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The creation of standards for special police in New Jersey: A case study of the legislative process

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THE CREATION OF STANDARDS FOR SPECIAL POLICE IN NEW JERSEY: A CASE STUDY OF THE LEGISLATIVE PROCESS

by

PETER PAUL HORNE

A dissertation submitted to the Graduate Faculty
in Criminal Justice in partial fulfillment of the
requirements for the degree of Doctor of Philosophy,
The City University of New York.

1987

This manuscript has been read and accepted for the Graduate Faculty in Criminal Justice satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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ACKNOWLEDGMENTS

There are numerous people to thank who aided me in the completion of this dissertation. First and foremost, I would like to thank the supervisor and chair of my dissertation committee, Professor Dorothy Bracey. She was most helpful with comments and criticisms and her editorial assistance proved invaluable. The other members of my committee, Professor Sidney Harring and Professor Jay Berman, also contributed substantially to the quality of this work.

Professor Anthony Simpson, a librarian at John Jay College of Criminal Justice, was most helpful throughout the dissertation and acted practically as a fourth member of my dissertation committee. Also, the librarians at Mercer County Community College and the New Jersey State Library at Trenton were quite supportive of my research.

In addition to the support from the library staff at Mercer County Community College (New Jersey) many other individuals at the college where I teach helped make the difficult task of writing a thesis much easier. Particular thanks should go the Professor Ronald Kopcho, Division Chairperson of Humanities, who gave me encouragement at each step of my doctoral education. Without the excellent secretarial assistance of Linda Decker and Margo Reynolds, this dissertation would probably not have been written. Lynn Holl-Madara, Art Director and Publications Manager, assisted me with some graphics and Martin Lawrence III, Supervisor of Office Services, helped with timely printing assistance. Accurate and cheerful editorial assistance was provided by English Professor James Franklin with additional help from Professor Robin Schore.

Of course the dissertation would not have been possible without the support of some thirty individuals who took time out of their busy schedules to talk freely and candidly to me about various aspects of special policing and the Special Law

Enforcement Officers Act. All of these individuals are mentioned by name at least once in the text, but I would like to thank them collectively here for sharing their thoughts with me and helping make this a truly informed piece of research. Several individuals should be singled out, however, for their ongoing assistance during the writing of the thesis. I was able to call and recontact these people several times over the telephone and in person to clarify key points and issues. The assistance rendered by Peter Traum, Larry Etzweiler, John Tumulty, Catherine Frank-White, and William Dressel, Jr., was all "above and beyond" the norm and for this I am indebted to them.

Lastly, the support of my daughter, Stacy, and my wife, Anne, was essential throughout the dissertation process. It enabled me to keep on course and complete "the great effort" and I thank them.

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INTRODUCTION

Statement of the Problem

The primary focus of this thesis is on the creation and evolution of the New Jersey Special Law Enforcement Officers Act. This statute regulates the role of special police officers. In general terms the law divides special officers into two classes, lays out specific guidelines for their training and certification, and specifies what type of duties they may perform.

This dissertation will examine the contemporary background of the special police in New Jersey, particularly as it relates to seasonal policing at the Jersey shore communities. The focus on seasonal police officers is deliberate because the police departments at these resorts face serious and unique problems which differ from other police agencies throughout the state which employ special police officers on a year-round, part-time basis.

Over the centuries the trend has been away from volunteer policing toward a concept of state responsibility for law enforcement. This trend resulted in the establishment of the first permanent police force in London in 1829 by Sir Robert Peel. Fifteen years later in 1844, New York City emulated Peel's model and modern policing was underway in the United States. Therefore, although the concepts of "citizen police" and self-policing have been very much part of the Anglo-American criminal justice heritage, the creation of paid, full-time, professional police departments relegated the reserve/auxiliary police concept to a minor footnote in police history.

Despite the historical significance of citizen law enforcement, today's volunteer police officer gets short shrift from the contemporary law enforcement community. The same holds true for seasonal police, who work just three or four months a year during a community's peak vacation season. Seasonal police officers

may be full or part-time; they may have police powers of arrest or not; they may be armed or unarmed; and they may be either paid or volunteer. There are almost as many variations of seasonal policing as there are variations of reserve/auxiliary policing. Indeed, an important function of the latter part of this chapter will be to define and clarify the profusion of terms which surround citizen policing.

New Jersey has many different versions of citizen police officers, including temporary police, auxiliary police, and special police. Special police officers do not hold a permanent appointment as a sworn police officer but are appointed on a year-to-year basis or for shorter periods; hereafter, they will be referred to as "specials." Specials are the most prevalent type of civilian police officer found in New Jersey. While approximately 17,000 regular police officers are employed by 482 municipal police departments in the state (State of New Jersey, 1985) approximately 5,000 specials are used in 384 of those municipal police departments. Two extensive statewide surveys were conducted by the Police Training Commission (PTC) of New Jersey in 1969 and 1975 to gather information concerning specials. The findings of both surveys were quite similar. First, specials were used extensively throughout the state (three out of four police departments used them) for a variety of law enforcement activities which ranged from traffic and crowd control to general patrol duty (i.e., the same work activities that regular police officers perform). Second, the statutory requirements (N.J.S.A. 40A:14-146) governing the selection and use of specials until October 1, 1986 were minimal. Third, the training given to specials, when it was given, was for the most part perfunctory and superficial. This was even the case in the majority of police departments that permitted specials to carry firearms while on duty and where they acted for all intents and purposes as regular police officers. The surveys (PTC, 1969, 1976a) noted that restricting appointments of specials to one-year terms also heightened the possibility of partisan political manipulation in the selection and retention of these officers. So essentially

the problem with special police officers in New Jersey was this: thousands of specials throughout the state were uniformed, armed, paid, had police arrest powers, and acted as regular police officers, yet most of those specials were poorly qualified, improperly selected, and ill-trained.

The situation was much the same for the special police officers working on a seasonal basis at the New Jersey shore communities. Approximately thirty-five resort municipalities along the Atlantic Ocean in the four seashore counties (Atlantic, Cape May, Monmouth and Ocean) employed about 500 specials a season prior to the summer of 1987 (PTC, 1982). Most of those specials were employed for a little over three months a year during "the season" which extends from Memorial Day weekend to Labor Day. While the influx of millions of summer vacationers has been lucrative for shore communities, it has also created major problems for their police departments. The summer tourist invasion can multiply a town's population several fold from its year-round base. The influx of summer visitors to a small shore community has traditionally increased the police department's workload in the form of increased traffic accidents, drunk driving arrests, disturbance calls, crime, and calls for service.

Thus, the shore communities must supplement their normal police ranks for the summer season to handle the greater workload. Unfortunately, however, with few exceptions, the shore communities traditionally hire seasonal police who (like the majority of special police officers around the state) are poorly qualified, improperly screened, and inadequately trained (Donahue, 1982). Of course, the danger in this type of additional manpower to expand the shore community's small police force was that the seasonal officers eroded both the effectiveness and quality of that force, especially if the quality of the seasonal personnel was below that of the regular complement. Although seasonal police officers worked forty or more hours a week during the summer season, the public was not receiving the same

standard of service and protection from seasonal specials as they received from regular officers. Essentially, the Jersey shore communities were relying on the "second string" seasonal officer to supplement their police force during the summer season. As a result, various cases of ineffectiveness, miscarriages of justice, and abuses of police authority (including the misuse of deadly force) occurred over the years involving seasonal and special police officers in New Jersey.

On January 13, 1986, the Special Law Enforcement Officers Act (SLEOA) was signed into law (P.L. 1985 c. 439) by Governor Thomas Kean, marking the end of a decade of controversy over the role that special police officers should occupy in New Jersey's law enforcement structure. The Act was approved 16 months to the day after it was introduced in the legislature as Bill A-2512. The bill's primary architect and sponsor was Assemblyman Martin Herman (D-Gloucester), Chairman of the Assembly Judiciary Committee. The Act is a landmark piece of legislation in several respects: it repealed the previous statute, N.J.S.A. 40A:14-146, which originated in 1971 (as far back as 1917 in prior versions of the law) and regulated special police officers; it required more rigorous minimum qualification standards to become a special; and it mandated improved screening and training of specials as supervised by the PTC. The effective date of the SLEOA was delayed by A-1776, making the actual implementation date October 1, 1986 to give the Police Training Commission more lead-time in creating new training programs for specials. The delay also gave the shore police departments one more summer (1986) under the old law before the new Act affected them in the summer of 1987.

The initiative to provide more meaningful standards for special police evolved gradually. Several incidents contributed to the creation of A-2512 and led to its eventual passage into law. A civil case decided by the New Jersey Supreme Court in 1960 (McAndrew v. Mularchuk, 33 N.J. 1972, [1960]) extended the concept of vicarious liability to a municipality for permitting a special police officer to

carry a revolver without adequate training in its handling and use. This occurred after special officer Mularchuk shot and wounded a minor to "scare off" the boy who was allegedly advancing on the officer. Another civil case affecting specials took two years to wind its way up to the New Jersey Supreme Court. The case (Belmar Policemen's Benev. Assn. v. Belmar, 89 N.J. 225 [1982]) went through numerous convolutions from May 1980 to May 1982 as it worked its way from trial, to appellate, to Supreme Court. The Supreme Court ruled that Belmar, a resort community, could use special police officers during the busy summer season to supplement its regular staff. Those specials could carry weapons while on duty and exercise the same authority to arrest as regular police officers. However, a careful reading of the lengthy decision reveals that the Supreme Court was unhappy with the inadequacy of the existing law (N.J.S.A. 40A:14-146) regarding specials in New Jersey. At this stage Assemblyman Herman drafted a bill (A-526) to address the Supreme Court's concerns about specials in the state. This bill was introduced in January 1982 and expired after two legislative sessions in January 1984. The bill was weak in several respects and was criticized by a number of parties including the PTC.

Assemblyman Herman persevered, however, and introduced a stronger and more comprehensive bill (A-2512) in September 1984. The bill for the first time created two classes of special police officers. Class One officers were designated to perform limited duties and were strictly prohibited from carrying or using firearms. Class Two officers were accorded full powers and duties similar to those of regularly appointed full-time police officers provided that the use of firearms be authorized only after successful completion of approved firearms training. Also, the bill's chances of legislative approval were greatly improved by the solicitation of advice and active involvement of nine interest groups: (1) the New Jersey State League of Municipalities; (2) the Division of Criminal Justice; (3) the Police Training

Commission; (4) New Jersey State Association of Chiefs of Police; (5) the New Jersey State Lodge, Fraternal Order of Police; (6) the New Jersey State Policemen's Benevolent Association; (7) the New Jersey State Special Police Association; (8) the New Jersey Special Police Benevolent Association; and (9) the United States Reserve Police Officers Association. After sixteen months of public debate and amendments (by both the Assembly and Senate Judiciary Committees and by both houses of the legislature) and backstage "wheeling and dealing," bill A-2512 was signed into law.

Two other court cases had an impact on this bill and the interest groups involved. One case (New Jersey State Policemen's Benevolent Assn., et al., v. City of Englewood, et al., Docket No. 00694-84 PW [Bergen County, October 31, 1984]) prohibited the Englewood Police Department from using their auxiliary police in a manner similar to specials and regular police. Another case (New Jersey State Special Police Assn. v. Atty. Gen., 201 N.J. Super. 75 [1985]) ruled that special police could not carry handguns while privately employed without first obtaining a permit.

Methodology

Research Questions

This dissertation will explore several broad research questions:

1. Why was a completely new law (A-2512) created to regulate special police in New Jersey?

2. What interest groups played a role in influencing the new legislation?

3. Why did the various interest groups affect the legislation?

4. How did the key interest groups influence the legislative process and the legislation itself?

The initial question seeks to identify why a new law regulating specials was needed in the first place. What was the motivation for repealing the existing law (N.J.S.A. 40A:14-146) regulating specials? What were the real and perceived weaknesses in that law? How did A-2512 correct those deficiencies or, at least, what were the expectations of the various interest groups? The second question seeks to identify clearly which parties were involved in the creation of P.L. 1985 c. 439. In drafting the law Assemblyman Herman formally conferred with nine different interest groups. Who were these interest groups and, specifically, whom did these groups represent? Were other groups or influential individuals also consulted?

Question three seeks to analyze the motivations of the different interest groups in helping shape this new piece of special police legislation. What were their expectations as they were involved in this legislative process? P.L. 1985 c. 439 should produce a different kind of seasonal police officer who will be more carefully selected, will be more rigorously trained, and will have more clearly defined authority than previously. What were the perceived advantages and disadvantages in having a more "competent" seasonal police force as far as the different interest groups were concerned?

The last question seeks to examine what the interest groups did to influence the legislation and how they did it. What political dynamics affected the SLEOA as it moved toward passage? In respect to this question there is a key point to recall. There was an unsuccessful predecessor to A-2512. A-526 was not well-received by most interest groups and after encountering stiff opposition, the bill was allowed to wither away after two legislative sessions. A related question to be explored is why A-526 failed where A-2512 succeeded. What were the roles of the various interest groups in both pieces of legislation?

Sources of Information

Chapter 2 enumerates the many sources of written material about reserve/auxiliary police although there is very little specifically about seasonal police. An extensive nationwide search uncovered information which fell into one of two broad categories--secondary and primary sources. The secondary sources include:

a. journal articles about seasonal police
b. reserve/auxiliary police books
c. Ph.D. and M.S. theses
d. journal articles and reports about reserve/auxiliary police
e. police textbook segments
f. law enforcement commission reports
g. journal articles and book segments dealing with foreign reserve/auxiliary police

The primary source materials include miscellaneous sources such as:

a. proposed state statutes
b. present and past administrative laws
c. state courts' case decisions
d. special reports
e. correspondence
f. newspaper articles

Most of the written reference works obtained about interest groups, politics, and the criminal justice system are secondary source materials, although two of the books are primary, first person accounts of the author's active involvement in the creation-of-law process. Also, several of the secondary reference sources are books

written by authors who are initimately involved in politics and government, especially New Jersey's political scene.

