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Biographical Sketches

Philip Matthew Stinson, Sr., J.D., Ph.D., is an assistant professor in the Criminal Justice Program at Bowling Green State University. His current research interests include the study of police crime, police misconduct, and police behavior. He has published articles recently in *Criminal Justice Policy Review*, *Police Quarterly*, and *The Prison Journal*.

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Abstract

The findings of independent commissions and research derived from a data-set of career-ending misconduct among New York Police Department (NYPD) officers suggests that police engage in a wide variety of crimes while they are off-duty including domestic violence, bar fights, drunk driving, burglary, and sex offenses (The Mollen Commission, 1994; Fyfe & Kane, 2006; Kane & White, 2009). The off-duty misbehavior of police is an important concern for police agencies exposed to potential liability costs, and scholars engaged in debates about whether studies on police deviance should include acts committed while an officer is technically off-duty. The problem for scholars interested in understanding off-duty police misconduct is that virtually all of the existing data describes the misbehavior of NYPD police. The purpose of the current study is to explore the nature and character of off-duty police crime in the United States through a content analysis of news articles on arrested off-duty police officers. Data are presented in terms of the arrested off-duty officer(s), his or her agency, and case outcomes including legal and/or employment dispositions. The paper includes a discussion regarding the generalizability of existing data on off-duty police crime and the policy implications of our research.

Keywords: police crime, police misconduct, off-duty police misbehavior

Off-Duty & Under Arrest: A Study of Crimes Perpetrated by Off-Duty Police

In August 1998, the Commission to Combat Police Corruption (CCPC) released a comprehensive report on the misconduct of New York Police Department (NYPD) officers. The Commission found that a significant number of cases arose out of misconduct that occurred while the officers were off-duty. More than 80% of the 163 NYPD officers arrested during the preceding year were charged for off-duty misconduct and crimes (CCPC, 1996). These cases most often involved officers who used their service weapons to threaten or even fire at others during private, off-duty confrontations, as well as officers who engaged in domestic or other forms of off-duty violence. The report also highlighted the pervasive role of alcohol in off-duty misconduct. Intoxicated cops were involved in roughly one-third of the cases of off-duty violence reviewed by the Commission (CCPC, 1998).

The CCPC's report echoed the findings of the Mollen Commission's (1994) investigation of wide-scale corruption within the NYPD, as well as some of Fyfe's (1980, 1987, 1988) earlier research on the misuse of weapons by off-duty police. The Mollen Commission focused on the illegal drug trade, including cases where off-duty NYPD cops robbed local drug dealers and subsequently sold the booty to friends and neighbors. Fyfe (1980) focused on cases that involved off-duty violence, including one where an officer used his service weapon to murder his wife, and another that involved an intoxicated off-duty cop who was ejected from a bar and fired six shots onto the premises. More recently, Fyfe and Kane (2006) and Kane and White (2009) found that NYPD officers engaged in off-duty crimes as varied as those committed by more typical criminals, including domestic violence, bar fights, drunk driving, burglary, and sex offenses.

The problem for scholars interested in understanding off-duty police misconduct is that virtually all of the existing data describes the misbehavior of NYPD cops. The data are based on either the findings of independent commissions designed to investigate the city's unique cycle of police scandals or published research derived from a dataset on career-ending misconduct among NYPD officers from 1975 to 1996 (Fyfe & Kane, 2006; Harris, 2009, 2010; Kane & White, 2009). The formation of local "blue ribbon" commissions occurs rarely—even in New York City; and, police departments do not usually expose agency data on misconduct to outside scrutiny whether it occurs on or off-duty. The existing line of research provides coverage on the off-duty misbehavior of NYPD officers, but the absence of data on the phenomenon as it occurs elsewhere raises legitimate concerns in regard to generalizability.

Another factor that has contributed to the lack of information on the misbehavior of off-duty police relates to a scholarly debate about whether studies on "police deviance" and/or "police crime" should include acts committed while an officer is technically off-duty. Kappeler, Sluder, and Alpert (1998) provide examples to make the case for the exclusion of off-duty crimes where police engage in acts "that have little to do with their employment" (p. 20). Others including Fyfe and Kane (2006) however present a compelling argument for the inclusion of off-duty crimes because it is often difficult to distinguish between on- and off-duty police behavior. More data on cases of off-duty crimes could help to resolve this debate; but so far, the scholarly wrangling and restrictions on the availability of official data has resulted in a complete absence of empirical research on the off-duty crimes perpetrated by cops outside of New York City.

The need for more research goes beyond scholarly concerns related to generalizability and conceptual clarity. The issue is also an important problem for police executives because departments confront potential liability costs associated with the off-duty misconduct of officers

(Martinelli, 2007; Nowicki, 2010; Stone, 2010). Cases involving off-duty police encompass many areas in which civil liability is at issue for law enforcement, including physical altercations and arrests, the scope of secondary employment, searches and seizures, and personal conduct (Farber, 2007). Off-duty misconduct reflects negatively on the police organization, and has the potential to undermine organizational legitimacy and public confidence in the police. Egregious cases of off-duty crime and misconduct are often accompanied by allegations of corruption, mismanagement, and cover-ups; and, media accounts of serious or violent police crimes are not likely to focus on whether the officer was on or off-duty (Martinelli, 2007).

The primary objective of the current study is to explore the nature and character of off-duty police crime in the United States through a content analysis of newspaper articles on off-duty officers arrested over a 36-month period, from January 2005 through December 2007. We define police crime as crimes committed by sworn law enforcement officers who are given the general powers of arrest at the time the offense was committed. We present data on these cases in terms of the: a) arrested officer, b) offense, c) his or her agency, and d) case outcomes including legal and/or employment-related dispositions. The study also includes measures designed to investigate the degree to which arrested off-duty police were acting in their official capacity when they committed the crime(s). Our methodology provides an opportunity to explore off-duty police crime as it occurs in jurisdictions throughout the United States, as well as information to inform debates about whether acts committed by off-duty cops should be considered in studies on "police deviance" and/or "police crime."

The next section provides an overview of the relevant literature that covers both the scholarly and legal issues associated with the misbehavior of off-duty police. The first part of the review covers existing data on the off-duty misconduct of NYPD officers and the offenses

that they commit. The second part outlines the ongoing scholarly debate about whether to consider acts that occur off-duty in studies of police misconduct and crime. The third part provides a summary of the civil liability issues that arise from these cases.

