—Many private businesses as well as other public authorities demand uniformed officers as a visible preventive or deterrent to violations of law. They may perform duties that are commonly performed by private security officers but with the additional expectation that they will enforce the law by arrest, if necessary.

**Routine law enforcement for public authorities**—In large cities, the scale of public authorities such as housing, airport, and parks usually leads to their employing a separate enforcement staff with full police powers. But in smaller municipalities such police service may be obtained on a contract basis with the city police department for extra-duty employees. The Tweed-New Haven Airport Authority, for example, employs extra-duty officers during its hours of operation. On such assignments, the department may rent out a police vehicle as well.

**Plainclothes assignment**—None of the departments reported a heavy demand for plainclothes police officers, although several reported some demand. New Haven, for example, reports supplying extra-duty plainclothes officers in jewelry stores during the Christmas shopping season and for some stockholder meetings of large corporations. Normally these officers are drawn from the detective rather than the patrol division and the union contract may even specify a priority selection.<sup>28</sup>

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Most police departments do not appear to keep detailed records of permit employment. The Seattle Police Department reported that in 1985 the following permits were issued for off-duty employment: bank security (111); Seattle Center (186); Kingdome (114); retail stores (89); traffic flagging (117); and funeral escorts (8).<sup>29</sup> This mix with traffic control, major public events (Kingdome), and protective services is perhaps typical of large departments permitting extra-duty employment.

Private employers are not the sole source of their employment. Each of the major sectors of employment—government, private nonprofit, and private for-profit—has a demand for uniformed officers. Public authorities for airports, public events, and utilities create a sizable demand for uniformed officers; in some departments demand from public authorities exceeds that of private profitmaking organizations. Given the substantial demand from all employment sectors, it is a mistake to think of extra-duty employment of uniformed officers as synonymous with working for a private employer. Nonetheless, regardless of the employer's sector, extra-duty employment usually involves policing for some special interest. Thus, the extra-duty officer's role is more like that of an officer assigned to a specific post or duty—for example, traffic or crowd control—than like that of an officer on general assignment to patrol.

### **Limits on extra-duty employment**

The limits placed on extra-duty employment differ substantially among police departments. Limits are placed on both employment as civilians and as uniformed officers. Among the limits are the kind of employment that may be performed, the amount of time one can spend on extra duty in a specified period of time, the jurisdiction where one may seek employment, and compensation.

#### **Limits on kinds of extra police duty**

Police departments uniformly prohibit employment in certain jobs, but there is inconsistency in the kind of restrictions placed on who qualifies as an employer and what kind of work can be done for an employer.

Police departments quite commonly list jobs in which employment is prohibited or specify tasks that cannot be performed for an outside employer. Some of these restrictions apply to both uniformed and nonuniformed employment, that is, in civilian jobs. More typically the restrictions apply to uniformed employment only. Although there was overlap among departments in their exclusions on secondary employment, no department had adopted all restrictions. This suggests, perhaps, that there are no universally agreed-upon standards for what is and is not to be permitted as outside employment.

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Some departments leave it to the discretionary authority of the chief or delegated official to decide whether or not an employer's request for department employees or an officer's application for permission to work in a particular job will be granted. Departments organized to investigate each application for the off-duty employment of a uniformed officer, or which require descriptions of the exact duties to be performed for a particular employer, seem less likely to state explicitly what kinds of work are excluded. These departments operate with general guidelines about what criteria employers or officers are to consider in seeking a permit from the department. Without formal guidelines, line officers develop informal guidelines based on what is seen as implicit in the discretionary decisions to grant or deny a particular application.

The explicit and implicit restrictions on secondary employment generally deal with such matters as the type of employer or job, the jurisdiction of employment, compensation, and amount of extra duty allowable. The nature and variation of these restrictions are now considered.

### **Restrictions on kind of employment**

The restrictions placed on the kind of jobs an officer may take are greater for employment as a sworn employee than as a civilian employee. There are three general types of prohibitions on kind of employment. Police officers are prohibited from holding jobs where there is:

- a potential conflict of interest between their duties as a police officer and duties for their outside employer;
- a threat to the status or dignity of the police as a professional occupation;
- an unacceptable risk of temporary or disabling injury that would limit their return to regular duty.

### **Conflict of interest**

Much of the traditional emphasis on prohibitions against employment of off-duty officers arose from the strong belief that officers cannot enforce the law impartially when they serve a private rather than a public interest. Occasions arise when their public duty to impartially enforce the law may be sacrificed to the interest of their private employer. It now is recognized that such occasions also may arise when their employer is another public agency. A public stadium authority, for example, may set arrest policies for use of drugs and alcohol or disorderly conduct at a public event that conflict with department policies.

Department prohibitions cover several general classes of potential conflicts of interest.

The first of these prohibits employment of uniformed officers when there is a presumption that their symbolic authority may improperly serve private

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rather than collective interests. The Seattle Police Department, for example, prohibits employment:

as a process server, reposessor, or bill collector, or in any other employment in which police authority might tend to be used to collect money, merchandise, etc., for private purposes of a civil nature;

at any employment which may require him/her to have access to police information, files, records, or services as a condition of employment—except where specific approval of each use has been authorized by the commander of the bureau having such information, record, files, or service; and

which assists (in any manner) the case preparation for the defense in any criminal action or proceeding.<sup>30</sup>

Additional stipulations in a similar vein are included in the outside employment prohibitions in force for Cincinnati:

employment by credit agencies for the purpose of investigating or collecting accounts, including repossession of automobiles and collection of bad debts;

pre-employment investigations for private industry; and

any type of work related to bail-bonding.<sup>31</sup>

Not only are police officers excluded from employment when there is a substantial likelihood that their authority may be used improperly for private interests, but the division also may prohibit employment under circumstances where one may have to ensure that the law is enforced impartially. The Cincinnati Police Division, for example, requires that:

Any member of the Division holding an outside employment permit (either an extension of police service or non-extension of police service) with a company which is affected by a strike, shall immediately suspend employment with that company during the period of the strike, and report this action on a Form 17 to the Police Chief. Upon termination of the strike, the affected employee will notify the Inspections Section for reinstatement of the permit.<sup>32</sup>

Not all departments maintain such a strict prohibition on off-duty employment for firms involved in labor-management disputes. The Charlotte Police Department permits employment under these circumstances but admonishes the officers that they shall in no way become involved in such disputes and advises officers who are employed under such circumstances to “. . . confine their activities strictly to enforcement of State statutes and Municipal ordinances.”<sup>33</sup>

The second major class of employment restrictions prohibit officers from working in activities regulated by law, that is, where their employment involves a potential conflict of interest because statutes require supervision

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of that licensed activity or premises. Clearly, no department permits employment in establishments that profit from activities that are prohibited by statutes the officer is sworn to uphold. But departments differ substantially in whether or not they will permit their officers to be employed in establishments that are licensed to sell goods or services that are closely regulated by law and where there is a likelihood the officer will have to enforce the law against the employer's interest. Such circumstances may arise, for example, if the officer is employed in an establishment where the employer buys, sells, or serves alcoholic beverages or where legalized gambling takes place. How can an officer arrest his employer or fellow employees for serving liquor to a minor or to an intoxicated person—activities the statutes specifically prohibit? Or, more specifically, should a nonuniformed officer be permitted to sell alcoholic beverages, guns, or lottery tickets?

All departments appear to prohibit direct employment of their officers, whether in uniform or plainclothes, in regulated activities. They cannot be sales clerks in stores that sell guns, alcohol, or lottery tickets, or engage in work related to a regulated activity. But there the uniformity ends. Some, but not all, prohibit engaging in any kind of work, including as a law enforcement officer, for an employer in regulated industries; others permit employment only on the immediate premises where the regulated activity is taking place; and still others appear to prohibit work for any licensed employer. Yet, of the departments that have specific regulations on kinds of employment permitted and prohibited, most seem explicit only about alcoholic beverages. Among the departments for which we have information, Seattle specifically prohibits participation in the following regulated activities where there is “. . . a high potential for conflicts of interest arising from statutory requirements for supervision of that activity by any law enforcement agency”:

The dispensing of alcoholic beverages.

- a. Employees are prohibited from employment as a “bouncer” in any establishment dispensing alcoholic beverages, inside or outside the corporate limits of the City of Seattle.

The towing of vehicles.

The conducting of any form of gambling, including but not limited to cards, bingo, raffles, Reno nights, etc.

Any other activity not herein defined where there is a law enforcement obligation for close police security.<sup>34</sup>

Some indication of the range in regulation can be found in the following examples. The Cincinnati Police Division prohibits “(a)ny type of work for a liquor-permit premise, where alcoholic beverages are sold by the glass” or employment by any vending machine company or service.<sup>35</sup> Although the Seattle Police Department similarly prohibits employment at any establishment that sells or dispenses intoxicating beverages, it specifically exempts employment at State-operated facilities where the consumption of

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alcohol is permitted or in establishments where the consumption of liquor is “. . . secondary to the main activity, for example, athletic events or hotel security.”<sup>36</sup> Whether or not these exceptions are made, as in Seattle, most departments permit uniformed employment at athletic events where intoxicating beverages are sold and in establishments where their sale is secondary to the main employment. Boston, Colorado Springs, and Charlotte police departments prohibit off-duty uniformed employment inside an establishment where alcoholic beverages are consumed, but permit employment outside of the area controlled by the onpremises license.

Boston, for example, permits uniformed officers to patrol the perimeter of the licensed premises and Charlotte explicitly provides: Police officers may perform traffic control, crime prevention and crowd control activities outside the building establishment only.<sup>37</sup>

Moreover, Charlotte obligates officers performing such duties to contact the communications bureau to dispatch a patrol unit if the officer “. . . receives reasonable information that the services of a police officer are required inside the establishment,” permitting the officer to enter the premises in an emergency after notifying the bureau. If the officer does so, “. . . he shall make a written report and forward a copy of the same to the Division Commander and to the Secondary Employment Coordinator.”<sup>38</sup>

There is a third class of restrictions that preclude officers from working under conditions where they confer a special advantage to a private interest at the expense of a public interest. Departments that permit outside employment of uniformed officers are sensitive to complaints that private employment of uniformed officers confers special privileges or advantages on their employers or their patrons. Accordingly, some department regulations governing outside employment of uniformed officers have explicit mandates to ensure that when enforcing the law, the officer does so only in the public interest. Several examples from the general order of the Charlotte Police Department governing secondary employment illustrate these mandates. In establishing regulations for secondary employment at a firm or establishment where alcoholic beverages are consumed, the department stipulates that:

Police officers shall not act to enforce any rules and regulations set up solely by the establishment's management. Police officers shall take action only for the enforcement of the law and the preservation of public safety.

Police officers shall take appropriate action in regard to all violations of law.<sup>39</sup>

Equally explicit are provisions in the regulations for off-duty officers engaging in traffic control on public streets:

Police personnel working off-duty at a firm or establishment that requires the officer to engage in traffic control on public streets shall fairly serve the interests of all motorists, not just those going into or out of a private establishment.

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Police officers should direct traffic in conjunction with the operation of any nearby traffic control signals.

Police officers shall not stop peak direction traffic in order to allow a left turn from the other (non-peak) direction.

Police officers shall not act to enforce any rules or regulations set up solely by an establishment's management. Police officers shall take action only for the enforcement of the law and the preservation of public safety.<sup>40</sup>

A fourth class of restrictions prohibit certain kinds of self-employment or work for particular kinds of employers. Perhaps the most sensitive area for proscription is that of investigative and security services. The main arguments for proscribing self-employment or work for security and investigative services are based on presumed conflicts of interests and the necessity to ensure fair competition. Typical of the prohibitions are the following:

- Officers are prohibited from soliciting off-duty employment opportunities in direct competition with private security firms.<sup>41</sup>
- No officer shall own, operate, manage, or have a financial interest in any private investigation business (and) Ownership or partial ownership in a private security business is prohibited . . .<sup>42</sup>
- No employee shall own, operate, manage or have a financial interest in a business providing security services, where the employee utilizes his/her color of office, position of employment or access to police department information, files, records or services for private or business gain.<sup>43</sup>

Some departments recognize that the prohibitions against self-employment or organizing a profitmaking corporation to provide protective or investigative services still leave room for entrepreneurial activity as a broker of such services. Accordingly, they prohibit employees from profiting or attempting to profit from the off-duty work of any other employee of the department.<sup>44</sup> Broker arrangements may continue under another guise, however, as when a retired member of the department forms a corporation to broker jobs for members of the department.

Off-duty police officers are a resource at all times because they have the power and authority to enforce the law. Their symbolic presence becomes a source of protection to others. Each officer is potentially marketable under a variety of circumstances. In Charlotte, for example, apartment owners and managers employ officers of the Charlotte Police Department as resident security officers. The officer provides police service in the apartment complex in exchange for rent or other residential benefits.

Employment as a resident security officer raises matters of conflict of interest because the officer has a private life as a resident as well as a public life as an officer enforcing the law within the residential complex. In recognition of these conditions, the Charlotte Police Department developed a separate set of regulations for resident security officers. Officers, for example, are

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prohibited from handling a complaint within their complex if they have been drinking alcoholic beverages. They are then responsible for mobilizing an on-duty officer to respond to the complaint. They also are prohibited from dealing with management problems such as landlord-tenant disputes of a civil nature and are expressly prohibited from collecting rent, debts, or bad checks on behalf of management.<sup>45</sup>

Departments fluctuate in the extent to which they make prohibitions on conflict of interest explicit. The criteria often are embedded in denials of permit requests for off-duty employment. Where, as in the Omaha Police Department, the chief and his department heads examine each permit request, the criteria are embedded in the description of the exact work to be performed and in an explicit written statement from the chief denying the permit. Yet, examination of permit requests and their denials does not provide specific guidelines. For example, in December 1985, the Omaha department denied a request for approval of uniform outside employment at a parish bingo hall where the officer would provide security for the building and parking lot during bingo sessions. The permit was denied because it was deemed to present ". . . a conflict of interest."<sup>46</sup>

### **Threats to status or dignity of the policing profession**

Earlier we pointed out that, originally, moonlighting police officers could not be employed as uniformed officers. Typically, their major source of employment was in manual labor. Not uncommonly, they worked in semiskilled or unskilled jobs because increasingly skilled jobs were unionized and union contracts prohibited such part-time employment.

The emergence of contract policing brought substantial changes in the way police commanders viewed extra-duty employment. Not only did it raise the issues of conflict of interest, but it also raised issues about how uniformed employment reflected the status of policing as a professional occupation. Inasmuch as a uniform also represents the employing police department, professionalizing departments were concerned about the image officers presented in their uniformed off-duty employment. As one chief put it in an interview: "You have to realize that at all times they are representing the department because they are so visible; they can't be permitted to do anything in uniform when off-duty that they would not be permitted to do when on-duty."

Illustrative of the provisions police departments adopt to ensure that the status of the department and the professional dignity of its officers is maintained at all times in off-duty employment are the following:

Any secondary employment, by civilians or sworn personnel that adversely affects the Department shall be prohibited.<sup>47</sup>

Employees are prohibited from working in any of the following situations:

a. At any occupation of a nature that would tend to lower the dignity of the police service in any manner;

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b. In performance of a task other than those of a police nature.<sup>48</sup>

Beyond these prohibitions against "conduct unbecoming" a police officer, the Cincinnati Police Division obligates the officers to report any such conduct: "Members will immediately report in writing on a Form 17 any incidents arising from, or connected with, their outside employment which might adversely affect the Division or its personnel."<sup>49</sup>

It is unclear, however, what constitutes an incident that "might adversely affect" the department, leaving the door open to discretionary reporting by the employed officer and potential disagreement with superiors. The only specific prohibition found in any of the guidelines that seemed largely designed to protect the integrity of the department as well as that of its officers was for nonsworn employment where the police identity of the officer would be unknown. The Arlington County, Virginia, Police Department explicitly provides: "No employee shall engage in off-duty employment which involves tipping or gratuities."<sup>50</sup>

Guidelines regarding work that threatens the status and dignity of the department exist, then, primarily as prohibitions against kinds of secondary employment rather than forms of conduct. Consequently, officers may have difficulty judging what is acceptable professional conduct in secondary employment.

### **Unacceptable risk of temporary or disabling injury**

Police chiefs are mindful that off-duty employment poses some risk of injury to their officers and that risk will vary with the type of job and whether or not it requires low- or high-risk uniform employment. Temporary injury on off-duty employment denies the department the services of an officer either because they must be assigned to duty for disabled officers or given sick leave. There may be disputed claims as to who is responsible for compensation for the injury when it involves uniformed employment. Particularly difficult issues arise when there are disabling injuries, requests for retirement for permanent disability, or, in a few instances, death.

Recognizing that these are matters involving sick leave, disability, and retirement benefits as well as matters of what kind of employment the department will permit, some departments explicitly prohibit employment that is deemed to have an unacceptable risk of injury or disability. Most, however, do not appear to take these risks into account in granting permits. If the issue is considered, it is recognized in sick leave and disability policies, in collective bargaining agreements, or in the way the department grants permission for off-duty work.

Among the departments examined, only Seattle had a provision limiting employment or participation in activities believed to have an unacceptable risk of injury. In their list of prohibitions of work in specified situations, the Seattle department specifically prohibits work:

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As a participant in any professional boxing or wrestling event. As a participant in any other professional sporting event where there is a substantial risk of serious injury to the employee, without prior written approval of the commander of the Administrative Services Bureau.<sup>51</sup>

### **Jurisdiction of employment**

The police jurisdiction of the employer is another important consideration in the secondary employment of *uniformed* officers. This is important particularly because most departments have limited authority beyond their jurisdictional boundaries. It raises issues of command authority, especially whether or not uniformed officers are under the same or different commands. In addition, problems of supervision and availability for mobilization are complicated when officers are uniformed employees outside their jurisdiction.

