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MANAGEMENT ISSUES CONCERNING POLICE IN
PRIVATE SECURITY ROLES

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PREFACE

This paper was written not only to meet the requirements of the Management Institute, but also to serve as a potential stimulus for administrators. Managing secondary employment of police officers is a complex task and must be addressed in an informed and comprehensive manner. The extent that this paper serves that purpose shall be its ultimate judge.

Introduction

Police officer involvement in private security is big business. For many officers it affords the level of financial security unattainable in their primary employment as public servants. Although private security provided by police is a relatively new endeavor, there is little reason to consider it a passing phase. Several years ago it was estimated that approximately a quarter of the nation's police worked off duty in private security. Today that proportion may easily be approaching one-half.¹ It is estimated that one hundred fifty thousand police officers are involved in off duty private security roles.²

Historical Development

Historically, police officers were prohibited from engaging in any form of outside employment. Not only was it prohibited by virtue of policy but also as a result of long work hours. As the work environment for police officers improved, resulting in a shorter work week, the opportunity to supplement regular earnings emerged. Initially police officers were allowed to engage in secondary employment only in areas completely divorced from protective services; primarily manual labor. As times progressed, allowable secondary employment expanded and police officers found their opportunities increasing to include quasi-police type services.

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A study conducted by Albert J. Reiss, Jr., for the

National Institute of Justice, identified three primary causes accounting for the evolution of secondary employment of public police:³

* Demand for increased compensation - The police became very vocal in seeking secondary employment. Police unions and associations actively pursued secondary employment and department administrators realized it was a viable means of increasing an officer's earnings at no expense to the department.

* Security for public/private events - The police had traditionally provided policing services for major private and quasi-private events. The philosophy of providing this service began to change in the 1950's with the rapid growth in demand for primary police services. This vacuum in service was consequently shifted to the private sector which increased secondary employment opportunities for the police.

* Increased demand for police services - The rapid escalation of the crime rate in the 1960's and 1970's fueled the demand for police services in the private sector. Although a large portion of this demand was met by a significant expansion of the private security industry, there was ample demand to further encourage the employment of off duty police officers. This was especially true when the circumstances required traditional types of law enforcement duties such as crowd control, traffic control, and order maintenance.

In summary, police departments and police officers were more than willing to meet this demand for services by the private sector; in an off duty capacity. This method met the police officers' objective for increased compensation and removed the financial burden from the municipality or governing body and placed it directly on the private interest seeking the service.

Statutory Control

Although secondary employment of police officers in private security is widespread today, it is by no means universally permitted. Kansas and Connecticut prohibit police officers from secondary employment in the security field.⁴ The state attorney general in Missouri issued an opinion that deputy sheriffs may not work secondary jobs in the security field.⁵ This was premised on the position that the officers would be receiving compensation for actions taken that are part of their statutorily prescribed duties. In Iowa a police officer was terminated for violating a ban on any secondary employment and the termination was upheld in court.⁶ Just as there is no universal agreement amongst departments or states on this issue, the same is true among police officers. This is illustrated by the Multnomah County Department of Public Safety which prohibits all forms of secondary employment and is strongly supported in that position by its officers.⁷

Where police officers are allowed secondary employment in the security field, state statutes often regulate such employment. Illinois, for example, requires all police officers who work off duty as a security guard or private detective to obtain a certificate of registration in the same manner as any citizen.⁸ Texas, however, takes a completely opposite approach than Illinois and exempts police officers from the requirements of its security statute with some limitations:

Section 3. Exceptions. (a) This act does not apply to:...

3(a)(3) a person who has full time employment as a peace officer as defined by article 2.12, Code of Criminal Procedure, who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, or watchman if such person is:

- (A) employed in an employee-employer relationship; or
- (B) employed on an individual contractual basis;
- (C) not in the employ of another peace officer; and
- (D) not a reserve peace officer;⁹

Police officers have argued that secondary employment should be an individual issue for each officer. This position has failed to pass judicial scrutiny. Courts from numerous states have ruled in favor of the department to regulate the off duty employment of its officers. The primary justifications advanced for the regulation of secondary employment are (1) the emergency nature of law enforcement, (2) the assurance that officers report for work in good mental and physical condition, and (3) the necessity of preventing conflicts of interest.¹⁰

Private Security - An Overview

Private security is a very diversified industry. Although it may be divided into two main categories, proprietary security and contract security, the fields functions cover a wide spectrum. Specific roles in the security industry range from a basic guard to a security consultant. The primary objective of private security programs is to protect the company's assets and prevent or control losses. To this end a considerable amount of financial resources are expended. For example, in 1980 gross expenditures for private protection were \$21.7 billion; compared to \$13.8 billion in 1979 for police protection at the federal, state, and local levels combined.¹¹ Obviously, there is a huge demand for protection services that is far beyond the resources of the public police.