Literature Review

Most of what is known about off-duty police misconduct concerns acts committed by NYPD officers and is derived from the reports of the CCPC and published scholarship. Overall, the existing data focus on three major problems including: 1) the misuse of firearms, 2) alcohol intoxication, and 3) domestic violence. The CCPC (1998) reported that 25% of the cases of off-duty misconduct analyzed by the Commission involved the improper display or discharge of a service weapon. Fyfe (1980) found that about one-quarter of all off-duty NYPD shootings were not related to some law enforcement or order maintenance function. These cases were commonly officer suicides or accidental shootings, but there were also acts of "bizarre violence" that were difficult to categorize (p. 77). Kane and White (2009) described several cases where off-duty NYPD officers shot motorists during disputes arising from minor traffic accidents, and the CCPC documented numerous cases where off-duty NYPD cops used guns to menace and/or shoot a wide variety of victims, including subway passengers, taxi cab drivers, bar patrons, and domestic partners/spouses (CCPC, 1998, 2001a, 2001b, 2010).

A large number of the misconduct cases analyzed by the CCPC involved off-duty officers who were intoxicated (CCPC, 2004). The most prevalent charges in these cases were driving under the influence and cases where officers had consumed enough alcohol to be considered unfit for duty. The CCPC recommended specific policies designed to mitigate problems associated with off-duty alcohol abuse, including provisions to expand the definition of "unfit for duty" to include intoxicated off-duty officers and prohibitions against carrying an off-duty

weapon while intoxicated (CCPC, 1998). Fyfe and Kane's (2006) classification of police misconduct includes driving while intoxicated within the category of "off-duty public order crimes" but they do not provide specific data that distinguishes misconduct that includes the abuse of alcohol. Kane and White (2009) however provide several descriptions of cases that involved intoxicated off-duty officers engaged in bar fights, drunk driving, and personal disputes.

The CCPC (1998, 2001a, 2001b) reports also identified a disturbing pattern of police domestic violence. Over 40% of the cases in which police committed acts of violence while off-duty arose within the context of a domestic relationship, including verbal threats, stalking, destruction of property, and physical assaults causing serious bodily injury. Cases of domestic violence were the most common offense that resulted in the termination of an officer for misconduct that occurred off-duty. The problem of police domestic violence has been documented in professional journals (Farber, 1995; Lott, 1995) and journalistic investigations (Lait, 1997; Spillar & Harrington, 1997). Police scholars have recognized the adverse impact of police work on domestic relationships and violence in police marriages (Bibbens, 1986). This line of research also includes studies on police domestic violence using officer surveys and interviews (Bergen, Bourne-Lindamood & Brecknock, 2000; Boulin-Johnson, 2000; Neidig, Seng & Russell, 1992); but, the issue of prevalence remains an unanswered empirical question because of problems related to measuring the phenomenon (Van Hasselt & Sheehan, 2000). Reliable data on the prevalence of intimate partner violence (IPV) within the general population remains elusive because of reluctance on the part of the victim to report these assaults, and the problem is exacerbated in police families due to the additional threat such information poses to the officer's job (Bergen et al., 2000).

The Scholarly Debate on Off-Duty Police Misconduct & Crime

The study of off-duty police misconduct and crime has been complicated by a debate on whether these concepts include acts committed while an officer is technically off-duty. Several policing scholars emphasize the occupational origins of police crime and focus on those acts that occur on-duty under the guise of police authority (Barker & Carter, 1994; Foster, 1966; Stoddard, 1968) and during the course of an officer's normal work activities (Barker, 1978; Ross, 2001). Kappeler et al. (1998) argue that many off-duty crimes should not be considered police crimes because they do not involve some aspect of an officer's occupational position to carry them out. This situation begs questions as to whether off-duty misconduct arises from specialized law enforcement training, skills, and knowledge, or even prevailing occupational norms that may serve to legitimate such misbehavior.

Fyfe and Kane (2006) make a compelling case for the inclusion of off-duty acts in their study of career-ending police misconduct, an argument that also applies to police crimes. First, the job provides officers unique criminal opportunities that can be taken advantage of either on- or off-duty. Second, police officers are more likely to engage in either on- or off-duty crimes in part because they believe their status as officers affords them some degree of immunity from prosecution (see also Reiss, 1971). Third, most jurisdictions grant full enforcement powers to off-duty police and permit them to carry service weapons. These factors make it difficult to distinguish between on- and off-duty police behavior because "the knowledge, gun, and badge that comes with being a police officer" often facilitates the off-duty crimes of police officers (Mollen Commission, 1994, p. 30) (see also Kane & White, 2009, p. 740, n. 1). The issues of importance for police scholars trying to measure police deviance and crime also emerge in litigation to determine organizational liability for officer misbehavior that occurs off-duty.

Off-Duty Police Crime & Civil Liability

Local government entities, including cities, counties, and their agencies can be sued in federal court for monetary damages pursuant to 42 U.S.C. §1983 for certain civil rights violations (*Monell v. Department of Social Services*, 1978). Municipal liability will attach under Section 1983 upon a judicial finding that a government official 1) acted under the color of state law 2) pursuant to some custom, policy, or law of the governmental entity 3) so as to deprive the plaintiff of some right, privilege, or immunity guaranteed by the Constitution or some federal law (*Monroe v. Pape*, 1961). Section 1983 has become the cornerstone of police liability federal litigation against police officers, police agencies, and municipalities (Kappeler, 2006).

Courts often need to make a determination in Section 1983 litigation as to whether an off-duty police officer was acting under the color of state law; in other words, did the police officer abuse their governmental power or were they acting as a private individual? The color of law requirement of Section 1983 excludes the purely private bad acts of off-duty police officers from the possibility of municipal liability (Kappeler, 2006). Factors considered by the courts in determining whether an officer acted under the color of state law are assessed based on the totality of the circumstances surrounding the incident in question (Schwartz & Urbonya, 2008). A court's analysis of the totality of the circumstances focuses on the nature of the specific acts that were performed by the off-duty officer rather than whether the officer was actively on-duty at the moment (*Pickrel v. City of Springfield*, 1995).

