

CHAPTER 6

USE OF FIREARMS BY NONUNIFORMED POLICE: PLAINCLOTHES AND OFF DUTY

OFF-DUTY WEAPONS

Many police agencies *require* their members to be armed while off duty and in the jurisdiction, on the proposition that a police officer must enforce the law 24 hours a day, 7 days a week.¹ Some departments, however, qualify this requirement. New Orleans, for example, permits its officers to remove their firearms "when engaged in recreation or activities where the carrying of such weapon would be impractical or dangerous." Although police officers are unlikely to carry their weapons when they go swimming, regardless of what a department says, a clause such as New Orleans' may be helpful in imparting credibility to department policy.

Kansas City is one department that has changed its rules in this area. Until 1973, the policy there not only required officers to keep their firearms "readily available at all times," but underscored the point by adding, "If an officer has need for a firearm while off-duty but is unarmed, he will be subject to disciplinary action." The new policy leaves the question to the officers' judgment, makes it clear that they will *not* be disciplined for failure to carry a weapon off duty, and finally offers this admonition:

When an officer anticipates that he will consume alcoholic beverages in an off-duty situation, he is advised not to carry his firearm. If the need arises for police services while an officer (off-duty) is visiting an establishment which serves liquor, the officer shall call the dispatcher and request that on-duty officers respond.

More recently, the Berkeley, California, Police Department considered adopting the Kansas City provisions verbatim, but decided instead on the following:

Officers shall not carry a firearm or be expected to take police action . . . when under the influence of alcohol as defined in Section 23126 of the California Vehicle Code, and/or other drugs.

Berkeley's version, in other words, permits an officer to consume a quantity of alcohol and still perform police duties. The off-duty officer carrying a firearm, like the citizen driving an automobile, is expected to know when he or she has passed the point of intoxication.

Some cities merely *permit* officers to carry their firearms off duty, without instructing them when they should or should not do so; and there seem to be few, if any, urban jurisdictions in which police officers are expressly *forbidden* to wear handguns except on active duty. Such a regulation would, in fact, run counter to the prevailing tendency of states to permit police officers to wear their weapons outside of the home jurisdiction (but within state boundaries).

There are several rationales for requiring, or at least encouraging, off-duty officers to carry weapons. Department administrators sometimes say that they base their regulations on statutes defining arrest powers which they view as obligatory; however, the reason most generally cited is community protection. Many off-duty shootings involve the interception of crimes that might otherwise have been completed. Such shootings doubtless reflect a large number of off-duty arrests that could not have been effected by unarmed officers. The culture and tradition of policing may also play a part in determining department practice. Fi-

nally, it is plausible that if police officers were known *not* to carry their guns off duty, there might be more deliberate attacks against them by persons they had arrested or otherwise offended.

If departments wish to make informed decisions about the advisability of requiring or not requiring off-duty weapons, the way to start is by identifying the basic factors underlying current practice: statutory provisions, community protection, tradition, or officer safety and evaluating their worth. If, for example, the principal reason for carrying weapons off duty is the possibility that a lower-visibility, off-duty officer might apprehend the perpetrator of a violent crime, and even perhaps prevent the crime from occurring, then the next step is to collect data on the number and quality of off-duty arrests for particular offenses.² If off-duty officers are making 15 percent of all arrests for armed robbery, presumably aided by their weapons, then they are providing a valuable service to the department and to the community at large. If, on the other hand, they are making insignificant numbers of quality arrests but constantly embroiling the department in controversial shootings, then the price being paid for the extension of law enforcement services may be too high.

Of the 320 shooting incidents in the seven cities reviewed in chapter 1, 17 percent involved off-duty personnel. In Detroit, which accounted for 38 percent of all shootings, more than 22 percent involved off-duty officers; while in Kansas City, only one incident out of 26 (4 percent) involved such officers. The reasons for these variations are not known. They may reflect residency requirements, crime rates, or a variety of other factors—some perhaps controllable, others not.