Private security forces confront all types of crime but report only the most serious to the public police; usually only crimes ranked as index crimes in the uniform crime report. The *Hallcrest* report lists several reasons for the under-reporting of business crimes to the police. Among them are:

- * Many of the crimes have a low priority for law enforcement agencies

- * Police agencies may lack the pertinent expertise on certain crimes

- * A complex case may involve local, state, and federal

authorities.¹²

Hard figures are not available to determine how much crime is not reported by private security firms. It is reasonable to infer, however, that a significant workload is removed from the criminal justice system as a result of the non-reporting. Put another way, the criminal justice system which may very well be stretched to its limits under existing conditions, could virtually be reduced to chaos with the comprehensive reporting of all crimes currently addressed by the private security industry.

Areas of Secondary Security Employment

The vast majority of police officers involved in private security do so in a uniformed mode. The major areas of employment may be categorized as traffic control and pedestrian safety, crowd control, protection of life/property, and law enforcement for public agencies without law enforcement jurisdiction.¹³ A brief definition of each follows:

* Traffic control/pedestrian safety - this type of security is prevalent in areas of road construction, general construction sites, business grand openings or promotions, funeral processions, and other private events.

* Crowd control - effectively controlling and directing a large group of people requires a coordinated effort of security personnel. Sports arenas, concerts, large festivals, and similar types of activities will generate a

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significant demand for basic crowd control and the prevention of disorder.

* Protection of life/property - many private businesses utilize uniformed security personnel at their offices primarily as a deterrent to criminal violations. Banks and savings and loans are prime examples. Although private security companies also provide this service, it is not uncommon for such institutions to actively seek out police officers to fill this need.

* Law enforcement for public agencies - public authorities such as housing, airports, and parks in large communities will generally have their own enforcement or security staff. In smaller communities it may be that the required service is provided on a contractual basis with the police department and managed as secondary employment.

Although the listed categories generating uniformed secondary employment may generally be thought of as non-mandated services, such is not always the case. Massachusetts, for example, statutorily mandates that an officer be assigned for all work that may impede traffic or creates hazards on public roadways and walkways.¹⁴ Even if a statutory mandate does not exist, numerous activities of themselves logically require some degree of regulation or control.

Management Issues

Police administrators are faced with a multitude of

concerns regarding the management of police officers involved in private security services. The issues range from the placement of organizational control to the complex and taxing questions of liability. The challenge for administrators is to recognize, comprehend, and properly address the various issues to protect the interests of all parties.

Organizational Control

Administrators must make a preliminary decision regarding where within the organization the responsibility for managing the secondary employment will reside. Since secondary employment is not a traditional task of police departments it is not surprising that responsibility for its control varies significantly from department to department. Some departments treat it as a staff function while others view it as a patrol operation. Reiss states that when the responsibility falls under field operations, there appears to be a greater opportunity for coordination of on and off duty employment as well as the potential for tighter procedural control.¹⁵

Three major models have been identified for controlling secondary employment. They are the officer contract model, the union brokerage model, and the department contract model.¹⁶

Officer contract model - In the officer contract model the conditions of secondary employment are basically organized and arranged by the individual officer. Under

this model the department's primary function is to delineate the rules and regulations governing secondary employment. The individual officer seeks out secondary employment and negotiates all relevant aspects of the job with the potential employer, including the rate of pay and hours of work. Once the officer reaches an agreement he then applies for permission from the department, often called a permit, to work the job. The permit becomes a primary source of control over secondary employment in the officer contract model.

Union brokerage model - The term union brokerage model is not an absolute. "Union" is used to reflect a formalized association which represents the officers' interests in secondary employment. The formalized association could be a collective bargaining unit, a police association, or an actual union. In any event, the "union" seeks out secondary employment and typically sets the rate of pay, conditions for employment, and assigns officers.

The department's leverage in this model is in its negotiations with the union over the various issues involving secondary employment. The give and take in negotiations will generally result in an agreement which satisfies the major concerns of both parties. Ultimately however, the department can force any issue it deems worthwhile and thereby cause the union to seek legal recourse.

Department contract model - The department contract is by far the most structured of the organizational models.