All of the material concerning both reserve/auxiliary policing and politics and government was gathered from a variety of sources, including library computer searches and telephone contacts. The following libraries were used: National Criminal Justice Reference Service; John Jay College of Criminal Justice; The Dana Library at Rutgers, now the depository of the National Council on Crime and Delinquency Library; Princeton University; Jersey City State College; Trenton State College; the Police Division Library (housed in Los Angeles Police Department headquarters) which is part of the Los Angeles Public Library; the Metropolitan Police Department (of St. Louis) Library; and the New Jersey State Library in Trenton. The law and reference reading rooms at the New Jersey State Library were particularly helpful as they provided ready access to proposed bills and enacted legislation, judicial decisions, sponsor and committee statements, and similar materials. Newspaper articles were obtained through an examination of the newspaper morgue files kept in the Library's reference reading room.

Correspondence, surveys, memos, other material, and some newspaper articles were gathered from the special police files of eleven different people representing six of the nine interest groups directly involved in the creation and evolution of the SLEOA. In addition, files were examined from the South Jersey Police Reserve Association as well as the state legislature's Senate and Assembly Judiciary Committees. An important set of files, those of Assemblyman Herman, who introduced and nurtured A-2512 through to its implementation, were not obtainable. After 12 years in office, Assemblyman Herman was defeated in the November 1985 elections. In clearing out his offices in Trenton and Woodbury, he threw out most of his legislative files. Among them, unfortunately, were the files pertaining to special law enforcement legislation.

But the inability to have access to these files or the files of three out of the nine key interest groups was not overly crucial to the research efforts. Assemblyman Herman had engaged in open and honest two-way communications between his office and all nine interest groups to promote a consensus on A-2512. Thus, all correspondence to and from Herman, memos about meetings, and communications from one interest group to another were duplicated and sent around to each of the parties. So what was observed while examining the various files was the remarkable similarity in the scope and content of all the files. This provided a cross-check of events, statements, dates, and so on by comparing one file's contents with another's. Certainly the files were not identical and some unique information and material would appear in one file which was not in any other file. Of course there is no way of knowing whether any particular person's or organization's files were sanitized or culled prior to opening them for examination, but, again, the duplication and distribution of all important materials makes it highly unlikely that key correspondence totally escaped scrutiny. All the parties who allowed access to their files were most gracious and cooperative. In most cases they permitted removal of the files from the office for examination and copying of any relevant material. In several cases uninterrupted examination of the files and copying was permitted at the interest group's office.

Unfortunately, one type of research source which is so conspiciously and voluminously available for determining federal legislative intent, the Congressional Record, the verbatim debates of Congress, has no true New Jersey counterpart (Allen, 1984, p. 230). The debates on the floor of the New Jersey legislature have never been recorded, either stenographically or electronically, and consequently never transcribed. There is also no official record of testimony of the discussions held at the various hearings of the Senate and Assembly Judiciary Committees. A third potential source of information which is also not in existence is detailed

minutes of the meetings held by Assemblyman Herman with all of the invited interest groups.

To fill in some of the gaps in the written research material and to get a true understanding of the events surrounding the special police legislative effort, the key actors involved in the creation and passage of A-2512 were interviewed. These interviews form the cornerstone of this dissertation. Only through careful and comprehensive face-to-face interviews could all the motivations, tactics, and nuances of the major parties be explored. All of the interviews were generally retrospective in nature and were concerned with A-2512 and ancillary topics which affected special policing in New Jersey. Questions were framed with the potential knowledge of the respondent in mind. A customized interview schedule was prepared in advance of each interview session. The interviews were informal and open-ended, and while the questions were specific, the respondents were given the latitude for free and spontaneous expression, which was important for a more complete understanding of the issues. Some specific, common questions asked of all the respondents allowed comparison of their responses with greater accuracy and objectivity. The comparability of statements would have been greater with a general uniformity in designing an interview schedule. Unfortunately, however, it was not possible to use a common questionnaire with so many diverse actors involved at so many different points during the last decade. There were, though, two or three common questions asked of all respondents which will be discussed later on in the thesis. During the interviews the personal motivations of the actors were probed as well as the individual respondent's perspective about the other actors and interest groups that he/she was familiar with.

Initially, 19 people were identified to be interviewed because they held leadership positions in the nine key interest groups involved in A-2512 or because they were important actors involved with relevant significant events. As usually

happens in this type of research, this case produced a "snowball effect," with one respondent introducing the researcher to another key respondent or group. Eleven other individuals were identified in this manner and 10 of the 11 were subsequently interviewed. Interviews were sought with a total of 30 people and only one person, a legislative aide to the Assembly Judiciary Committee, refused to be interviewed. Of the 29 interviews, 24 were tape recorded, one was interviewed over the telephone, and four were interviewed with just handwritten notes taken. All but one of the tape recorded interviews occurred at the interviewee's work place and lasted anywhere from 45 minutes to 1 1/2 hours. The telephone interview lasted 30 minutes and the four interviews with ancillary sources which were not tape recorded lasted about 45 minutes each. Without listing specific names and titles at this stage, it should suffice to state that the interviews were conducted with people representing a variety of organizations and interests such as legislators, police chiefs, PTC representatives, representatives of the League of Municipalities, lawyers on the staff of the New Jersey Attorney General, regular police officer association representatives, special police officer association representatives, legislative aides and others such as the New Jersey State Police coordinator of auxiliary police and the executive administrator for the New Jersey State Association of Chiefs of Police.

Ethical Issues

All 19 original parties to be interviewed were contacted via telephone in the summer of 1985. After the thesis proposal was approved, they and nine newly discovered parties, were recontacted and interviewed during the summer of 1986. One person was subsequently interviewed in the spring of 1987. When these parties were initially contacted, they were given a clear statement of credentials, the purpose of contacting them (to gather information for a Ph.D. dissertation for the City University of New York), and the plans to interview them on tape for a thesis relating to A-2512 and special and seasonal police in New Jersey. When they were

recontacted to set up an interview and at the interview itself, the research objectives were reiterated. The respondents also were reminded that the interview was to be tape recorded and that any comments they made on the record might appear in a dissertation and be attributed to them. All interviewees were willing to be tape recorded and only one respondent asked to see any quotes attributed to him prior to their appearance in the thesis. Of course, any information given in confidence was respected and is not included in the dissertation.

Scope and Limitations

The primary focus of this dissertation is the creation and passage of A-2512 and its transformation into the Special Law Enforcement Officers Act. The Act will substantially revise the manner in which specials are hired, trained, and used throughout New Jersey. A partial emphasis of the research is directed toward the seasonal police officer. The Jersey shore communities have some unique policing requirements that had to be considered by the various interested parties as this bill was shaped and moved toward passage. In fact, some sections of A-2512 apply solely to seasonal policing at the Jersey shore.

The research in this thesis will go no further than October 1, 1986, the date the SLEOA actually took effect. This research will not examine the operational police administrative issues associated with specials or seasonal policing since by the time the dissertation is completed, most police management issues will not yet have fully emerged. The principal research will be devoted to the politics and interest groups that helped mold new special police legislation in New Jersey.

Theory

This study of special police legislation in New Jersey will adopt several interrelated theoretical perspectives. One theoretical approach is derived from the sociology of law. The study of the generation and enforcement of legislation lies

within the domain of the sociology of law. Social science and law have converged in a movement that defines and combines their mutual interests. The research resulting from this convergence has formed the basis for the sociology of criminal law (Quinney, 1974, pp. 10-11). Most of the research in this area takes for granted the necessary existence of the legal system and is directed toward explaining how the system operates and how laws are formulated, enforced, and administered. Scholars such as Chambliss, Quinney, and others emphasize the value of criminological theories which do not focus exclusively on offenders but are cognizant of the social basis of law as well its enforcement. It must be remembered that the laws that scholars examine are man-made, human laws rather than natural or higher laws. Man's law is officially instituted by the state and although it often reflects what is referred to as natural law, it also undergoes constant change. Law is not a given means of social control but reflects the morality of a society at a particular point in history. A major contribution of this dissertation will be a case study and analysis of law creation and implementation in a state governmental setting.

Judith Walkowitz (1980) used the sociology of law perspective in her study of prostitution in Victorian England. She explored the relationships among law, ideology, and politics as they related to the state regulation of prostitution by examining the memberships, arguments, and strategies of the groups supporting and opposing the Contagious Diseases Acts of 1864, 1866, and 1869. Walkowitz analyzed this issue and period of time in terms of group theory and its underlying assumption that politics can be best understood by focusing upon the aggregation of groups in any given policy arena. Several other studies have also been of an historical nature and tended to be aimed at a rather sweeping macrolevel of analysis (Nagel, Fairchild & Champagne, 1983, p. 5). A few examples (Gusfield, 1963; and Platt, 1969) relate large social movements in late nineteenth and early twentieth century

America to changes in the criminal law. Other studies (Hall, 1939; and Chambliss, 1964) are concerned with the political uses of criminal law and criminality in much earlier times.

This dissertation will focus on the ideas, actions, and sequence of events surrounding the SLEOA. While specific individuals and groups may act, it is their relationships to one another, as well as the social, political, and economic context in which their actions take place, which is significant in the creation and implementation of law. Chambliss and Seidman (1982) wrote that "law is a living institution, created by people occupying roles and positions in a social structure" (p. 189). They noted that the law reflects the fundamental contradictions and conflicts of the particular epoch.

In addition to studying the formulation of law from a sociological perspective, it is necessary to study it from a political science point of view as well. The definite interface between sociology and politics is demonstrated by the sociopolitical study of special police legislation in New Jersey.

Group theory is a well-accepted approach to the study of politics. "The group approach is one of the more popular and yet controversial of contemporary approaches to political analysis" (Pavlak, p. 109). Group theory traces its beginnings to Arthur Bentley's seminal work, The Process of Government, which first appeared in 1908. Another influential book on the subject was David Truman's 1951 work, The Governmental Process. The central thrust of the group approach is that interest groups and not institutions, ideas, or individuals constitute the basic unit of political analysis. The group theory approach postulates generally that public policy is the result of input from different and sometimes competing interests. "Politics is viewed in terms of interest group activity and the struggle among groups in pursuit of their goals" (Pavlak, p. 110). The views of group theorists have been modified and challenged by some such as Turk, Quinney, Chambliss, and others, and yet, few

doubt that group theory has contributed to our knowledge and understanding of American politics. Makielski (1980) notes that interests "are the cement that binds a group together and the motivating power which impels a group into politics" (p. 21); and these interests -- economic, social, or ideological -- are the basis for structuring the kinds of policy concerns that characterize various groups.

Scholars have given increasing attention to the nature of the forces that shape important policy decisions in the American political system. In the general area of criminal justice policy a number of studies have examined the interplay of politics and policy (Fairchild, 1981, p. 181). Regarding municipal policing, the studies of Wilson (1972), Ruchelman (1974), and Bent (1974) are of value in their evaluation of political forces that influence police operations in a variety of settings. But these works are primarily inquiries into the politics of bureaucratic, executive, and judicial aspects of the law enforcement policy process. What has been missing in the study of the politics of criminal justice, and policing in particular, however, has been systematic empirical research about questions related to interest group influence and actions (Fairchild, 1981, p. 182). This dissertation will contribute to the relatively small amount of material on group influences in law enforcement policy making. The thesis is a microscopic investigation of the creation of one aspect of law enforcement policy in the state of New Jersey in the 1980s.

One central argument will serve as the conceptual framework for the presentation of data in this study: that interest group politics were clearly evident in the creation of the SLEOA. Numerous interest groups tried to shape the law to serve their own needs and protect their interests. The groups involved represented some of the obvious interests such as labor and management, but some represented various government interests as well; and the governmental agencies involved in the formulation of the Act were not just passive, neutral actors on the scene. "Contemporary group theorists typically perceive government as having a much more

active and significant role in the political arena" (Pavlak, 1981, p. 112), and this clearly was the situation in this case. Government agencies were actively involved in group politics, both as the determiner of the outcomes of group struggles and as interest groups pursuing their own ends. Also some of the same interest groups involved in creating the new law were involved in trying to influence the New Jersey Supreme Court in the landmark Belmar decision which was handed down in 1982.

Criminal justice is an integral part of the American political system. It has been shown that the structures, operations, and outcomes for society of the criminal justice system are intimately involved in politics (Scheingold, 1984; Fairchild & Webb, 1985). There is a great deal of benefit from using a group theory approach to analyze interest group activity and the struggle among groups in pursuit of their goals (Pavlak, 1981). And yet, it has been suggested that criminal justice legislation is generally enacted on a consensual basis without open conflicts in state legislatures and without major public or media involvement in the process (Fairchild, 1981, pp. 188-189). This was very much the case regarding the special police bill.

It may appear to be contradictory to say that a group theory approach stresses competition and struggle among groups with varying degrees of power and yet at the same time state that the SLEOA was derived from a generally consensual basis. This entire discussion relates to what is probably the most central metaphysical issue in sociology: the consensus/conflict debate. The debate is centuries old as Thomas Bernard (1983) documents its history going back to Plato and Aristotle. The debate then is not just an argument by some contemporary partisans. Bernard (1983, pp. viii-x) suggests that the debate will probably never be resolved, in part because each participant's position is true some of the time and false at other times. Also the issue will not be resolved quickly or easily because of

the many ambiguous and even contradictory statements made by scholars during the course of this debate.