As long as officers carry weapons off duty, there will undoubtedly continue to be a category of off-duty incidents that police administrators might like to wish away—shootings that grow out of private disputes, not related to duty, often fueled by the consumption of alcohol. There are cases in which police officers shoot their spouses, their spouses'

lovers, themselves, or other persons who arouse their ire. There are accidental shootings that occur when children, friends, or the officers themselves mishandle their weapons. And there are cases in which off-duty officers taking police action are mistaken for criminal suspects and are shot by fellow officers, security guards, or store owners. From 1970 to 1973, for example, there were 15 cases in New York City of police shot by other officers.

It is impossible to say just how many of these potentially deadly mishaps should be tolerated in order to achieve the benefits of off-duty police protection. A breakdown of off-duty shootings in one of the seven sample cities may be instructive. Over an 18-month period in that particular jurisdiction, 27 persons were shot by off-duty police officers. Fifteen of these shooting victims were armed with guns; in addition, one had a "b.b." rifle, one a toy gun, one a knife, and one a beer bottle. The rest were not armed.

- Nine of the incidents involved officers witnessing robberies (one bank holdup, four holdups of bars or restaurants, one purse-snatching, and three robberies directed against the officers themselves).

- Another six incidents involved suspects in a range of serious felonies: two shootings, three burglaries, and one stabbing.

- Five incidents involved off-duty police officers' coming across persons wielding or pointing guns. In one case, a mentally disturbed subject pointed a toy gun through the officer's car window. In another, the officer was visiting a friend's house when, by the officer's testimony, he observed a person sitting at the dining table with a rifle in his hand. The weapon turned out to be a "b.b." rifle. Police investigators suspected that there might be more to the incident than the officer related, but they were unable to prove their suspicions and so accepted the shooting as justified.

- Two incidents involved auto theft, an offense that does not justify the use of deadly force according to local police policy. In one of these cases, the shooting was de-

scribed as accidental; in the other, the officer testified that the suspect had tried to run him down with the stolen car. In the latter case, the car was the officer's own and he had borrowed a neighbor's car (at roughly 1:00 A.M.) in order to search for the thieves off duty.

- Two incidents occurred at bars: one in which the officer stated he was attacked without provocation by members of a motorcycle gang, and one in which an officer tried to break up a fight and got into a shootout.

- One incident resulted when an officer, cut off in traffic, shouted "Why don't you learn how to drive?" and the driver of the offending vehicle proceeded to draw a gun.

- The final two incidents involved officers' personal lives. In one case, the officer shot a man he found with his girlfriend; in the other, a woman's estranged husband shot the officer first, and the officer returned the fire.

Although only a small number of the shootings in this group appear unwarranted, their occurrence nevertheless suggests that departments might profitably issue specific guidelines for off-duty police action. In each of the cities visited, there were cases in which off-duty officers became embroiled in violent confrontations growing out of unimportant disputes or infractions. A set of rules limiting off-duty action to situations involving serious crimes or a danger to life might reduce the number of shootings by off-duty personnel at little cost. Certainly, officers could be instructed to ignore minor traffic offenses and not to become involved in barroom fights. In addition, the officer's proficiency with a weapon carried off duty, if the weapon is not issued by the department, should be subject to periodic review.³

PLAINCLOTHES AND OLD-CLOTHES OFFICERS

Several of the cities—notably Detroit, Kansas City, and Washington—have made extensive use of old-clothes patrol

and decoy units. It is almost inevitable that the performance of officers assigned to these units will be measured by volume of arrests. Old-clothes officers, after all, are not expected to write traffic tickets nor to provide social services nor, generally, to prevent crime from occurring in the first place. Their job is to apprehend criminals; police administrators should not be surprised, therefore, if members of old-clothes units account for a disproportionately large number of shootings of civilians. At the same time, however, these shootings should be carefully reviewed and monitored, as should all shootings, for signs of potential problems. There is a certain danger that, within the close atmosphere of plainclothes units, officers may develop a sense of elitism which distorts their perspective and causes them to adopt an indiscriminately aggressive style of policing. Unwarranted use of firearms can be a byproduct of this tendency and ultimately may result in community pressure to discontinue an otherwise productive police practice.