The federal courts have addressed a number of specific factors relating to color of law and off-duty officers. In one case, an off-duty officer working private security at a shopping mall attempted to arrest a fleeing shoplifter. The officer was in her full police uniform when she approached the suspected shoplifter in the mall parking lot and identified herself as a police

officer. The suspect jumped into a car, attempted to run over the off-duty officer, and was fatally shot by the officer. In holding that the officer was acting under the color of state law when she shot the suspect, the court noted a township ordinance providing that its police officers “shall at all times take appropriate police action to protect life and property, preserve the peace, prevent crime, detect and arrest violators of the law, and enforce [all laws within the township]” (*Abraham v. Raso*, 1998, p. 443).

Similarly, courts have found municipal liability when an off-duty officer used their service weapon to shoot someone where the officer’s police department required officers to carry a gun at all times within city limits (e.g., *Bonsignore v. City of New York*, 1982; *Stengel v. Belcher*, 1975). Courts also have held that off-duty officers are acting under the color of law when they flash their badge or otherwise identify themselves as police officers, file police reports, attempt or make an arrest, invoke their police powers outside the jurisdiction where they are employed, use their police powers to settle a personal vendetta, display and/or use a police weapon, drive a police cruiser, or wear their uniform (Vaughn & Coomes, 1995). These decisions provide police executives some insight as to how courts may interpret liability in particular cases; but, research has yet to supply more generalized data on the typical crimes perpetrated by off-duty police that could be used to develop policies to both mitigate the problem and lessen the number of claims arising within the context of off-duty police misbehavior.

Method

Data for the present study were collected as part of a larger comprehensive study on police crime. The larger study was designed to locate cases in which sworn law enforcement officers had been arrested for one or more criminal offenses, including acts that occurred while the officer was either on- or off-duty. The present study is focused specifically on the

identification and description of crimes committed by police while they were off-duty. The primary information source was the internet-based Google NewsTM search engine and its Google AlertsTM search tool. Google News is a computer-generated news site developed and operated by Google that aggregates news articles from several thousand news sources (Google, 2008). Google News has quickly become the preferred method to conduct news-based content analyses since its inception in 2002 (Carlson, 2007). The method has already been used by researchers to conduct news-based content analyses on a variety of subjects including TASER[®] lawsuits (Adams & Jennison, 2007), human trafficking (Denton, 2010), shaken baby syndrome (Lee, Barr, Catherine, & Wicks, 2007), medical research funding (Hochman, Hochman, Bor, & McCormick, 2008); and, influenza infections among children (Ma, et al., 2006).

Google designed the Google News search engine with the goal of including the newspaper of record in each county within the United States (V. Boyapati, personal communication, November 15, 2008). The Google News search engine can be used in conjunction with the Google Alerts tool to run automated daily searches using a researcher's designated search query terms. The Google Alerts tool has also been used previously in conjunction with Google News to analyze news coverage on a range of subjects including the bird flu (Ungar, 2008) and stem-cell based medical interventions (Regenberg, Hutchinson, Schanker & Mathews, 2009). News articles are accessible via Google News for 30 days from the date of publication in the original news source (Galbraith, 2007). Our data collection process occurred in real time on a daily basis beginning on January 1, 2005 through December 31, 2007.

Data Collection & Coding

News searches were conducted using 48 different search terms. The Google Alerts tool sends an automated email message that notifies the user whenever the daily search identifies a

news article that matches the search terms. The automated alert contains a link to the URL for the designated news article. These articles were located and examined for relevancy, printed, and archived for subsequent coding and content analyses. Google Alerts commonly identified news articles that reported on events that occurred after an officer's arrest, including various court proceedings such as plea bargains, adjudications, appellate court orders, and/or the subsequent arrest(s) of the same officer(s) in different criminal cases.

After the universe of news reports was identified, we recorded case related information using a five page coding instrument that included 109 individual data fields. Cases were initially coded in terms of the duty status of the officer at the time the offense was committed. Determinations were made as to whether the arrested officer was either on- or off-duty based on the manifest content of the articles.¹ Additional data were coded including information on the: a) arrested officer, b) his or her agency, and c) case outcomes including legal and/or employment dispositions.

Offenses committed by off-duty police were coded in two ways. We initially used the data collection guidelines of the National Incident-Based Reporting System to code specific offenses (NIBRS) (see United States Department of Justice, 2000, pp. 21-52).² We found however that in many instances officers were officially charged with offenses that did not reflect the nature of the criminal acts described in the narratives of the news articles, suggesting that preferential initial charging decisions were sometimes offered as a professional courtesy to fellow police officers. The occurrence of preferential charges suggested the need for additional offense codes based on the manifest content of the news articles. We subsequently coded each offense in terms of five general categories that more accurately depict the nature of the crime(s), including those related to: 1) violence, 2) sex, 3) drugs, 4) alcohol, and/or 5) a profit motive.

The study also includes measures designed to investigate the degree to which arrested off-duty police were acting in their official capacity when they committed the crime(s). We constructed several indicators to measure this variable that were based on those referenced in Schwartz and Urbonya's (2008) description of factors commonly considered by federal courts in Section 1983 litigation involving claims that off-duty police officers acted in their official capacity. Specific items used to indicate the degree to which arrested off-duty police were acting in their official capacity when they committed the crime(s) included whether the arrestee: a) identified themselves as a police officer, b) was wearing their police uniform, c) displayed their service weapon or some other department-issued weapon, d) displayed a badge, e) conducted an off-duty search, f) conducted an off-duty arrest, and g) intervened in an existing dispute pursuant to agency policy. One additional item was used to indicate whether the jurisdiction had an ordinance that deemed 24-hour on-duty status for police.

Coding of content was completed by one of the authors. Additional procedures were undertaken to ensure the reliability of the data. One of the most widely accepted tests of reliability for content analyses is the percentage of agreement test, wherein the percentage of agreement among two or more coders is calculated (Riffe, Lacy, & Fico, 2005). We employed a second coder to independently code a random sample of five percent of the total number of cases ($n = 106$). The overall level of simple agreement between the two coders across the variables included in the present study (97.6%) established a degree of reliability well above what is generally considered "acceptable" (Riffe, et al., 2005, p. 147).