The crux of the debate is that the nature of the relationship between social values and laws has been interpreted in sharply differing terms by the proponents of two positions that may be designated the value-consensus and value-conflict models. One of the truly important books devoted more or less exclusively to the theoretical aspects of the study of crime, Theoretical Criminology, was first published by George Vold in 1958. After Vold died, the second and third editions of this seminal work were co-authored by Thomas Bernard. The third edition succinctly captures the essence of the ongoing debate:

> In the consensus view, society is said to be based on a consensus of values among its members, and the state is said to be organized to protect the general public interest. To the extent that societies are composed of groups with conflicting values and interests, the organized state is said to mediate between these conflicting groups and to represent the values and interests of society at large. The contrasting conflict view has a history as long as that of the consensus view and is also based on the argument that societies are composed of groups with conflicting values and interests. However, the organized state is not said to represent the values and interests of the society at large. Rather, it is said to represent the values and interests of groups that have sufficient power to control the operation of the state. (Vold & Bernard, 1986, p. 269)

It should be clear from the preceding that in the value-consensus model of society, interest groups compete and struggle with each other to achieve the outcomes most favorable to them. But it is not an "either-or" situation: either total consensus and harmony or total conflict and dissension. The interest groups involved in the formulation of the special police statute clearly competed with each other (and at times acrimoniously so), but the state, in the form of the Legislature and key political actors, stepped in to mediate and offer compromises. The interest groups accepted the legislative process and recognized the need to work within the framework of the established political process if they were to achieve any of their objectives. Many of the compromises were predicated on what was best in terms of the public interest. Group theorists such as Bentley, Truman, and others argue that

concepts such as "public interest" are merely abstractions that do not exist apart from or independent of the political process, which is a process of group struggle (Pavlak, 1981, p. 113). But it would be foolish to maintain that all public policy is a result of the conflict of organized interest groups. "The slightest inquiry into empirical evidence would convince the student that many laws are passed not only without the support of organized groups but frequently in opposition to the demands of such organizations" (Zeigler, 1964, p. 24). A contention of this dissertation is that the public interest and a "greater good" were considered in reaching compromises.

Perhaps another way to look at interest group theory (a political scientist's term and not a sociologist's) is to consider it as being part of a value-divergence model. As an alternative position, the value-divergence model recognizes the contributions of both the value-consensus and the value-conflict models to an understanding of criminal law development. It emphasizes that the United States is not a cultural monolith but a mosaic composed of many diverse subcultures held together by certain shared beliefs and social values. These are stronger in the aggregate than are the forces of divisiveness. This model is a pluralistic one which argues that political power is distributed among a variety of groups and institutions and that no group has a monolopy of political power.

The first-person accounts of the travails of the legislative process by Berman (1966), Redman (1973) and others point up several factors that should be kept in mind when examining the creation of laws. One key point is that laws are written by human beings. Interest group theorists sometimes forget that the actions of individual legislators and members of interest groups may be affected by such frailties as vanity, greed, sickness and so on. Bentley, for example, largely dismisses the individual as being inconsequential. "To Bentley all politics is group politics; thus individual political actors are of relatively little importance" (Pavlak, 1981, p. 113). Most contemporary group theorists, though, would point out that while

individuals may not have a great impact on the political process, they certainly can have an impact on group behavior and hence on political outcomes (Makielski, 1980). And yet, it is important to recognize that some charismatic and forceful political actors do occasionally come upon the scene who have the ability to significantly affect the political process. A contention of this thesis is that one individual did play a pivotal role in the creation and passage of special police legislation, and an examination of his role is an important part of this study. The supporting actors, such as legislative and staff aides, secretaries, and others, sometimes play a vital role in the legislative process and their roles are also studied here.

The creation of legislation does not occur in a vacuum. The world doesn't stop because one bill is winding its way toward passage. Current events and the resultant changing of priorities by legislators have been known to delay and defeat more than one bill. Timing sometimes is crucial in determining why one worthwhile bill is defeated and another is successfully enacted into law. As will be noted throughout the thesis, both current events and timing greatly affected special police legislation in New Jersey.

Most of the sociopolitical studies have focused on the creation and implementation of criminal law. Consensus, critical, and divergent model criminologists as well as group theorists emphasize the role of interest groups in the support of or opposition to criminal laws. This dissertation, though, examines a change in administrative (not criminal) law affecting law enforcement policy in a state governmental setting. Interest groups with direct and indirect interests played key roles in the creation and passage of A-2512 and the defeat of its predecessor, A-526. Administrative law consists of statutes, regulations, and orders that govern public agencies. Essentially these rules governing the administrative operations of the government constitute public law as opposed to private law. Just as criminal law should not be viewed as a given, administrative law should not be viewed as a given

either but must be seen as a product of interest group power dynamics within a society.

A related premise to the primary argument of this dissertation is that the interest groups' efforts expended on behalf of special policing in the Garden State clearly reflect the active role that these groups play in state politics. "Over the years pressure groups have generally been described as playing a major role in the formulation of public policy in New Jersey" (Burch, 1975, p. 81). Few contemporary studies have dealt with how interest groups influence criminal justice legislative policy in New Jersey, the ninth most populous state in the nation. This thesis will analyze the role and relative strengths of the many interest groups involved in the creation of special police legislation. Fairchild (1981) accurately points out that it is difficult to generalize about how interest groups affect criminal justice policy making because "the particular structure, power, and goals of criminal justice interest groups are related to social, cultural, and economic conditions in various states" (p. 188). In other words, one has to study each legislative event in its own context to get an accurate picture of the unique factors at work in each case; only then can generalizations be attempted.

Definition of Terms

The following reserve/auxiliary policing terms will be used consistently throughout the thesis. New Jersey's definition of a term may be unique; in different states these terms may take on different meanings, and even within a state from one jurisdiction to another meanings may change.

Auxiliary Police. Auxiliary police act in the discharge of their official duties when engaged in emergency disaster control and during periods of actual training. All members of the auxiliary police are unpaid volunteers who must be residents of the muncipality where they hold such membership. While on duty auxiliary police officers have police arrest powers, but they carry firearms at the

discretion of the local chief of police. Auxiliary police may not be used as substitutes for regular or special police and the 100 or so individual units come under the jurisdiction of the New Jersey State Police Office of Emergency Management.

Civil Defense Police. Most civil defense police units were established during World War II. In New Jersey the original designation of such units was civil defense auxiliary police which now has been modified to auxiliary police. A few units in New Jersey still retain "civil defense" in the official title of their unit. See "auxiliary police."

Civilian Police Personnel. All nonsworn employees of a police agency who have not taken an oath of office, are not armed, and do not have police powers of arrest fall into this category.

Police Officer. This denotes a member of a police agency who has taken an oath of office, is armed, and has police powers of arrest.

Regular Police. This includes any sworn, permanent, full-time active member of a police agency. See "Police Officer."

Reserve Police. In most states reserve police are similar to New Jersey's special police in that they are part-time sworn law enforcement officers who are armed and have police powers of arrest when on duty. The key difference is that reserve police in other states are usually volunteers and do not get any pay as in New Jersey. In this state there are some reserve police units but except for their official designation they are essentially either auxiliary or special police. See "auxiliary police" and "special police."

Reserve/Auxiliary Police. This denotes a formal organization of part-time or temporary police personnel developed, trained, and utilized by a parent law enforcement agency. This is a generic label for the many different types of reserve, auxiliary, special, civil defense, and seasonal police in the United States.

Seasonal Police. This is a type of special police officer. They are employed full or part-time by municipalities which experience a substantial increase during a seasonal period in the number of persons visiting or temporarily residing therein. Most seasonal police officers in New Jersey are employed full-time during the season, are paid, armed, and have police arrest powers only when they are on duty in the municipality where they work. The vast majority are used by Jersey communities during the summer season, but some work in northwest New Jersey during the winter ski season. See "special police."

Special Police. In New Jersey, specials (as they are commonly called) are appointed for a term not to exceed one year; are not regular members of the police force; and their powers, rights, and duties immediately cease at the expiration of their term of appointment. Specials may be full or part-time; have police arrest powers or not; be armed or unarmed; and either be paid or not. Special police may not carry a firearm off duty, and they may perform their duties only in the municipality wherein they have been appointed, except when in fresh pursuit of an offender. The majority of specials in New Jersey are employed part-time, are paid, armed, and have police arrest powers. Specials used in this mode are similar to reserve police officers in other states except that they are paid while most reserves are volunteers.

Sworn Officer. This denotes a commissioned law enforcement officer, subject to an oath of office, and possessing those general peace officer powers by constitution, statute, or ordinance in the jurisdiction.

Temporary Police. These are members of a police department who are hired for an emergency or certain specified parts of the year and then discharged at the end of such temporary employment.

Contribution to Knowledge

Little has been written both nationally and internationally about seasonal policing. This dissertation represents one of the few pieces of formal research about seasonal policing and the broader issue of special police. The research demonstrates how an important component of public law enforcement is affected and modified by administrative laws. Within the context of the sociology of law and interest group theory, an in-depth analysis of the types of interest groups concerned with special and seasonal police in New Jersey has been undertaken. The identity of these groups, their attitudes, and their methods of operation will, in a general sense, probably be similar to interest groups in other states as well. It is important that these interest groups be clearly identified and their motivations understood because in most states the overall utilization of reserve/auxiliary police is restricted and legislatively constrained.

If, as various police administration "experts" and law enforcement commission reports recommend, reserve/auxiliary police should be more fully and comprehensively used, then it is necessary to identify what interest groups resist reserve/auxiliary policing and why to understand better how the resistance can be overcome. Perhaps this thesis will contribute to the ability of law enforcement to create more competent reserve/auxiliary police units throughout the United States. Also, important public policy implications resulted from this research as to the efficacy of using changes in administrative law to create a higher caliber special and seasonal police officer.

CHAPTER 2

REVIEW OF THE LITERATURE

The review of the literature for this dissertation fell into two broad areas. One area was the examination and analysis of literature relating to reserve/auxiliary policing in general and New Jersey's situation in particular. The other broad area in which literature was reviewed dealt with politics and the criminal justice system; this included works analyzing the political structure and process and the interaction with the different components of the justice system. Again, as with the exploration of literature pertaining to reserve/auxiliary policing, the focus of the search was on important literature concerning New Jersey.

Reserve/Auxiliary Police Literature

As noted in Chapter 1, this thesis will examine New Jersey's special police officers with added emphasis on their seasonal deployment by Jersey shore communities. Except for some general, descriptive journal articles, little has been written about seasonal policing anywhere in the United States. Steven Brumm (1982), a reserve police officer himself, has written about the problems of "Policing a Fluctuating Population in a Resort" in Panama City Beach, Florida. He describes how a police chief provides police services to a community with a fluctuating population where 80 percent of the police activity takes place in a six-month period. Retired Police Chief William Donohue (1982) wrote the only material specifically about seasonal police in New Jersey; he described recruiting, selecting, and training "Summertime Cops" for his community, Stone Harbor, New Jersey. Police Chief William Krueger (1982) of the Salem (IL) Police Department wrote not so much about seasonal policing but about the need for supplemental manpower to handle festival crowds during several special events which occur every spring, summer, and

fall. Responding to the need for additional manpower to handle festival crowds, the Salem Police Department has organized a well-trained cadre of reserve officers.

The police chief of the resort community of Coronado on the southern California coast (next to San Diego) faced a rising crime rate in 1976. Chief Arthur LeBlanc (1978) and his police department also had the responsibility of policing ten miles of popular, sandy beaches which swelled the summer population by up to 20,000 people on a typical weekend day. His answer to both the crime increase and tourist influx was to create an auxiliary task force with his police reserves to provide deterrent and surveillance patrols for the high-crime areas and "beach sweeps" to control rowdiness and drinking/drug abuse on the beaches. Two articles written in two different police journals three years apart deal with the summer police problems faced by one police agency, the Virginia Beach (VA) Police Department. Both Southward (1967) and Culverhouse (1970) describe the unique approach undertaken by the police department to handle the annual monumental policing problem generated by the seasonal influx of summer visitors. To solve the need for additional summer manpower, the Virginia Beach Police Department recruited approximately forty law school students from several law schools to act as seasonal police. The department has been quite pleased with the quality and performance of these "law student-policemen."

The most recent discussion of seasonal policing occurred in an interview conducted by Robert Dompka (1985) in Law Enforcement News. The police chiefs of two different east coast resort communities, Palm Beach, Florida and Ocean City, Maryland, were interviewed about their perspectives regarding policing oceanfront resorts. One community, Palm Beach, does not employ any seasonal police officers while Ocean City hires seasonals in fairly substantial numbers. The Ocean City police chief particularly commented on the difficulties and challenges of providing adequate training to the seasonal officer.

On the broader issue of reserve/ auxiliary policing, more material has been written than about seasonal policing, but there is no abundance of information here either. A number of professional journal articles have been written about reserve/ auxiliary police which describe their use in particular police agencies, but overall little pertinent material has been written related to the subject. It is almost as if the reserve/auxiliary concept never existed or was considered a police administrative oddity not worthy of in-depth examination. Until very recently, the only book devoted exclusively to reserve/auxiliary policing was written by Everett King (1960), a lieutenant in the Alameda County (CA) Sheriff's Department. The Auxiliary Police Unit is basically a small "how-to" book about the creation of an auxiliary police force. King wrote the book to dispel many of the fallacious opinions surrounding the auxiliary concept and to help prepare the police administrator to recognize and overcome many of the problems and pitfalls which may present themselves as a police department contemplates the creation of an auxiliary unit.

Professor Martin Greenberg (1984) wrote the only other book about the reserve/auxiliary police concept. Greenberg, a former major in the New York City (NYC) Auxiliary Police with a master's degree (1970) from John Jay College of Criminal Justice, wrote Auxiliary Police: The Citizen's Approach to Public Safety. The book is a fairly comprehensive study examining the history and current status of reserve/auxiliary police, with particular reference to NYC's volunteer Auxiliary Police Force. Greenberg concludes that the use of auxiliary or reserve officers as unpaid assistants to the sworn police force can greatly relieve an overburdened police department. Further, he writes that the public's assistance is vital in controlling crime and that the establishment of carefully trained and screened units of the auxiliary police can play an important role in crime prevention, maintenance of order, and delivery of public services.