Under this model the department contracts with employers for secondary employment, assigns officers, and pays the officers from reimbursements to the department by the employers. The department will generally negotiate with relevant police groups over pertinent issues but all procedural control is managed by the department. The most interesting aspect of this model is that the policing authority follows its normal procedures for withholding taxes and reporting earnings.

It is important to note that the three models are not necessarily mutually exclusive. Departments may easily manage secondary employment utilizing a combination of all three models. A close examination of an individual departments management styles, however, will generally reveal a stronger association with one of the models discussed.

Conflict of Interest

Police administrators are always concerned about the need to project an image of objectivity and impartiality. Police officers involved in private security are not exempt from this concern. Consequently, restrictions on types of secondary employment are not uncommon. Administrators tend to prohibit employment of uniformed officers when there may be a presumption that their *symbolic* (italics added) authority may improperly serve private rather than collective interest.¹⁷ The Seattle police department prohibits employment in endeavors such as that of process server, repo-

ssessor, bill collector, or any type of employment where police authority may tend to be used to collect money or merchandise.¹⁸ The rationale is that employment in areas such as these could easily lead to public mistrust of the police and confusion as to the officer's role and his exercise of legitimate authority. Citizens expect police officers to work for the common good of the entire community rather than that of special interests. Along these same lines, secondary employment in security where labor - management conflicts erupt is another area worthy of concern. Tension can be high in such situations and certainly the potential exists for the police officer, hired by management, to be placed in a precarious environment.

A second area regarding conflict of interest is secondary employment in activities regulated by law. Often times a potential conflict of interest may arise due to statutes which require official supervision of a licensed activity or premise. Examples of such areas would be drinking establishments, vehicle towing companies, legalized gambling, bingo organizations, and other similar environments. According to Reiss there is considerable diversity amongst departments in addressing this issue. The one specific area that most departments tend to focus on is secondary employment where alcoholic beverages are sold or consumed.¹⁹ Illustrative of regulations addressing this topic, the Cincinnati Police Department prohibits "(a)ny

type work for a liquor-permit premise, where alcoholic beverages are sold by the glass...." A different approach is taken by the Boston, Colorado Springs, and the Charlotte Police Departments. These departments prohibit off duty uniformed employment inside an establishment where alcoholic beverages are consumed, but permit employment outside of the area controlled by the on-premises license.²⁰ Even though departments vary in their approach to this issue, most seem to recognize the potential for an officer to be put in a compromising position in such environments.

A third area of concern regarding a possible conflict of interest is secondary employment under conditions where the officer confers a special advantage to a private interest at the expense of the public interest. This issue is best exemplified by the Charlotte Police Department regulation which prohibits enforcement of rules established by private industry management. It further requires the enforcement of the law and preservation of public safety and requires that traffic control in secondary employment serve the interest of all motorists.²¹ In reality, this is a much broader area of concern and goes to a core issue involving secondary employment; that is, the question of whether or not police authority should be used for personal or financial gain, or whether or not duties which should be part of the officer's public responsibility should be provided selectively for remuneration.²² Administrators address this concern by requiring their officers to enforce the law

without regard for employer interest. The extent to which this is actually accomplished is an area worthy of research.

A final area of possible conflict of interest is in investigative security services, or the actual ownership of a security company. The National Advisory Commission on Criminal Justice Standards and Goals, in its report *Private Security*, states in standards 6.8 and 6.9 that law enforcement officers should be strictly forbidden from performing any private investigatory functions or from being a principal or manager of a private security operation.²³ The concerns justifying this position center around the possibility of unfair competition, official actions which tend to favor the officer's private security interests, and the possible damage to a department's reputation. It is generally recognized that an officer involved in either private investigative services or as an owner of a security company is in a delicate position which could lead to misuse of official authority, records, and equipment.

Risk of Injury

Department administrators have an obligation to closely examine the potential for injury to off duty officers in secondary employment. The administrator's primary concern is the operation of his department. Any officer injury has the potential to adversely impact department operations. Temporary injuries to an officer

denies the department the regular services of that officer due to assignment to "light duty" or the use of sick time. Disabling injuries may lead to the actual loss of the officer and raise legal questions over retirement benefits and medical coverage. Reiss states in his study of secondary employment of police officers that as serious as this issue is only the Seattle police department addresses this issue directly, and only in regard to employment in professional sports.²⁴ The risk of injury is real and should be treated accordingly. For example, if a department allows officers to provide security in drinking establishments, it may well be prudent to mandate a minimum of two officers. This will not guarantee the officers safety but will certainly minimize the danger. Administrators should carefully review all requests for secondary employment and analyze the employment circumstances as they relate to possible injury.

