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# Reflections on Police Privatization

By DENNIS O'LEARY, J.D.



**A**cross the Nation, budget-conscious communities explore the privatization of governmental operations as a way to contain costs while continuing to provide citizens with traditional municipal services. Some services, such as garbage collection,

are routinely provided both as private functions and as functions of the government. Increasingly, however, communities are beginning to privatize services that were once *exclusively* within the realm of the public sector. Examples include food preparation in public schools,

collection of delinquent parking violation penalties, and even vouchers for public education.

Recently, the Borough of Sussex, New Jersey, experimented with privatizing another service traditionally administered only by the public sector—the police department. In doing so, this small municipality of 2,500 residents became what may be the first modern American community to privatize its municipal law enforcement.

As the Sussex County Prosecutor, I witnessed firsthand the borough's experiment with private policing. Its experiences, both positive and negative, offer valuable lessons to community and law enforcement leaders around the Nation.

## THE SUSSEX EXPERIMENT

### The Borough

Like many small communities in the Northeast, Sussex Borough has experienced a general economic decline during the past several decades. Founded before the advent of automobiles, its Main Street district offers very limited parking. As a result, people in the surrounding areas do the majority of their shopping at suburban malls rather than at local stores. Many merchants have found it difficult to survive this "Main Street syndrome," and the resulting vacant storefronts have proven to be something of a blight on the area. In addition, two once-fashionable hotels in the borough have degenerated into rooming houses that have, on occasion, attracted a criminal element.

Because Sussex Borough is a small, fully developed municipality, little opportunity exists to



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**“...the hiring of a private security firm in lieu of a municipal police department... constituted a giant step backward in terms of law enforcement professionalism.”**

expand its tax base. In fact, during the past several years, the borough has experienced a decline in real-estate-based tax assessments that has brought the community to the brink of insolvency.

### **Disbanding the Police Department**

For a number of years, the borough's governing body strongly considered closing the police department. Even though the four-member force patrolled only on a part-time basis and possessed almost no modern equipment, the borough found it increasingly difficult to afford.

The issue was, of course, a highly political one. Many residents feared that without a regular police presence, the criminal element in the Main Street area would overtake the business district. However, in early 1992, in the wake of a drug scandal that culminated in the indictment of the chief and another department officer, the borough's law enforcement operations were taken over by the Sussex County

Prosecutor's Office for a period of several months.

With assistance from the county sheriff, we were able to provide borough residents with a law enforcement presence that they had heretofore not known. This was due, in large part, to the expanded personnel and resources available.

Still, because my statutory mission does not include providing local police coverage, I informed the borough's political leaders that the long-term issue of police coverage would be up to them. For primarily economic reasons, the borough elected to abolish the police department and to rely upon the State police for law enforcement services.

However, it soon became readily apparent that due to limited resources and slow response times, this option would not represent a satisfactory permanent solution. The criminal element in the Main Street district and lawless flavor of the area posed enough of a problem that the residents demanded that the mayor and council enhance police protection within the borough.

### **Choosing Private Security**

Having disbanded its police force for lack of funding, the borough now faced an impasse. Residents sought a more constant uniformed presence than the State police could provide. At the same time, political leaders considered a police department an expense the municipality could no longer afford.

The borough's leaders devised a unique response to this dilemma. They developed a plan to hire a private security company to provide a more constant uniformed presence within the borough. Specifications were drafted, a bid was submitted by a private security company, and a contract was signed between the firm and the borough.

While the security company's initial mission simply was to supplement the State police, it soon became clear that its true mission was to function as a fully independent municipal police department. From the outset, my office received reports of motor vehicles being stopped, summonses being issued, and persons being detained and arrested.

My concern was heightened when reports surfaced that the security guards had mishandled several incidents. In one case, they returned a knife to an individual suspected of assault. Information also came to light revealing that a number of the guards had minor criminal records, primarily for assault.

Partly for these reasons, the borough's experiment in private policing turned out to be a fairly short one. An injunction was obtained by the New Jersey attorney general's office on the basis that the Sussex

Borough could not create a private police department without complying with existing State statutes relating to the creation of a police force. While this effectively resolved the issue as it related to Sussex Borough, the privatization of police services is an idea that undoubtedly will be studied closely by other communities in the future. As the residents of Sussex Borough learned, police privatization is a complex issue with a number of compelling arguments both for it and against it.