Several dissertations touch upon reserve/auxiliary policing. The most important and comprehensive is a doctoral dissertation written by Peter Unsinger (1972) who is presently a criminal justice professor at San Jose State University in California. Using a broad survey approach, Unsinger examined the personnel practices of police departments which have volunteer peace officers. The selection and training of these volunteers is discussed in depth. The dissertation predicts that the trend since World War II of developing reserve/auxiliary programs will probably continue. Opposition to these programs will diminish as better selection and training standards are developed and implemented. Unsinger concludes that the 1970s and 1980s will witness the development of reserve/auxiliary policing programs as one of the alternatives to law enforcement's personnel problems. Master's theses by Chipps (1973) and Sarcone (1978) do not offer any new material although a thesis by William Bonner (1974) discusses a long-standing concern in his Authoritarianism in Auxiliary Police. Bonner concludes that auxiliary police are no more authoritarian than regular police.

Of the many journal articles about reserve/auxiliary policing, most are fairly short and describe reserve/auxiliary programs in police agencies ranging from New York City (Greenberg, 1978; Ross, 1982; Gross, 1983), to Arizona (Lesce, 1985), to Miami (Bohardt, 1977), to Mobile (Woodward, 1986), to Portland (Brown, 1976), to Seattle (Libby, 1978). One of the more interesting articles with a broader perspective of reserve/auxiliary policing is by Bernstein (1977) which appeared in the inaugural issue of Police Magazine. The article describes the extent to which volunteers are used in various communities. The effectiveness of volunteers is examined as well as the type of praise and criticism they have received. The need for standards for the future is also discussed.

Several worthwhile and informative reports have been written about reserve/auxiliary policing. In cooperation with the Bureau of Governmental

Research and Services at the University of Washington, the Association of Washington Cities (1961) prepared an Information Bulletin about reserve/auxiliary police. This study dealt with the various definitions, statutory authority, qualifications, and training of volunteer civilian police officers throughout the state of Washington. It basically concluded that since there was no express statutory authority for the civilian auxiliary police, public funds could be expended for uniforms and equipment for police reserve or auxiliary police if they were budgeted for civil defense and if the reserve/auxiliary police participated in the local civil defense organization.

Ronald Dow (1978) prepared a report for the New York Conference of Mayors in light of the controversy surrounding a June 1976 legislative proposal to permit expansion of the volunteer police effort. In this report the role of the volunteer in police work, both nationally and in New York State, is examined, and issues arising from a legislative proposal to expand the volunteer police effort in New York are considered. In his conclusion Dow urged New York State to estabish three levels of volunteers in the police system (civil defense, auxiliary officers, and reserve officers) and to define clearly their duties, screening, legal status, and training.

Finally, an important study was conducted for the U.S. Department of Justice (1975) which examined the Los Angeles County Sheriff's Department (LASD) Reserve Deputy Sheriff Program. This study was an exemplary project validation report written as the LASD was seeking to have its reserve program designated an "exemplary project" by the Law Enforcement Assistance Administration. Although it did not gain that designation, the LASD program still stands as a model of one of the finest reserve police programs in the nation. This report identifies the strengths and weaknesses of the largest reserve police unit (over 1,300 trained reserves) in the country.

The leading police administration texts have given little attention to volunteer police officers. It is as if they are viewed as an aberration worthy only of a cursory sentence or two. The fourth edition of the classic police administration text by Wilson and McLaren (1977) indirectly mentions police reserves only twice. In the well-known anthology published by the International City Management Association, Charles Hale (1982) wrote about the value of a properly organized and well-trained reserve force. G. Douglas Gourley's (1974) text, Patrol Administration, has seven pages devoted to police reserves. He included in his description some of the history as well as the advantages and disadvantages associated with reserve/auxiliary policing. A former high-ranking New York City police adminstrator and currently Minneapolis Police Chief, Anthony Bouza (1978), wrote several sentences about the value of auxiliaries in promoting a healthy citizen participation in police affairs. Germann, Day, and Gallati (1985), who have written one of the most respected, best-selling textbooks in the criminal justice field, point out the drawbacks of poorly qualified, screened, and trained reserve/auxiliary police. In an autobiography spanning his career in the Los Angeles Police Department, former Police Chief Edward Davis (1978) points out the cost-effectiveness of a police agency's maintaining a qualified and trained police reserve corps.

In researching any police administrative issue it is important to analyze what has been the collective wisdom of the "experts" as expressed in the various national commission reports written in the twentieth-century. The first such commission report was written by the National Commission on Law Observance and Enforcement (1931), popularly known as the Wickersham Commission. Report fourteen of the Wickersham Commission, The Police, was written principally by the renowned police chief August Vollmer and, although it dealt with police administration, no mention was made of reserve/auxiliary policing. The President's

Commission on Law Enforcement and the Administration of Justice (1967) published a volume on the police which briefly mentioned the value of reserve/auxiliaries in crime prevention programs. A five-volume study of the private security industry was conducted by the Rand Corporation under a grant from the National Institute of Law Enforcement and Criminal Justice. The two principal investigators in this study, Kakalik and Wildhorn (1972), devoted three pages of volume V, entitled Special-Purpose Public Police, to the reserve/auxiliary police concept. Descriptive information was presented as well as advantages and disadvantages associated with the concept.

The National Advisory Commission on Criminal Justice Standards and Goals (NACCJSG) published a number of volumes dealing with different components and facets of the criminal justice system. The volume Police (1973d) has an informed and comprehensive discussion about reserve/ auxiliary policing in a section entitled "Standards for the Selection and Assignment of Volunteer Police." This section appears in Chapter 10, "Manpower Alternatives," and it calls upon every police chief executive to consider the use of reserve/auxiliary police as a valuable supplement to the regular force of sworn personnel. In addition to listing standards, this section has a thorough commentary about current problems and issues related to volunteer policing. Fragments of information about reserve/auxiliary police are found in three other volumes published by NACCJSG: Community Crime Prevention (1973a); Criminal Justice System (1973b); and A National Strategy to Reduce Crime (1973c).

The Commission on Accreditation for Law Enforcement Agencies, Inc. (1983) has promulgated and published 944 standards focused on law enforcement policy, procedures, and practices, among which are standards pertaining to reserve and auxiliaries. Although it is an independent, nonprofit organization which is not affiliated with the federal government, this commission and the law enforcement accreditation movement may have a significant impact on American policing if the

majority of police departments seek accreditation. Four major law enforcement executive member associations joined together to form the commission and developed a comprehensive body of standards for universal applicability. It will be interesting to briefly evaluate New Jersey's new law pertaining to special and seasonal police in relation to these nationally endorsed standards.

A researcher should examine the international aspects of a subject under scrutiny to acquire the fullest possible understanding. This research uncovered no material about seasonal policing in foreign countries, but there is some material about reserve/auxiliary policing in general. Bayley (1969) discusses the Home Guards and Village Volunteer Forces in India where both act as unpaid volunteer police. The Pacific Islands Monthly (1985) magazine notes the effectiveness of reserve policemen in controlling "hoodlumism" and other crimes in the Port Moresby area of Papua, New Guinea. Special constables have long been a fixture in Great Britain, dating back to a statute in 1662. Ronald Seth (1961) explores the extensive historical roots of "specials" in England, Wales, and Scotland. Philip John Stead (1985) briefly discusses the contemporary role of specials in his recent book The Police of Britain. Hovav and Amir (1979) point out that the Israeli Civil Guard is somewhat similar to reserve/auxiliary police forces in the United States although their emphasis is more on performing security and paramilitary functions rather than strictly law enforcement. Berkley (1969) notes that neither France nor Sweden employs reserve/auxiliary police, but the police departments in many West German cities have created auxiliary police units which have been well-received by the citizens and the police. William and Nora Kelly (1976) write about the fairly extensive use made of auxiliary police throughout Canada. Even the Royal Canadian Mounted Police (RCMP) uses auxiliaries in those provinces where it undertakes provincial police work under contract. Willett and Chitty (1982) outline

the results of a preliminary survey about the employment of auxiliary police by Canadian police forces (excepting the RCMP).

Up to this point most of the material discussed in this chapter has been from secondary sources and, with the exception of the Donohue (1982) article, it has not dealt specifically with New Jersey nor the special police within the state. There is, however, a relatively small but important body of primary sources to explore regarding specials and seasonal police in New Jersey. In addition to examining A-2512 itself, there are three formal "statements" (which run to three or four pages each) which are helpful in clarifying the meaning and intent of the different key passages of the bill. The SLEOA replaced the former law governing specials. This previous statute (N.J.S.A. 40A:14-146) regulating specials had been amended four times since its creation in 1971. Laws mandating the requirements for specials have appeared in one form or other since 1917. N.J.S.A. 40A:14-146, its amendments, and prior laws governing New Jersey's specials will all be examined to shed light upon the growing complexity of the special police issue. It will be important also to explore an unsuccessful predecessor to the SLEOA. That bill, A-526, had significant problems, met stiff opposition, and was never brought to a vote in the New Jersey Assembly or Senate.

As noted in Chapter 1, one civil court case had a strong influence on the initial creation of bill A-526 and, subsequently, A-2512. The case, Belmar Policemen's Benev. Assn. v. Belmar, was heard in three different courts. The Superior Court, Law Division, Monmouth County McGann J.S.C., 174 N.J. Super. 370, entered judgment enjoining the borough from utilizing special police, and the borough appealed. The Superior Court, Appelate Division, Allcorn P.J.A.D., 178 N.J. Super. 473, modified the judgment and affirmed. On certification, the Supreme Court of New Jersey, Schreiber, J., 89 N.J. 255 (1982), reversed the judgment and dismissed the complaint. Another civil case decided by the Supreme Court of New

Jersey in 1960 (McAndrew v. Mularchuk, 33 N.J. 172 [1960]) was cited in the Belmar case and had an impact on the final decision. Two other civil cases had an indirect impact on A-2512 as it moved toward passage. One case (New Jersey State Policemen's Benevolent Assn., et al;, v. City of Englewood, et al;, Docket No. 00694-84 PW [Bergen County, October 31, 1984]) affected the Englewood Police Department's auxiliary police, and the other case (New Jersey State Special Police Assn. v. Atty. Gen., 201 N.J. Super. 75 [1985]) affected special police and their being armed while off duty.

The Police Training Commission (PTC) is responsible for prescribing training requirements for law enforcement officers in New Jersey. While the PTC does not provide training itself, it plays an important role in developing curriculum and insuring that the basic training program for newly appointed regular police officers at the fifteen police training academies meets existing standards. Two extensive surveys were conducted by the PTC in 1969 and 1975 to ascertain the status of special police in New Jersey. As noted in Chapter 1, a fairly comprehensive and similar picture concerning specials emerged from both surveys. A fourteen-page memorandum with nine conclusions was prepared for the Police Training Commissioners (PTC, 1969) after the first survey. After the second survey was completed, a six-page preliminary memorandum was prepared for the Police Training Commissioners (PTC, 1976a). A final twenty-page report with nine recommendations was presented two months later (PTC, 1976b). Some of the key recommendations regarding specials made in this report found their way into another PTC (1977) report sent to the governor the following year. In response to the creation and possible passage of A-526 in 1982, the PTC presented a fourteen-page memorandum to the Police Training Commissioners outlining a plan for the training of special police officers as well as noting the deficiencies inherent in bill A-526 (PTC, 1982). After the passage of the SLEOA but before its actual

implementation, the PTC (1986) issued an extensive memorandum which enumerated its responsibilities under the new law and described how they would be handled.

The County and Municipal Government Study Commission (1976) used many of the findings and data of both PTC surveys when it discussed the role, utilization, and training of specials in its report, Aspects of Law Enforcement in New Jersey. About eight pages of this ninety-one page report, which was presented to the governor and members of the Senate and General Assembly, specifically pertains to special and, by implication, seasonal police officers. Many of the findings and recommendations concerning specials made by both the PTC and the County and Municipal Government Study Commission were reiterated in the final report of the Governor's Adult and Juvenile Justice Advisory Committee (1977).

Two other important sources of written material of value in researching this dissertation -- correspondence and newspaper articles -- offered insight into the specific concerns of various parties and the politics surrounding the new special police bill, A-2512, and its predecessor, A-526. More than 200 pieces of correspondence to and from various parties were reviewed. Some are letters to Assemblyman Herman concerning specific points of either bill. Letters from police chiefs to Catherine Frank, Executive Administrator of the New Jersey State Association of Chiefs of Police, express their concern about particular issues relating to seasonal or special police. Correspondence to and from the New Jersey State League of Municipalities concerned points of interest to municipal governments throughout the state. There are letters to and from Chief James Gormley (Montville Township Police Chief) who was the chairman of the New Jersey Chief's Special Police Committee during several critical years as these bills were proposed and modified and as A-2512 moved toward approval. One of the more important pieces of correspondence, though, is the letter sent out to all state senators and assemblymen by the New Jersey State Association of Chiefs of Police (Catherine

Frank, personal communication, spring 1985). This letter clearly endorses A-2512 and urges legislators to support and approve it.

A series of newspaper articles (Seidenstein, 1981; Heine, 1981a, 1981b; and others) from various New Jersey newspapers in 1981 discusses the Belmar case and particularly its significance for the shore communities. Several articles published in 1984 (Lundstrom, 1984a, 1984b) discuss the Englewood auxiliary police case. Other articles focus on the drawbacks and poor performance of specials (Glucroft, 1977) or the financial hardship that would be placed on shore communities if seasonal police had to undergo extensive training before being fully utilized (Watson, 1984). Some articles focus on the background to A-2512 (e.g., Resnick, 1986) or the future implications of the bill once its full effect was realized (e.g., Mills, 1986).

Political Literature

Another broad segment of literature examined was politically oriented. This material gave insight into the "whys" and "hows" of law creation and implementation, particularly at the state government level and, more specifically, in New Jersey. Some of the research items are sociological in their perspective while others have a political science viewpoint. Certainly though, these categorizations are not inflexible as there is a good deal of overlap between them.