Strengths & Limitations of the Data

Our research compliments existing studies in the "newsmaking criminology" tradition (Barak, 1988, 1995). According to Barak (2007), newsmaking criminology "refers to the

conscious efforts and activities of criminologists to interpret, influence or shape the representation of ‘newsworthy’ items about crime and justice” (p. 191). Studies in newsmaking criminology most commonly involve the analysis of news content to gain knowledge about the nature of crime-related media coverage, but news content can also provide valuable information on the nature of the criminal behavior that underlies the media coverage (e.g., Beard & Payne, 2005; Denton, 2010; Morris, 2010; Payne, Berg, & Sun, 2005; Payne & Gainey, 2003; Ross, 2000). For our purposes, the news reports provided an unparalleled amount of information on a very large number of off-duty crimes committed by police officers. These data would be difficult or impossible to collect using other methodologies.

Google News also offers some clear advantages over other aggregated news databases (e.g. Dialog[®], Factiva[®], LexisNexis[®]) (Ferguson, 2005; Galbraith, 2007; Ojala, 2002). The Google News site crawls content from over 4,500 English language news sources and appears to be more likely to locate stories that have not been picked up by news wire services. Google News offers more up-to-date stories since it crawls the internet every 15 minutes. Google News incorporates Google's automated search algorithms that are the current industry standard. Finally, the search engine provides multiple links to related news content, so if a particular story provides insufficient information it is relatively easy to locate more relevant news sources. Google does not however provide a publicly-available list of news sources. Google treats the source list as proprietary information that is kept confidential in order to protect the company's competitive interests.

There are three primary limitations of these data. First, it should be recognized that the data are limited to cases that involved an official arrest. We do not have any data on cases of police crime that did not come to the attention of police, nor do we have information on cases

that did not result in an arrest. Second, our research is limited by the content and quality of information provided on each case. The amount of information on each case varied, and data for some of the variables of interest were missing for some of the cases. Third, it should be recognized that these data are the result of a filtering process that includes the exercise of discretion by media sources. Media sources exercise discretion in terms of both the types of stories covered and the nature of the content devoted to particular stories (Carlson, 2007).

Results

The news searches identified 2,119 criminal cases that involved the arrest of 1,746 sworn officers during the period January 1, 2005 through December 31, 2007. Some of the officers were arrested more than once, and some of the officers had multiple cases due to having more than one victim. The arrested officers were employed by 1,047 nonfederal law enforcement agencies representing all 50 states and the District of Columbia. Slightly more than one-half of the cases ($n = 1,126$ or 53.1% of all cases) involved officers who were off-duty at the time of the offense.

The remainder of this section is organized into three parts. The first part provides descriptive statistics on the off-duty crimes and the types of offenses that were more likely to be committed by off-duty officers. The second part describes the off-duty crimes in terms of our measures of official capacity, or the degree to which arrested off-duty police were acting in their official capacity when they committed the crime(s). The third part of the section provides comparisons between the employment outcomes of on- and off-duty officers including case dispositions that resulted in suspension, resignation, or termination of employment.

The Off-Duty Offenses

Table 1 provides data on the cases that involved officers who were off-duty at the time of the offense including univariate descriptive statistics on the arrested officers, their agencies, and the geographic region in which they are employed. The vast majority of cases involved male officers (94.2%). Most of the officers were patrol and street-level personnel (82.7%), including nonsupervisory officers, sheriff's deputies, state troopers, and criminal investigators. The remaining officers were line/field supervisors (corporals, sergeants, lieutenants) (13.5%) or police managers (captains, majors, colonels, deputy chiefs and chiefs) (3.6%). The modal category for officer age was 36-43 years ($n = 325$ or 28.8%), and the modal category for years of experience was 0-5 years ($n = 292$, or 25.9%). The off-duty crimes occurred in every region of the United States, but the arrested officers were most commonly employed by agencies located in the South (40.2%).

<<<<< Insert Table 1 about here >>>>>

Next we sought to identify and describe the types of offenses that were more likely to be committed by off-duty officers. We present findings on the offenses in terms of both specific offense types (Table 2) and more broad offense categories (Table 3). Chi-square analyses were performed to discern the degree of association between specific types of offenses and the duty status of the arrested officer. Table 2 presents the specific offenses that were significantly more likely to be committed by officers who were off-duty rather than on-duty based on the Chi-square analysis.

Simple assaults and aggravated assaults were more likely to be committed by off-duty officers. Off-duty officers committed 74.7% of the simple assaults and 63.1% of the aggravated assaults in our study. Several specific offenses related to the consumption of alcohol were also

more likely to be committed by officers who were off-duty, including driving under the influence (86.6%), liquor law violations (73.9%), and drunkenness (86.7%). Several sex offenses were also more likely to be committed by off-duty officers than on-duty officers including statutory rape (77.8%), pornography/obscenity offenses (83.3%), on-line solicitation of a child (93.3%), and incest (100%).

<<<<< Insert Table 2 about here >>>>>

Chi-square analyses were also performed to discern the degree of association between general categories of offenses and the duty status of the arrested officer. Table 3 presents the five general categories of offenses by the duty status of the arrested officer. Alcohol-related crimes were more likely to be committed by off-duty officers rather than on-duty officers ($p < .001$). Off-duty officers committed 86.5% of the alcohol-related crimes in our study. Profit-motivated crimes and drug-related crimes were more likely to be committed by on-duty officers rather than off-duty police ($p < .001$ and $p < .001$ respectively). Sex crimes were also more likely to be committed by on-duty officers ($p = .016$), and slightly more than one-half (51.3%) of the officers arrested for sex crimes committed them while they were on-duty. The association between crimes of violence and duty status was not significant ($p = .053$). Off-duty officers committed 55.2% of the violent crimes. The null finding in regard to the association between duty status and violent crimes suggests that police commit violent crimes regardless of whether they are on- or off-duty.