Jurisdiction of Secondary Employment

Secondary employment outside an agency's jurisdiction poses several concerns for the administrator. The administrator may initially need to clarify his jurisdiction. The official jurisdiction may exceed the territorial boundaries (Such is the case in Texas). This will require a modicum of research and should be easily clarified. The administrator must then confront issues such as officer availability, supervision, and legal authority of officers

if they are allowed employment outside their jurisdiction. Although most departments tend to prohibit employment outside their jurisdiction, the issue is worthy of close scrutiny if allowed.²⁵

Administrators should give special heed to the potential for creating a conflict with other police agencies if their officers provide security outside their jurisdiction. Police officers are generally protective of their "turf" and may well resent an influx of outside officers functioning as security personnel in another jurisdiction.

Amount of Extra Duty Allowed

Secondary employment of police officers, especially in the security field, may be a relatively new phenomenon from a historical perspective, but it has become well entrenched. One of the few recognized advantages of police employment is the ability of the individual officer to supplement income through secondary employment. Police officers are often described as a breed apart or different from the general citizenry. There may be some merit to that position, but police officers are certainly no different when it comes to the desire for money. Secondary employment in the security field is so widespread that the police "profession" is perhaps among only a few occupations with a built in guarantee of supplemental income.

Administrators must be cognizant of this aspect of the police profession and additionally must understand the

motivational impact it may have on their employees. The ability to easily earn supplemental income must be controlled and properly managed to prevent any conflict with primary responsibilities. A prime consideration here is the potential adverse impact that long hours of secondary employment may have on the officers regular work performance. Reiss states that little is really known on this issue and poses some common and interesting questions: Do long hours of secondary employment affect an officers driving performance, attitude towards citizens, or lead to dereliction of duty?²⁶ As an administrator one must also be concerned about the quality of investigations, officer safety, and general mental alertness. These and other concerns are valid and worthy of considerable study by administrators. Not only is the department entitled to a fully competent officer; so are its citizens.

According to Reiss, departments approach this issue from different perspectives. Some departments limit the extra work hours per day while others address a work week. Additionally, some departments require a buffer time between any extra job and official duty.²⁷ A combination of these approaches is possible and with good supervision the department should be able to successfully manage this concern.

Liability Issues

The issue of civil liability regarding police

officers involved in private security is one which may well portend a re-evaluation by administrators of the entire issue. Most of the management issues discussed to this point are procedural in nature and pose little potential for a crisis type incident that would really capture the attention of administrators and the community. This is not intended to negate those issues; they are just as worthy of serious attention as is liability. Liability issues, however, invoke a universally understood reality--financial damage to the responsible jurisdiction or individual. Case law is rapidly developing in this area and one can only anticipate a proliferation of related cases.

One area of special concern to administrators is that of workers' compensation. Statutes outlining workers compensation laws generally provide that employers are obligated to compensate employees for work related injury and disability. Since off duty employment involves work for another employer, an interesting question arises: Is the secondary employer to be solely responsible for compensation required for injury or disability arising from that employment. There is no clear and unequivocal answer to this dilemma. Reiss states that the issue of sole responsibility may depend on the role the department plays regarding secondary employment.²⁸ This would indicate that the administrator's choice of management models is perhaps worthy of serious attention. Reiss goes on to state, how-

ever, that even if the department operates under the officer contract model, liability may still attach. This is due to the department exercising control over the secondary employment through its rules and regulations. Additionally, many departments allow officers to wear the department uniform in off duty employment. Under that circumstance the association with the department is blatantly obvious.

Departments address this issue in varying ways. The Charlotte Police Department, an officer contract department, attempts to distinguish between workers compensation claims as regards 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....
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.²⁹

Departments controlling secondary employment primarily under the department contract model will usually assume full responsibility for workers' compensation claims. The New Haven Police Department exemplifies this approach, although the governing body does attempt to recover financially from the private employer if the officer injury appears to be related to a private rather than a public interest.³⁰ Regardless of the department's approach to this issue, the ultimate answer or framework for deciding

responsibility may well reside with the courts.

A much broader and potentially more serious concern to administrators is the question of tort liability. Torts may be defined as a civil wrong, in violation of a duty legally imposed by law, in which one person's actions cause injury to the person or property of another.³¹ Liability lawsuits against police officers and departments have escalated over the years. In 1981, more than \$325 million in claims were filed against police officers in one state alone.³² One can easily imagine the magnitude of such claims nation wide. Even if the lawsuits are eventually dismissed there may still be a considerable cost involved in the various stages of defense.