One way of coping with problems which can arise in plainclothes units has been demonstrated by the New York City Police Department which, with the help of a grant from LEAA, has developed procedures aimed at maintaining a tight grip on its old-clothes and anticrime squad, known as the street crimes unit. Applicants for assignment to this unit must pass through a screening process that includes a written application, an oral interview by a three-member board, and a check of the officer's record of arrests. Street supervision is at a ratio of one sergeant to three teams of two or three officers. Whenever a firearm is discharged by a member of the street crimes unit, the unit's commanding officer responds to the scene and conducts a personal investigation. Each day's arrest reports are reviewed by the commanding officer, and in some cases this officer's views on the quality of individual arrests are relayed to the officers responsible for those arrests.

THE PROBLEM OF MISTAKEN IDENTITY

Plainclothes, old-clothes, and off-duty officers run a constant risk of being mistaken for criminals. When a

nonuniformed officer chases after a holdup suspect, gun in hand, he may be hard to distinguish from the suspect. Even perfectly innocent acts on the part of off-duty officers may attract suspicion if they fail to conceal their weapons adequately. Shootouts may occur between officers or groups of officers in which both sides assume they are faced off against armed criminals. The two examples which follow illustrate the problem:

WOMAN SLAIN IN GUN FIGHT BETWEEN OFF-DUTY OFFICERS

A 24-year-old woman was fatally wounded early yesterday in the East New York Section of Brooklyn when caught in the crossfire between a Housing Authority officer and a Correction Department officer who were exchanging shots because of a dual case of mistaken identity, the police said. Both off-duty officers were wearing street clothes at the time.

The shooting started when the correction officer saw the housing patrolman standing gun in hand over a man and a woman and apparently mistook him for a robber. The woman had been arguing with the officer about trying to get her car out of a parking space.

The victim of the shooting was Maria Pellet of 749 Franklin D. Roosevelt Drive. She was killed in a parking area at Pitkin Avenue and Crescent Street as she stood near her car. She had been visiting friends in the area.

The two officers involved in the gun battle, in which nine shots were exchanged, were Housing Officer James Gibson, 31 years old, and Correction Officer Robert Johnson, 26. Detective John Britt, who was passing at the time—shortly before 1 A.M.—halted the shooting and disarmed the two men.

As Detective Britt later reported, the other officers were crouching behind cars when he approached.

He said that he had drawn his gun, and showing his police shield to Officer Gibson, asked him to stop shooting. But the officer kept firing. Detective Britt said that he then approached Officer Johnson and

persuaded him to cease shooting. Then he and Officer Johnson, shouting to Officer Gibson, convinced him that they were officers and got him to desist.

Mrs. Pellot was taken to Brookdale Hospital, where she died of a bullet wound in the stomach.

Officers Gibson and Johnson were questioned at the Sutter Avenue police station and released pending further investigation. An autopsy is to be performed on the woman, and a ballistic test will be made to determine whose weapon had fired the fatal shot. A loaded .25-caliber automatic was found at the scene of the shooting.

The incident started when Mrs. Pellot tried to get her car out of a parking space and found it was blocked by Officer Gibson's double-parked automobile.

Officer Gibson, who lives nearby, saw her and went to his apartment to get his car keys so that he could move his vehicle. When he returned, he saw Mrs. Pellot hitting his car with a pipe in frustration.

The officer tried to take the pipe from the woman. A passerby saw the struggle, went to Mrs. Pellot's aid and punched Officer Gibson in the face. The officer then drew his service revolver and said he was going to arrest them.

At this juncture, Officer Johnson—on a passing bus—saw Officer Gibson holding his gun over the man and Mrs. Pellot. Officer Johnson got off the bus and fired. The two men, unaware that the other was an officer, then started their gun battle. The pedestrian fled.⁴

DEPUTY SHERIFF KILLED, 3 WOUNDED BY STRESS OFFICERS IN 'MIX-UP'

In a tragic case of mistaken identity, three Detroit police officers and five Wayne County sheriff's deputies engaged in an intense, five-minute gun-battle early today that left one deputy dead and three wounded.