<<<<< Insert Table 3 about here >>>>>

Measures of Official Capacity

We examined the off-duty police crimes using measures designed to investigate the degree to which arrested off-duty police were acting in their official capacity when they

committed the crime(s). Table 4 presents the eight measures of official capacity derived from our review of factors that are commonly considered by federal courts in Section 1983 litigation involving claims that off-duty police acted in their official capacity. Table 4 shows that slightly more than 16% of all the off-duty crimes ($n = 184$) included at least one of the measures designed to indicate that the arrested officer was acting in an official capacity when he/she committed the crime. The most frequently occurring measure exhibited by police who were arrested for crimes committed while they were technically off-duty was the display of an official weapon ($n = 110$; 9.8% of all off-duty crimes). The second most frequently occurring measure were cases where the off-duty officer identified themselves as a police officer ($n = 83$; 7.4% of all off-duty crimes). There were 25 instances where an off-duty officer displayed a badge during the commission of their crime(s) (2.2% of all off-duty crimes). A small number of cases involved off-duty police who were in uniform ($n = 13$) and/or conducted an arrest ($n = 9$) and/or a search ($n = 9$) during the commission of the crime(s).

<<<<< Insert Table 4 about here >>>>>

Employment Outcomes

Additional analyses were conducted to further investigate the relationship between duty status and the employment outcomes for police criminals. Specifically, a multinomial logistic regression model was used to determine the influence of a number of independent variables on employment outcomes. The dependent variable is a trichotomous measure that distinguishes between officers who were suspended ($n = 875$), resigned ($n = 377$), or terminated ($n = 356$).³ Several officer, offense, and agency variables were included in the multivariate analysis. The main independent variable of interest, duty status, was included as a dichotomous measure to distinguish between officers who committed crimes while off-duty (coded 0) and officers who

committed crimes while on-duty (coded 1). Officer gender was included with females coded as 0 and males coded as 1. Years of service were included as a continuous variable.⁴ Rank of the officer was included as a dichotomous measure with managers/supervisors coded as 0 and nonsupervisory officers coded as 1. For type of offense, five dummy variables were also created for sex offenses, nonsex-related personal offenses, property offenses, drug offenses, and other offenses. Personal offenses were left out of the analysis as the reference category. Department variables including agency type and geographic region were also controlled in the analysis.

The descriptive statistics of the independent variables for officers who were suspended, resigned, or terminated are presented in Table 5. On- and off-duty officers differed slightly in terms of employment dispositions. The most common disposition for officers who committed on-duty crimes was suspension, followed by resignation and termination. The most common disposition for officers who committed off-duty crimes was also suspension, but resignation was the least common disposition for these officers. Bivariate correlations computed for each of the independent variables revealed that none of the variables were highly correlated with each other. Tolerance statistics and variance inflation factors were also examined. None of the tolerance statistics were below .1, and none of the variance inflation factors exceeded 4. Thus, it was determined that collinearity was not an issue in the model (Mertler & Vannatta, 2002).

<<<<< Insert Table 5 about here >>>>>

The results of the multinomial logistic regression are reported in Table 6. Suspension, the modal category, was left out of the model as the reference category for the dependent variable. Therefore, the results are interpreted as the odds of an officer resigning as opposed to being suspended and an officer being terminated as opposed to being suspended. Table 6 reveals that duty status was a significant predictor in whether officers resigned versus being suspended ($b =$

.464, $p < .001$). The disposition of officers who committed on-duty offenses was significantly more likely to be resignation rather than suspension. In examining the odds of termination versus suspension, duty status was not significant at the .05 level. If the significance level is relaxed to .10 however, the coefficient ($b = .238, p < .10$) indicates that on-duty officers were more likely to be terminated than suspended. Several other variables were found to be significant predictors of disposition, including years of service, variables associated with the type of offense, and the geographic location of the agency.

<<<<< Insert Table 6 about here >>>>>

Discussion

Off-duty police crime is an issue of concern for both scholars and police executives. Scholars confront the problem of whether to "count" off-duty misbehavior in their conceptualization and measurement schemes; police executives face potential municipal liability exposure and negative fallout from police crimes that occur while an officer is technically off-duty. Data to inform these issues have thus far been limited because most of it is based on the misbehavior of cops from a single agency. We conducted news searches to identify and describe the off-duty crimes perpetrated by police throughout the nation. Some points of discussion emerge from our research.

Our findings confirm the generalizability of existing data on off-duty misconduct in regard to at least two issues: 1) alcohol intoxication, and 2) the misuse of firearms. Problems associated with off-duty alcohol abuse and intoxication appears to be pervasive. We found that alcohol-related crimes were significantly more likely to be committed by off-duty police, and specific offenses such as DUI, drunkenness, and violations of the liquor laws were among the offenses more likely to be committed by off-duty police. Our study identified dozens of cases

involving intoxicated off-duty cops arrested for aggravated and simple assault ($n = 37$ and 30 , respectively), and there were hundreds of off-duty police arrested for alcohol-related cases involving harassment/intimidation ($n = 320$) and property damage/vandalism ($n = 315$). Police work seems to be conducive to alcoholism, and alcohol abuse has been associated with a myriad of problems that occur on-duty (Swanson, Territo & Taylor, 2008). Our data show that alcohol abuse leads to a wide variety of violent and property crimes perpetrated by police who are off-duty. The scholarly research and reports of the CCPC also focus on the misuse of firearms by off-duty police. We identified 110 cases (about 10% of all cases of off-duty police crime) where off-duty police displayed a department-issued service weapon to threaten or intimidate people during the commission of a crime. Overall, our findings indicate that major problems associated with the off-duty misuse of alcohol and guns extend well beyond the jurisdictional boundaries of the NYPD.