The sociology of law concerns itself with the role of social forces in shaping criminal law and, concomitantly, the role of criminal law in shaping society. Judith Walkowitz (1980) used this approach in her study of prostitution in 19th century England during the Victorian era. This valuable work points up the necessity of analyzing the social and political milieu of the times in which laws are enacted to see what forces helped shape them.

Criminologist William Chambliss (1964) wrote a seminal article pertaining to law creation. Chambliss' analysis of the law of vagrancy in 16th century England indicates that it was created shortly after the Black Death had wiped out

approximately 50 percent of the population. The vagrancy law was modified in such a manner that beggars were defined as criminals to provide a source of cheap labor for landowners. Chambliss and Seidman (1982) wrote Law, Order, and Power which analyzed the functioning of the criminal justice system from the perspective of conflict theory. The authors argue that the laws reflect the immense importance of interest group activity in shaping the content of legislation. They feel that both in structure and in function the law is generated in the interests of existing power groups. Critical criminologist Richard Quinney (1974) edited a book dealing with the American criminal justice system. In an introductory chapter Quinney argues that a critique of the legal order of advanced capitalist society is missing in the sociology of criminal law. Whatever theoretical perspective that does exist in the sociology of criminal law is one that accepts the legal order unquestionably. Little attention is devoted to questions about why law exists, whether law is indeed necessary, or what a just legal system would look like.

Two books are quite valuable in shedding light on the consensus - conflict debate which was discussed in the theory section of Chapter 1. The classical work by Vold and Bernard (1986) clearly and concisely describes the two contrasting views held by social theorists throughout the long history of thinking about human societies. Bernard (1983) notes that the debate among social theorists has been ongoing for quite some time and is one which may never be fully resolved.

There is an adequate amount of literature pertaining to the creation of law from a political science perspective. Most of the following sources relate criminal law and politics to the criminal justice system, but two sources focus on the creation of general statutory law. In an edited book T.J. Pavlak (1981) wrote a chapter about political science and its relationship to criminal justice studies. The author stresses that criminal justice in the United States is an integral part of the American political system. He also notes that the structures, operations, and outcomes for

society of the criminal justice system are intimately involved with politics in its several meanings.

Several books are valuable in describing the role of interest groups in American politics. Harmon Zeigler (1964) describes the role of interest groups in all areas of the political process -- electoral, legislative, administrative, and judicial. The entire spectrum of interest group activities is examined with special emphasis placed on the development of the theory of groups in political science. Political scientist S.J. Makielski (1980) deals with the processes by which an interest group is transformed into a pressure group that turns to the political arena to press its demands. He also discusses the various ways by which pressure groups gain access to the political system, and he asserts that this provides the key to understanding how such groups exert influence upon legislative actions.

Erika Fairchild has researched and written several publications in the field of criminal justice politics. In an article (1981) about the role of interest groups in criminal justice policy making, she concluded that in criminal justice politics, interest groups composed of criminal justice professionals are more influential in shaping criminal justice policy than those with social service or reform concerns. In The Political Science of Criminal Justice, Nagel, Fairchild, and Champagne (1983) state that a political science perspective to criminal justice is one that emphasizes who gets and who should get what, how, and why in governmental decision making that relates to the formation of policies defining legal and illegal behavior. Fairchild and Webb (1985) were co-editors of another book exploring the relationship of politics to crime and criminal justice. They note that crime is a public policy issue that has had periods of more or less concentration or visibility in the political arena. Crime is also an issue that can be easily exploited by politicians. The editors discuss some of the research that has been done in analyzing the relationship between politics and criminal justice. They feel that broad

generalizations are impossible to make from the studies that have been done, unless it is that the policy making process in criminal justice is closely related to the particulars of local political culture.

Stuart Scheingold (1984) feels that conflict is the key to understanding the complex interaction of politics, crime, and the criminal justice process. Although softened by accomodations and cooperation, the clash of values and interests typifies the justice process. A book by Professor Daniel Berman (1966), A Bill Becomes A Law, traces the tortuous path of civil rights legislation as it wound its way through Congress. Eventually the legislation was enacted and it became known as the Civil Rights Act of 1964. Eric Redman's (1973) book with the descriptive title The Dance of Legislation also tracks a bill as it takes a circuitous route to approval in Congress in the early 1970s. Redman worked as a legislative aide to a U.S. Senator and knowledgeably discusses the big and little twists and turns (the "dance") involved in the legislative process.

Several key resources shed light on the New Jersey political scene and clarify the state governmental structure and process. The New Jersey Reporter is a monthly journal of public issues published by the Center for Analysis of Public Issues. Virginia Sideris' (1984) insightful article in a special issue of the journal devoted to the concept of home rule in New Jersey deals with local police departments and home rule. She concludes in her article that home rule and local control of the police is becoming more and more a myth as local police chiefs are insulating themselves from the control of the local government. In the same issue of that journal Rick Sinding (1984) has written an article with a broad overview of the home rule concept in the Garden State. He concludes his discussion of the concept by acknowledging that although home rule is a much abused and overworked phrase, it is, nevertheless, a political principle worth saving.

The Eagleton Institute of Politics of Rutgers University published two editions of collected articles entitled Politics in New Jersey. One particularly important article from the revised edition was written by Philip Burch, Jr. (1979), and it concerns interest groups and the role they play in state politics. He feels that interest groups have played an important part in the legislative and administrative process in the state. Also in the revised edition of the book, Alan Rosenthal (1979) writes about the governor's role in state policy making. One portion of the article deals with the increasingly important function that the governor's staff plays in managing the "affairs of state."

One book authored by Cameron Allen (1984) is primarily a library reference work about legal and legislative resources in New Jersey. There is one particularly helpful chapter, "Legislative History and Legislative Intent." The League of Women Voters of New Jersey sponsored the publication of the new fifth edition of New Jersey: Spotlight on Government. Karen West (1985) is the editor of this comprehensive reference guide to the state government which covers in detail the three branches of government -- executive, legislative, and judicial; political parties and elections; finances; correctional institutions; human services; legal issues; and much more. Gerald Pomper (1986) is the editor of The Political State of New Jersey. Sponsored by the Eagleton Institute of Politics of Rutgers University, this volume is a comprehensive analysis of contemporary New Jersey politics. The contributions to this volume describe the politics and public policies of the Garden State and evaluate the quality of the state's governmental institutions, political processes, and policies. In particular, one chapter in this book by Cliff Zukin (1986) describes three characteristic divisions that have helped shape New Jersey's political culture. These divisions and their effects will be discussed in Chapter 6.

Summary

The reserve/auxiliary police literature is mostly descriptive in nature. It simply describes "what is" in a particular police agency rather than analyzing how the reserve/auxiliary unit came into being or why it came into being in the first place. While a largely adequate amount of research is devoted to reserve/auxiliary policing in general, a less-than-adequate amount is devoted to seasonal policing in the United States.

In New Jersey the situation is even worse. Neither year-round specials nor seasonal police officers get much attention in the research literature. Aside from some mention in a few governmental reports, the specials in the state have gotten little attention. Only one article has been written which pertained to any aspect of special policing in the state.

A good deal of literature is devoted to the social and political forces that shape law and, in turn, society. A review of the literature clearly points out the central role that interest groups play throughout the political process from agenda formation to implementation. This is equally true when one examines the creation of administrative law as well as criminal law. The purpose of this thesis is to examine the creation of the SLEOA in light of the interest groups and sociopolitical factors operating in New Jersey at this time.

A review of the politically oriented literature demonstrates that true criminal justice policy analysis must be based on a thorough understanding of the legislative process in a particular setting. New Jersey has a unique economic, cultural, and political background. The competition among interest groups, and the compromises that were made as a result of it, will somewhat restrict across-the-board findings. Nevertheless, there are generalizations which will flow from this study of special police legislation, but they must be made with restraint.

CHAPTER 3

THE BELMAR CASE

The New Jersey Supreme Court's decision in Belmar Policemen's Benev. Assn. v. Belmar, 89 N.J. 255 (1982) was a landmark ruling in many respects. But its most important result was the creation and passage of P.L. 1985 c. 439 which is known as the Special Law Enforcement Officers Act. All special police officers and nearly all law enforcement agencies in the state will be affected by the many far-reaching reforms in the Act. The New Jersey Attorney General and other officials feel that the SLEOA will have a positive long-term impact on the law enforcement community (De Vesa, 1986, p. 4).

Even though the State Supreme Court issued a decision in the Belmar case on May 10, 1982, it wasn't until January 13, 1986 that the SLEOA was enacted. A great many events occurred between the final Belmar decision and the actual implementation of a new law governing specials. The following two chapters in the dissertation will discuss those events. It should also be kept in mind that just as it took several years for a new law to be created, it took nearly two and a half years for the Belmar case to wind its way through the New Jersey court system to its ultimate resolution. And before the actual particulars of that case are examined, it is important to note the significant events which preceded Belmar and affected special law enforcement officers. Some of these events were specifically discussed in the legal decisions of the trial, appellate, or Supreme courts and in essence, they set the stage for this important legal ruling.

Setting the Stage

An important civil liability case, McAndrew v. Mularchuk, 33 N.J. 172 (1960), was decided by the New Jersey Supreme Court on June 28, 1960. Mularchuk, a reserve patrolman (essentially acting as a special police officer), was appointed by

the Borough of Keansburg (a shore resort) to work at elections and parades and to engage in regular patrol activity on foot and in police cars. This reserve officer was never given any education or training with respect to the use of his department-issued police revolver. As a result, a young man was seriously wounded in 1956 in an altercation outside of a local night club. The court held that the reserve police officer was legally responsible for wounding the plaintiff, McAndrew. Under the general principles of respondeat superior, the municipality was also found liable for authorizing the reserve police to carry a revolver on duty without adequate training in its handling or use. See also: Peer v. Newark, 71 N.J. Super. 12 (App. Div. 1961) aff'd 36 N.J. 300 (1962). McAndrew v. Mularchuk put municipalities on notice that they should provide adequate training and experience in the handling and use of firearms and in carrying out general police responsibilities to avoid a serious risk of vicarious liability for injury caused by an act or omission of its special police officers. The vast majority of police agencies that used armed special police officers did not respond to this legal decision in any significant manner, perhaps under the assumption that "lighting doesn't strike twice" or that whatever firearms training they did give their specials would be viewed by the courts (if a case did go to trial) as adequate.

At the top of the pyramid of law enforcement officers in New Jersey is the Attorney General, the chief law enforcement official of the state and head of the Department of Law and Public Safety. The Criminal Justice Act of 1970 lodged the ultimate responsibility for law enforcement in the state with the Attorney General operating through the Division of Criminal Justice which is a major component of the Department of Law and Public Safety. The Police Training Commission (PTC), an important part of the Division of Criminal Justice, was established in 1961 by the Police Training Act, N.J.S.A. 52:17B-66 et seq. This act grants the Commission authority to develop training standards for all regular municipal and county police

officers in New Jersey. The PTC administers and oversees, on a statewide basis, entry-level training in commission-approved police training academies. As will be observed in this thesis the PTC came to play an increasingly important role in the creation of the SLEOA.

One of the earliest actions by the PTC in reference to specials was a 1969 survey which was undertaken to ascertain the number of special police officers being used throughout the state (PTC, 1969). This was a valuable study because up until this time no one had any accurate data about the use of specials in New Jersey. The survey, based on statistics as of May 1, 1969, specifically did not include such police personnel as school traffic guards or civil defense auxiliary police. Of the 567 municipalities in the state at that time over 95% (541) responded to the PTC questionnaire. Responding agencies indicated that they employed 4,744 special police officers and about 13,150 regular police officers for a ratio of approximately one special police officer for every three regular officers (PTC, 1969, p. 1). Fifty-seven police departments (more than 10%) had no regular police but solely employed specials. The PTC drew a number of conclusions from the results of the survey including (a) approximately 80% of the specials were used throughout the year and not on a seasonal basis; (b) training for specials was minimal (the majority of specials had fewer than 40 hours of training) and in some cases was non-existent; (c) a minimum of 264 specials were working at least a 40-hour week; (d) special police officers were being used more than 2,000,000 man hours annually; (e) the legality of appointments of specials was suspect in some cases; and (f) there appeared to be no minimum entrance standards for special police in the majority of agencies (PTC, 1969, p. 5). The PTC conducted a follow-up survey in 1975 to its 1969 study. It is interesting to compare and contrast the results, but it is necessary to examine several events that occurred in the interim.

As previously noted, the PTC under the authority of the Police Training Act had jurisdiction only over the training of regular, full-time police officers. Special police, auxiliary, and temporary police officers were all exempt from PTC training requirements. Whatever training of these officers was done was conducted at the discretion of the local police agency. In 1970 a bill was introduced in the New Jersey Assembly which would have changed that and given the PTC control over the training of specials. The bill, A-918, would have modified the Police Training Act and required that all specials, prior to appointment under R.S. 40:47-19 (the 1953 special police law), attend a training program approved by the PTC. The bill did not specify the number of hours of training that the special officer should undergo nor the course content of such training but left it up to the expertise of the PTC. The unique aspect of this bill, though, is that for the first time New Jersey would have had systematic and uniform statewide standards of training for specials. However, the bill never got out of the Law, Public Safety, and Defense Committee. The bill didn't go anywhere even though the primary sponsor of the bill, Matthew Rinaldi (R), was the chairman of the committee in a Republican-dominated (both houses and Governor William Cahill) Legislature. It is interesting to note that in addition to Rinaldi there were six co-sponsors of A-918. The last one listed was a bright young Assemblyman from District 11F, Thomas Kean (R). Kean continued his political career and since 1982 has been the Governor of New Jersey. He was governor during the crucial time of the creation and enactment of the SLEOA.