Although case law is limited involving police officers in secondary employment, the growing body of such law suggests that it is a subject about which administrators should be keenly. One of the major issues developing in this area is the doctrine of "color of law". This refers to an officer's use of power possessed by virtue of law and possible only because he is clothed with the authority of the state.³³ The question arises then whether police officers working off duty in a security function are acting under color of law. The answer may well depend on state law, an individual agency's rules, and court decisions. Courts have ruled that wearing a police uniform while working security, coupled with the department's knowledge

of the security job, are indicative that the officer is acting under color of law.³⁴

A related issue involving liability is immunity. Under the doctrine of *respondeat superior*, employers are legally responsible for the tortious actions taken by their employees in the course of their duties. Defenses presented by departments for immunity center around absolute and qualified immunity.³⁵ Absolute immunity results in the dismissal of the lawsuit without a consideration of the case merits. Absolute immunity has been held to apply only to judges, prosecutors, and legislators. Qualified immunity is limited in scope and refers primarily to discretionary and good faith acts, thus requiring a consideration of the case merits for proper resolution. The ability to claim absolute immunity would clearly reduce the department's and officer's fear of lawsuits. The Supreme Court, in *Malley v. Briggs*, made it very clear that it will not extend the absolute immunity defense to police officers.³⁶ Departments must, therefore, rely on qualified immunity which will entail some degree of financial expenditure. A 1987 court case in New Orleans is illustrative of the liability issue. An off duty police officer working security at a bar effected an arrest in which force was used. The court ruled that the officer acted in an unreasonable manner and used excessive force. The court additionally stated that the officer was acting within the scope of his employment as a police officer. A considerable amount of money was awarded

to the plaintiff.³⁷

The issue of liability is one of potentially enormous consequences for police departments. Several key determinants of departmental liability are listed as follows:

- * The party controlling the manner in which the work is to be performed

- * The method of obtaining employment

- * The degree of control or direction exercised by the employer

- * The method of payment.³⁸

All of the above listed factors may become issues in litigation. State statute, as well as any local ordinances, may also play a major role in resolving a lawsuit. The administrator's challenge is to thoroughly research all relevant areas in order to arrive at an informed policy decision. It has been argued that a police officer's secondary employment should be completely divorced from his official law enforcement capacity.³⁹ This could be accomplished most appropriately by state statute. Such a statute could prohibit an officer from being insured by his agency from general liability while employed off duty. A statute of this nature could well raise the ire of affected police officers. Constructive dialogue and a proper explanation for such action would help to mitigate the potential controversy.

Conclusion/Recommendations

Police officer involvement in private security raises numerous questions for the department administrator. A half hearted approach to the issue will almost certainly result in a controversy or crisis at some point. Attempting to forecast the future trend on this issue is speculative at best. Police management approaches to secondary employment are really still in the formative stages. Considerable diversity exists amongst individual departments and the states as to the best approach. Court decisions are also just starting to take form and as with all legal questions it will take a considerable period of time for a concensus to materialize.

Department administrators can take the lead on this issue by assuming a proactive approach. They are the ones who have the most to lose. Passivity and ignorance on the subject merely places one in the position of accepting the end result without the benefit of input. Administrators can make a difference and would be prudent to entertain the following:

- * Develop comprehensive policy/procedures - this can only be properly accomplished after thorough research into all the relevant aspects of the issue with a concentrated probe into pertinent state law and state court decisions. Developing the department's policy and procedure does not have to be an act of complete originality; the International Association of Chiefs of Police has developed a model

policy which could serve as a starting point. Administrators could additionally network with other agencies to enhance the development of a sound policy.

* Legislation - actively work with professional associations to bring about necessary statutory changes. Lobbying for statute reform and clarification, designed to protect a department's interest and serve the public good, is not improper.

* Supervise and evaluate - assure that adequate supervision is provided to maintain the integrity of the department's basic approach to this issue. Policies and procedures without accountability are merely words occupying space on paper. It is also important that a process of evaluating the existing program be implemented to identify deficiencies and to stay abreast of possible statutory and judicial modifications.

Police officer involvement in private security is an expanding field. Department administrators should prepare themselves well to best address the important issues related to this area. By taking a proactive approach to the issues the administrator will fulfill his obligations to his department, the officers seeking secondary employment, secondary employers, and, most importantly, the public.

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