The third major problem identified in the existing literature on off-duty police misconduct is domestic violence. Coding procedures to identify police involved in domestic violence in the current study failed to uncover many of these cases due to preferential initial charging decisions. There were numerous cases where police responded to 9-1-1 calls made within the context of a domestic assault involving an off-duty officer that resulted in an arrest for some other offense such as public drunkenness, disorderly conduct, or resisting arrest. The Lautenberg Amendment of 1996 prohibits anyone convicted of a crime of domestic violence from carrying a firearm (Gun ban for individuals convicted of a misdemeanor crime of domestic violence, "Lautenberg Amendment," 1996); a factor that presumably influenced preferential charging in these cases. Researchers interested in the study of police domestic violence need to recognize the problems associated with preferential charging decisions and methodologies that

rely on official charges to identify these cases. Future studies could utilize news-based content analyses that incorporate expanded definitions of the phenomenon to uncover cases that have thus far remained "invisible" to researchers.⁵

Crimes of violence including simple and aggravated assault were commonly perpetrated by off-duty police in our study ($n = 207$ and 149 , respectively) however the relationship between duty status and crimes of violence was not significant. The finding indicates that police who are technically off-duty are as likely to commit violent crimes as those who are on-duty. Police scholars have long recognized violence as a hallmark of both police culture and the day-to-day work of street-level officers (Crank, 2004; Skolnick, 1994; Westley, 1970); but, we know much less about how violence may infuse off-duty behavior and the lives of cops *after* the shift is done. To what degree do occupational and cultural norms that define violence as an acceptable means to achieve job-related goals "bleed-over" to encourage illegitimate violent behavior on the part of police who are off-duty? Many of the crimes in our study could be described as cases involving officers who could not distinguish the appropriate and legitimate use of violence within the context of shifts in their duty status—they could not "turn off" the influence of cultural norms that legitimate the use of on-duty violence in cases when they were technically off-duty. More data are needed to investigate the influence of cultural and occupational norms on the violent behavior of off-duty police.

We explored the relationship between duty status and employment outcomes for police criminals using a multinomial logistic regression model and a trichotomous measure of dispositions including suspension, resignation, and termination. The descriptive statistics (see Table 5) show that cases that involved off-duty police concluded with a suspension more often than did cases that involved on-duty police, suggesting that police who commit off-duty crimes

may be less likely to be separated from the job through either resignation or termination. The multivariate analyses however were inconclusive in this regard (See Table 6). On-duty police criminals were significantly more likely to resign rather than be suspended compared to off-duty police criminals. On-duty police criminals were also more likely to be terminated rather than suspended compared to off-duty police criminals, but this relationship was not significant at the .05 level. Reports of the CCPC on the disposition of charges of serious off-duty misconduct among NYPD officers identified cases that resulted in "questionable penalties," especially those that included sanctions "short of termination where termination [was] warranted" (CCPC, 1998, p. 24). The question of whether off-duty police crimes are adequately punished remains an unsettled empirical question.

We developed measures designed to investigate whether arrested off-duty police were acting in their official capacity when they committed the crime(s) and found that most of the cases (83.6%) did not include any of the eight measures of official capacity. One might argue that the remainder of cases is inconsequential because they rarely occur. An alternative view merits consideration however. The measures of official capacity were based on factors commonly considered by federal courts in Section 1983 litigation, so the cases that *did* include one or more of the factors ($n = 184$) are instances where municipal law enforcement agencies and local governments face potential liability exposure. The cost of an average jury award of liability against a municipality is reported to be about \$2 million, and the average award against a police-defendant in a sample of federal liability cases was found to be about \$492,000 excluding legal fees (Kappeler, 2006; Ross, 2000). Police agencies clearly remain vulnerable to significant monetary damages from claims that arise from off-duty misconduct even though the majority of these cases do not include evidence that an officer acted within the scope of his or

her official capacity. Research on this issue would benefit from methodologies that incorporate data on the ultimate disposition of Section 1983 claims concerning whether an off-duty officer acted within their official capacity during the commission of a crime.

The identification of cases that did include some of the measures of official capacity also provides additional fodder to scholars who argue for the inclusion of off-duty acts in studies designed to measure police deviance and/or crime. For example, 62 of the 149 cases of aggravated assault committed by off-duty police in our study included at least one of the measures of official capacity (41.6%). Off-duty police displayed their service weapon during the commission of 50 aggravated assaults, and off-duty officers identified themselves as police officers during the commission of 20 aggravated assaults. Three of the off-duty officers were in uniform while they committed an aggravated assault. Scholars determined to focus exclusively on acts that occur on-duty and exclude acts that occur off-duty would be hard-pressed to explain why those situations do not "count" as cases of police crime. Also, we used conservative measures that were based exclusively on factors commonly used by courts in Section 1983 claims to determine whether off-duty police were acting in their official capacity. Alternative coding procedures based on an analysis of the manifest *and* latent content of the news articles would have resulted in the identification of more cases, and arguably more valid estimates regarding how many off-duty crimes arose from prevailing occupational norms or specialized law enforcement training, skills, and/or knowledge.

Policy Implications

Alcohol abuse and intoxication present the most obvious challenges to police executives who need to identify and deter off-duty misbehavior. Organizational strategies to mitigate these problems need to include punishments enforced through departmental regulations as well as

incentives compatible with prevention and treatment approaches. Most agencies already enforce "zero tolerance" policies in regard to on-duty alcohol use and intoxication, but a growing number of agencies have revised policies to cover situations that arise during off-duty hours. The Lowell (MA) Police Department enacted policies to limit off-duty consumption including those that prohibited: a) off-duty consumption in a public place and/or b) consumption at any time and place to the extent that it would render an officer unfit for immediate duty (Redmond, 2009). The policies of the Indianapolis Metropolitan Police Department (IMPD) include prohibitions on: a) the consumption of alcohol within 8 hours of the start of a shift, b) the purchase of alcohol while in uniform whether on- or off-duty, and c) the use of police vehicles to transport alcohol whether on- or off-duty. The IMPD also mandated breath tests for on- and off-duty officers involved in any crash involving a squad car (Gillers, 2010; Vane, 2010).

Of course, there are problems with approaches that rely on formal policies and bureaucratic rules to govern off-duty drinking. First, these policies cannot mitigate problems associated with every instance of off-duty consumption, in particular cases where off-duty police drink alcohol in accordance with departmental rules and are then dispatched for an emergency response. Second, the promulgation of policies intended to regulate off-duty conduct including those that limit the off-duty consumption of alcohol have become a source of conflict between agencies and police unions opposed to these types of regulations (Redmond, 2009).