### **PRIVATIZATION OF POLICE SERVICES**

Not surprisingly, the Sussex experiment with privatization generated a great deal of interest from representatives of two distinct segments of government. Administrators of small municipal governments experiencing financial difficulties similar to those of Sussex Borough saw the experiment as an opportunity to save considerable sums of money without denying citizens a needed service. On the opposite end of the spectrum, the Police Benevolent Association and many law enforcement unions saw the Sussex experiment as a direct threat to their livelihood. While both sides professed their concerns in terms of good government and effective law enforcement, money clearly represented an underlying issue.

I personally opposed the action undertaken by Sussex Borough. However, my concern stemmed not so much from the concept itself as it did from the lack of safeguards provided in terms of accountability and qualifications.

### **Accountability**

The statutes in New Jersey authorizing municipalities to provide police services are similar to those in other States. Once a police department is established, it operates more or less autonomously from the municipality's administration. The chain of command does not go through the mayor and political structure of the municipality, but rather directly to the county prosecutor and the attorney general, and ultimately to the courts. This arrangement was designed to "depoliticize" the administration of law enforcement, a laudable and desirable goal.

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The arrangement established in Sussex Borough completely circumvented this delicate balance. The private security company directly reported, and was technically responsible, only to the entity that awarded its contract. History is replete with instances in which police departments were used for dubious purposes by political bosses. This is not to say such a situation developed, or would have developed, in Sussex Borough. However, were such arrangements duplicated in

other municipalities, the potential for corruption and abuse certainly would grow accordingly.

### **Qualifications**

As county prosecutor, I was concerned also with the issue of qualifications. As in every State, an entire statutory framework exists in New Jersey relating to hiring qualifications for municipal police officers. Candidates undergo psychiatric testing prior to being offered employment, as well as intensive training on dealing with people in difficult situations, criminal law (including search and seizure), physical fitness, marksmanship, and various other matters relating to law enforcement work.

The training received by the private security guards was limited at best. In fact, the only real training the guards received focused on the use of guns. By contrast, firearms training generally represents a relatively minor component of the instruction provided to public sector law enforcement officers.

It is reasonable to assume that municipalities offering positions of authority, which include the carrying of a firearm, at relatively low salaries, will attract a wide spectrum of applicants. Some will be attracted to the job out of a sense of public commitment. Others will be motivated by other, less desirable factors.

Therefore, to ensure the integrity of any municipal law enforcement force, a psychological screening process is not only desirable but essential. However, this is only a first step. Training in areas such as search and seizure must keep personnel abreast of constant changes

in the law. Even with intensive training, police officers, as well as attorneys and judges, make periodic mistakes in these areas.

The security guards in Sussex Borough received *no* training in these areas. The security firm explained this deficiency by claiming that, as private citizens, the guards were not bound to comply with the fourth, fifth, or sixth amendments (rights of defendants).

I vigorously disagree. While private citizens are not obliged to afford such rights to other private citizens, a convincing argument could be made that the security guards did not act merely as private citizens. They were, after all, duly hired agents of a municipality.

Nonetheless, the guards were seriously unprepared for their responsibilities. In short, the hiring of a private security firm in lieu of a municipal police department not only circumvented a longstanding statutory framework, it also constituted a giant step backward in terms of law enforcement professionalism.

## **CAN PRIVATIZATION WORK?**

Is it possible to have a professional, qualified, responsible police department that operates fully within the private sector? As I have indicated, my objections to the Sussex Borough experiment centered on qualifications and accountability. Both areas could be addressed adequately by simply amending laws and regulations to provide accountability along a similar chain of command as those of public police agencies. In addition,

legislatures could mandate that in order to win a bid for municipal policing, private security companies must meet the same screening and training criteria as public police departments.

Could private security someday replace public policing? There seems to be a national trend among

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legislatures to grant greater police powers to private security. It is conceivable that the legal obstacles to private security firms assuming “public” policing powers could be overcome. In fact, from a legal perspective, this transition could be accomplished with little difficulty.

Whether municipalities embrace the concept depends on a number of factors. Communities should consider these factors carefully before embarking on the road to privatization.

## **CONSIDERATIONS**

Like many private waste removal companies, large security firms could supply police coverage for several contiguous municipalities, and thereby affect economies of scale. Such an arrangement not only would keep costs down but also would provide greater promotional opportunities for law enforce-

ment officers, because they would be working for a larger enterprise. In addition, the degree of professionalism theoretically would improve over small police departments that possess limited training resources and equipment.