On July 1, 1971, a new law regulating specials, L.1971, c. 197, §1, became effective. This law created 40A:14-146 which was the basic statute that regulated specials from then until October 1, 1986. The new law was not actually new in substance, though, as the wording in it was essentially the same as the prior legislation controlling specials which was established in 1953, R.S. 40:47-19, amended by L. 1953, c. 228; and, L. 1957, c. 163. This 1971 statute regulating specials was

part of a series of bills approved at the time as part of a process to clarify the laws concerning county and municipal fire and police departments. Both the 1971 law and the 1953 law regulating special police officers were legal descendants of L. 1917, c. 152, Art. XVI, §7. The creation of 40A:14-146 was just a continuation of the legislative oversight of specials in the state.

The 1970 bill, A-918, introduced by Rinaldi, Kean, and others, would have modified the Police Training Act and required that all specials (then appointed under R.S. 40:47-19) attend and successfully complete a PTC-approved training program. A bill, A-583, was introduced in 1972 which had the same wording and intent as A-918. Again this bill would have mandated the PTC to supervise the training of specials but specials who were appointed pursuant to N.J.S.A. 40A:14-146 (1971). A-583 was introduced by Assemblyman Carl Orechio (R-Nutley) and several other co-sponsors, but the bill never got out of committee. Again, as in 1970, Republican sponsors of this bill could get no action on it in a legislature with both houses controlled by Republicans and a Republican governor in office. Carl Orechio continued the effort to get the PTC to train specials and thereafter, every two years he, as the sole sponsor, introduced the same bill (of course with different legislative numbers) before several different committees in a now Democratic-controlled legislature. See A-661 (1974); A-116 (1976); A-1248 (1978); A-1117 (1980). None of these bills ever got out of their respective committees. After Orechio left office at the end of 1981, no one continued his crusade to try to get the PTC's authority changed to include the training of specials. But by then a number of other events were in motion which would ultimately affect the statute governing the specials themselves.

In 1976 the PTC reported on its second extensive survey of special police officers in New Jersey. This follow-up study to the one conducted in 1969 was based on statistics as of December 1 , 1975. Although the number and percentages

had changed somewhat, the results of the survey (PTC, 1976b, pp. 1-2) were similar to the previous one:

1. There was extensive use of special police officers, with three out of every four police departments using them.

2. There were approximately 5,000 special police officers or roughly a ratio of one special officer for every four regular officers. So there had been minor growth in the number of specials in the six years between the two surveys, while the growth rate of regular police officers over the same period was 25.9 percent.

3. There were 3,206 specials used on a year-round basis. The use of specials on a seasonal basis was limited.

4. The majority of municipalities used specials for general police work rather than for limited activities.

5. Approximately two-thirds of the municipalities using specials required only the statutory standards for that position. The PTC noted that the standards were inadequate, especially for special police officers performing general police work.

6. Almost half of the municipalities that employed specials gave them 40 hours or less of training. About 8 percent of the municipalities did not afford any training to their specials.

7. Nine out of every 10 municipalities permitted their specials to carry firearms. It is noteworthy that four municipalities indicated that their armed special officers received no training in the use of the weapon. And this survey was conducted 15 years after the decision in McAndrew v. Mularchuk.

It appeared from the survey that many municipalities relied heavily on special police officers on a year-round, part-time basis. In addition, there were strong indications that several hundred special police officers were being used in lieu of hiring regular police officers.

Also in its 1976 report on the results of its statewide survey of specials the PTC noted only three significant statutory differences between regular police officers and special police officers. The differences between individuals appointed as regular police officers under R.S. 40A:14-122 and those individuals appointed as special police officers under R.S. 40A:14-146 were (a) special police officers were not permitted to carry weapons while off duty while regular police could carry off

duty; (b) specials were required to be fingerprinted while there was no statutory authority requiring fingerprinting of regular police; and (c) specials were appointed annually while regular police officers achieved tenure (PTC, 1976b, pp. 4-5). Additionally, the majority of regular police officers were required to pass a written examination and a pre-employment physical agility test. Few specials were required to do the same. Regular police had to attend a PTC-approved training program, but there was no statutory requirement that specials had to be trained.

Whereas the 1969 PTC survey of specials ended its report with a number of conclusions, the 1976 survey concluded its report with a battery of nine strong, action-oriented recommendations. The Police Training Commission (1976b, pp. 13-14) staff recommended that New Jersey State Statute 40A:14-146, which governed the appointment and qualifications for special police officers, be amended to provide that

(a) The Police Training Commission be empowered to develop and promulgate minimum selection standards for all special police officers employed by municipal and county police departments.

(b) The Police Training Commission be allowed to exercise discretion in waiving selection of standards in cases in which the public interest warranted same. In no event could the commission exempt any municipality from the personnel standards developed by the commission for a period in excess of two years in the aggregate.

(c) The personnel standards section of the legislation become effective 18 months after passage of the amendment.

(d) Each special police officer, selected in accordance with personnel standards developed by the commission, be required to attend and successfully complete a commission-approved training course.

(e) The mandated training be completed within 12 months of the special police officer's appointment (whose appointment is consistent with the provisions set forth in (b) and (c) above).

(f) No special police officer be permitted to carry any firearms unless the individual met the criteria for selection as promulgated by the commission, and had successfully completed a minimum course of training in the use of the firearms, including instruction in the legal circumstances in which the weapon may be used.

(g) The training program be structured according to the type of police activities the officer would perform.

(h) Costs of the training programs be absorbed by the municipalities.

(i) Terms of special police officers be increased from one year to three years to lessen the political impact on these appointments.

These direct and explicit recommendations by the PTC concerning special police legislation fell on deaf ears in New Jersey. But utlimately, with the passage of the SLEOA in 1986, a number of these recommendations were enacted into law.

Several tables and a number of conclusions that were voiced by the PTC in its two surveys of special police officers were incorporated into a report submitted to New Jersey Governor Brendan Byrne by the County and Municipal Government Study Commission (1976). This state-sponsored study commission researches various problems which confront local governments and then issues a report of its findings. In the June 1976 study, the commission concentrated on those features of New Jersey's law enforcement structure which related to the functions, roles, and reponsibilities of policing at the state and local levels. In reemphasizing the major findings of the PTC, the commission stressed the key reason for the widespread use of specials statewide:

> Municipalities used special police officers to perform the role of regular police officers for financial reasons. It costs more money to hire, train, and maintain a person full-time than part-time. Another reason, far less supportable, is evasion of state training requirements. (County and Municipal Government Study Commission, 1976, p. 22)

The last sentence refers to a practice that was far from unique in New Jersey. In essence, a number of municipalities were appointing specials for consecutive one-year periods and thereby circumventing the training requirements

set by the PTC pursuant to state statutes. Regular police who were hired had a one-year limit in which to complete training. But specials, who could only be appointed for a year at a time, were re-appointed year after year by municipalities who successfully evaded the training requirements. The commission suggested that "municipalities may be overly dependent on specials to perform the work that should be intrusted exclusively to full-time police officers who meet predetermined state standards of qualification, and who have successfully completed the State-prescribed program of training" (County and Municipal Study Commission, 1976, pp. 22-23).

The commission concluded its report to the governor with a number of straightforward recommendations. In its recommendations concerning personnel utilization and training, it acknowledged that there was a place in New Jersey law enforcement for specials but as supplements to regular, fully trained professional police officers, not as replacements for them. The commission called for an identification of the appropriate tasks and duties for specials; carefully drawn qualifications for their appointment; and the establishment of minimum training standards and programs to be completed by all specials within a reasonable time after appointment (County and Municipal Study Commission, 1976, pp. 90-91). No specific, direct action was forthcoming concerning this report's recommendations regarding special police officers.

An incident involving specials in August 1976 highlighted some of the shortcomings and criticisms of them. It occurred at a weekend flea market in Chester Borough, Morris County. A special policeman controlling traffic stopped a motorist from turning left. The driver turned right but then made a U-turn. The officer tried to stop the car to get the driver's credentials but the car, carrying two men, two women, and an infant, sped away. Two other specials who observed this drew their weapons and one overzealous special started firing his .357-magnum revolver in all directions. The incident resulted in the two men in the car being

wounded (though not seriously), a grand jury investigation, and a lawsuit filed against the borough and the two specials who drew their weapons (Glucroft, 1977, p. 13). This occurrence placed specials under serious scrunity by several state agencies which questioned their duties and their training. Assistant Attorney General Theodore Winard put his finger on the crux of the problem when he noted that the law governing specials (40A:14-146) did not mandate their training nor did it state what duties specials could or could not perform.

The Morris County flea market situation recalled some other earlier mistakes by specials that critics said might have been avoided by regular officers. For example, a Hasbrouck Heights special held a man at gunpoint in 1973 only to find he had the wrong man when regular police arrived. A Washington Township special officer shot himself in the thigh and was suspended. A Ridgefield Park special was suspended in 1972 for firing his gun with no justification (Glucroft, 1977, p. 13).

The PTC (1977) sent a comprehensive report to the governor entitled Standards for the New Jersey Municipal and County Police System - A Plan of Action. In the report the commission identified a series of interrelated organizational and administrative problems affecting police service in New Jersey. In the text the PTC reiterated some of the major findings from its December 1975 statewide survey regarding special officers, and it made two primary recommendations concerning specials: that there should be a statewide set of minimum selection standards for specials; and that all specials should be properly trained and prohibited from field duty until such time as they completed an approved training program (PTC, 1977, pp. 88, 94, 95). In addition to highlighting some of the findings from its most recent special police survey in this report, the PTC made reference to the National Advisory Commission on Criminal Justice Standards and Goals (NACCJSG) and its report entitled Police.

The NACCJSG consisted of about 200 national experts representing different areas of criminal justice. The National Advisory Commission issued six reports in 1973 with standards and recommendations that were keyed to a national strategy for criminal justice administration and police service. In Chapter 10 of the volume Police the NACCJSG (1973d) devoted Standard 10.2 to discussing the role of the police reserve or police auxiliary in the contemporary police agency. The PTC (1977, pp. 85, 86) in its report to Governor Byrne quotes a section from the national report in which the commission recommended the establishment of minimum selection standards for reserve police officers. This national standard essentially supported the PTC's recommendations of minimum standards for New Jersey's specials.

Many of the findings and standards recommended by the PTC and the County and Municipal Government Study Commission in the mid-1970s found their way into the final report of the Governor's Adult and Juvenile Justice Advisory Committee (1977) which was submitted to Governor Brendan Byrne on June 24, 1977. The Governor's Advisory Committee was created to compare the national criminal justice standards as promulgated by the NACCJSG in 1973 with New Jersey's justice system and where applicable, recommend standards and goals for the state's justice system. Using the national standards as points of reference, the 54 members began meeting in four different subcommittees in October 1975. In a section of the report devoted to police personnel standards, the Governor's Adult and Juvenile Justice Advisory Committee (1977, p. 14) issued "Standard 2.16 Selection, Training and Assignment of Special Police Officer Reserves."

The initial paragraph of the standard set the tone for the entire standard as it stated:

> Every community with a need to supplement the regular police force to meet seasonal or emergency needs should organize special police officers into a reserve system. Special police reserve officers should only be assigned on a 40-hour week basis when temporary increases in population

> or emergencies significantly overburden a police agency. Part-time special police officers should only be used to supplement a police agency's manpower needs during emergencies, to correct unique deployment problems or to meet manpower shortages until full-time police officers can be hired and trained. (Governor's Adult and Juvenile Justice Advisory Committee, 1977, p. 14)

The standard continued and recommended that every police agency should consider a special police reserve unit as a potential career development program to incorporate successful specials into the ranks of its regular sworn police officers. Much of Standard 2.16 made recommendations concerning legislation that should be enacted if New Jersey law enforcement was to reap the maximum benefit from special police office reserve programs. Basically the proposed laws would have prohibited specials from exercising police authority or carrying a firearm prior to appropriate training and qualification. "The Committee concluded that in a profession where an individual's decision can mean life, death or injury, the decision maker should be trained in the proper use of force and decision making" (Governor's Adult and Juvenile Justice Advisory Committee, 1977, p. 84).

In response to such situations as the Morris County flea market incident and inquiries from the Department of Civil Service and others, the New Jersey Attorney General, William Hyland, issued Formal Opinion No. 22 (1977) to clarify the duties and responsibilities of special police officers in both civil service and non-civil service communities throughout New Jersey. The Formal Opinion stated that the legislative intent was to use specials to provide intermittent or temporary assistance to the regular police force during unusual or emergency circumstances. However, the Attorney General's Formal Opinion did sanction the use of specials under some predictable circumstances that necessitated extraordinary temporary assistance, "such as the use of special police during the summer at a resort community to handle the seasonal influx of visitors, to direct heavy traffic and handle large crowds at regularly scheduled sporting events and rock concerts" (1977, p. 2). The Opinion concluded that a special police officer should not be appointed to "perform the

regular responsibilities of a municipal police department on a continuous basis such as dispatching and routine traffic and crowd control (1977, p. 4).

The Attorney General supplemented that opinion on January 13, 1978, holding that specials could not be assigned "on a regular basis to perform the routine duties of traffic control at school crossings or as a police radio dispatcher" (Formal Opinion No. 22 (1977) Supplement, p. 1). The Attorney General next published responses to numerous inquiries by county and municipal officials. He stated that specials could be used as school crossing guards, as municipal court attendants, as guards in banks, and as dispatchers under unusual or emergency circumstances, and that they could be used at polling places during primary and general elections (Responses to Inquiries, August 1, 1978). Both of these supplemental opinions, though, were essentially superfluous to Formal Opinion No. 22 (1977) which dealt with the crux of the issues regarding special police officers in New Jersey. And yet, the Attorney General's Formal Opinion notwithstanding, because of the essential ambiguity and discretion in the statute regulating special police officers (40A:14-146), most communities continued to use specials as they had in the past. "Business as usual" regarding specials held true at the Jersey Shore communities as well as in towns that used specials year round.