Larger police agencies usually incorporate prevention and treatment approaches through Employee Assistance Programs (EAP). EAPs designed to mitigate problems associated with the misuse of alcohol date to the 1950s in Boston, New York City, and Chicago (Swanson et al., 2008). The CCPC (1998) recommended mandatory counseling for NYPD officers prior to the adjudication of any disciplinary proceedings involving the misuse of alcohol, and also

emphasized the need to increase officer awareness of EAPs to deal with substance abuse problems. Prevention and treatment approaches may not however persuade individual officers to enter these programs due to social stigmas and a police culture that is "essentially a drinking culture" (Lindsay & Shelley, 2009, p. 88). Violanti (1999) explains how officers often "gather at a local bar after the shift to relax over a few drinks with their peers and reinforce their own values" (p. 16). These prevailing norms also discourage treatment approaches because they encourage police to protect fellow officers who may have a drinking problem. First-line supervisors are probably in the best position to recognize problems and guide an officer to treatment (Violanti, 1999). Swanson et al. (2008) describe a model program of the Denver Police Department that used the agency's closed-circuit television system to educate officers who are problem drinkers and persuade them to enter hospital treatment programs. The program worked to retain officers who had suffered from alcoholism and influenced the prevention of dangerous drinking habits among officers who were moderate drinkers.

Many of the recommendations of the CCPC in regard to the off-duty misuse of alcohol were more focused on the association between off-duty drinking and the specific misuse of firearms. The Commission encouraged strict prohibitions on any level of drinking by officers carrying a weapon, and more specific guidelines requiring officers to remove and/or safeguard weapons when they attend activities where alcohol will be consumed. The El Paso Police Department prohibits off-duty officers from carrying a firearm when they enter an establishment whose primary business is to sell alcoholic beverages to be consumed on the premises. These kinds of restrictions allow for the maintenance of policies that require off-duty police to be armed and "ready for action," but discourage the practice in situations when they are drinking and/or within establishments that encourage them to do so (Fyfe, 1980, p. 73).

Agencies also have the option of addressing the misuse of firearms as an issue separate and apart from off-duty alcohol consumption. The CCPC (1998) recommended more severe sanctions in cases involving the off-duty misuse of a firearm. Policies designed to mitigate the misuse of firearms by off-duty police can be justified on the basis of data that demonstrate cases where off-duty cops use weapons to threaten, harm, and/or intimidate citizens; but also, on the presumption that officers who misuse firearms while they are off-duty are more likely to misuse them while they are on-duty (CCPC, 1998). Police agencies should perhaps take notice of Fyfe's (1980) three-decades-old call to reconsider policies that require officers to be armed off-duty. Fyfe raised important questions about the utility of these policies and whether they make officers safer and/or deter on-scene crimes. He concluded that, "it may be most fair to require off-duty police to leave their guns in their lockers with the rest of their uniform" (p. 81).

Policymakers would benefit from the collection and dissemination of more official data on off-duty police misconduct and crime. The call for more data on off-duty misbehavior follows initiatives to expand the Law Enforcement Management and Administrative Statistics (LEMAS) survey to include data on use of force complaints (United States Department of Justice, 2003), as well as Kane's (2007) argument for the collection and release of comprehensive data on all coercive activities including disciplinary actions. The collection of official data on the criminal arrests of police officers—including those that commit crimes while they are technically off-duty—should be incorporated in these initiatives.

Notes

¹ We were able to make objective determinations in regard to duty status based on the manifest content of the news articles for the vast majority of cases. Determinations in regard to duty status were more problematic however in cases where officers were driving police vehicles while they were intoxicated. In some of these cases, department officials contended that arrested officers who were charged with DUI while driving a police vehicle were not on-duty. We decided to code as "on-duty" any cases that involved an officer who was arrested for DUI while driving a police vehicle. Arguably, the public considers any officer driving a police vehicle to be "on-duty," and departments typically enact policies that require officers who are driving police vehicles to be available to respond to emergencies whether they are technically considered to be on- or off-duty.

² Several non-NIBRS offense categories were added to our coding instrument during a pilot study when we noticed many cases where officers were arrested for offenses that are not included in the NIBRS. The non-NIBRS offense categories are: indecent exposure; online solicitation of a child; civil rights violations (criminal); destroying or tampering with evidence; false reports/statements and perjury; hit and run; obstructing justice; official misconduct, official oppression, and violation of oath; and, restraining order violations.

³ Cases that were missing data for the outcome measure ($n = 509$) were excluded from the analyses in Tables 5 and 6. Only the most severe type of sanction was recorded for these analyses. For example, some officers were initially suspended and then later terminated. In these cases, the officer was classified by the ultimate sanction of termination. Due to the small number of officers who were demoted ($n = 7$), an additional outcome to account for these cases could not be estimated. These cases were removed from the analysis. The final sample for the analyses in Tables 5 and 6 contained 1,608 cases.

⁴ Years of service was included as a continuous variable. Originally, this variable contained a large number of missing cases ($n = 426$). In order to include these cases and the years of service variable, missing values were estimated with multiple imputation (MI). This approach can be used with data that is missing at random and data that is not missing at random (Schafer & Graham, 2002) and has been used previously in social science and criminal justice research (e.g. Desmond & Turley, 2009; Fox & Swatt, 2009; Jordan & Freiburger, 2010).

⁵ The American Academy of Family Physicians (AAFP) promulgates an expansive definition of "family violence" that could be used to identify cases of police domestic violence. The AAFP defines family violence as the intentional intimidation or abuse of children, adults or elders by a family member, intimate partner or caretaker to gain power and control over the victim. Abuse can take many forms, including physical and sexual assault, emotional or psychological mistreatment, threats, intimidation, economic abuse and violation of individual rights (American Academy of Family Physicians, 2000).