Situations in which officers request permission to work in another jurisdiction are not uncommon, especially when they are employed as uniformed officers for mass public events. Large sports arenas and bowls often employ officers from a number of police jurisdictions. Officers from the Pasadena and Los Angeles police departments, for example, work some Rose Bowl events; and Yale University bowl events usually require officers from the New Haven, West Haven, and Yale University police departments because of the bowl's location at the perimeter of West Haven and New Haven.

Although most departments assume their officers are available to enforce the law at all times, the powers and responsibilities to do so tend to be unclear when the officer is outside the jurisdiction of his employing department. Such matters are complicated when residence is permitted outside the police department's jurisdiction. There are further complications when permission is sought for uniformed employment providing police services.

Most police departments appear to prohibit uniformed employment outside their jurisdiction. Where such employment is permitted, special permission ordinarily is required from the police department where uniformed employment is sought. Typical of this requirement is the rule of the Cincinnati Police Division:

When the outside work is an extension of police services, and is performed in another police jurisdiction, a letter from the head of that police agency indicating his acknowledgment must accompany the Form 668 to the Police Chief's Office.<sup>52</sup>

The Seattle Police Department similarly requires approval of the outside police agency for uniform employment<sup>53</sup> and specifically enjoins officers from wearing the Seattle Police Department uniform or any part thereof that would identify the employee as a Seattle police officer.<sup>54</sup> Furthermore, it does not permit employment in an off-duty status with the University of Washington unless the officer is "commissioned or deputized as a University of Washington Campus Police Officer," and secures the proper University of Washington campus police officer's uniform.<sup>55</sup>

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## Limits on compensation

Other restrictions include limits on compensation and limits on the amount of extra duty allowed. Compensation of police officers for secondary employment occurs in one of two ways: either the officer is paid directly by a public agency or private employer or the city compensates the officer from collections from their outside employers. What follows is a brief overview of policies and practices concerning compensation. A full discussion begins on page 44 of this report.

Of the 13 departments surveyed, five—Boston, Colorado Springs, Metro-Dade, New Haven, and St. Petersburg—prohibit compensation of uniformed or plainclothes officers by their outside employer. Boston and Metro-Dade do not categorically prohibit direct compensation. Boston makes an exception to their policy that all compensation will come from the city comptroller, permitting cash details when it may be difficult for the city to bill a vendor or recompense for services rendered.<sup>56</sup> Metro-Dade permits an officer to contract for nonuniformed employment and its rate of pay.<sup>57</sup>

The other eight departments (Arlington County, Atlanta, Charlotte, Cincinnati, Minneapolis, Omaha, Peoria, and Seattle) permit cash/paid details for secondary employment. Of these, Cincinnati divides police service details into two categories for pay and expense purposes. For city agency or city-sponsored and cosponsored events or work being done by an outside agency for the city, county, or State, officers are paid time and one-half on the regular city payroll and the city bills the employing city agency unless specifically exempted by the city manager. All other employers compensate officers directly.<sup>58</sup>

Although most departments did not state so explicitly, most appear to follow the practice of Cincinnati, which forbids lump sum payments for outside employment to a sworn member of the division who then disperses it to officers who worked the detail.<sup>59</sup> This prohibition is designed to preclude officers from profiting by operating as an employment agency for other officers.

The amount of extra-duty compensation is usually set by union or brotherhood agreement and only occasionally by management.<sup>60</sup> The amount of compensation for extra-duty employment varies considerably among departments, but it is fair to say that the hourly rate of pay in some departments is at least three times that negotiated in others.

The hourly rate of pay may also vary considerably within departments. Cincinnati, for instance, requires time and one-half payment for all work performed for a city agency or city-sponsored activity, work being done by an outside agency for the city, county, or State,<sup>61</sup> or hazardous special duty for any outside agency.<sup>62</sup> The hourly rate for all other extra-duty work is set by agreement.<sup>63</sup> Since 1983, the City of Boston Police Patrolmen's Association contract calls for a \$1 per hour differential for outdoor details<sup>64</sup> and New Haven has a differential of \$1 per hour for holiday pay.<sup>65</sup>

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The rate of compensation also varies depending on the number of hours worked. Most departments set a minimum number of hours for which the officer must be compensated on an extra-duty job. This varied among our sample departments with a minimum payment required for 2 hours or less in Colorado Springs,<sup>66</sup> to a minimum for 4 hours or less in Boston,<sup>67</sup> and for 5 hours or less in New Haven.<sup>68</sup>

### **Limits on amount of extra duty allowed**

Most departments do not place a cap on the amount of time an officer may spend in secondary employment during a workweek. Departments, rather, limit the number of hours an officer may work on the day of a regular tour of duty. Such rules permit extended periods of work without time off if the officer chooses back-to-back employment. Most officers, however, who work extra duty limit their number of hours to well below the maximum allowed under department rules. In one department that made pay records available, a small number of officers at least doubled their annual pay by off-duty employment.

There is considerable variability among departments in the number of extra-duty hours permitted and in the flexibility of scheduling them. The Charlotte and Arlington County police departments, for example, limit secondary employment to 6 hours per officer during a regular-duty day, and Charlotte has a limit of 14 hours on days off and vacation days, with a duty-day commencing at 0001 hours and ending at 2400 hours.<sup>69</sup> Although this rule limits the number of hours, it permits considerable flexibility in scheduling so that were an officer so inclined, continuous employment for 28 hours is possible by working back-to-back shifts on consecutive days. The Boston Police Department permits up to 16 consecutive hours of duty but no more than 16 consecutive hours in any 24-hour period, including overtime, court, and details.<sup>70</sup> Nevertheless, inasmuch as Boston police officers have considerable flexibility in scheduling their tours—and any officer works only four tours every 6 days (rather than 5 of 7 as is the case for most departments)—the officer can work more off-duty than duty shifts. By working two regular tours back-to-back, with 8 hours between tours, an officer can work four regular tours in 2 days. This makes it possible to work the remaining 4 days at an off-duty job. Working two tours each of those 2 days, the officer can equal the employment on regular tours.

Two of the departments surveyed have a weekly maximum number of hours for off-duty employment that falls below the maximum permitted by aggregating allowable hours per duty-day and off-days in other departments. Seattle prohibits off-duty employment which, “. . . when added to regular Police Department work periods, totals more than sixty-four (64) hours per week” and Arlington County specifies “Exclusive of days off or leave, off-duty employment shall be limited to 30 hours during a seven day week, Sunday through Saturday.”<sup>71</sup> Most departments state, nonetheless, that they discourage approaching the maximum number of weekly hours permitted.

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Two departments report, however, that a few officers earn more annually from their extra-duty than from regular-duty employment.

### **Restrictions on employers**

Some departments impose additional restrictions on employers. These are essentially of two kinds: control over the kind and level of policing required in the off-duty employment and departmental command and control over the officer while on off-duty assignment.

One must keep in mind that the major vehicle for departmental control over both the outside employer and the officer employee is the work permit. The power to grant and withhold permits is the major means department chiefs and their managers use to achieve control over off-duty employment. To some degree that power is circumscribed by collective bargaining, as increasingly police unions bargain over matters of paid work details. Some departments stated that the major topic at recent police patrolmen's association meetings is matters of extra-duty work assignment by the extra-duty coordinator. This matter will be examined in connection with the power of the extra-duty coordinator in the section on extra duty coordination.

### **Control over kind and level of off-duty employment**

Police departments have a number of different interests in maintaining authority over the kind and level of off-duty employment. The control police commanders seek over off-duty employment depends very much on whether the employment involves the exercise of the officer's sworn authority. When the officer is not working uniformed or plainclothes duty, most departments rely almost entirely on the employer or officer statements in the permit application to decide whether the off-duty job is likely to involve the exercise of police discretion. The permit is routinely granted if it is nonuniformed and none of the department's prohibitions apply. Where the request is for uniformed employment, most employer or officer requests for employment are regarded as routine since that employer regularly requests officers for extra-duty assignment or the request is classified as a "holddown" position.<sup>72</sup>

Yet, departments are uneven in the attention given to investigation and approval of the employer, the place of employment, and the employing situation. Only 2 of the 13 departments require that either the off-duty coordinator or an administrative unit review each applicant and the employment situation. Colorado Springs obligates the off-duty coordinator to approve each request by not only requesting information from the employer by interview but by an actual site visit to the place of employment. The deputy chief reports that this was one of the measures taken to minimize corruption in outside employment. The process is not quite as onerous as it might seem since most jobs are recurring and the necessity for continuing investigation minimal.<sup>73</sup> Metro-Dade requires an investigation for all perma-

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ment and temporary permits, with a more thorough investigation required for permanent permits.<sup>74</sup>

The kinds of conditions police departments are most likely to impose on employers over the type and level of policing required in off-duty employment vary among departments. The most comprehensive statement among the departments surveyed is that of Cincinnati, which stipulates: "The Police Division will maintain the authority to determine the number of officers, rate of pay, hazardous or special duty, and the amount of equipment and supplies necessary to perform an outside extension of police service detail."<sup>75</sup>

The bases for these concerns to maintain authority over off-duty policing are several. Concerns about the number and kind of officers and equipment and supplies arise primarily in connection with requests for off-duty police officers for mass sporting or public events. This option is most likely to be exercised for events posing special crowd-control problems, such as rock concerts, where disorderly conduct and the use of drugs may require both uniformed and plainclothes officers. Such mass events also may require police vans to handle arrested persons or other special equipment to handle nonroutine events. Chiefs are reluctant to place their officers at risk at such mass events or to risk the political costs that ensue if a major disorder occurs. Similarly, they are worried about the failure to deal with problems those events create for the nonparticipating public, such as traffic congestion, vandalism to adjacent property, or an increased rate of crime in the area. It is understandable that police administrators might wish to determine, then, both the numbers of persons to be assigned to these events and what additional resources are required to maintain order and handle disorder.

Some departments that operate under the officer contract or union brokerage models, such as Peoria and Seattle, respectively, recognize the special requirements for mass public events and their potential harm to the department if not properly policed, but make exceptions to their sponsors and provide police service. The city of Peoria provides police service on an overtime basis for its civic center events. The city bills the civic center for the service. The department of police designates a uniformed lieutenant as liaison between the center and the department who:

... assign(s) and coordinate(s) with the proper divisions any manpower or other resources for events; shall provide monthly reports to the Superintendent of Police and uniformed captain, listing any problems and monies spent on Civic Center overtime; and shall assign an officer of appropriate rank in charge of each event with responsibility to see that all department rules and regulations are followed, ensuring the proper image of police officers for the public and the Civic Center is maintained.<sup>76</sup>

In further recognition of the special requirements for such events, the general order provides that although officers are ordinarily assigned to such events by rotation from a voluntary signup sheet, the uniformed captain may waive this procedure with the approval of the superintendent "... for an event

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requiring special capabilities, experience, temperament or skills."<sup>77</sup> Moreover, if personnel requirements for the event cannot be filled from the pool of volunteers for civic center duty, the general order mandates that ". . . the remaining slots shall be filled mandatorily by the appropriately ranked officer(s) with the least amount of events worked."<sup>78</sup>

Whereas the city of Peoria contracted with the civic center for police service on an overtime basis, the Seattle Police Department negotiated arrangements to provide that service without a formal contract with the city. Rather, the director of security for the Seattle Center selects officers to work at the center from a rotation list kept by the police lieutenant in the district where the center is located. A local accounting firm pays the off-duty officers for working the events. The department delegates all responsibility for such events to a special section and coordinator:

The Special Activities Section commander shall be responsible for all aspects of off-duty employment of police officers at Seattle Center and Kingdome events, including record keeping in compliance with current department policy. The Commander shall comply with all specifications for security at these facilities.<sup>79</sup>

Most police departments seek to maintain some form of control over the uniformed officer when employed off-duty. Their primary reasons for doing so are to facilitate mobilization of and by the officers and to ensure that they conduct themselves according to department rules and regulations. To ensure mobilization, each uniformed officer is equipped with a two-way department radio. To ensure proper conduct and performance by off-duty officers, the department also tries to provide supervision for paid details. Typical of the regulations on supervision is that of the Charlotte Police Department:

The Department shall insure that officers engaged in secondary employment are properly supervised and that supervisors are directly responsible to the department. In the event that on-site supervision is impractical, the burden shall be specifically assigned elsewhere. (If possible, police supervisors shall function as off-duty supervisors as well.)<sup>80</sup>

Cincinnati is more explicit in assigning responsibility for supervision:

Members engaged in an extension of police service will be subject to the control and supervision of supervisory officers in the District where the work is performed, or will be under the supervision of the officer in charge of that outside work detail.<sup>81</sup>

Despite the intention of division administrators to supervise all officers on off-duty employment, each administrator interviewed reported that officers on extra duty normally went unsupervised because of insufficient personnel. This was especially true for those employed on routine solo assignment. Most departments in fact do not notify their watch commanders or supervisors about extra-duty officers assigned to off-duty employment in their area.

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The situation is rather different when the division permits off-duty employment of a number of officers at the same location. Then the department has both an opportunity to exercise direct supervision and an incentive to provide it. Employers usually are reluctant to pay the additional cost of supervision—supervisors are paid at a higher rate than patrol officers who normally provide work on paid details. Union contracts often guarantee supervisors—at the ranks of sergeant, lieutenant or captain—a higher rate of off-duty pay. Employers seeking to control expenses typically minimize the number of supervisors and level of supervision needed. Hence, division rules and especially union or association contracts obligate the employer to hire supervisors for some paid details. Frequently, they stipulate the ratio of supervisory or command personnel to patrol officers when the number of paid detail officers in a location reaches a threshold. Typical of these ratio requirements are the following rules or contract provisions:

When more than three police officers/specialists are simultaneously engaged in outside extension of police services employment at one location, a police supervisor must also be hired.<sup>63</sup>

Whenever four or more nonsupervisory personnel are assigned to Extra-Police Duty for the same hours of work, a supervisor shall also be assigned whose function is to supervise only. Whenever ten or more men are assigned to Extra-Police Duty, a Sergeant and a Lieutenant or Captain shall be assigned and one additional supervisor shall be assigned for each unit of ten men thereafter.<sup>63</sup>

### **Responsibilities of officers on extra-duty employment**

Most departments regard their officers as responsible for enforcing the law whether or not they are on duty. Consequently, officers on paid details are obliged to deal with police matters that come to their attention. In some departments, such as New Haven, this is not merely understood—the rules and regulations state quite explicitly:

1. While 'Extra-Duty Work' may cover a wide range of police related activity, i.e., traffic/crowd control, security, etc., specific to that particular assignment, it is understood that the officer has an obligation to deal, at least in the immediate sense with ANY and ALL police related matters coming to his attention in the most efficient and effective manner possible.
2. Officers working in an 'Extra Duty' capacity are subject to ALL rules and regulations, policies and procedures presently in effect by the Department, insofar as they are applicable.<sup>64</sup>

and those of Colorado Springs:

Officers working extra duty as assigned per these procedures shall be subject to the rules, regulations, policies and procedures contained elsewhere in this Operations Manual.<sup>65</sup>

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The primary duty of officers working extra duty assignments shall be to protect life and property, keep the peace, and enforce City ordinances and state and federal laws.<sup>86</sup>

or even more demonstratively, those of Charlotte:

The Department requires that officers engaged in secondary employment conform to the same standard of conduct as applies to their on-duty activities. (This would specifically include the requirement that they enforce the law and not let themselves be bound by rules or restrictions a private employer may wish to enforce for his own purposes.)<sup>87</sup>

and of St. Petersburg:

All individuals assigned to Permit Assignment Work are subject to all City and Police Department Rules, Regulations, Policies and Procedures.

The primary responsibility of an individual on permit assignment is to perform police functions as required and to prepare the necessary reports.<sup>88</sup>

What these regulations make abundantly clear is that officers on extra-duty assignment are at all times subject to each rule and regulation of the department and consequently they are subject to discipline for infractions of them. It is unclear how common infractions are. It also is unclear how the type and frequency of such infractions compare with those committed while on duty. Several departments reported that they annually discipline officers for such infractions. Normally discipline consists of temporarily suspending the officer from extra-duty work. One department surveyed reported suspending 9 out of 270 officers employed off duty for off-duty violations in 1986 and 3 of 239 in 1985.

### **Special responsibilities for extra-duty officers**

Most departments regard secondary employment as voluntary; officers need not work extra duty. In addition, even though most departments enter into contractual arrangements with employers to permit officers to work when off duty, they do not guarantee the employer that an officer will be assigned whenever a request is made. The New Haven Police Department extra-duty coordinator reports that it is the responsibility of his office to assign a priority to each paid detail and then, according to priorities, fill them with available personnel. Only St. Petersburg explicitly provides mandatory departmental assignment when there are no volunteers for a permit assignment: "If no individuals are available to work a permit assignment, a mandatory assignment may be made at the discretion of the Deputy Chief of Patrol Operations Bureau or his designee."<sup>89</sup>

Peoria, as noted previously, provides mandatory assignment for civic center events. Departments deviate, however, in their policies regarding responsibility of the officer to report for the extra-duty assignment. It is recognized that such personal matters as illness, or such department matters as going

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to court on an arrest may preclude the officer from reporting to the off-duty assignment. Colorado Springs holds the officer responsible for obtaining another officer to fill the assignment if, for whatever reason, the officer is unable to work.<sup>90</sup> The majority of departments, however, simply require the officer to notify the department if he or she is unable to work the extra-duty assignment.