The Trial Court

The Facts

The details of the Belmar case are fairly prosaic. The Borough of Belmar, New Jersey is a resort community whose population increases dramatically during the summer months. Crowded beaches and boardwalks and noisy parties create a demand for additional police services. One means used by the Borough to meet this demand was the hiring of more than 30 special police officers to augment its regular police force of 21 members. During the 1978 summer season, the police chief assigned unmarked police cars manned by regular police officers in plain clothes to

respond to noise complaints between 10 p.m. and 6 a.m. on weekends. The regular officers involved volunteered and received overtime pay for this duty. Sometimes there were not enough volunteers for this duty, and citizens complained about inadequate police protection. During the 1979 summer season, the chief placed another patrol car on duty on weekend nights. He substituted special police officers for the regular police officers who had previously patrolled the "F" Street, business district post. The regular officers were then assigned to car duty to handle noise complaints between Wednesday and Sunday nights. The chief concluded that his regular policemen were better trained and more experienced in the types of activities generated by the nighttime noise-complaint shift. On the other hand, special officers were considered capable of making certain that stores and buildings were secure, checking in on local nighttime businesses, investigating suspicious activities and making necessary arrests. They were instructed to contact headquarters if they encountered situations that they were not sure how to handle.

It was the assignment of special police to patrol the business district in place of regular officers that triggered this lawsuit. The assignment of regular officers to the noise-complaint detail as their regular duty shift deprived them of overtime pay which they had previously received for this work. The Borough of Belmar Policemen's Benevolent Association (PBA) opposed this system and the chief then reassigned regular officers to the business district patrol, designating one special officer to accompany each regular officer in each patrol car on the anti-noise detail. The PBA was concerned that the Borough might at some future time again attempt to assign special police in place of regulars.

On June 11, 1979, the plantiff, Borough of Belmar PBA of Local #50, filed a complaint in lieu of prerogative writ against the defendants, the Borough of Belmar and Chief of Police Lawrence Vola. The PBA sought a declaration that the Borough had no power to hire and assign specials to the usual duties of regular police

officers. The case was assigned to the Honorable Patrick J. McGann, Jr., J.S.C., who conducted a pretrial conference on October 17, 1979. Pursuant to the pretrial order, the matter was originally scheduled for trial on November 20, 1979, but that date was postponed when both the New Jersey State Policemen's Benevolent Association (NJPBA) and the New Jersey Attorney General applied for leave to appear, to file a brief, and to argue as amici curiae. Judge McGann granted their applications.

To render moot the question of whether the plantiff had standing to bring this suit, a consent order was entered on the eve of trial (December 3, 1979) which amended the complaint solely for the purpose of joining three Belmar residents and taxpapers as plantiffs along with the Belmar PBA. If the complaint had not been revised to include the residents/taxpapers of Belmar as plantiffs, the case may not have gotten a judicial hearing but would have probably been handled by the seven-member Public Employment Relations Commission (PERC) instead. Since its creation in 1968, PERC has tried to mediate and resolve numerous such labor-management disputes between public employees and their employers (West, 1985, p. 36). But the PBA wanted this question concerning specials dealt with in the courts rather than through PERC. The trial was held in the Law Division of Superior Court and testimony was heard on December 3, 1979 and again on January 16, 1980.

Principal Parties

Before discussing the trial judge's decision in this case it is important to clarify several points and examine the principal parties involved in it. The facts underlying this legal action were not disputed by any of the parties. The Borough of Belmar contended that there was a serious need for an increased police presence in the community during the summer season. Being sensitive to that need but sorely restricted by fiscal constraints and by the Local Government Cap Law limitations, N.J.S.A. 40 A:4-45 et seq., Belmar used various mechanisms to increase police protection at minimal cost, including the use of specials, who for all intents and

purposes acted as regular police officers. At the trial the Borough pointed out that its 1979 budget was within $.88 of the permitted spending limits allowed by the so called "cap law" (which has been law since 1976 and limits yearly municipal spending increases). Belmar noted that police protection furnished by specials was much less expensive than that provided by regulars. Belmar argued that to the extent the use of specials was curtailed, police protection would be diminished because the borough could not increase expenditures (Belmar, 174 N.J. Super. at 374-375).

From the start, though, the Belmar case was viewed by all the principal parties as more than just a local dispute between one town and its regular police officers concerning the proper role of specials. The issue was far broader than specials being assigned to work "F" Street in Belmar. The Belmar case was perceived to be a test case which would have far-reaching ramifications in New Jersey one way or the other depending upon the court's judgment. Of course, though, the local problem and issues gave the Belmar PBA legal standing to take the case into court in the first place. Sgt. Richard Lynch, a patrol officer at the time and the president of the Belmar PBA and Local #50 to which Belmar and eight other Monmouth County shore police departments belonged, was one of the primary instigators of the Belmar case. The primary catalyst for the legal action was that the Belmar PBA felt economically threatened by specials and the way in which the Borough was using them. Sgt. Lynch stated:

> There's been a concern all the way along this period of time from early 1970 to the late 1970s that we were all concerned about the specials taking over our jobs. That we're all going to school now, we're all being educated, and we're all being told we're professionals. We're all coming back and we're seeing guys being hired without any training whatsoever. We're complaining about this constantly and every time we have a contract negotiation we start pushing for certain things.... It was all a result of saving money, again. The special was cheaper. (personal interview, August 6, 1986)

While Lynch hoped to bring Belmar to trial over the special police issue, he was advised by the Local's attorney, Joe Dempsey, that the PBA would probably not win the case in the first round at the trial court. Dempsey felt that a case like this would have to be won on appeal and that it might not be won even at the appellate level, so the Belmar PBA should be prepared to lose initially and appeal the case all the way up to the New Jersey Supreme Court. He told Lynch that this protracted legal process would cost the Local $40,000 to $50,000 in legal fees and expenses (R. Lynch, personal interview, August 6, 1986). Neither the Belmar PBA nor Local #50 had the financial resources to bring the case to trial, so Patrolman Lynch turned to the NJPBA for financial and legal assistance. The New Jersey State PBA is a statewide union representing some 23,000 members, including police officers, prison and jail guards, sheriffs' deputies, and others. At the time of the Belmar case the NJPBA had approximately 20,000 members. The president of this powerful union was Frank Ginesi. As early as 1977 Lynch approached Ginesi with the idea that the NJPBA should support the Belmar PBA in its legal challenge concerning the proper role of special police. Richard Lynch commented:

> It took 2 1/2 years to sell them [NJPBA] on the idea. We kept on going back, we kept on beating and beating.... The year I finally got the support all the politics were right for it. I was chairman of negotiations, chairman of our grievance committee, I was president of the Local PBA, and also alternate delegate to the PBA convention. So I had the politics to be able to go out and force the issue. I had the right to go to the state PBA meetings. I had the right to push the issue then. So I was able to push the issue and at that time [1979] I got the state PBA to back the venture. (personal interview, August 6, 1986)

What finally convinced the NJPBA to support a court case concerning specials was the issue of job security for its members and the NJ cap law. Lynch said:

> There were a whole lot of departments throughout the state at that particular time that were being replaced tremendously. If a man retired they didn't hire a new man; they just filled the spot with different specials working. This special would work one day. This guy would work one day. This guy would work two days; he needed a job. They found that more and more in the state. This was beyond the shore communities.

> This was the time when the "cap" came into existence in the mid-1970s; this is when the economy wasn't good; this was when towns were saying "Jesus Christ, we can't make it" and they were looking to cut. So they were able to cut by taking someone who they were paying $20,000 per year (plus $15,000 for benefits) and they replaced him with a special for $3.00 or $4.00 an hour. In some instances, where specials or auxiliaries were volunteers who aren't paid, they replaced him [the regular officer] for nothing. (personal interview, August 6, 1986)

Although Frank Ginesi and the NJPBA finally agreed to the concept of challenging the use of specials in the courts, the final site of the actual test case was unsettled for a period of time. The attorneys for the state PBA chose two cases to research to see if the particular circumstances of each case fit the criteria for a winning test case. One case was in Belmar and one was in Kearny in northern New Jersey. The NJPBA attorneys decided the better case to try was Belmar, so all the money and support were thrown into the Belmar case. Tom Murphy is currently the president of the Trenton PBA and has served on the executive board of the state PBA since 1974. Murphy said:

> Some local municipalities were using specials as a subterfuge to hiring regular police officers. The state PBA was looking at Kearny (up north) and Belmar (by the shore) as possible test cases. We were advised by our attorney, James Zazzali, that Belmar had the best argument at the time, so we went with them. (personal interview, July 29, 1986)

The NJPBA paid the legal fees for the Belmar PBA to take its case to court. But the state PBA also got involved in the case in a more direct manner as amicus curiae. The state PBA wanted its own attorney involved with this case to monitor how wisely its money was being spent by the local chapter and also to insure that the Belmar PBA didn't do anything that was not in the best interests of the state PBA. The briefs filed by the state PBA were similar to and supportive of the briefs filed by the Belmar PBA attorney (R. Lynch, personal interview, August 6, 1986).

Jack Manutti was a captain in the police department during the time that the Belmar case erupted and later became its chief. He felt that right from the start the case had implications beyond Belmar and was viewed as a test case by the local and state PBA. Manutti commented:

> I think it [the Belmar case] was viewed with a broad outlook because the PBA, the NJ State PBA, was looking at the whole special police issue and that gave the Belmar PBA the support they needed. They gave them that vehicle and they came in and provided a lot of the legal help and everything. (personal interview, June 19, 1986)

The Attorney General got involved in the Belmar case for several reasons but before discussing these it is important to note the authority and responsibilities of that office. The Attorney General is the chief law enforcement official of the state and head of the Department of Law and Public Safety. Many law enforcement functions in New Jersey are gathered together in the Department of Law and Public Safety: e.g., the Law Division, the Division of Criminal Justice, the New Jersey State Police, Motor Vehicles, Alcoholic Beverages Control. Only one of those components, the Division of Criminal Justice, was directly involved in the Belmar case. As one of its many functions the division supervises law enforcement on the local level. The director of the division is appointed by the Attorney General and serves at his pleasure. The PTC is part of the Division of Criminal Justice and one of the many roles that the director of the division assumes is that of Chairman of the Commissioners of the PTC (West, 1985, pp. 325-329).

A key reason for the involvement of the Attorney General in Belmar was that the plantiffs, and to some extent all of the parties, relied substantially upon the Attorney General's Formal Opinion No. 22 (1977). Deputy Attorney General Mark Cronin discussed another reason for the involvement of the Attorney General as amicus curiae which had to do with his objectivity in this case:

> When I say objective it's because we don't hire specials or employ them. We're not in competition with them either because we don't perform a "cop on the beat" function in the Division of Criminal Justice. So for that reason we don't have the economic or administrative concerns directly on the issue. Our concern is more "Do you have a professional police force that's capable of doing its job properly?" Particularly since, if there's a problem with how a police officer does his job, it very frequently winds up here in the Division.... So for that reason we didn't have a direct "hands on" interest in the issue. We could take a step back and we could

> say our concerns are that the job be done properly and not so much who's doing it but how they're doing it. (M. Cronin, personal interview, June 23, 1986)

Frederick DeVesa is a Deputy Attorney General and currently assistant director in charge of the Division of Criminal Justice Police Bureau. He occupied a similar post in 1979 when he was appointed assistant director for special projects responsible for training, legislation, and the local police function. DeVesa commented about the Attorney General's recognition of the broad significance of the Belmar case and his subsequent involvement in the case as amicus curiae:

> I think we stepped into the Belmar case because the statute regarding the appointment of special police at that time [N.J.S.A. 40A:14-146] was admittedly vague. It was our view that the legislature could never have intended that specials be allowed to replace regular police or else they wouldn't have passed the special police statute. They would have called it something else if they intended that specials be just like regular police. But what we were confronted with in that case was that we had basically two views of specials in existence at that time. The view of the municipalities was articulated by Belmar, but other municipalities felt the same way. We rarely intervene in cases unless they are of statewide magnitude and there's more to it than just one municipality against a police union. This was the prevailing philosophical view that was broader than the two parties. The view of the municipalities was basically that special police were untenured regular police. The only reason that there was a statute for special police was to allow municipalities to hire them without providing them with any tenure or fringe benefits, pension rights, etc., and other than that there would be no difference. They could use them any way they wanted. That was the prevailing view of a lot of municipalities.
>
> Police unions, on the other hand, were essentially willing to take the position that special police should be so limited in their duties as to almost not be allowed to do any kind of regular police work. They would only be permitted to engage in mundane types of activities, not carry a weapon, etc. So our view was that we should enter into the case in an attempt to work with the existing law, knowing that long-term legislation was really the appropriate solution. But given what we had in the form of legislation at that time, we felt we might be able to provide some guidance to the court and to suggest at least a more balanced or objective view of how that statute should be interpreted. And that's what we did. (F. DeVesa, personal interview, July 8, 1986)

The Judgment

On May 2, 1980, Judge McGann submitted a written opinion in which he set forth his findings of fact and conclusions of law. The trial judge accepted the

plantiff's opinion that special policemen should be prohibited from performing the usual duties of regular police officers. Judge McGann's opinion also went beyond that issue and provided for broader relief than was requested by the Belmar PBA. For example, the court's opinion concluded that specials could neither be armed, nor could they exercise police powers of arrest beyond those accorded the ordinary citizen. He presented this conclusion although the question of whether specials should be disarmed or stripped of their arrest powers was not raised during the trial. The court also held that specials might "check parking meters, cross pedestrians over busy streets and act as watchmen in the beach area" (Belmar, 174 N.J. Super. at 380), but their duties were limited to these essentially administrative functions. In particular, a special could not perform patrol duty on the "F" Street (business district) post nor could he or she serve as an extra officer in a patrol car under the supervision of a regular officer, although this duty was not the subject of the plantiff's complaint. The trial court's reasoning in support of these conclusions rested primarily, and almost exclusively, upon the special officers' lack of training and the fact that the Police Training Act (N.J.S.A. 52:17B-66 et seq.) does not include special officers among these law enforcement officers who must be trained.

Judge McGann felt that the key issue at stake in this trial was public safety and security and not the individual primary interests of the plantiff or defendent.