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Table 1. Off-Duty Police Crimes: Offender & Agency Characteristics (N = 1,126)

	<i>n</i>	%		<i>n</i>	%
Offender Characteristics			Agency Characteristics		
Sex			Type		
Male Officer	1,061	94.2	Municipal Agency	815	72.4
Female Officer	65	5.8	Sheriff's Dept.	170	15.1
Function			State Agency	54	4.8
Patrol & Street-Level	932	82.7	County Agency	47	4.2
Line/Field Supervisor	153	13.5	Special Agency	40	3.5
Management	41	3.6	Region		
Age			Northeast	274	24.3
20-27	136	12.0	Midwest	255	22.6
28-35	297	26.3	South	453	40.2
36-43	325	28.8	West	144	12.7
44-51	132	11.7			
52 or older	42	3.7			
Missing	194	17.2			
Years of Service					
0-5	292	25.9			
6-11	197	17.4			
12-17	151	13.4			
18 or more years	106	9.4			
Missing	349	30.9			

Table 2. Offenses More Likely to be Committed Off-Duty (*N* = 2,119)

	Off-Duty		On-Duty		Total	χ^2	<i>df</i>	<i>p</i>	<i>V</i>
	<i>n</i>	%	<i>n</i>	%					
Specific Offenses									
Simple Assault	207	74.7	70	25.3	277	59.654	1	<.001	.168
Driving Under the Influence	226	86.6	35	13.4	261	133.764	1	<.001	.251
Aggravated Assault	149	63.1	87	36.9	236	10.659	1	.001	.071
Statutory Rape	63	77.8	18	22.2	81	20.533	1	<.001	.098
Pornography/Obscenity	50	83.3	10	16.7	60	22.609	1	<.001	.103
Disorderly Conduct	45	90.0	5	10.0	50	27.943	1	<.001	.115
Property Destruction/Vandalism	28	73.7	10	26.3	38	6.559	1	.010	.056
Hit & Run	28	93.3	2	6.7	30	19.744	1	<.001	.097
On-Line Solicitation of a Child	28	93.3	2	6.7	30	19.744	1	<.001	.097
Liquor Law Violation	17	73.9	6	26.1	23	4.030	1	.045	.044
Drunkenness	13	86.7	2	13.3	15	6.820	1	.009	.057
Restraining Order Violation	13	100.0	0	0.0	13	11.535	1	.001	.074
Non-Violent Family Offense	9	90.0	1	10.0	10	5.483	1	.019	.051
Incest	7	100.0	0	0.0	7	6.194	1	.013	.054

Table 3. General Offense Categories by Duty Status ($N = 2,119$)

	Off-Duty		On-Duty		Total	χ^2	df	p	V
	n	%	n	%					
General Offense Types*									
Alcohol	326	86.5	51	13.5	377	204.630	1	<.001	.311
Profit Motivated	136	26.1	385	73.9	521	202.771	1	<.001	.309
Drugs	80	36.0	142	64.0	222	29.127	1	<.001	.117
Sex	267	48.7	281	51.3	548	5.788	1	.016	.052
Violence	585	55.2	474	44.8	1,059	3.758	1	.053	.042

*Categories of offenses are not mutually exclusive

	<i>n</i>	% all crimes
Measures of Official Capacity*		
Displayed Official Weapon	110	(9.8)
Identified Self as Police officer	83	(7.4)
Displayed Badge	25	(2.2)
In Uniform	13	(1.2)
Conducted Off-Duty Arrest	10	(0.9)
Conducted Off-Duty Search	9	(0.8)
Intervened per Agency Policy	1	(0.1)
24-Hour On-Duty Ordinance	0	(0.0)
Total Indicators	251	
Total Crimes with at least one indicator	184	(16.34)
* Categories of official capacity measures are not mutually exclusive.		

Table 5. Employment Outcomes Descriptive Statistics (*N* = 1,608)

	Suspended		Resigned		Terminated	
	<i>n</i>	%	<i>n</i>	%	<i>n</i>	%
Duty Status						
Off Duty	473	54.1	153	40.6	164	46.1
On Duty	402	45.9	224	59.4	192	53.9
Gender						
Female	47	5.4	12	3.2	14	3.9
Male	828	94.6	365	96.8	342	96.1
Rank						
Manager/Supervisor	168	19.2	88	23.3	39	11.0
Patrol	707	80.8	289	76.7	317	89.0
Offense Type						
Personal (reference)	356	40.7	95	25.2	88	24.7
Property	117	13.4	64	17.0	66	18.5
Drug Related	64	7.3	23	6.1	15	4.2
Sex Related	155	17.7	115	30.5	119	33.4
Other Offense	183	20.9	80	21.2	68	19.1
Agency Type						
Municipal (reference)	640	73.1	267	70.8	263	73.9
State Agency (primary)	50	5.7	20	5.3	8	2.2
Sheriff's Dept.	116	13.3	60	15.9	70	19.7
County Agency	41	4.7	23	6.1	5	1.4
Special Agency	28	3.2	7	1.9	10	2.8
Region						
South (reference)	337	38.5	178	47.2	188	52.8
Northeast	251	28.7	73	19.4	39	11.0
Midwest	181	20.7	68	18.0	76	21.3
West	106	12.1	58	15.4	53	14.9
Years of Service						
	M	S.D.	M	S.D.	M	S.D.
	10.12	6.90	11.65	8.08	7.58	6.39

Table 6. Employment Outcomes Multinomial Logistic Regression Analysis (N = 1,608)

	Resigned Rather than Suspended (n = 377)				Terminated Rather than Suspended (n = 356)			
	<i>b</i>	<i>p</i>	<i>SE</i>	Exp (B)	<i>b</i>	<i>p</i>	<i>SE</i>	Exp (B)
Duty Status	.464	<.001	.131	1.591	.238	.082	.137	1.268
Years of Service	.024	.007	.009	1.025	-.051	<.001	.011	21.588
Property Offense	.522	.008	.196	1.685	.877	<.001	.204	18.561
Sex Offense	.947	<.001	.169	2.578	1.232	<.001	.176	48.725
Drug Offense	.190	.482	.271	1.210	-.036	.910	.317	.013
Other Offense	.351	.043	.173	1.420	.477	.011	.187	6.515
Gender	.301	.376	.340	1.351	.294	.374	.331	.790
Rank	.029	.859	.165	1.030	.576	.006	.209	7.583
State Agency (primary)	-.057	.840	.282	.945	-.805	.045	.401	.447
Sheriff's Dept.	.085	.644	.184	1.089	.248	.168	.180	1.282
County Agency	.227	.426	.285	1.255	-1.412	.004	.493	.244
Special Agency	-.574	.194	.442	.563	-.392	.322	.396	.676
Northeast	-.624	<.001	.172	.536	-1.301	<.001	.204	.272
Midwest	-.284	.110	.178	.753	-.155	.376	.175	.856
West	-.021	.914	.196	.979	-.144	.480	.204	.866
Constant	-1.857	<.001	.404		-1.552	<.001	.417	
Nagelkerke R^2	.142							
Cox and Snell R^2	.163							