The financial savings to municipalities could be dramatic. In the short-lived Sussex experiment, the borough realized a savings of over 50 percent. While I suspect that a portion of this amount resulted from a “loss leader” by the security firm in its effort to win the borough’s initial bid, I believe that a practical savings of 25 to 30 percent could be realistic for many jurisdictions.

Clearly, however, such arrangements would not be without considerable drawbacks. The large amount of money private security companies would have to invest to hire and train qualified personnel would be reflected in any realistic bid. Further, while competition may serve to keep costs to municipalities down initially, once a security company becomes entrenched in a particular area, its proximity to nearby jurisdictions would allow it a distinct advantage to underbid other firms. The resulting monopoly could significantly erode any long-term savings that the municipalities anticipate.

Aside from costs, however, other important considerations remain. Under private security agreements, municipalities would possess considerably less control over their police force than afforded by the traditional public policing model. While public police departments enjoy some degree of autonomy, police chiefs often are appointed by

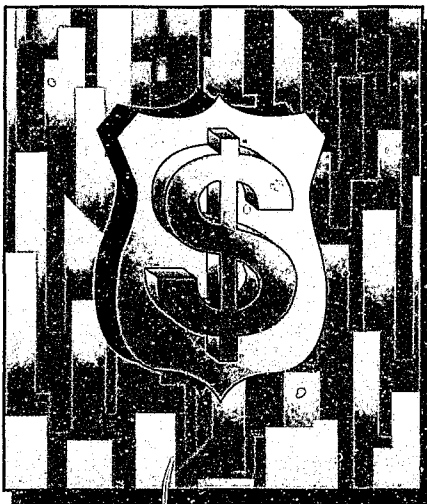
municipal governing bodies. These bodies generally review and approve police budgets, as well.

But, more subtle "controls" also forge a link between a municipality and its police department. In many communities, for example, when the police department promotes a patrol officer to sergeant, a ceremony takes place before the town council meeting. Generally, despite periodic "rocky moments," a warm and friendly relationship exists between the governing body and the police department of a small town.

Municipalities that enter into private security arrangements suddenly would find themselves dealing with corporate America. The warm and friendly relationship as it once existed between local government and the police force would change forever. Because large private security firms could conceivably hire employees from anywhere and relocate them, municipal government officials and citizens may find themselves no longer dealing with police officers who are also friends, and in some cases, relatives. While this certainly could be seen on one level as a positive outcome, the fact remains that small town residents appreciate being afforded certain informal courtesies by their police department. They enjoy being known by name and feel secure being protected by members of their own community. To a large degree, the "personal touch" afforded by local public departments would become a casualty of police privatization.

Further, in the interest of efficiency and scheduling, private security guards in large firms might be

assigned from municipality to municipality. This would allow little opportunity for guards to develop allegiance to any one community, let alone to individual residents or municipal officials. The unique advantages of local police coverage—intervening when an otherwise well-behaved youth becomes associated with the wrong crowd, checking on elderly residents, noticing a suspicious new person in town—would be missing.



In the final analysis, it may be these intangibles that form the basis for debate in municipalities considering the privatization issue. Communities must decide whether forsaking these intangibles is worth any monetary savings realized by privatizing the police function.

In the interest of accuracy, however, communities should keep the issue of police privatization in perspective. Private policing does not represent a radical new concept. Indeed, the idea of government-administered, or public, law enforcement is of relatively recent

origin—occurring in most parts of the world within the past 100 years. Prior to the advent of public policing, groups of citizens wishing law enforcement protection organized it privately, without direct government intervention. During the formative years of the American frontier, citizen posses and private railroad guards provided essential law enforcement services. In many ways, the privatization of policing simply represents a new take on an American tradition.

## CONCLUSION

Is it legally possible to create a private police department? Probably. But, more important questions remain. Would such an arrangement work? And would the savings be worth the effort? The Sussex Borough experiment may have been too brief to fully answer these questions. But, they will undoubtedly be asked by economically challenged communities around the Nation.

Although private policing may offer significant initial cost benefits to small municipalities, the savings would probably diminish as large security firms formed regional monopolies. Municipalities then may find that they lost far more than they gained.

Because many of the functions that local police departments perform relate to providing services to their communities in addition to mere code enforcement, ill-planned privatization could bring about unanticipated change. Communities should consider carefully the effects of all these changes when weighing the benefits of private, versus public, policing. ♦