The three Detroit STRESS patrolmen were not hurt, nor was the fifth deputy and a civilian at the scene of the 12:05 A.M. shoot-out at an apartment at Rochester and Wildemere on Detroit's near west side. All the lawmen were in plain clothes.

Mortally wounded was Deputy Henry C. Henderson, 33, of Detroit who died of a gunshot wound of

the abdomen at 1:05 A.M. in Receiving branch of Detroit General Hospital.

In critical condition in the same hospital is Deputy James L. Jenkins, 29, of Detroit, who underwent surgery for a bullet wound in the head.

Doctors said Jenkins had lost the sight of one eye and could lose the sight in the other.

Deputy Henry Duvall, 29, of Detroit, was admitted to the hospital with a leg wound. Deputy Aaron D. Vincent, 23, who is the tenant of the second-floor apartment at 3210 Rochester, in the West Chicago-Dexter area, was treated for a grazing gun wound of the head.

These four deputies were longtime friends who worked at the Wayne County Jail.

The fifth deputy, David E. Davis, is assigned to the Sheriff's Road Patrol.

The civilian in the apartment was identified as Richard Sain, 32, an orderly at Boulevard General Hospital, who lives in another apartment in the building.

Although top-ranking detectives of the Homicide Section were still trying to untangle the exact events of the shoot-out, Police Commissioner John F. Nichols and Sheriff William Lucas agreed that it was a "tragic mistake."

They said the deputies and Sain were gathered after work, as was often their custom, to play a social game of cards—whist—in Vincent's apartment when the STRESS officers arrived under the apparent misapprehension that something illegal was going on.

They said the STRESS officers, in a cruiser on Wildemere, had seen one of the deputies enter the apartment from an outside stairway with a gun and a holster in his hand after parking his car in a well lighted parking lot next to the building.

They said two of the STRESS officers—joined by the third after the shooting started—climbed the stairway to a second-floor porch where the door to the apartment was ajar.

They said one of the STRESS officers said he poked his badge through the door and announced he was an officer. The deputies able to talk to detectives after the incident said they thought what they saw was the flash of a gun barrel, not a badge.

Nichols and Lucas said each side "sincerely believes" that the other started shooting first.

More than two dozen shots were reported fired in the shoot-out that followed, the STRESS officers apparently firing through a window and the door and the deputies firing while crouched behind overturned furniture...⁵

There is no way to stop all such incidents from ever taking place. After examining a number of mistaken identity situations in different cities, however, certain common factors emerge. The worst confrontations tend to involve overlapping law enforcement agencies—e.g., municipal, transit, and housing police, and sheriff's deputies. Often the situations are precipitated by an officer's failing to keep the off-duty weapon concealed, carrying a weapon while intoxicated, drawing the weapon without good reason, or turning a personal dispute into an occasion for police action.

It is at least plausible that strict standards for the care and use of weapons by plainclothes and off-duty officers, coupled with an effort to reduce the number of overlapping agencies operating in any one area (or to make certain that members of such agencies can identify one another by sight), could prevent some shootouts between law enforcement officers and some of the tragedies that inevitably result.

Notes

1. Such regulations may be a reflection of statutory requirements. As an example, the D. C. Code in Title IV, Section 143 states, "If any member of the police force shall neglect making any arrest for an offense against the laws of the United States committed in his presence, he shall be deemed guilty of a misdemeanor and shall be punishable by imprisonment ... not exceeding two years or by a fine not exceeding \$500..."

2. Arrests should be looked at not only in terms of absolute numbers, but also in terms of their effect on the closure rate for certain serious offenses such as armed robberies.

3. In Washington, D.C., for example, before a member of the police department can be authorized to wear an off-duty, nonissued revolver and holster, the weapon and holster must be taken to the pistol range to be approved by the range officer or assistant. In addition, the officer seeking authorization must demonstrate proficiency in handling the nonissued weapon. During annual

revolver qualifications, officers with approved nonissued weapons must qualify with both the service revolver and the off-duty weapon. If an officer is required to turn in the service revolver for any reason, authorization to wear an off-duty weapon is automatically rescinded until the service weapon is returned.

4. *The New York Times*, December 23, 1974.

5. *The Detroit News*, March 9, 1972.