Nonetheless, most of the departments oblige the officer who accepts a paid detail assignment to work it unless he is excused from doing so. Sanctions are levied on the officer for failure to report to an extra-duty assignment. Typical sanctions are revocation of the work permit for some period of time or placing the officer at the bottom of the queue for assignment. The Charlotte rules, for instance, prescribe:

An officer who accepts a secondary job is required to show up at that job assignment unless he is sick . . . An officer who fails to show up for a secondary job assignment and fails to call in shall have his work permit rescinded for a period of one week for the first offense and two weeks for each offense thereafter.<sup>91</sup>

Penalties for failure to work a paid detail for which an officer has accepted responsibility are greater for officers in the St. Petersburg Police Department: Only excuses which would normally exempt an individual from his regular assignment will be considered valid for not working an assignment . . .<sup>92</sup>

The rules stipulate the following penalties for failure to show up for an assignment:

1st failure to show up for a permit assignment: removed from rotation file for 90 days.

2nd failure to show up for a permit assignment: removed from the rotation file for 6 months.

3rd failure to show up for a permit assignment: removed from the rotation file for 1 year.

In addition, the individual shall be considered AWOL and other disciplinary action may be administered at the discretion of the Deputy Chief of the Patrol Operations Bureau.<sup>93</sup>

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## Department organization of secondary employment

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Police departments adapt internal organization and procedures for secondary employment according to the major management model that is adopted.

### Organizational responsibility for off-duty employment

Police departments are dissimilar in their internal organization of functions. This variation is partly a consequence of the size of the department and the availability of officers and civilians to operate separate divisions and bureaus. It also is due to management decisions about task organization and responsibility. Inasmuch as secondary employment was not originally a traditional task of departments, it is not surprising that responsibility for it is currently lodged in different organizational bureaus and department divisions. Some treat it as a staff function while others view it as a patrol operation. Colorado Springs and Cincinnati place responsibility for secondary employment in the personnel section, New Haven in the traffic and license unit of its administration division, Peoria under an administrative captain, and Metro-Dade in support services. Boston, Charlotte, and St. Petersburg categorize it as a field operation—the area commander in Boston, the special services bureau in Charlotte, and the patrol operations bureau in St. Petersburg.

When responsibility falls under field operations, there appears to be greater opportunity for coordination of on- and off-duty employment. Thus, area commanders in Boston have information about how all of their officers are deployed for any given tour of duty and potentially can make use of that information in assigning duty. St. Petersburg maintains the closest operational control over off-duty assignment, requiring the following procedures for the off-duty tour:

1. Individuals working permit assignment will change into and out of uniform in the police locker room.
2. Individuals on permit assignment will check in at the equipment room.
3. Individuals will use their private vehicle for travel to and from a permit assignment, unless otherwise directed.
4. At the completion of a permit assignment, individuals will return to Police Headquarters, check off at the equipment room and change out of uniform before proceeding home.<sup>94</sup>

### Approval of employers and employment situations

The opportunities and procedures for review and approval of employers and employment situations may differ under the officer and department contract models. Under the officer contract model the department typically reviews each officer's application for an off-duty work permit at designated levels

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of command, with the chief retaining power to approve or disapprove each job application. Review and approval depend primarily on information that the officer provides about the employer and the knowledge that review officers have about the employer or employment situation. There ordinarily is no provision for a formal investigation. The department contract model potentially provides greater review because employers usually apply to the department for a permit to employ off-duty officers and enter into an employment contract with the city. Greater screening of employers and work situations is possible under the department contract model because the employers are screened and reviewed by a centralized office. Under this model, any officer may be assigned to work for an approved employer.

Under department contract systems, the off-duty coordinator is delegated the responsibility for approving employment requests based on information provided on an application for a permit to employ off-duty officers. The application permit of the St. Petersburg Police Department, for example, requests such information as the employee's name, address, the billing address, permit service dates, hours, and uniformed personnel desired by rank, and whether a police vehicle is required. A brief description of the required service is requested and a designation must be made of the person to whom the officer is expected to report; for example, the manager on duty.

St. Petersburg also requires the authorized representative of the applicant to sign a statement indicating that the attached "conditions of permit" have been read, initialed, and dated, and that the applicant will ". . . abide by and be subject to these conditions in all respects if the permit is granted." More important perhaps, the applicant must agree to a hold-harmless and indemnification clause:

*(Company name)*, through its authorized representative, hereby agrees to hold harmless and indemnify the City of St. Petersburg and its employees from any and all injuries or damages suffered by *(Company Name)* or its employees which may be caused by third parties during the term of any permit that is issued as a result of this application.<sup>95</sup>

The following are conditions of the St. Petersburg police service permit to which the applicant for police services must agree:

1. *A fee schedule* setting forth the hourly cost of a patrolman, sergeant, lieutenant, and police vehicle, with the requirement of a minimum of 3 hours pay and a statement that the fee schedule shall be consistent with, and pursuant to, the current union contract(s).
2. *A permit cancellation* clause stating the right of the department to cancel the permit at any time with or without cause but requiring a 24-hour notice if the permittee is to cancel and a penalty of 3-1/2 hours pay for each scheduled officer for failure to notify in advance.
3. *A status of law enforcement officers performing police permit services* clause that states ". . . law enforcement officers shall be deemed on duty

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and their principal responsibility will be to the Police Department and general public.”

4. *Manpower provisions* which stipulate that the deputy chief of patrol operations will review all permit assignment applications prior to approval, the review will evaluate manpower needs and if a deficiency appears, the supervisor has a right to remedy it.

5. *A general requirements* provision stating that all applicants are required to provide 7 days prior notice for a work assignment.<sup>96</sup>

The main alternative to experienced evaluation of permit applications is to investigate the employer and conduct an onsite evaluation of the location where off-duty employment is requested. The Colorado Springs Police Department follows this procedure by visiting the site of the proposed employment and by interviewing the employer and others who will be supervising the officer's work. This is not regarded as a difficult assignment for the extra-duty coordinator since most requests are from continuing employers. The advantages of an actual site visit are that the coordinator can determine whether or not the location conforms to department rules and regulations for uniformed or nonuniformed employment of officers, whether there are any special risks associated with that employment, and whether the requested number of officers and supervisors is sufficient.

Metro-Dade Police Department regulations require a more extensive review of permits than do the regulations of most departments. The department distinguishes between permanent and temporary permits for employers. A permanent permit is issued for off-regular-duty service that is to exceed 2 weeks or is to be performed on a repetitive basis; authorizes one or more of the same employees to perform duties on a regular and repetitive basis benefiting both the permit holder and the Department.<sup>97</sup> The temporary permit is issued for off-regular-duty service that is not to exceed 2 successive weeks.<sup>98</sup> The license and permit bureau is responsible for investigating and processing permanent permit requests. Its investigation must include a review by the organized crime bureau, the internal review section, and the business management section.<sup>99</sup> Temporary permits are normally “. . . accepted, approved, and issued by the affected district in which the off-regular-duty service is to be performed.”<sup>100</sup> Lacking the business management section review of the permanent permit holder, which authorizes direct billing, the holder of a temporary permit must make prepayment “. . . by cash, money order, certified check, travelers check, or cashiers check; personal and noncertified checks are not acceptable. . .”<sup>101</sup> Metro-Dade permits for outside employment, although issued to the officer, nonetheless require a corporation check unless the officer is self-employed or works for large established organizations known to the department. The organized crime bureau conducts the investigation and refers its findings to the officer's division chief or the assistant director with approval also required from the administrative division chief and final approval by the director.<sup>102</sup>

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## Special provisions

A large proportion of employers repeatedly request police services. Some, such as public utilities that require traffic control in connection with underground access to power lines, make almost daily requests. Others, such as sponsors of events or businesses, require service at times of heavy customer demand. Consequently, most departments grant permits for some specified period of time—typically one year. Once an employer is granted a permit, there are problems both of ensuring that the demand remains as represented and of monitoring the request. Most departments deal with these issues by setting a terminal date for the permit. Commonly, departments require annual review and renewal of officer permits and, when applicable, employer permits.

Regardless of the procedures departments adopt for approving employers—whether by approving the officer's permit application or that of a prospective employer—the department must specify conditions for its revocation. Usually conditions for revocation are the same as those for denying a permit application.

Most large departments supply officers for events at a coliseum, stadium, dome, bowl, or other facility that attracts a large number of spectators. Two of the prime questions to answer are What shall be the responsibilities of uniformed off-duty officers at such events?, and How many officers are essential to ensure the safety of both the public and the officers themselves? Additional problems to consider, such as how officers shall work with private security and other protective service employees for these events, raise issues of command and control. Likewise, it is not uncommon for alcoholic beverages to be sold at such events—a policy that comes into conflict with many departments' regulations prohibiting employment on the immediate premises where alcohol is sold and consumed. If mass disorder occurs at such events, the department will be called on to provide additional officers to respond to that crisis and may be held responsible for its consequences and even its occurrence. Clearly, mass events call for extensive planning and coordination.

There are obvious examples among our sample departments where such planning and coordination exists. Most, however, make compromises. Most survey departments, for example, make an exception to their general rule prohibiting working on a liquor-permit premise by allowing officers to accept off-duty employment at mass public events where liquor is sold. Cincinnati for example makes exceptions for large scale public safety details; i.e., Riverfront Coliseum, Cincinnati Gardens, church festivals, etc.,<sup>103</sup> where alcoholic beverages are served.

As noted previously, some officer contract departments contract only for mass events because they require a larger number of sworn officers and supervision with special skills. All department contract departments singled out the policing of these events as problematic; yet, all but one leaves it up

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to the employer to determine how much police manpower is needed and how policing at those events is to be coordinated. Such loose coordination raises troublesome issues for chiefs about how the interests of the police, the public, and the agency sponsoring such events all can be protected.

### **Extra-duty coordination**

Under the traditional officer contract model of off-duty employment, each officer is responsible for locating prospective employers and contracting directly with the employer for his or her employment. The police department approves or denies these officer permit requests for employment. So long as officers contract independently with employers, they are subject to competitive market conditions where each officer is competing with all others who seek outside employment. With the growth of demand for extra-duty employment, and especially for uniformed officers, the desirability of requests employers make to officers varies considerably. Some positions clearly are more desirable to officers depending on the kind of police work required, the hours of work, and the rate of pay. Competition for these positions may be divisive.

Employers, moreover, have no formally organized means for learning about who is seeking employment in the off-duty labor market. Departments, additionally, are largely dependent on whatever information area commanders and supervisors have about prospective employers to determine whether or not a particular application for off-duty employment should be granted or denied.

These market conditions of demand and supply gradually have given way in some departments to the desire of officers and their police managers to control market conditions surrounding independent contracting. The officers seek to control independent contracting by negotiating through collective bargaining to control officer supply, the conditions under which the department can deny or revoke work permits, and the rate that employers pay for their services. Department managers at the same time seek to control the amount and kind of service that uniformed officers may perform.

Although employers initially may have little incentive to abandon independent contracting which ensures low-cost labor, the highly imperfect nature of information on availability of officers for employment, together with the growing demand for uniformed police service, has led employers in some cities to press police departments to organize the supply of officers.

These separate department, employer, and officer interests in controlling the demand and supply of uniformed officers have slowly converged in some departments around a means of organizing and coordinating these separate interests. That means turned out to be the development of the job of extra-duty coordinator.

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Within police departments extra-duty coordination is organized in one of two different ways, either through a central office under a deputy chief or decentralized under division, area, or bureau commanders. Depending on how competing employer, department, and union interests converge, departments vary in the role union representatives take in off-duty coordination. Under the union brokerage model, the union is largely responsible for brokering employment between the officers and private employers. The police officer union or association bargains collectively in all department contract departments for wages, conditions of work, and grievance procedures for off-duty, as well as for regular assignments. Under the officer contract model, union representatives are on the whole less active.

Among the sample cities, off-duty coordination is most decentralized in the Boston Police Department. Patrol operations in Boston are organized into five command areas. Within each area the station commander assigns one or more superior officers to handle paid detail assignments. A superior officer is assigned to the day and evening platoons to handle paid details. Additional sworn officers may be assigned by the commander to assist in handling paid details. Each area receives its own requests from employers and assigns officers from that area to handle the paid detail.

Whenever there is an excess demand for paid detail officers in an area that cannot be supplied by the officers assigned to the area, the excess paid detail opportunities are, by a memorandum of agreement between the city of Boston and the Boston Police Patrolmen's Association, assigned to a sixth division for assignment to its officers. That division consists by agreement of all those members of the bargaining unit who belong to the division plus those assigned to police headquarters and the members assigned to team police. In the event that these paid detail opportunities are not filled by the division, they are forwarded for distribution by a paid detail service in headquarters.<sup>104</sup> Except for the centralization of payment in 1986 through the paid detail service, each area assigns officers to paid details with the major stipulation that the procedures set forth in the memorandum of agreement be followed. It should be made clear that this system requires the department to assign a substantial number of on-duty officers to coordinate off-duty employment—perhaps as many as 15 on a given day.

### **Office of extra-duty coordinator**

Most departments centralize the responsibility for paid details and assignments under a deputy chief. Either a single person designated as an extra- or off-duty coordinator or a small staff handles permit applications, compensation forms, and assignment of officers. In some police departments, such as those in Colorado Springs, Charlotte, and St. Petersburg, the position of off-duty coordinator is held by a civilian. Whether the office of off-duty coordinator is held by a civilian or by a sworn officer depends on the extent to which the department relies on civilian personnel and the extent of union involvement in paid detail matters.

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There is wide range among police departments in the powers and duties of the off-duty coordinator, yet three core tasks usually are performed: issuance of employer and officer permits, including determination of officer eligibility; selection for paid details; and coordination of payment.

**Issuance of permits**—We have discussed employer and officer permits in some detail and pointed out that most extra-duty coordinators do not undertake proactive investigation of employers who request a paid detail, relying instead on command intelligence or past experience with the employer in treating them as eligible for a paid detail.

Similarly, because off-duty work is considered a voluntary matter, all officers who conform to the application procedure are regarded as eligible. The minimum application procedure under the officer contract system is but some form of signing up for extra-duty work with placement in a rotation file for assignment. The Charlotte Police Department procedure is fairly typical: officers wishing to engage in secondary employment shall sign a register in the Coordinator's Office. The names on this register will initially be listed on a seniority basis.<sup>105</sup> St. Petersburg requires a more formal application:

All sworn personnel up through the rank of Lieutenant who desire to work permit assignment work shall request to do so by memorandum to the Deputy Chief of the Patrol Operations Bureau. Upon approval by the Deputy Chief, the individual's name will be placed in a rotation file.<sup>106</sup>

**Selection of officers for off-duty assignment**—The primary task of the extra-duty coordinator on any given day is to match employer demand with volunteer officer supply. To do so requires information on the availability of officers for off-duty work on each day and a list of job opportunities to which off-duty officers may be assigned. Since demand fluctuates, most extra-duty coordinators seek at least 24 hours' notice from employers. Officers must designate their availability somewhat longer in advance of assignment. St. Petersburg, for example, requires each officer who seeks permit assignment work to complete an availability form ". . . by the Wednesday before the beginning of the pay period to be eligible for permit work during that pay period."<sup>107</sup> But, New Haven requires only:

Employees who desire Extra Police Duty on their regular day off, of off-duty time, shall notify the Extra Duty Officer not later than 1300 hours on the day prior to his seeking such duty. Employees who desire Extra Police Duty while on vacation, shall notify the Extra Duty Officer not later than three days prior to the day(s) that he is seeking such duty.<sup>108</sup>

At the heart of any assignment procedure is ensuring equity in assignments. The more discretion a coordinator has to choose which officers shall be assigned to which employers, the more power the coordinator has to give preferential treatment to officers. Formally, departments try to accomplish equity in assignment by establishing rotation files in which officers are

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ordered according to some previously agreed-upon procedure. Assignment is then made in order beginning with the officer at the top of the rotation list. After an assignment, the officer is moved to the bottom of the list and must await assignment until his or her name moves back to the top of the list.

The creation of a rotation file however may not guarantee equity in assignment. The criteria used to establish lists and select from them affect the discretion of the coordinator and, correspondingly, the equity in assignment. Separate rotation files may be established by rank or for special duty. There may be separate files for supervisory ranks required in supervising paid details or for special duty such as detective or plainclothes work. St. Petersburg, for example, has a rotation file for each of the ranks of lieutenant, sergeant, and patrol officer.<sup>109</sup> Boston decentralizes assignments; accordingly, it requires that:

All employees will signify in writing from time to time their desire to accept or not to accept paying police details and a current file on this subject will be maintained in each unit, district division, and bureau. The exchanging of paying details or the use of substitutes between employees is permitted providing it is done in accordance with existing procedures.<sup>110</sup>

What is implied in these rules is that while signing up may create an arbitrary ordering, the maintenance of the same order over an extended period of time ensures equity in selection. Colorado Springs stipulates that a seniority list is to be created with "assignments to extra duty . . . made from a seniority list established by the extra-duty work record of each officer."<sup>111</sup> Clearly, while judgment enters into creating such a list, if the rotation rule requires assignment in order, initial biases are soon overcome. The more frequently officers have to sign up—daily or weekly rather than yearly—the greater the leverage of the coordination officer in ordering officers for assignment.

Ensuring equity in assignment requires more than just avoiding bias in the selection of officers. Bias must be avoided in selecting employment opportunities too. (Working conditions and pay are better for some jobs than for others.) While most departments have a rotation file for assigning officers, few have clear procedures for ordering employer demands. Without control over the ordering of opportunities, the coordinator can exercise preference in assignment. St. Petersburg tries to ensure that no such preference is made by requiring that: "the rotation file sequence be strictly adhered to in the selection of personnel for permit assignments, and permit assignments will be filled in the order they are received."<sup>112</sup>

Likewise, to avoid preferential treatment, the discretion of the officer to accept or reject assignments must be controlled. To control this discretion, which could lead to reassignment, most departments preclude reassignment on the same day as the refusal was made.<sup>113</sup>

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Some departments allow exceptions to the equity principle. Exceptions are granted when an employer makes a request for specific officers and when the extra-duty officer determines there are no reasons to assume any conflict of interest. Typical of the provisions in union contracts that govern such exceptions is New Haven's policy:

Without exception, all Extra-Duty shall be recorded and assigned through the Extra-Duty Officer. Any firm, corporation, or other person may request an individual police officer by name and the Extra Duty Officer shall honor such request, providing it does not interfere with the Officer's regular work schedule. The provisions of this section shall apply to the New Haven Coliseum, but not to those firms, corporations or other persons whose business is conducted at sites that are transitory in nature.<sup>114</sup>

Other exceptions are permitted, such as for regular assignment to the same paid detail (often this arrangement is called a holddown):

For the purpose of this Article and this Section, a 'hold-down' is defined as any assignment for which an officer is requested by name, by a firm, corporation or other persons in which he works and receives payment in excess of 16 hours during any one-week period, commencing from 2400 hours Sunday to 2400 hours the following Saturday. Any police officer who falls within the definition of a 'hold-down' shall be ineligible for other extra police duty except that work which requires large numbers of personnel, or other such work, and for which no other police officer is available.<sup>115</sup>

### **Payment of extra-duty officers**

Officers are paid in cash by their off-duty employers under the officer contract model. Normally employers provide no fringe benefits, nor do they withhold for Federal income tax, and, where applicable, State or local income taxes. They may also fail to withhold for social security. Withholding is attractive to some officers, especially if they are on a regular cash detail, because it may provide additional retirement benefits—particularly in the case of death or disablement prior to retirement from the police department.<sup>116</sup>

Only one of the departments permitting officers to contract independently required disclosure of income earned in extra-duty employment. Under the department contract model, agencies do not require financial disclosure for contract employment because their disbursement accounting procedures permit calculation of the earnings for each officer. The Metro-Dade Police Department requires financial disclosure reporting only for outside employment (and not off-regular-duty law enforcement service, for which it disburses payment).

Full-time departmental employees engaged in any outside employment, either self-employed or for any person, firm, corporation, or entity other than Dade County, shall file under oath, a Full-Time County and Municipal

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Employee Outside Employment Statement . . . and, if applicable, such other financial disclosure statements (tax return, Financial or Source of Income Statements, or State forms) as appropriate.<sup>117</sup>

The Metro-Dade department also requires that department employees with the rank of captain and above file one of the following financial disclosure reporting forms: current Federal income tax return, a financial statement form on source and amount of income, a financial statement on assets and liabilities, or comparable forms utilized by the State of Florida.<sup>118</sup> The assistant director is responsible for reviewing these forms for adherence to county and department guidelines and for filing the forms or tax returns with the Dade County supervisor of elections, the county manager's office, and the human resources bureau.<sup>119</sup>

Under the department contract model, officers are paid for their off-duty employment by their government employer. The government's fiscal agency, in turn, collects from each private or public employer for off-duty employment.

### **Collection and disbursement accounting**

None of the department contract police agencies charged the officer for administering the collection of off-duty employment wages or for their disbursement. Rather, cities or counties that assume responsibility for compensating officers for outside employment under the department contract model usually obligate employers for some administrative costs of collection and disbursement and, in some cases, social security, fringe benefits, and State or local service taxes.

Departments exercise numerous options in determining what is included in these charges and their amounts. New Haven, for example, charges a 5-percent administrative overhead and collects the 7.5-percent State service tax (on which it earns interest pending quarterly payments to the State of Connecticut).<sup>120</sup> Metro-Dade had a fixed 20-percent surcharge in early 1987, but a pending request for the county manager to authorize a 25-percent surcharge.<sup>121</sup> The surcharge is intended to cover costs of program administration, social security, and retirement contributions required by the county. The surcharge does not include the cost of insurance coverage and wear and tear on uniforms, radios, or other equipment used in their off-regular-duty police service. These costs are assumed by the county.<sup>122</sup> Cincinnati collects for fringe benefits (retirement, accrued liability, worker's compensation, and unemployment compensation) and a 25-percent administrative charge for a total of more than 55 percent.<sup>123</sup>

No department provided a specific accounting rationale for their overhead charge, and it is unclear how their fiscal agencies calculate the annual costs for paying details. No case was uncovered where the overhead charge specifically included expenses for the office of off-duty coordinator. Contract departments ordinarily provide officers or civilian personnel to staff an office

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of off-duty coordinator without recovering the costs of providing that service. Similarly, it does not appear that any department calculates the cost of providing work permits or for investigating complaints involving paid details with a view to recovering those costs through a surcharge to employers.

The overhead costs charged private employers vary among departments, ranging from as little as 4 percent to more than 50 percent. No department had done a detailed cost accounting of its off-duty employment program on which to base its surcharge, and the departments chose different costs to recover. Few, if any, departments in the survey had a surcharge sufficient to recover all of the costs of administering the paid detail program within the department and to recover other costs such as those of insurance and uniform and equipment use. Cost recovery in most departments seemed associated with recovering the costs of billing employers and paying officers.

Most of the survey police departments permit only the contract of the labor of the uniformed officer. A few departments permit contracting for department equipment. Metro-Dade, for example, rents vehicles including patrol cars, helicopters, airplanes, boats, and the horse and trailer for mounted patrol tow vehicles (including the horse and the trailer). The 1987 charge for a marked patrol sedan was \$0.53 per mile, or \$5 minimum. Rates for the specialized vehicles are fixed at "a reasonable and customary cost of operation of the vehicle and service period."<sup>123</sup>

### **Procedures for disbursement**

Departmental policies and practices for determining how employers are to be billed for paid details and likewise the amount to be recovered are varied. Most departments require the officer to file a report with the off-duty coordinator about the hours worked. The controller of the city of New Haven, for example, requires that each week the officer file a private-duty job ticket for each employer and provide copies for the controller, the employer, and the employee. Most departments rely on the integrity of the officer's report of hours worked for a particular employer and require the signature of the employer.<sup>124</sup> Each individual officer then is responsible for turning in his or her private-duty job tickets to the paid-duty officer who forwards them to the city controller's office for billing the employer and paying the officer.

A rather different procedure is followed in St. Petersburg where the permit assignment coordinator prepares a worksheet for each assignment. The officer working the permit assignment then is responsible for supplying information about carrying out the assignment and for delivering it to the proper supervisor so that he or she will be credited with the hours worked. The officer's supervisor is responsible for crediting the officer's payroll card and then returning the worksheet to the permit work coordinator.<sup>125</sup> Clearly this procedure permits considerable control at the department level. There is less control over whether the contract is actually fulfilled, because no

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employee certification of hours worked is required. There is some control on overreporting of hours, as the contract calls for a fixed number of hours of employment, and any officer who requests payment in excess of the contract hours must submit an explanation.<sup>127</sup>

### **Payment schedules for paid details**

Policies and practices that set wages for secondary employment also differ among the departments.

The wages for some officer contract departments are set by direct negotiation between the officer and his or her employer while in other departments wages are set by formal contract between the city or county and the union (or brotherhood) of officers. The Atlanta Bureau of Police Services allows officers to contract for the wage as well as for the extra-duty job. The extra-job permit,<sup>128</sup> which must be approved by all persons in the applying officer's chain of command and by the division commander,<sup>129</sup> requires information about hourly salary and other compensation; but, according to the department's standards for review of permit requests, this information does not constitute grounds for rejecting the permit.<sup>130</sup>

Departments that contract for extra-duty policing have a wage schedule for extra-duty employment based on rank of the officer. The wage schedule is established either through collective bargaining between the governmental authority for the police department and the union or brotherhood representing police officers, or it is set directly by the department.

Although wage and salary matters always loom large in contract negotiations, it is clear that those involving extra-duty work are substantial. Not only do negotiations over assignment of officers to extra duty and their wages constitute a major matter for bargaining, but they occupy a considerable place in the regular meetings of unions. One officer reported that it is the major source of conflict within the union and a regular matter for discussion and argument at union meetings. The union representing officers also allocates resources to handling grievances involving extra-duty work.

Wages set for extra-duty work are substantially varied among the departments for which we have information. Although some of this variation reflects differences in base wages among departments, the bulk of the variation cannot be explained on that basis. A substantial part of the difference can be accounted for by the rules established for calculating wages. Some departments, such as St. Petersburg, have substantially higher rates than others because the paid detail hourly rate must be one and one-half times that of the officer's regular hourly rate. In general, off-duty hourly rates for patrol officers negotiated by collective bargaining are above their on-duty rate. Officers above the rank of patrol officers may be compensated below the minimum for their rank, however, when working paid details. Other departments display little differential in hourly wages by ranks. New Haven,

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for example, has only a \$0.75 hourly differential for off-duty employment between the rank of patrol officer and that of Lieutenant.<sup>131</sup> By contrast there is roughly a \$9 hourly rate differential between the off-duty wage of a patrol officer and a lieutenant in St. Petersburg,<sup>132</sup> and a \$6 hourly rate difference between a patrol officer and a lieutenant (rising to \$12 hourly difference for a police major) in Metro-Dade.<sup>133</sup> Seattle sets compensation at the “. . . minimum rate of pay equal to the top step of Police Officer or the top step of Police Sergeant” and also provides that “the total compensation in meeting these rates may be comprised of pay and other benefits, such as food.”<sup>134</sup>

Wage rates also slide according to work criteria, as previously noted. Thus there are higher rates of pay in New Haven for holidays and rock concerts<sup>135</sup> and in Cincinnati and Seattle for major athletic events.<sup>136</sup> New Haven also provides for time and one-half the hourly rate for extra police duty for more than 8 hours in any one day for the same employer,<sup>137</sup> and Boston provides an additional dollar per hour for outdoor work.<sup>138</sup>

Wage rates for paid details also vary among contract departments according to the minimum number of hours an employer must compensate any officer on extra-duty assignment—regardless of the number of hours actually worked. The minimum ranges from as few as 2 hours to 5 hours in New Haven.<sup>139</sup>

## **Policy and management issues in secondary employment**

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Earlier we traced the development of secondary employment in U.S. police departments. Our examination disclosed considerable differences both in how they are organized and in management policies and practices over extra-duty employment. Like many police department practices, those regarding secondary employment have evolved without much systematic study or research and development. Consequently, there are no major models or guidelines that department administrators might choose among to implement, to structure, or to control secondary employment.

This absence concerns most department administrators. They are concerned, for example, about the legal obligations and liabilities the department incurs when public or private agents employ their uniformed officers to exercise police powers. Some also are concerned about whether or not police officers can enforce the law universally when they are employed for private as well as public ends and about how their officers can be held accountable to police authority when they work for others. We turn now to consider a number of these problematic features of secondary employment.

### **Employee injury in secondary employment**

Little is known about the nature and extent of injury to police officers in their off-duty employment. All of the chief administrators we interviewed were aware that the injury of officers while on extra-duty employment creates problems because of their lost time from regular duty and compensation for the injury. Although all departments maintained records of injury status and worker's compensation claims, none routinely examined how paid detail employment affected their availability of manpower or how much officers were compensated for such injuries. Absent such information, little can be said about what is the risk of injury in extra-duty employment and the nature and amount of compensatory claims for injury and disability. Despite the lack of information, top police administrators disclose these are matters of concern.

Generally, the position a department takes on matters of injury to police employees while on extra duty depends in the first instance on its legal obligations as an employer. Those legal obligations depend in turn on what contractual obligations the department assumes for the off-duty employment of its employees. The eligibility of officers for departmental sick benefits and compensation for injury depend also on benefit coverage by the department.

Under worker's compensation statutes, employers have obligations to compensate for work-related injury and disability. Because off-duty employ-

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ment involves work for another employer, the question arises as to whether or not the secondary employer is solely responsible for compensation if there is injury or disability. The question of sole responsibility depends on the status the police department assumes as an employer in secondary employment.

It is reasonable to suppose then that when the police department contracts with other employers for the services of the officer, that the department has a primary responsibility to compensate the officer for injury. Even when the officer acts as an independent contractor, the department may be responsible for compensation. Where the department requires that the officer act in accordance with the rules and regulations of the department and has special regulations governing such employment, the department is ordinarily assumed to retain its obligations, particularly if the injury arises in connection with an officer acting in line of duty; i.e., exercising police authority. Some police departments make the status of their law enforcement officers explicit in granting a permit. St. Petersburg advises the applicant for a permit as follows:

**Status of law enforcement officers performing police permit services—**

Law enforcement officers performing permit service under the terms of a permit shall be deemed to be on duty and their principal responsibility will be to the Police Department and the general public. Permit service assignments may be terminated at any time in the interests of the police department and the general public.<sup>140</sup>

Such an explicit statement about the law enforcement status of officers on off-duty employment places a burden on the police department to define conditions under which the injury may have occurred outside of "duty" in "off-duty" employment.

When the officer is not clearly acting by exercising his police powers under departmental authority, the matter is moot. To clarify the status of claims under these circumstances, some departments have explicit provisions on disability benefits in off-duty employment. Seattle provides that in the case of the police retirement pension: "Disability benefits shall not be paid when the policeman is disabled while he is engaged for compensation in outside work not of a police or special police nature."<sup>141</sup>

The Charlotte Police Department tries to distinguish between those worker's compensation claims for which the department is responsible and those for which a private employer has the designated responsibility:

1. Officers working off-duty for a private employer are not included under the City's Workmen's Compensation coverage for injuries received in the course of whatever duties they are expected by their private employers to perform. (They may be covered under the private employer's Workmen's Compensation coverage, but this is an issue which will have to be worked out between the officer and his employer in each individual case.)

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2. An off-duty officer (whether he is being paid by a private employer or not) will be included under the City's Workmen's Compensation coverage if he assumes the role of a Police Officer and performs a function primarily for the benefit of the City of Charlotte rather than for the benefit, or to meet the expectations, of a private employer.<sup>142</sup>

It often is no simple matter to determine when an officer is performing a police function primarily for the city and when for a private employer. It is perhaps especially difficult to make such distinctions when private employers sponsor public events. For example, are police officers hired by a corporation for a professional sports team to deal with crowd control acting in a public or private interest if they are injured by a fan attempting to gain entry to the team quarters?

Matters are rather different when a police department contracts with employers for police service. Some of these departments assume responsibility for all worker's compensation claims. Typical of this position is that of New Haven, which assumes responsibility for all injury and disability compensation—including permanent disability—for its uniformed officers when they work for another employer. The corporation counsel of the city of New Haven, however, attempts to recover from private employers when the injury is sustained while the officer is in their employ and the injury appears to be related to a private interest.<sup>143</sup> Some police bargaining units negotiate contract provisions ensuring such department compensation. The Dade County Police Benevolent Association executive bargaining agreement with Metropolitan Dade County provides: Personnel assigned to off-duty law enforcement jobs shall be fully protected in case of line-of-duty injury during such assignment by Workman's Compensation and County disability leave coverage.<sup>144</sup>

One of the benefits to which police officers are entitled is sick leave. Officers ordinarily take sick leave for minor injuries sustained in performing police service for a private employment as well as for their police employer. Taking sick leave, of course, deprives the department of the officer's services for the period of the leave. All of the survey departments ordinarily grant such leaves as a matter of course, regardless of how and where the injury occurred. Yet for some, there is concern that the department receives no compensation for the loss of service sustained when an officer is injured in off-duty employment that private employers do not cover by worker's compensation. Even when department coverage is applicable, the compensation does not cover loss of service.

### **Legal liability**

With the growth of tort suits against police officers and departments, police administrators express misgivings about potential department liability for the actions their officers take in private employment. Even when such claims

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for damages are dismissed, there are costs of litigation and perhaps opportunity costs for the department as well as for the officer.

Up to the present, many although not all police departments have had no need to defend against tort suits arising from their liability for acts taken by their officers during off-duty employment. A growing body of case law on tort actions in State courts on the status of police officer arrests when working off duty as private security officers suggests, however, that it is a matter for potential concern.<sup>145</sup> Moreover, although there appear to be no civil liability actions for personal liability against police officers in off-duty employment under section 1983 of the Federal Code, the scope of section 1983 is such as to invite potential litigation. The U.S. Supreme Court has implied that liability under section 1983 need not be limited by State statutory principles of causation and that section 1983 may be a remedy for official negligence as well as intentional harms.<sup>146</sup>

The traditional common law doctrine of *respondeat superior* holds that employers are legally responsible for tortious actions by employees taken in the course of their duties, but it is only recently that public tort remedies have been expanded. Where public police are contracted to private employers, however, the question of whether the government is responsible for the actions of officers, as well as the private employer, is problematic. Nevertheless, it seems reasonable to assume that both are open to tortious actions under particular circumstances, especially where harm resulting from the failure to provide adequate security or protection is at issue. Such would be the case when both public police and private security agents are employed to provide security at a privately sponsored event.

When a suit involving a police officer ensues as a consequence of actions taken in an official capacity, it is of central concern whether absolute or only qualified immunity can be claimed for the employer's liability or the police officer's personal liability. When officials can invoke absolute immunity, there is considerable cost saving, as one can obtain dismissal at the beginning of the case. A limited liability defense costs on the average considerably more, as it is a matter for trial determination.

An official's claim to absolute immunity depends on what government function is manifest or latent in the particular acts or duties at issue in the litigation and also on whether or not State or Federal statutory or constitutional law is alleged to have been violated. Absolute immunity has been held to prevail when the acts are of a judicial, legislative, or prosecutorial nature, but it is not clear precisely to which officials this applies. Of particular concern here is whether or not absolute immunity applies to police officers. As Schuck<sup>147</sup> concludes, the U.S. Supreme Court's decisions concerning the immunity of nonprosecutorial executive officials such as police officers remain problematic.

Little light is shed on the question of whether and when police officers and their employers enjoy absolute or qualified immunity in U.S. Supreme Court

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cases. In *Pierson v. Ray*, an action involving local police officers and a judge as officials, the Court held that judges enjoyed absolute immunity at common law, but that the police enjoyed only qualified immunity;<sup>148</sup> yet it failed to state the grounds for that distinction. Subsequently, in *Scheuer*, the Court concluded that the issue was "far more complex" concerning the status of top echelon officials because their discretion "is virtually infinite" and observed that there was a "similarity in the controlling policy considerations in the case of high-echelon executive officers and judges" who enjoy absolute immunity.<sup>149</sup> The officials in this case were national guard officials, a governor, and a university president; and the Court implied that they require no less and usually greater protection than do police officers.<sup>150</sup>

Appellate case addresses directly the question of the immunity status of a police officer in an action arising in the course of working for a private employer; for, at common law, private employers and employees have no such immunity whereas a public employee may lay claim to at least qualified immunity. Consequently, when a public police officer is at work for a private employer, at least two issues are inevitably involved. One is whether the officer is acting in the capacity of a private employee or as a public official and the other is whether the claim of qualified immunity is justified if the officer is acting as a public official. What seems apparent is that even when there are reasonable grounds for a police department and the police officer to claim qualified immunity based on a threshold of acting in "good faith," a full and often costly trial on the merits will be required to resolve the question.

As a recent New Orleans case illustrates, a police department, a private employer, and an officer may be held liable if the officer is found to have behaved negligently in the exercise of police powers performed while on off-duty employment.<sup>151</sup> A brief summary of the case and the court's findings may be instructive.

By his sworn testimony, Officer Steele, an off-duty officer of the City of New Orleans Police Department, was working a paid detail at The Original Melius Bar in the French Quarter. He had been an employee for the bar for about 2 years and testified he was ". . . working around the door (entrance) on the outside of the bar when he heard a call for help from the inside." and went in. He testified that the plaintiff, Beals, was in a fight and that when he sought to break it up, the plaintiff struck him in the face and fought with him until with the help of another patron of the bar he subdued and placed Beals in handcuffs.<sup>152</sup> The plaintiff acknowledged he was in a fight because he had been assaulted by a bar patron, but that the officer struck him on the head with a billy club without warning and that when he was down he was kicked and beaten by the officer. Beals also said that while Officer Steele put the handcuffs on him, he tore his skin and caused heavy bleeding from his side.<sup>153</sup> There also was testimony offered that another police officer was on duty but did not help. Conflicting testimony was obtained from witnesses who included friends of the plaintiff, the owner of the bar, and a bar employee. Medical and employment histories were also

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obtained. The Civil District Court of the Parish of New Orleans concluded that "... plaintiff's representation of what happened in the case was more credible" and found that: "Under the circumstances Officer Steele acted in an unreasonable manner, and the court finds especially that the force used by Officer Steele was excessive."<sup>154</sup> Significantly, the court found further "... that at all relevant times herein, Officer Steele was within the course and scope of his employment with the City of New Orleans and The Original Melius Bar and, accordingly, Officer Steele, the City of New Orleans and The Original Melius Bar are liable, in solido, to plaintiff."<sup>155</sup> It was stipulated that the plaintiff be awarded \$32,515.88 (of which \$6,515.88 was for medical expenses, \$6,000 for loss of wages, and \$20,000 for pain and suffering), and that he was entitled to legal interest and the cost connected with the prosecution of his claim, including the cost of the proceedings.<sup>156</sup>

Determining departmental and officer liability where the officer is uniformed on extra-duty employment is no simple matter because much depends on the employment contract. It would seem to make at least some difference in laying claim to a qualified immunity whether the officer is an independent contractor or the department has contracted for the employment. As the *Hallcrest Report* observes, there are several key determinants of departmental liability: (1) the party controlling the manner in which the work is to be provided, (2) the method of obtaining employment, (3) the degree of control or direction exercised by the employer, and (4) the method of payment.<sup>157</sup> These determinants vary considerably among police departments according to whether off-duty employment takes place under the officer contract or the department contract model. Moreover, the department's general orders may further specify the determinants. The implications of each of these determinants for claims against police departments and their officers is examined next.

### Control of work

Quite clearly, the independent officer contract model places the private employer and the officer as the controlling parties, absent any general orders of the department that modify the status of the parties in controlling the manner in which the work is to be performed. Correlatively, the department contract model presumes that the officer is primarily an employee of the department. In either case, an explicit statement or order about the off-duty status of the officer is clarifying. The St. Petersburg Police Department explicitly states (as previously noted) on the official permit of employment: Law enforcement officers performing permit service under the terms of a permit shall be deemed to be on duty and their principal responsibility will be to the Police Department and general public."<sup>158</sup> Even with an explicit statement about the primary responsibility of the officer, the fact that there are responsibilities to the private employer opens the door to litigation over whether the department and the officer have qualified immunity for a particular action.

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It is insufficient to presume that because the officer is uniformed his acts will be deemed official for purposes of qualified immunity. In *Robinson v. Davis*, the fourth judicial circuit held that "being clothed in official garb" does not signify that an officer is acting in an official capacity.<sup>159</sup> This presumption is based not only on the possibility that the officer may be performing duties for an employer that do not fall within the scope of official authority, but also on the possibility that an officer may in fact be working in a plainclothes rather than a uniformed capacity. Hence, there is an implied presumption that the officer must identify interventions in off-duty employment as arising from his sworn authority.

Because enforcement actions may be ambiguous, especially in off-duty employment situations, it is incumbent on the officer to make clear in which capacity he or she is acting. If a police officer who is working for a private corporation ejects a fan from the stadium for disorderly conduct, it may be difficult to determine on which employer's behalf—the corporation's or one's police department—the officer is acting.

Cognizant of the fact that police officers may be held liable for their actions in off-duty employment, some departments attempt to specify the conditions under which they will defend the off-duty officer's actions. The Charlotte Police Department general order #16 makes such an effort:

3. An off-duty officer (including one who is being paid by a private employer) who assumes the role of a Police Officer and takes action within the scope of his employment and duty or engages in the good faith performance of his duties on behalf of the City will be defended by the City against any civil claim or judgment arising or resulting therefrom.

J. Officers will not be defended against claims or judgments arising from cases when the officer willfully:

1. Acts or fails to act because of actual fraud, corruption, or actual malice.
2. Acts or fails to act as a result of or at a time when his self-indulgence substantially impaired his judgment (as, for example, an officer or employee who causes damage or injury while intoxicated or under the influence of drugs while on the job).
3. Acts, or fails to act, except in emergencies or the existence of extenuating circumstances, directly contrary to instructions from his superior or directly contrary to the advice of the Police Attorney.
4. Acts or fails to act in such manner as to constitute a criminal act.<sup>160</sup>

Although such specificity suggests the police department is making an effort to define both standards of behavior and departmental control in off-duty employment, it does not resolve ambiguity about which party controls the manner in which the work is to be provided and performed in any situation that may arise in off-duty employment. There perhaps is somewhat less ambiguity in the general order of the Colorado Springs Police Department stating:

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**Responsibility of business or agency**—Enforcement of regulations which are made by the business or agency with whom the extra-duty assignment is made shall be the responsibility of that business or agency. However, when the conduct of any person(s) threatens a breach of the peace, or similar violation of the law, the Officer may intervene to quell the violation and, if necessary, make arrests. In the event of action of this type, officials of the business or agencies will be asked to give support of the Officer(s) by bearing witness and/or signing complaints.<sup>161</sup>

Apart from the uncertainty in determining when an officer is acting on behalf of a private employer, there are problems in determining when the department's or an officer's actions meet the good faith standard. It is far from clear in judicial opinion. As Schuck wryly observes, the "objective prong" of the good faith test requires that the circumstances surrounding the disputed action be assessed, and ordinarily that cannot be done in advance of a trial.<sup>162</sup>

The vagueness implicit in determining whether or not a police officer acted in good faith and may enjoy qualified immunity is ordinarily problematic when the officer is acting solely as an employee of the department; the difficulty is compounded when the officer acts both for private and public employers. Then the problem becomes one of determining which party—the private employer or the public police department—controls the manner in which the work is being provided and performed in any given situation that gives rise to a tort action. It would seem that an explicit statement affirming the primacy of the police department in the private employment situation, together with general orders clarifying control, is more likely to resolve ambiguity. It should be made clear that the more the department asserts primacy of authority in off-duty employment, the more it assumes liability for the actions of officers. There is then, a tradeoff in which, under the department contract model, the police department assumes much of the liability for officers' conduct in private employment situations in return for the potential gain of securing qualified immunity for actions taken. Obtaining qualified immunity may be fairly costly, however, because it is likely to require a judicial proceeding.

Recognizing the risks for tort liability suits that arise from off-duty employment as a sworn officer, a department may make approval of such employment contingent on assurances that there is sufficient liability insurance to cover potential suits against the officer and the department.

Among the survey departments, only the Arlington County, Virginia, Police Department has an explicit provision for both worker's compensation and liability insurance coverage:

No employee shall work in any law enforcement capacity for any private individual, private business, or any other secondary employer who does not carry Workmen's Compensation and liability insurance with liability endorsement coverage for the employee in amounts necessary to protect the employee for acts performed on behalf of the employer or as a police officer to the extent such coverage is reasonably available.<sup>163</sup>

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However, it is difficult to enforce such a provision especially under an officer contract system. More importantly, just what insurance amounts would satisfy this provision is unclear as is the determination of whether or not such coverage is "reasonably available." What is "reasonably available" is intimately connected with the liquidity and profitability of each particular employer.

### **Method of obtaining the employment**

The personal liability of the police officer is clearly dependent on his or her private employer's capacity to indemnify for judgments when the officer is an independent contractor working without permit from the department. All of the departments included in our examination required such a permit; yet, procedures used to grant an employment permit are inconsistent. Only two of the departments routinely gather information about the employer prior to granting a permit. One department tries to make an onsite investigation prior to approving permits for off-duty employment. Most departments, however, grant a temporary permit while the application is being reviewed.

Although all departments require that supervisors and senior officers approve permits and that permits be periodically renewed, departments vary in the conduct of that review. None, to our knowledge, has procedural requirements. Some departments turn down a higher proportion of permit applications than do others. Determining how much control is being exercised in approving employment is problematic and may cast doubt about whether or not the department makes a good-faith effort to control such employment in the public interest. When the police officers' union is involved in dealing with employers and in making assignments, the department's role may be further compromised.

Most departments do not advise employers about rules and regulations governing off-duty employment. Although all departments have prohibitions against certain kinds of employment, none, to our knowledge, specifies what will constitute the limits to police action and to private employer work requirements in the private employment situation.

It seems reasonable to conclude that the larger the investment a department makes in controlling who can work where and at what jobs, the more it will move toward a department contract model. Hence, the more liability a department will assume for its officer's actions and the more it can lay claim to qualified immunity.

Correlatively, the more control the department assumes over off-duty employment, the less it can shift liability to the private employer.

### **Degree of control or direction exercised by employers**

Another of the matters at issue in liability suits is if and how the department supervises an officer's conduct in off-duty employment. Because we shall

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discuss the matter of supervision of extra-duty employment as a separate matter, we simply note here that, generally, departments operating under the officer or department contract models do not actually supervise an officer's conduct during extra-duty employment. Exceptions routinely occur when an employer hires several or more officers who must be supervised in an off-duty employment situation; for example, to police mass public events. Whenever a department issues a permit for such employment, it usually stipulates the number and rank of supervisors that must be employed. This stipulation may be specified by collective bargaining agreement. As noted earlier, the agreement between the city of New Haven and the New Haven police union specifies that whenever there are four or more nonsupervisory personnel assigned to extra police duty for the same hours of work, a supervisor whose sole responsibility is supervision must also be assigned. When 10 or more officers are so assigned, a sergeant and a lieutenant or captain shall also be assigned with one additional supervisor for each unit of 10 officers thereafter.<sup>164</sup>

Although departments report that little supervision is provided when only one or two officers are assigned to work for a particular employer, most departments require that the officer seek assistance or supervision if a police matter arises in the course of their extra-duty work. Accordingly, they permit the officer to carry a department radio to mobilize assistance. Although there is little proactive supervision, reactive supervision is provided if the officer seeks a supervisory opinion or if the officer calls for assistance and a supervisor is expected to respond.

Most police departments do not require that an officer on extra-duty assignment notify the dispatcher that he or she is available for dispatch or might make requests for assistance. Consequently, the department is mobilized only by the officer. An exception is Colorado Springs where the general order on extra-duty procedures provides for diversion of mobile officers from extra-duty assignments:

**In-progress calls for service**—Officers working extra-duty assignments who are mobile and/or radio equipped may be diverted from their assignments to respond to *in-progress* incidents only in life-threatening situations and *only* when there are *no on-duty units immediately available*. The decision to divert extra duty officers will be at the discretion of the dispatcher.

**Immediate return to duty**—If extra-duty officers are diverted from their assignments by the dispatcher to respond to in-progress incidents, the dispatcher will send the first available on-duty unit to the scene to take over the call; extra-duty officers will return to assignment immediately.<sup>165</sup>

Inasmuch as most extra-duty officers are not equipped with police vehicles, such diversion from extra-duty assignment is uncommon.

In all but one of the survey departments, an officer on extra-duty assignment is not ordinarily under the control of either dispatch or supervisory personnel except on request by the officer. Just how much this lack of department

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control affects claims to qualified immunity is unclear, but when a police department contracts for the police service or asserts primacy of authority over the officer, the lack of supervision and control may prove detrimental to a good faith defense.

### **Method of payment**

Under the officer contract model, the employer pays the officer directly and there is a presumption of private employer liability for the acts of the officer employee. This presumption is particularly strong when the officer does not exercise any police powers. Under the department contract model, the department contracts for services, bills employers, and pays the officer for the work, regardless of whether the department is reimbursed by an employer. In fact, some departments report that the city attorney's office seeks recovery for any unpaid or contested billings for extra-duty work. There is a clear presumption that the city remains the employer and is contracting the service of its employees. How that contractual status affects the liability of the city and of the private employer is unclear from case law, but it appears that the city will become a party to any civil suit. At least there is a clear presumption of potential liability in the method of payment.

### **Joint and several liability**

Under departmental contract systems, the department clearly assumes a liability for officers in private employment. It appears that it assumes liability for some actions under permit employment when clearly the private employer assumes liability. Moreover, when police officers are on extra-duty assignment where other employees, such as private security personnel, are responsible for security or enforcement, lines of responsibility and control are blurred and give rise to suits entailing joint and several liability.

When litigation involves the police department as one of several parties, issues arise as to how responsibility is divided; for example, between the public police officers contracted for extra duty, the private security agents, and the attendants or ushers at a professional sports event or a rock concert. Rarely are lines of authority and responsibility made clear in such situations, so it is difficult to determine the liability of the department and its officers and perhaps more difficult to lay claim to qualified immunity. Much, of course, will depend on the nature of the action brought, but the ambiguity in command and control and division of labor in such situations complicates both the settlement process and the allocation of responsibility for payment of awarded damages. The municipality may be held responsible for damages of other parties under joint and several liability when the other parties are unable to pay their share of the damages.

### **Indemnification**

A major policy issue for police departments is whether or not and in what ways it will shift indemnification to private or other agency employers for

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officer actions on off-duty assignments. We have discussed some of the difficulties departments face in avoiding liability, but there remains a problem of indemnification for losses.

As civil suits against governments for the conduct of police officers have become more common, it has also become increasingly difficult for them to indemnify liability losses through insurance coverage. Correlatively, private employers may also have difficulty in securing such coverage and, when there is joint and several liability, the city can be responsible for the losses of the private employer as well.

There is an additional complication that arises from contracting officers to private employers: the police department may be held responsible for injuries or damages suffered by the private employer or other employees as a consequence of actions by the police officer. The St. Petersburg Police Department requires that any applicant for police employees waive such claims by agreeing. . .

to hold harmless and indemnify the City of St. Petersburg and its employees from any and all injuries or damages suffered by the corporation or its employees which may be caused by third parties during the term of any permit that is issued as a result of this application.<sup>166</sup>

### **Collective bargaining over off-duty employment**

To a growing degree, governments negotiate with police bargaining units about matters of off-duty employment. The nature and extent of bargaining depends on whether or not the department operates under the officer contract, union brokerage, or department contract model. The most common matter for collective bargaining under these models is compensation for off-duty employment, including rates of pay by officer rank and compensation for court time. Often there will be provisions stipulating the conditions under which an officer may file a grievance pursuant to off-duty employment and provisions for settling those grievances. When departments operate under the department contract model, bargaining also may occur over the procedures for selecting and assigning officers to off-duty employment, over when supervisors shall be assigned, and over the amount of off-duty time permitted. Because there is only one case of the union brokerage model in our sample, we cannot determine if that model stimulates negotiation over additional matters.

What appears to emerge is a trend that bargaining units for the police increasingly negotiate over most matters governing off-duty employment. Consequently, an important question for police administrators is if and to what extent it is in the department's interest to negotiate over such matters. This is an especially important question for departments that operate under the officer contract model. For them, the issue is whether the government and the police bargaining unit should be setting wage rates that private employers pay, when the government unit disclaims responsibility both for

their uniformed officer's work and for supervision of it. In entering into collective bargaining over compensation, is the department then not liable for the officer's conduct as well as any official acts? When negotiations cover conditions of work as well as compensation, a department's responsibilities would seem to broaden accordingly. In any case, unless the city assumes responsibility for off-duty employment, as it does under the department contract system, an important issue becomes whether it is wise to be a party to the private contracts of its officers by fixing a uniform rate of compensation for off-duty work. The point may be moot, but a compelling issue for police administrators is whether by simply permitting officers to exercise their sworn authority in off-duty employment for private employers the department has a broad liability for their conduct. An interesting side issue is the liability the union incurs in such bargaining on behalf of its officers.

### Supervision

Quite apart from the legal liability issues raised by supervision of extra-duty employment, there are issues about if and how the department can provide such supervision. In an earlier section, we discussed that some departments provide explicitly in their general orders that officers shall be supervised while on extra-duty employment. Few departments, however, stipulate how supervision of off-duty employment is to be provided, or who will be responsible for that supervision.

A few, like Cincinnati, specify that officers "engaged in an extension of police service" are under the control and supervision of supervisory officers in the district where the work is performed, or under the supervision of an officer in charge of an outside work detail.<sup>167</sup> Officers are entitled to seek supervision if they wish it. Among those departments that permit officers to serve as independent contractors, the policy generally—though not always—is to assume that off-duty work supervision is the responsibility of the private employer. Regardless of the policy a department has regarding supervision of off-duty officers, only St. Petersburg regularly provides supervision for off-duty employment.

The St. Petersburg department provides each district commander a schedule of off-duty assignments. The commanders route these to the field sergeants on the shifts during which the duty occurs. District commanders and field sergeants are required to check routinely the actions of off-duty personnel on their shift.<sup>168</sup>

A number of reasons are given by departments for failing to supervise off-duty employment. The primary reason is that the department has a shortage of supervisory personnel, particularly sergeants. Consequently, the department is unable to assign off-duty personnel to a supervisor. In addition, seasonal and shift shortages of supervisors cause understaffing at the supervisory level. Challenges to promotion exams and department cutbacks in personnel are other reasons given for supervisory shortages.

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While there is merit to the argument of staff shortages, it seems that most department administrators do not place a high priority on supervising off-duty work. Much of it is, in their view, routine order maintenance work or work performed primarily for the benefit of a private employer. There is judged to be little need for supervising the discretionary actions of officers. Supervision requirements, such as determination of whether the officer is on post or performing work, are thought to be the obligation of the private employer, even when the department is the contractor for police service.

Mention also was made about tactical difficulties in supervising extra-duty officers: officers are scattered throughout a district and their number and location vary from day to day. But these seem to be minor difficulties. A supervisor can easily be provided with a list of all those working extra duty on his or her watch. Since the extra-duty officer is not mobile, but occupies a fixed post, supervision will occur at the work site. Equipped with a department radio, the supervisor can readily make contact and locate extra-duty personnel. Yet, as noted earlier, while the extra-duty coordinator knows the location of those assigned from that office, that knowledge ordinarily is not available except through the work permit of officers who are independently contracted. There usually are checkout procedures for radios and other equipment. In all departments but St. Petersburg and Boston, the command and control structure lacks information about who is on extra duty and where they are located. Consequently, neither dispatchers nor supervisors can readily make use of that information.

A significant policy issue is whether supervision of off-duty employment should be left almost entirely to private interests since they are the primary beneficiary of the employment. Although some departments appear to reject that position in principle, asserting some rules for supervision, except for St. Petersburg none seems to actively supervise. Therefore, most may be jeopardizing any claim to a good faith defense in civil litigation.

Quite apart from the issue of vulnerability in civil litigation, there is the issue of whether or not supervising officers ensures a high standard of police work and conduct when employed for police duty. Given the fact that at least department contract agencies charge for providing police service, it seems reasonable to presume that they could include a supervisor's fee in their surcharge, using off-duty supervisors to provide the supervision.

### **Conflict of interest**

Earlier we drew attention to several major ways that private or public agency employment of police officers may conflict with the public interest. Here we shall review the policy issues in each of these sources of conflict and then turn to the more general question of whether such conflict should preclude departments from permitting officers to perform law enforcement services for hire. A related question is whether or not departments should contract services as if they were what is commonly dubbed a "rent-a-cop" service.

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There is little doubt that there are difficulties in enforcing the law when a police officer is to serve private as well as public interests. And, there is good reason to conclude that almost all private employment of public police has a potential for an officer to serve private—at the expense of public—interests. Yet it is far from clear that who employs the officer is the major basis for that conflict of interest, because there is ample evidence that such conflicts also arise in everyday policing on regular-duty assignments. Many discussions of the discretionary power to arrest can be read as a question of whether the public good or a private interest is served. Perhaps more important is the larger question of whether the public interest is always best served by subjugating private to public interests.

Examples of such conflicts in everyday policing abound. Shall foot patrol officers provide special attention and services to businesses in a community, since without such businesses the community may atrophy? Shall an officer arrest a drunken and disorderly person or have him or her transported to a detoxification center? Shall the officer provide services that are not directly related to law enforcement, such as providing information to the public or helping elderly and disabled persons cross the street? Shall the officer take actions that might prevent a crime from occurring, such as accompanying a business person to a night depository of a bank? Shall the police department provide businesses or other agencies with information about the prior criminal record of potential employees? Shall the closing hours for establishments be strictly enforced? Clearly, many private interests are served by police officers and by the department in day-to-day police work.

Without resolving the issue then, a question can be raised. Does the status of a police officer's employer create a qualitative difference in conflicts of interest, since regular-duty policing as well as extra-duty assignment gives rise to at least some such conflicts? What is perhaps at issue is how the department and the officer are guided in dealing with potential conflicts.

There is reason to contend that the practice of departments prohibiting officers from working for private employers when there are clear potential conflicts of interest is wise, if for no other reason than preserving public confidence in the department. Two principles seem to be unambiguous and commonly accepted. The first is that private employment of officers should be prohibited when their public authority can be regarded as coercion for a private interest. Hence, officers should not perform such services as bill collecting and repossession because the public will be confused both about the authority behind the demand and about their civil rights in the matter. The second principle is that officers should not be permitted to accept employment where an illegal business or activity is operated.

Other principles are fraught with ambiguity. It is not as simple a matter to determine if and when an officer should be prohibited from working for an employer when the employer's activity is regulated by law. Why should an officer be permitted to work the street in front of a bar for a private employer,

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but be prohibited from regularly maintaining the peace inside an establishment while off-duty? Why should an officer be prohibited from working where alcoholic beverages are sold if it is a bar or pub, but be permitted to work in a stadium or arena where they are dispensed? That there are no clear and unambiguous ways for reaching those decisions seems apparent; departments differ in whether or not private or public employment is permitted where alcohol is being sold under a license. There does not seem to be any recognized list of prohibited activities common to all departments.

Perhaps where principles cannot be firmly laid down, guidelines are helpful. A useful guideline is one commonly followed: that officers should generally be prohibited from working for a private employer when the employer is regulated by law and the officer is responsible for enforcing those laws. Officers might be permitted to work for licensed premises where regulatory agents rather than police officers are the primary enforcement agents. Such businesses may wish to employ a law officer for other reasons; e.g., preventing robberies or forestalling disorderly behavior.

To insist that officers be prohibited from working in off-duty situations which could cause the public to misperceive when the officer is exercising police powers and when he is not would seem to be too stringent a guideline. There is, to be sure, risk that uniformed officers working for private employers will be seen as exercising police powers when they are simply enforcing the rules of their private employer. There also may be conditions under which officers elect to legitimately exercise their police powers when a citizen will regard the situation as a private rather than a police matter—especially so if the police officer is not in uniform and is working plainclothes. It is perhaps easier to deal with a situation in which an officer is exercising police powers than when he or she is only misperceived as doing so. The officer can advise citizens that police powers are being exercised when the decision is made to act. But, it is no simple matter to detect misperceptions and their effect. Still, as noted above, such misperceptions are common in everyday policing as well as in the private employment of police officers.

Some police administrators suggest that the way to deal with the problem is to permit private employment solely for the purpose of maintaining law and order in private settings and to prohibit officers from acting on behalf of the private employer. They are then police officers on assignment to enforce the law in specific private settings. Just what stance is to be taken on the question is unclear. What does seem clear is that whether an officer is on or off duty or in or out of uniform is not controlling at law. What is determinative is the nature of the act performed—whether the officer has “acted under the color of law.”<sup>169</sup>

One of the more troublesome conflict-of-interest issues is whether in practice police officers are enforcing the law against private employers and their employees. Department administrators express concern about whether their

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officers enforce the law against their private employers because charges of law violations against them are a rare occurrence.

The primary means departments have for dealing with this issue is to prohibit employment in places where they presume such violations will occur and under conditions that could compromise the integrity of the officer. Some contend that officers are more likely to enforce the law against private employers under a department than an officer contract system. The reasoning is that the officer is less dependent on the particular employer under the department contract system. The officer is less responsible for obtaining the contract and therefore is less dependent on that particular employer for future employment. Such assumptions, however, ignore the importance of investments that officers hold collectively as well as individually in maintaining an off-duty employment system.

### **Misconduct and misuse of authority**

Closely tied to the question of if and how to supervise off-duty police officers is the question of what off-duty conduct to monitor. From the perspective of any police administration, the department has a responsibility to ensure that police authority is not used improperly when the officer works for another employer. When the officer also serves private interests, it is the responsibility of the department to ensure that public interest is not compromised. Generally, it is assumed that the private employer has the responsibility for ensuring that private interests are served by the police officer as a private employee. The challenge for the responsible police administrator is to determine that private employment does not give rise to misconduct that reflects adversely on the integrity of the department or the officer, and to guarantee against the misuse of police authority.

One issue is whether the department has a greater responsibility for monitoring the off-duty conduct of officers when the department contracts to provide police service than when it simply issues a permit allowing the officer to contract independently for off-duty employment. Although the responsibility of contracting departments depends in part on the specific language of the contract, an agreement to provide police service places a considerable responsibility on the department to ensure that the officer provides the service the department agrees to provide.

Specifications for the service to be provided vary considerably among the survey departments. In some cases, only an officer's application to work in a particular job for a particular employer must be approved. In others, the prospective employer signs an agreement that requests a specific police service and agrees to the department's conditions governing contract employment. Most departments, however, pay little attention to these contractual provisions or to how they can be enforced. As noted earlier, enforcement generally is treated as nonproblematic. Departments appear to

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pay attention to such matters primarily when there is an external complaint or when an investigation discloses the need for attention.

Not too much is known about what forms of misconduct and misuse of authority arise from off-duty employment. Most administrators admitted they essentially had a reactive policy to misconduct on off-duty employment. Such matters were rarely attended to by internal affairs, and off-duty employment was not generally viewed as giving rise to any serious problems that required disciplinary or other attention. Yet, a number of chiefs admitted to disciplining officers for their off-duty conduct, though they saw it as a relatively infrequent event.

What is interesting is that disciplinary matters largely involved instances when behavior related to extra-duty assignments was problematic for department operations rather than behavior when working off-duty. The most common examples involved officers making false claims of being ill so that they could work a particular off-duty assignment. A number of officers also misrepresent their prospective employment situation in permit applications. In short, these are violations of department rules and regulations.

It was not possible to gain a sense of the range of these problems in off-duty employment. The following discussion, therefore, is based on what was gleaned from newspaper accounts and reports of police administrators. The identity of the department is cloaked except where judicial standards of proof had been applied to a case. The examples serve only to illustrate the kinds of problems that may arise in connection with off-duty employment.

## **Fraud**

Unless a private employer and the officers are in collusion, the officer contract system provides fewer opportunities for misrepresentation and fraud by off-duty officers than does the department contract system. This is especially true if the private employer pays the officer at the close of each tour of duty or processes payment much as it does for regular employees. It appears that the department contract system—at least as administered in all but one of the sample cities—is more open to misrepresentation and fraud on the part of the officer. Fraud is easier because the officer usually provides a private-duty job ticket and neither the department nor the private-duty employer seems to make an effort to independently verify or certify hours worked. Even when employers are required to sign the job ticket, there often is room for misrepresentation since the officer may be unsupervised and the employer has no way of knowing whether or not the employee has worked the hours indicated. This is especially likely to be the case for routine jobs where an officer works several times during a pay period and the employer does not daily certify hours worked.

In one city, this kind of situation led to charges against several police officers who billed for time they failed to appear for work and for personal time

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that they took from work on a routine off-duty assignment. Under these circumstances, the municipality as well as the private employer is defrauded if it makes regular payments to the officers without such payment being subject to recovery from employers.

Departments can develop procedures to reduce their risk for fraud. Routine off-duty assignments may require closer monitoring and different job ticket procedures that minimize fraud potential. Requiring that officers report on and off duty to station personnel for extra-duty assignments can control some of these practices. However, only closer supervision and other forms of monitoring can control practices of taking unauthorized leave from off-duty employment.

### **Extortion**

Recently newspapers in a major metropolitan city reported that some of the city's bar owners alleged that uniformed police officers were extorting money from them. It was alleged that even though the businessmen had not requested a security detail, officers approached them and promised to provide protection if hired as a paid detail. The bar owners discovered that the officers usually failed to show up for work, yet demanded payment. The officers apparently were circumventing the department's procedures that required these jobs be allocated through the local precinct. Because the department permitted direct payment to the officers, they were able to shake down the bar owners without the paid detail officers of the precinct being aware of their doing so.

Although extortion through the officer contract and union brokerage paid detail programs is uncommon, it does illustrate that such programs are vulnerable if they do not have explicit procedures for prospective employers to secure paid details and if the department is not involved in the billing and payment process. Centralized billing and payment may not prevent extortion, particularly from businesses such as bars that are vulnerable to discretionary enforcement of the liquor licensing laws, but they minimize such possibilities. This is especially true if there are departmental or statutory provisions prohibiting individual officers from directly soliciting law enforcement employment by private employers. Extortion may be more difficult to control in an officer than in a department contract system for off-duty employment. A department contract system that decentralizes paid-detail permit application and assignment to local precincts is probably more vulnerable to corruption of authority than is a centralized system. Investigation of corruption in police departments points to the vulnerability of police departments to local precinct commands.

### **Misuse of coercion**

Officers rarely use coercive police powers in paid-detail assignments. Many assignments are for routine order maintenance or to provide protection. Rarely do officers on paid details have to invoke their power to make and

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enforce an arrest. Although there are exceptions, most paid-detail assignments are unlikely to require the police officer to use force even when an arrest is made. Yet, as the previously cited New Orleans case illustrates, situations of misuse of coercive force arise in off-duty employment.

What concerns some police administrators is a more subtle issue than that of the misuse of coercive power: the possibility that paid-detail officers use their police powers for private interests in ways that border harassment. This is particularly the case when paid detail officers police shopping malls and arenas where their employers wish to discourage congregation by members of the public they consider "undesirable." Such congregation and public behavior can be deleterious to private interests as fear-of-crime studies have been made clear. That more aggressive foot patrol of such areas and places can restore public confidence also is clear. Such programs can be mounted by police departments, either by deployment of duty officers or by contracting with private businesses for paid details.<sup>170</sup>

### **Income tax evasion**

Police officers have been indicted for income tax evasion arising from failure to report their earnings from off-duty employment as taxable income. Several departments said that the officer contract and union brokerage systems are more likely to result in some officers underreporting their income. One department, not represented in this study, was reported as shifting to the department contract system after reviewing with the Internal Revenue Service the way that its officer contract system gave rise to reporting failures.

A system in which the private employer pays officers in cash or kind is especially prone to tax evasion. Although both employers and officers are obligated to report such payments, they often do not, and evasion is enhanced if Social Security payments are avoided as well. The officer contract system induces failure to report all or some of the off-duty income in part because there is no withholding. Officers who fail to save sufficient income to cover tax payments on that earned income are more likely to report their income relative to their resources, and hence evade paying some portion of the tax that is owed.

The department contract system has several advantages in reducing the likelihood of tax evasion. By serving as the sole employer for police services in off-duty as well as duty employment, by centralizing billing of private employers and payment of the police officers, and by reporting off-duty earnings to local, State, and Federal tax authorities, the department contract system substantially reduces the possibilities to evade taxes. Not only do such departments report annual earnings, but they withhold taxes (and, in some cases, Social Security contributions as well).

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## Complaints

Complaints about paid details come from two major sources. There are internal complaints that arise in the department. The most common are from superior officers about the effects of paid details on officer's regular-duty performance and from officers about whether they are being treated equitably in the assignment to particular off-duty jobs. Complaints from external sources come from employers about officer performance and from citizens about the behavior of officers on paid details. The department necessarily must pay attention to how to handle these complaints and to the issues they raise.

One of the more common complaints about the paid-detail program is that the performance of officers is adversely affected when they work long hours or frequent details. In one of our cities, for example, a few officers were able to double their annual salary through paid-detail employment. Most departments permit employment that will increase annual salaries by as much as 50 percent. Earlier we reported about rules departments adopt to minimize the effect of off-duty on regular-duty employment, such as ensuring that there is a minimum of 8 to 10 hours between a paid-detail assignment and the next regular tour of duty, or by placing a ceiling on the number of hours that can be worked on a paid detail on days of duty assignment. Despite these rules, most of the administrators interviewed reported that at times they found that officer behavior was impaired by frequent and continuous employment on paid details. One administrator said that when such instances were reported by a superior officer, the department usually revoked the work permit for a period of time and limited the number of hours that officer could subsequently work on paid details.

It is unfortunate that so little is known about how much and in what ways an officer's performance is affected by long hours of employment in a workweek. Does a 60- to 70-hour week, as some officers work, impair driving performance, affect the demeanor of officers toward citizens, or lead to dereliction of duty such as sleeping on the job? These remain unresolved issues in an occupation where only the highest standards of job performance are acceptable.

One contract department reported that there was considerable internal dissatisfaction with the manner in which the off-duty coordinators assigned officers to extra-duty jobs. As noted earlier in this report, departments develop various rotation and assignment schemes to improve equity in assignment. Yet rotation schemes are open to manipulation unless the department controls the order in which jobs are to be assigned as well as the assignment of individual officers to jobs. In one department, officers spend considerable time at union meetings in contention over assignment to particular jobs.

It follows that these problems of equity are limited to departments that contract for police service. Where officers independently locate and contract

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for their extra-duty work, problems of equity do not arise. Perhaps it is worth noting that maintaining an equitable assignment and permit application program is not an insignificant cost to a police department. Most departments do not seem to recover those costs by surcharge.

All departments reported that they rarely had complaints from employers about the performance of their officers in extra-duty assignment. One employer noted that complaints may be rare because private employers simply drop their paid-detail program rather than risk alienating the department and its officers by complaint.

All departments also reported that they rarely had complaints from citizens about the performance of their officers while on extra-duty employment. Although there are good reasons to conclude that such complaints may be rare because most paid-detail assignments provide few opportunities for citizen complaint, there was some speculation that any complaints are usually made to the private employer rather than to the police department. Inasmuch as there are no known surveys of how private employers and their clients judge the adequacy of paid-detail service, it is not possible to assess the merits of such speculations.

The volume of complaints depends substantially on the procedures established for receiving and processing complaints. No department in our survey has a separate complaint procedure for paid-detail employment, and none has organized its complaint service to seek such complaints. This is not surprising, given the fact that no police department regarded paid details as an integral part of the department's mission.

### **Off-duty court attendance**

Police departments usually treat court attendance as a regular duty of police work. Officers who must appear in court attendant to an arrest normally do so on their duty time, on paid overtime, or compensatory time off. When appearance is required off duty, officers are compensated at some rate agreed on in collective bargaining or set by the department. There are other issues arising from off-duty court attendance, such as whether hours of court attendance will be counted toward overtime compensation.

Normally court appearance for off-duty arrests can be handled as duty time if the officer is assigned to a regular shift on which court appearance is required. But if no provision is made for compensation of court appearance for off-duty arrests when the officer is required to appear on his or her off-duty time, it is likely to affect the officer's discretion to arrest, thereby scanting the enforcement of law by officers assigned to extra-duty employment. To avoid this conflict, survey departments generally award compensatory time for off-duty court appearances arising from off-duty employment.

The issue that arises for off-duty court attendance is whether or not a police department should be responsible for bearing the cost of court time when

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an arrest is made off-duty. Whether or not the officer receives cash payment or compensatory time, the department has a cost of court appearance for off-duty employment. The opportunity costs of compensatory time are not unsubstantial. All of the departments in our survey seem to bear the cost of court appearance, making no provision for reimbursement of such costs by outside employers.

## Conclusions and considerations

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The foregoing history and contemporary snapshot of secondary employment in a small sample of police departments makes it abundantly clear that there is diversity in the ways that extra-duty employment is organized and managed. While there is some uniformity in department rules and practices concerning secondary employment, each department has evolved its own codes and practices. The major difference among departments is whether their organization conforms to an officer contract or a department contract system of secondary employment.

Our review also indicates that all of the departments accept extra-duty employment as a fait accompli. Although a few department administrators still refer to secondary employment in the common parlance of "moonlighting," it is an accepted practice in all departments. All but one department regularly permits private or other public employers to employ uniformed and nonuniformed officers with full police powers. Some permit private employers to rent police vehicles and other police services as well.

### Competition of off-duty employment with private security

*The Hallcrest Report: Private Security and Police in America*,<sup>171</sup> drew attention to the major sources of conflict of interests between law enforcement and private security agencies. One of the principal conflicts identified was the secondary employment of police officers in what the report regarded as competition with private security firms.<sup>172</sup> Two aspects of the competition were singled out as unfair. One was the use of department uniforms and equipment and an officer's sworn authority as in direct competition with uniformed private security, giving unfair advantage to the police officer in competition for jobs with private employers. The other was the ownership of private security firms by police officers who then employed fellow uniformed officers, using their official position to recruit and market police service in direct competition with private security firms. A third complaint, outlined in the report though seemingly of lesser concern, was that public police officers should not be paid to provide a service they were sworn to uphold 24 hours a day. This, the authors said, suggests impropriety in selling a public service.<sup>173</sup>

Among the police departments in our study, all of those under the department contract system expressly enjoin an officer from owning a private security firm or brokering the employment of fellow officers. A few departments, such as Seattle, Washington, have a grandfather clause permitting the retention of such businesses if begun prior to the effective date of the general order that prohibits engaging in a private security business or serving as an independent contractor for officers under the officer contract system.<sup>174</sup> It

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seems reasonable to conclude that such direct competition is relatively uncommon.

Such competition, furthermore, does not appear to be in the department's interest since it raises issues of equity in employment as well as fair competition.

The larger issue of whether private employment of uniformed police officers is unfair competition with private security firms is more complex. To determine whether the entrance of public police officers into the labor market is unfair requires an examination of several core issues. The first of these is to look at what authority and police powers should be given to private police or security agents and what limits shall be placed on their exercise. The second issue to consider is who shall bear the cost of a public police service that serves primarily private rather than public interests. A third issue is how can and how should the public police relate to private organizational demands for protection and security or, correlatively, what can a private organization legitimately claim as protection service from the public police? Each of these issues is discussed briefly before returning to the question of fair competition.

The public police in the United States may legitimately exercise coercion over others in enforcing the law, especially in their right to use deadly force and to arrest. Such powers are granted on the condition they be exercised for public rather than private interests. Police agencies and their government are held responsible for the legitimate exercise of these powers by their employees. The state does not extend those powers to private agents for the service of private interests. Reciprocally, the public police are enjoined from using such powers for private interests. They are expected to remain neutral to private interests in the exercise of police powers.

A problem arises when an employment situation requires that both private and public interests be served. Where such duties are not easily or efficiently divided between public police and private security, an advantage falls to the employment of public police officers in private settings. Yet, clearly the public police officer is potentially open to conflicts of interest when a private employer expects subordination of public to private interest. The integrity of public policing requires that under those circumstances the officer enforce the law without regard to employer interests, and most departments permitting uniformed employment of their officers require such subordination of interests.

The private employment of public police confers additional advantages to private employers that are not available when private security officers are employed. These advantages arise from the seeming exercise of police powers. Because the officers are uniformed, citizens accord them full police status since they ordinarily make no distinctions based on who is employing an officer. Accordingly, the officer may be regarded as exercising public authority for private interests when, in fact, they do not intend so. Because

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public police officers have considerable discretion to exercise police powers, their failure to exercise them may not be regarded as discretionary but as serving private interests.

There seems little reason to doubt then that public police officers not only bring to private employers greater formal authority but that they enjoy greater informal power as well. As Shearing and Addario have shown, public police are more likely than private security personnel to be regarded as moral protectors.<sup>175</sup> Accordingly, the public police can lay claim to moral as well as legal authority for their actions. The advantage is theirs in competition with private security agents, but the fairness of that advantage must be judged on other grounds.

The question of who should bear the cost of public police service is a difficult one. The answer lies in part in determining whether private or public interests are paramount in a situation. Such determinations are not easily made and often the answer is that both interests are equally important. It is hard to imagine that a mass public event, for example, does not involve both private and public protection interests. Such situations may call for a division of labor between private and public police, but in any case a question will remain as to who should pay for providing public police in private or public settings. The answer may be more political than a calculable choice. What seems to be evolving is that these costs should be borne by the private or public organization that derives a special benefit from the event or creates a special demand for public police service whether or not there is a direct benefit. Inevitably then, who pays depends less on the status of police authority than on who benefits.

The third issue: how can and how should public police relate to private organizational demands for protection and security is a complex issue admitting no simple resolution. What can private organizations legitimately claim as protective services from public power is yet another issue. Clearly, public police have an obligation to meet demands for protection and security by private organizations when that demand serves collective rather than strictly private interests. Yet, while they are obliged to respond to private mobilizations with a reactive patrol, they have considerable discretion in how, when, and with what speed they will do so. Similarly, although the police may respond to a private complaint with proactive strategies—such as in vice enforcement—they have considerable discretion in whether and how to do so. On the average, however, public police can favor one private demand over another only in the aggregate. They may give higher priority to a bank robbery than to a shoplifting but they must not regularly favor one bank or one retailer over another.

It is precisely when private organizations or persons want their private security and law enforcement interests to have priority over those of others that private organizations arise to meet that demand. Private security organizations are able to meet some of those special demands for preferential treatment. A problem arises when those demands are not within the scope

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of their legal authority. While some private agencies provide an armed service, most lack that legal authority. They can detect shoplifting, but they are dependent on the public police to arrest the suspect. At most, private security is complementary to the public police service.

There are limits, then, in what the private and public police can do when each is responding to their authority. Those limits give rise to an asymmetry that can be resolved either by private employers who employ the public police or by cooperative arrangements between public and private police services. The asymmetry is that the private police are better able to meet specialized private demands for protection and security but lack the coercive powers to enforce the law. By the same token, while the public police have such powers they cannot fulfill the specialized demands of each particular private person or organization. The resolution to this asymmetry has taken one of two forms.

One resolution is for private employers to employ public police with their full police powers intact. They can then serve both the specialized demands for protection and security at the same time they enforce the law. The only condition is that when they enforce the law, they do so without preference for the interests of their employers. The public police have a distinct advantage over private security when they are so employed, and it is difficult to see how private security agencies can compete on equal terms under those circumstances. Their competitive advantage can rest only on providing less service at lower cost or by performing additional services that uniformed police are prohibited from providing.

Another resolution is for private employers to institutionalize a complementary or cooperative relationship between private security and public police officers by employing both types of officers and routinizing their task performance in common employment situations. That complementary relationship will be based on a division of labor, one where ordinarily private security agents are assigned the routine protective and order maintenance functions—especially protection of property—and the public police are assigned to enforce the law and handle crisis events. Such a division of labor now often characterizes the policing of mass public events. Similarly, the detection of shoplifting may be assigned to private security personnel with an off-duty police officer handling the arrests at a shopping mall or department store, an innovation first introduced in the repeat call experiment of the Minneapolis Police Department.<sup>176</sup> On a somewhat larger scale, the Edmonton, Alberta, Canada, Police Department developed standard reporting forms for arrests in shoplifting and other cases that can be completed by private security agents and need only be reviewed by the arresting officer before filing.<sup>177</sup> For the most part such complementary relationships depend on private employment of the public police with the public police department involved only in institutionalizing the relationship or serving as the contractor for the public police service.

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Returning to our initial question, it seems a mistake to assume that the public police are inherently competitive with private security interests and that competition is inherently unfair. The review of issues leads to the conclusion that often both interests can be regarded as complementary rather than as competing. Still, when it comes to meeting the demands of private organizations, the public police have an advantage in being able to meet private organizational demands for protection and security at the same time that they can enforce the law. Where the demands for law enforcement are small and infrequent, private security agencies may well be competitive in pricing routine security and protective service and in being able to provide the same personnel on a regular basis. Public police officers, nevertheless, not only have the advantages of training and experience in law enforcement and of a sworn authority, but also that of a uniformed police presence. Understandably, advantages of a uniformed presence may be seen as unfair competition when private security and public police compete for service in private employment.

### **Choosing among management models**

We have tried to set forth the kinds of issues that pertain to extra-duty employment, and it becomes obvious that there is no optimal organizational solution. It does seem that the officer contract model has fewer advantages than the department contract model, particularly the potential advantages conferred for greater control over private employers and over the officer during off-duty assignment.

The officer contract system requires less by way of organization and administration than does the department contract system. Under the officer contract system, responsibility for brokering employment, coordinating the assignment of officers to duty, supervising their off-duty employment, and paying the officers for their extra-duty work, all are shifted to private or other public employers and to the officer. Not only are these tasks shifted but their costs shift as well. It commonly is assumed that a department can shift any costs of worker's compensation to outside employers and that the department incurs no liability for the actions of off-duty officers under the officer contract system. Finally, although officer contract departments recover none of the costs of administering off-duty employment, costs are considerably less than those operating under department contract systems. On balance, it is argued, their costs are no greater since no department contract agency in this survey recovered its costs fully.

Such claims for the officer contract system obviously can be challenged. For one thing, although none of the contract departments recovered costs fully, the officer contract departments fail to recover any costs associated with the officer contract system. Those departments must bear the cost of issuing permits, determine whether off-duty officers violate department rules when employed off-duty, investigate complaints against officers for their off-duty employment conduct, and discipline any who violate. There usually

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are other costs as well, such as compensatory time—an opportunity cost—or actual cost for court appearance for off-duty arrests. Depending on department policies, they may pay, for example, for worker's compensation and uniform or equipment costs. If the officer is injured during off-duty work, there may be additional opportunity costs in lost time. On balance, these costs may be as great or greater than those not covered by contract departments with a substantial surcharge to recover administrative and other costs.

There are ways potentially to recover some costs under the officer contract system. The department could charge the officer for a work permit in an amount sufficient to cover its costs, but it is unlikely that such a policy would survive collective bargaining. Or, the department could require that all outside contractors register with the department and pay a registration fee, a partial move toward a department contract system that might recover permit costs.

Perhaps one of the more questionable presumptions of officer contract department administrators is that they avoid liability for their officers' conduct when they are working on off-duty jobs. That presumption seems unwarranted as they are likely to be a party to any litigation where an officer's conduct is deemed negligent or to violate the civil rights of others under section 1983 of the Federal Code. Indeed, it is possible that officer contract departments may be found to incur a greater risk under section 1983 by failing to supervise the employees in their off-duty work.

A major advantage of off-duty police employment is that it meets a demand for police service at private rather than public expense. This is especially the case when private interests create special demands for police service, as when mass public events are staged by private interests. Traffic and crowd control problems created by such events demand public as well as private police attention. Such events, moreover, require central coordination and control, a coordination that cannot be assumed by private police when it involves coordination with the public police. Mass public events also require officers trained in crowd control and command officers skilled in displaying officers for crowd control. Minimally, the public police will insist on autonomy of action in policing such events. Even where a department follows primarily the officer contract model of off-duty employment—such as in Arlington County, Virginia, and Peoria, Illinois—the county or municipality through its police department provides police service on an overtime basis for such mass public events and seeks reimbursement from its private or public sponsors, much as do department contract systems. The more a situation calls for centralized coordination and control of officers in policing for private interests, the greater the advantages of the department contract system of off-duty employment.

Often it is within a department's interest to provide off-duty employment for private employers, since it is able to secure reimbursement for policing that it might otherwise be expected to provide. This is the case not only for mass public events, but for many cases where private interests create special

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policing problems, as for example, patrolling trouble spots or zones in one's jurisdiction or in controlling the flow of traffic. Funerals, cinema and shopping center traffic, seasonal shopping crowds, and maintaining order outside recreation and entertainment places that cater to young people, for example, create such demand. A uniformed police with full police powers or officers equipped with police vehicles often are essential to meet that demand and to meet it in ways that most private security forces lack the power to provide. Although such service can be provided under the officer contract system, it is an inefficient way to allocate police manpower, particularly when there are needs for specialized police personnel, as in crowd control, or where the private demand exceeds the supply or the supply of officers at a particular time. A department contract system provides more efficient and rational deployment when police resources are scarce, when special police skills are required, as in crowd control, or when onscene response of a number of officers is required—responses coordinated by both field and radio command and control.

A department contract system seems a more rational way to allocate manpower when private demand for police service exceeds the supply, if it is assumed that the department regards some private demand as having a greater priority because of the way it serves public as well as private interests and it can establish some priority among such interests. Most departments seem to agree that the control of crowds at public events has a very high priority, perhaps exceeded only by the protection of dignitaries at such events. They also report placing a high priority on having officers patrol spaces where there is a high probability of disorderly conduct that can erupt into mass disorder. A high priority likewise will be assigned to policing situations where the law requires a public police officer in attendance, as at some construction sites. Absent legal obligations, departments assign private employer demands a very low priority, presuming that they can be handled by private security. In general, lower priority will be assigned to those situations or events where private and public security interests are seen as competing rather than being complementary. An officer contract system precludes the likelihood that scarce police manpower can be allocated to situations on a priority basis. Rational allocation is optimal under the department contract system when there is a priority of assignment on the basis of public interest.

Although not all departments report experiencing an excess of demand over supply, most do. This is so because of the high variability in demand on a seasonal, weekly, and even daily basis. Officer contract departments ignore that demand except, as noted, when they resort to department contract for policing mass public events. Department contract systems normally use some priority system for allocating demand when the supply is short. In no case, however, did a department have a clear set of priorities based on a priority of public interest in meeting the demand. More attention seems to have been given to fulfilling the routine and routinized requests that provide a regular market for off-duty employment. Few departments realized, then,

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the potential for rational allocation inherent in the department contract system, even though this appears to be the direction in which departments are moving.

Although some departments are firmly wedded to an officer contract system of secondary employment, and the largest, New York City, permits no uniformed off-duty employment, there seems to be a shift toward the department contract system among police departments in municipalities with 100,000 or more inhabitants. One of the departments in our sample, in fact, shifted to a department contract system during the course of the study.

One clear advantage to secondary employment of uniformed police officers working for private employers is that at any given time of their employment, they are a substantial addition to both the visible police manpower and that available for mobilization and deployment. By increasing the visibility of uniformed patrol, secondary employment may serve the deterrent and preventive objectives of the police department. By increasing the size of the patrol for any tour of duty, they constitute an auxiliary mobilization pool if they are organized to be accessible for deployment.

Given the adjunctive role that secondary employment plays in augmenting police manpower and visibility for all police departments, and given the fact that most departments can count on a minimum demand for such service, the question can be raised as to whether departments might not hire more regular police officers and organize a contract service to private employers. Although such a service might be regarded as competitive with private security services, that seems insufficient grounds to preclude its consideration. If the public police can satisfy a private employer demand for police service in ways that are both superior to that provided by private security while at the same time increasing the preventive and deterrent capability of the public police, there may be good reasons for organizing to meet at least some of that demand through regular rather than secondary employment of their police officers.<sup>178</sup>

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## Notes

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1. Clifford D. Shearing and Susan M. Addario, "Public Perceptions of Private Security," *Canadian Police College Journal* 9 (1985), 225-253. Also, Albert J. Reiss, Jr., "The Legitimacy of Intrusion into Private Space" in Clifford Shearing and Philip Stenning, eds., *Private Policing*, Beverly Hills: Sage Publications, 1987.
2. Shearing and Addario, *Canadian Police College Journal*, 7.
3. Ibid.
4. Arlington County, Virginia, Police Department Procedure No. 512.03, "Off-Duty Employment," IV.
5. Peoria Police Department General Order No. 391-87, February 17, 1987.
6. Interview with Chief Allen H. Andrews, Jr., February 6, 1987.
7. *Cincinnati Police Division Manual*, 19.140, D-1.
8. Letter from Major M.D. Bradshaw, Inspectional Services Division, Seattle Police Department, September 4, 1986.
9. Interview with Chief Patrick S. Fitzsimmons, Seattle Police Department, June 23, 1986.
10. Interview with Chief G.T. Arnold, Metro-Dade Police Department, March 17, 1987. See also, Metro-Dade Police Department, *Off-Regular-Duty Service and Outside Employment*, standard operating procedure no. 434, December 1985.
11. General Order No. 8 of the Charlotte, North Carolina, Police Department, for example is entitled "Secondary Employment," with the stated purpose: "The purpose of this order is to establish regulations and procedures for sworn officers and civilians who wish to engage in secondary employment" (General Order No. 8, effective July 27, 1982, with an amendment dated August 18, 1986).
12. New Haven, Connecticut, Department of Police Service General Order No. 83-1, April 4, 1983. The *Agreement between the City of New Haven and the New Haven Police Union, Local 530, Council 15, AFSCME, AFL-CIO, XIV*, states "Extra Police Duty for the purposes of this article shall mean police duty for which an employee is paid directly or indirectly by some party other than the City."
13. Metro-Dade Police Department, *Off-Regular-Duty Service and Outside Employment*, II-C:1.

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14. Ibid II-D:1
  15. Ibid. IV-V.
  16. Colorado Springs, Colorado, Police Department General Order No. C 1365, 1365.01 and 1365.05.
  17. New Haven, Connecticut General Order No. 83-1, 11-B:4.
  18. Ibid. 11-B:7.
  19. *Seattle Police Department Manual*, 1.07.200 [2, 3, 1)-3)].
  20. Communication from Major M.D. Brasfield, Inspectional Services Division, Seattle Police Department, September 4, 1986.
  21. Colorado Springs police inter-office memorandum, "Extra-Duty Comparative Statistics, 1982-1986," January 23, 1987.
  22. Colorado Springs Police Department information release, "Colorado Springs Police Department Extra-Duty Program."
  23. Correspondence from Chief G.T. Arnold, Metro-Dade Police Department, March 25, 1987.
  24. Colorado Springs General Order No. C 1365, 1365.10.
  25. Colorado Springs General Order No. C 1365, 1365.15.
  26. St. Petersburg Police Department General Order No. 11-4 (revised November 1985), 1-H:2.
  27. Communication from Lt. R.G. Kerlikowske, Criminal Investigation Division Commander, St. Petersburg Police Department, December 30, 1986.
  28. The contract for the city of New Haven and the police union requires a higher hourly rate for detectives or officers working plain clothes (*New Haven Agreement*, XIV, 7).
  29. Brasfield communication, September 4, 1986.
  30. *Seattle Manual*, 1.07.204 e, f, and h:I-82-83.
  31. *Cincinnati Manual*, 19.140, B, 1c-e (revised September 1980), 2.
  32. Ibid. B-2.
  33. Charlotte General Order No. 8, IV, A-7.
  34. *Seattle Manual*, 1.07.205, 1-4.
  35. *Cincinnati Manual*, 19.140, B, 1a-b.
  36. *Seattle Manual*, 1.07.204.

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37. Charlotte General Order No. 8, attachment no. 2, "Regulations for Secondary Employment at a Firm or Establishment Where Alcoholic Beverages are Consumed," no. 1.
  38. Ibid. nos. 2-4.
  39. Ibid. nos. 5-6.
  40. Charlotte General Order No. 8, attachment 3, "Regulations for Off-Duty Officers Engaging in Traffic Control on Public Streets," nos. 1-4.
  41. Charlotte General Order No. 8, IV-A-8.
  42. *Seattle Manual*, 1.07.204l and 1.07.204p.
  43. Ibid. 1.07.204k.
  44. Charlotte General Order No. 8, IV, A-10.
  45. Ibid., attachment no. 1, "Regulations for Resident Security Officers at Apartment Complexes."
  46. Omaha Police Division Request for Approval Uniform Outside Employment and Inter-Office Communication, December, 1985.
  47. Charlotte General Order No.8, IV, H.
  48. *Seattle Manual* 1.07.204a and b.
  49. *Cincinnati Manual*, 19.140, C-8.
  50. Arlington County procedure No. 512.03, III-B:2.
  51. *Seattle Manual*, 1.07.204c.
  52. *Cincinnati Manual*, 19.140, B-9.
  53. *Seattle Manual*, 1.07.204n.
  54. Ibid. 1.07.104n (1).
  55. Ibid. 1.07.104o (1), (2).
  56. Until May 15, 1985, Boston operated with a mixed system of compensation for secondary employment with most outside employment compensated as cash details. Special Order No. 86-34 (April 30, 1986) terminated all cash details except that "...those details transient in nature, such as carnivals, feasts, etc., will be allowed to pay cash and then only with the approval of the Commanding Officer of the area." By contrast, New Haven handles these claims by requiring the officer to obtain a check for services, including tax and surcharges, made payable to the city comptroller; the officer then submits the check along with the job ticket, and he or she is compensated in the usual way by the city comptroller.

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57. Arnold interview, March 17, 1987.
  58. *Cincinnati Manual*, 19.140, D, 1a-c and 2a-b.
  59. *Ibid.* 19.140, B-6.
  60. In one of the departments, Colorado Springs, the basic per-hour fee is established annually by the city manager (*Colorado Springs Police Manual C 1365.35*).
  61. *Cincinnati Manual*, 190.140 D, 1a.
  62. *Ibid.* 19.140, D, 2b, 2).
  63. *Ibid.* 1).
  64. *Agreement Between City of Boston and Boston Police Patrolmen's Association, Inc.*, 1979-81, XII, (h), 3a, as amended June 30, 1983.
  65. *Agreement Between the City of New Haven and the New Haven Police Union, Local 530, Council 15 AFSCME, AFL-CIO*, XIV, 7.
  66. *Colorado Springs Manual C 1365.40*.
  67. *Boston Agreement*, XII, (h), 2.
  68. *New Haven Agreement*, XIV, 7.
  69. Charlotte General Order No. 8, IV, A-14:7; Arlington County Police Department Procedure no. 512.03, III-B.
  70. Boston Police Special Order No. 85-36, May 23, 1985.
  71. *Seattle Manual*, 1.07.204i. Arlington County Police Department Procedure No. 512.03, III-B.
  72. Most departments permit an officer to work for the same employer in the same job—in the jargon of some departments that is designated a “holddown” position. But the definition of what constitutes a holddown position varies among departments. The New Haven Police Union contract, for example, states “...a ‘hold-down’ is defined as any assignment for which an officer is requested by name, by a firm, corporation or other person in which he works and receives payment in excess of 16 hours during any one-week period.” (*New Haven Agreement*, XIV, 5).
  73. Interview with Deputy Chief of Administrative Services James Vetter, July 12, 1986.
  74. Metro-Dade, *Off-Regular-Duty Service*, III-A and B.
  75. *Cincinnati Manual*, 19.140, B-4.
  76. Peoria General Order No. 391-87, “Lieutenant in Charge,” no. 2, February 17, 1987.

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77. Ibid. "Scheduling," no. 6.
  78. Ibid. no. 1.
  79. *Seattle Manual*, 1.07.202d.
  80. *Charlotte General Order No. 8*, IV-F.
  81. *Cincinnati Manual*, 19.140, C-9.
  82. Ibid. B-5.
  83. *New Haven Agreement*, XIV, 6.
  84. New Haven General Order No. 83-1, II, A, 1-2.
  85. Colorado Springs General Order No. C 1365.01 and C 1365.05.05.
  86. Ibid. C 1365.05.
  87. Charlotte General Order No. 8, IV, E.
  88. St. Petersburg General Order No. II-4, III-A and B.
  89. Ibid. I-H.
  90. Colorado Springs General Order No. C 1365.55.
  91. Charlotte General Order No. 8, IV, A-2d.
  92. St. Petersburg General Order No. II-4, I-G.
  93. Ibid. I-G.
  94. St. Petersburg General Order No. II-4, II-F.
  95. St. Petersburg Police Department Permit Application: 1.
  96. Ibid. 2.
  97. Metro-Dade, *Off-Regular-Duty Service*, II-E:1.
  98. Ibid. II-F:2.
  99. Ibid. III-A, 1 and 1a:2.
  100. Ibid. III-B, 1:3.
  101. Ibid. III-B, 4:3.
  102. Ibid. V-A, 2:3.
  103. *Cincinnati Manual*, 19.140B, 2a, "exception."
  104. City of Boston and Boston Police Patrolmen's Association, Inc., *Memorandum of Agreement*, 1986 amendment to article XIV, section L.

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105. Charlotte General Order No. 8, III, A-3.
  106. St. Petersburg General Order No. II-4, I-C.
  107. Ibid. I-E.
  108. *New Haven Agreement*, XIV, 2 (c).
  109. St. Petersburg General Order No. II-4, I-C.
  110. *Boston Agreement*, XII, as amended 2, September 17, 1982.
  111. *Colorado Springs Manual C 1365.25*.
  112. St. Petersburg General Order No. II-4, I-D.
  113. This is the rule, for example, in New Haven (*New Haven Agreement*, article XIV, 2 (c)).
  114. Ibid. XIV, 9.
  115. Ibid., 5.
  116. The matter of contributions to OASI is a complex decision for officers, depending as it does on both department and employer withholding and on officer income reporting practices.
  117. Metro-Dade, *Off-Regular-Duty Service*, VI-A, 1:12.
  118. Ibid. VI-B, 1:12.
  119. Ibid. VI-C, 1-4:13.
  120. Information on New Haven secured from interviews with Chief of Police William F. Farrell and Sgt. Raymond F. Alberino of the License Unit.
  121. Arnold correspondence, March 25, 1987.
  122. Metro-Dade Police Department *administrative bulletin* no. 010, "Off-Regular-Duty Police Service Procedure," July 14, 1983.
  123. *Cincinnati Manual* 19.140, D, 1b, 2) and 3).
  124. Arnold correspondence, March 25, 1987.
  125. The private-duty job ticket is issued at the time a job is assigned by the extra-duty officer. The tickets are numbered serially, but serialization is not used for accountability. The form includes the basic information on the officer—Social Security number, name, rank, employee number, date of assignment, and information on the day and hours worked. Additionally it includes information on the employer's name and account number and the billing address. Both the employer and the employee must sign the job ticket as well as the off-duty coordinator who made the assignment.
  126. St. Petersburg General Order No. II-4, II-G, 1-3.

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127. Kerlikowske communication. December 30, 1986.
  128. City of Atlanta, Bureau of Police Services, "Extra Job Permit Request," form 32-G-103, January 1982.
  129. City of Atlanta, Bureau of Police Services, *Standard Operating Procedure* 80-30-SOP-BPS (January 1, 1981), VI-B, 1-5. An exception is made for all job requests by captains, majors, and deputy chiefs, which must be submitted through the chain of command to the chief of police for approval (Ibid. 9).
  130. The "Conditions and Restrictions on Employment" are stipulated (Ibid. VI-A).
  131. *New Haven Agreement*, "Rates of Pay Monday Through Friday," XIV, 7.
  132. St. Petersburg Police Department Permit Application Fee Schedule.
  133. Metropolitan Dade County administrative order, no. 7-15 (November 4, 1980):2-3.
  134. *Seattle Manual*, 1.07.201.
  135. *Rates of Pay for Holidays, Rock Concerts, and Special Events*. The holiday rates apply from 6:00 p.m. on the day before a holiday to 1:00 a.m. on the day after for New Year's Day, Fourth of July, Labor Day, Thanksgiving Day, Memorial Day, and Christmas Day only.
  136. Interviews with command personnel in cited departments.
  137. *New Haven Agreement*, XIV, 8.
  138. *Boston Agreement*, XII, (h). 3a, as amended September 17, 1982.
  139. *New Haven Agreement*, XIV, 7.
  140. St. Petersburg Permit Application.
  141. *Seattle Manual*, 1.07.230, "Disability Benefits (Off-Duty Employment)."
  142. Charlotte General Order No. 16, III, I, nos. 1-2.
  143. Interview with Chief William Farrell, July 15, 1986.
  144. Collective Bargaining Agreement Between Metropolitan Dade County, Florida, and the Dade County Police Benevolent Association, October 1, 1985 to September 30, 1988, 27, F, p. 25.
  145. The *Hallcrest Report* on private security summarizes a number of tort cases brought in State courts that deal with arrests made by police officers employed as private security officers. See William C. Cunningham and

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Todd H. Taylor, *The Hallcrest Report: Private Security and Police in America*, Chancellor Press, 1985, 205-6 and table 12-1.

146. See Peter H. Schuck, *Suing Government: Citizen Remedies for Official Wrongs*, New Haven: Yale University Press, 1983 (esp. ch. 2, 47-51) for a discussion of the potential of section 1983 as a remedy against State officials.

147. *Ibid.*, 90.

148. 386 U.S., 553-555. The Court took note of the fact that the police officers did not claim absolute immunity (*Ibid.*, 555).

149. 416 U.S., 245-46 and 246n.8.

150. See Schuck, *Suing Government*, 89-92, for a more general treatment of the allocation of absolute and qualified immunity.

151. Civil District Court for the Parish of New Orleans, State of Louisiana, *Merlin Beale, Jr. v. Melius, Inc., William Steele, and the City of New Orleans*, No. 85-8714, February 17, 1987.

152. *Ibid.*, 2.

153. *Ibid.*, 1.

154. *Ibid.*, 6.

155. *Ibid.*, 6.

156. *Ibid.*, "Findings-Damages," 6, and "Judgment," 7.

157. William C. Cunningham and Todd H. Taylor, *The Hallcrest Report: Private Security and Police in America*, Chancellor Press, 1985, 206-7.

158. St. Petersburg Police Department Permit for Permit Service.

159. *Robinson v. Davis*, 447 F. 2d 753 (4th Cir. 1971).

160. Charlotte General Order No. 16, I and J.

161. Colorado Springs General Order No. C 1300, "Standards of Conduct," (October 15, 1981), C 1365.70.

162. Schuck, 94.

163. Arlington County Procedure No. 512.03, III-B:2.

164. *New Haven Agreement*, section 6.

165. *Colorado Springs General Order*, Nos. C 1365.10 and C 1365.15.

166. St. Petersburg Permit Application.

167. *Cincinnati Manual*, 19.140, "Outside Employment," section C-9.

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168. Kerlikowske communication, December 30, 1986.
169. For a discussion of this matter, see Karen Hayes Brophy, "Department Civil Liability for Officers' Off-Duty Acts," *The Police Chief*, 16, (February 1982).
170. There also are programs where the private sector pays for augmenting police manpower for foot, mounted, and motorized patrol in business areas. For an example of a successful program in Oakland, California, see Albert J. Reiss, Jr., *Policing a City's Central District: The Oakland Story*, U.S. Department of Justice, National Institute of Justice Research Report, March 1985.
171. Cunningham and Taylor, *The Hallcrest Report*, esp. ch. 12, "Problems in Police and Security Relationships."
172. Ibid., 199.
173. Ibid.
174. The Seattle Police Department's grandfather clause provides that any employee engaged in ownership of a private security business prior to September 1, 1984, is not subject to the prohibition against ownership. *Seattle Manual*, 1.07.204p.
175. Shearing and Addario. "Public Perceptions," 225-253.
176. Crime Control Institute Press Release, "Chronic Locations Swamp Police," February 22, 1987.
177. "Cooperative Policing: The Way of the Future?" *Liaison*, 9, (1985), 9-12.
178. See note 170.