> The PBA and the borough each have a stake in the outcome of this litigation. This is primarily fiscal. The public, i.e., the citizens of Belmar and the summer visitors, have a far more basic interest -- their safety. It is fair to assume that citizens are assured by the visible presence of armed men in uniform that laws will be enforced and their safety protected. Underlying that feeling is the assumption that the armed, uniformed policeman knows his job -- is a trained professional. To the extent that members of a municipal police now receive mandated minimum training, that confidence is justified. In the case of a "special" it is not. (Belmar, 174 N.J. Super. at 380)

The Borough of Belmar was not totally unaware of its potential civil liability under principles expressed in McAndrew v. Mularchuk. To that extent all of Belmar's specials were required to complete successfully a 30-hour departmental

training course. The course consisted of 26 hours of classroom instruction and four hours of firing instruction on the pistol range. By comparison, regular officers of the police department went through a 14-week training course at the police academy and had to qualify in all types of police weapons, not just the pistol. In McGann's decision he noted that the "decision to arrest or merely to issue a summons, to decide on the manner of arrest so as to keep force and violence to a minimum, requires the exercise of a sensitive discretion best left to a trained professional" (Belmar, 174 N.J. Super. at 381). And in Judge McGann's view, specials did not have adequate training to exercise police discretion wisely nor to be considered "trained professionals."

The trial court's opinion also dealt with the status of temporary police officers. The defendent (Borough of Belmar) employed no temporary officers, and the issue as to the legitimate duties and responsibilities of temporary officers was not part of the plantiff's complaint. The court's opinion, nevertheless, discussed this subject and held that Belmar should hire temporaries, rather than specials, to assist regular police during the summer months. The court concluded that temporaries could be armed and perform all the duties assigned to regular officers because temporaries, unlike specials, are subject to the provisions of the Police Training Act and therefore must be trained. This was another gratuitous pronouncement made by the trial court in the Belmar case.

The Borough of Belmar was worried about the impact of this decision on its ability to provide adequate police protection for the fast-approaching summer of 1980. Belmar filed a Notice of Appeal for emergent relief on June 20, 1980 with the Appellate Division of the Superior Court of New Jersey. On June 23, 1980, the appellate court stayed the trial court's judgment pending appeal. Belmar was able to employ its specials as it always had for the upcoming summer. But the trial court's

decision would have to be overturned by the appellate court else the entire concept of special police in the state would drastically change in the future.

The Appellate Court

At this point it is important to note that almost a year passed before the Appellate Division of the Superior Court ruled on the appeal filed by the Borough of Belmar. The trial court handed down its decision on May 2, 1980 and the appellate court decided the appeal on April 22, 1981. One should keep in mind that a number of events were occurring during this period of time which were on the periphery of the Belmar case. Most of those events happened after the trial court's judgment, and many of them were affected by it in one way or another. A few events were related to the Belmar decision in an only indirect manner, if at all. These concurrent events ran the gamut from a court decision in a case similar to the Belmar situation to an early version of the SLEOA being introduced in the legislature. These occurrences were secondary in importance to the main event, the Belmar case, which occupied center stage concerning the issue of special police in New Jersey, and would have had no long-lasting impact without Belmar. These affairs will be discussed more fully in the next chapter.

Reaction to the Trial Court

The reaction of the Borough of Belmar to the trial court's decision has already been alluded to. The Belmar authorities were not pleased by the decision and immediately appealed it, resulting in the trial court's judgment being stayed until the Appellate Division had a chance to review the case. Belmar also took the precaution of responding to Judge McCann's decision in another manner. Just in case his decision was upheld by the appellate court, the Borough, in addition to hiring summer specials, hired a number of temporary police officers to handle the influx of summer tourists and crime. These temporary officers had all worked as

regular police officers for other municipalities; therefore, they were completely trained, had police arrest powers, and were qualified to carry and use firearms. These temporary officers put in many hours of part-time duty and were essentially used as regular officers. The specials were shifted to traffic and crowd control and any that were untrained were disarmed. These actions were consistent with Judge McGann's decision, so Belmar was prepared to provide adequate police protection during the summer months even if they lost the legal battle.

The plantiffs in the case, the Belmar PBA, were happy and even surprised about the trial court's verdict, as was the NJPBA. Sgt. Lynch stated:

> McGann went way beyond what we wanted. After we sat back and read the decision with the attorneys we said "Jesus, I never thought it was that bad." Judge McGann really presented a nice situation. He looked at it and he said, "It's about time that you became professionals." I know we felt real good about it [the decision] and we weren't going to have to appeal or do anything. (personal interview, August 8, 1986)

This decision surprised both the Local and State PBA because, on the advice of their attorneys, they were psychologically prepared for the case to be lost at the trial and even, perhaps, the appellate court levels. In preparing for the Appellate Division hearing the only real change in the PBA's legal strategy was to wholeheartedly adopt Judge McGann's ruling that it was impermissible to arm specials. This was something that was not initially sought by the Belmar PBA, but they, and the NJPBA, incorporated that concept into their briefs and legal arguments presented to the appellate court.

The Office of the Attorney General had mixed feelings about the decision. On the one hand it generally approved of McGann's ruling that specials not be permitted to perform the usual duties of regular police officers and that specials should not be used instead of regular police. This was consistent with the Attorney General's Formal Opinion No. 22 (1977). But the Attorney General strongly disagreed with the judge's ruling that Belmar's specials should be disarmed and not have police powers of arrest. The Attorney General's Office agreed that a special

might properly be restricted to performing routine or mundane police duties such as directing traffic or acting as a watchman. But the Attorney General felt that even these types of duties might properly call for the special to be armed or to exercise police powers of arrest and that the Legislature clearly intended to permit this at the discretion of the local government. The brief prepared by Deputy Attorney General (DAG) Larry Etzweiler and submitted to the Appellate Division on behalf of John Degnan, the Attorney General, stated:

> The lower court's judgment must be vacated insofar as it enjoins Belmar from arming its special police and from allowing them to exercise powers to arrest beyond those accorded other citizens. The question whether special police should be armed or stripped of their arrest powers was never even remotely raised in the proceedings which occurred prior to Judge McGann's submission of his written opinion, and it is clear that the opinion simply fails to take into account statutory provisions which are obviously pertinent to this issue which mandate a contrary result. (Brief and Appendix at 23)

Another part of the trial court's decision the Attorney General strongly disagreed with related to temporary police officers. The Attorney General had to deal with this issue because of Judge McGann's gratuitous views on the duties and responsibilities of temporary police officers appointed pursuant to N.J.S.A. 40A:14-122. In his written opinion the judge made several points concerning temporary police. He concluded that the Police Training Act required that temporary officers receive the same training as regular officers. He also concluded that the legitimate duties of temporary and regular officers are coextensive. The judge accordingly advised Belmar to hire temporary rather than special officers if it wished to expand its police department during the summer season to perform the duties previously performed by specials. However, Larry Etzweiler argued in his brief that:

> The Attorney General submits that there is no requirement in the Police Training Act that temporary officers be trained. He furthermore submits that, insofar as here pertinent, the legitimate duties and responsibilities of temporary officers and special officers are the same; that is, both are similarly restricted from the range of duties properly performed by regular officers. (Brief and Appendix at 30)

DAG Etzweiler and others of the Attorney General's staff were fairly confident that the Appellate Division would reconsider and sustain the Attorney General's viewpoint as far as armed specials and the use of temporary police officers was concerned. But before the case went to appellate court, some new interest groups got directly involved.

New Parties

Two new parties got involved in the case prior to its reaching the Appellate Division. The appellate court granted applications made by the New Jersey State League of Municipalities and the New Jersey State Special Police Association to participate as amici curiae and to file appellate briefs. The New Jersey State League of Municipalities is an interest group representing the interests of 555 out of the 567 municipalities in New Jersey The League provides an information service to its members through a monthly magazine. The League also lobbies for and against relevant legislation that is brought up in the state legislature in Trenton. Four lobbyists from the League are officially registered with the state Attorney General's Office which keeps track of sanctioned interest groups. William Dressel, Jr., Assistant Executive Director of the League of Municipalities, commented on how and why the League joined the Belmar case at the appellate level:

> Belmar felt that the trial court's decision had implications for other communities, not only communities that bordered on the coast, but communities throughout the state because the Belmar decision did not really discriminate. It was written in such a way that any community which hired specials would be affected by its findings. And we thought that the court was overstepping its bounds in that here was clearly a home rule prerogative of communities that felt that they needed specials on a part-time basis to augment their regular forces, particularly in the resort communities where they had these peaks in population. We felt this was a very real issue and one that we should be involved in. (personal interview, August 18, 1986)

Gerald Dorf, the labor relations counsel for the League, argued the case before the Appellate Division. Dorf was familiar with the case because he had initially represented the defendant, the Borough of Belmar, when the case was in the

trial court. A change of law firms had brought about a change in representation, but there was no conflict of interest for Mr. Dorf as the League supported Belmar's legal position. At the appellate level the League essentially argued that the decision to hire specials was essentially a home rule issue and that mayors and local governing authorities should be the ones to determine when, where, and how special police officers should be employed in their own jurisdictions.

The other party admitted into the case as amicus curiae was the New Jersey State Special Police Association. The Special Police Association was formed in 1938 to promote the recognition and interests of all special, temporary, or other part-time police officers. The Association had approximately 1,000 members in 1981. It was also on record as favoring adequate police training and training in the use and handling of firearms for all specials and part-time peace officers throughout the state (J. Petroll, personal interview, July 31, 1986). Essentially the Association got involved with the case to preserve the concept of specials as had been employed prior to the Belmar decision. That concept was that specials could be armed and have police powers of arrest while on duty. Even though the specials in Belmar were not members of its group, the Association felt that the implications of the case were so significant for specials throughout the state that they wanted to support Belmar's special police officers. It is interesting to note though that while the association did favor the concept of training for specials, they agreed with the League of Municipalities that the use and training of specials was a home rule issue. They felt that since the Police Training Act did not mention special and temporary police officers, this signified that there should be no statewide monitoring and oversight of their activities, including training. Needless to say, the Attorney General's Office didn't quite see things that way (Supplemental Brief at 38, 39).

The Decision

The Appellate Division heard arguments in the Belmar case on February 17 and rendered its opinion on April 22, 1981. The appellate court substantially affirmed the trial court's opinion. It essentially agreed with the trial court as to the legitimate duties and responsibilities which could be assigned to special officers. The appellate court, however, determined that specials might be called upon in the event of an occurrence of a sudden, unexpected and critical emergency of such a nature that the regular police force was unable adequately to protect public safety without assistance. In such instances municipalities might use specials to a limited extent and for a limited period during an emergency as might be essential to protect the public interest adequately (Belmar, 178 N.J. Super. at 473-474). The Court did not specifically address the issues of the weapons-carrying authority and arrest powers of specials, but its affirmation of the lower court's opinion in this regard and its failure to address or to overrule the lower court on those issues left no doubt that those portions of the lower court's opinion were still in force.

As to the issue of temporary police and their status in relation to special police, the Appellate Division rejected the Attorney General's viewpoint that the discussion of their status was gratuitous and instead set forth its agreement with the trial court that Belmar should hire temporary police officers (rather than specials) to supplement the regular police in the summer months. However, the appellate court did disagree with the trial judge concerning the applicability of the Police Training Act to persons appointed as temporary police officers. The court pointed out that the status of temporary police was not a litigated issue in this case. But, the court did note in passing that under the provisions of the Police Training Act it appeared that temporary police did not have to complete successfully a state-approved training course. So, except as noted, the judgment of the trial court was unanimously (3-0) affirmed by the Appellate Division.

There was an immediate reaction to this appellate court decision by the appellant, the Borough of Belmar. Belmar asked for and was granted a stay by the Appellate Division on May 21, 1981. The upcoming summer of 1981 presented Belmar with major difficulties if it were to be forced to use specials in a restricted manner. Belmar got temporary relief while it filed a petition for certification with the New Jersey Supreme Court. If certification occurred, then the Supreme Court would hear Belmar's appeal of the appellate court's judgment. If certification was denied, then the Appellate Division's opinion would stand as promulgated. Certification was the only means by which the Belmar case would have reached the Supreme Court since there was no dissenting vote in the appellate court's decision, which would have automatically placed the case before the court. Obligatory Supreme Court review of appellate decisions is afforded only under limited circumstances such as dissent in the Appellate Division of the Superior Court. Otherwise, the discretionary route of certification brings cases to the Supreme Court for appellate review.

Because Belmar's application for a stay was granted, the Acting Attorney General's motion for a stay was therefore rejected as moot. More importantly, the Acting Attorney General's petition for a rehearing by the appellate court was denied. The Appellate Division denied the petition for rehearing, perhaps in part because it was uncertain over the Acting Attorney General's (Judith Yaskin) standing to move for relief in view of her status as amicus curiae. As a result, the Acting Attorney General determined that it would be appropriate to seek party status. After Belmar filed its petition for certification, the Attorney General's Office moved for permission to intervene as a third-party defendant and to file a cross-petition for certification which sought adjudication of these issues.

The Supreme Court

The appellate court handed down its decision on April 22, 1981. The Supreme Court, after agreeing to hear the appeal, issued its judgment on May 10, 1982. So a little more than a year passed between judicial decisions. Again, there were other events between the decisions which affected the issue of specials. Some of the events were directly related to the Belmar case while others were only tangentially related to it. All will be discussed in Chapter 4.

Reaction to the Appellate Division

Before discussing the reactions of the news media, the principal parties, and the amici curiae to the Appellate Division's opinion, it is interesting to observe how the Supreme Court itself reacted to the immediate legal ramifications of the lower court's opinion. The first question facing the Supreme Court was whether or not to intervene in the case and hear Belmar's appeal. On July 7, 1981, the Supreme Court granted Belmar's petition for certification. The court would hear the appeal. This was no small victory for Belmar and the Attorney General's Office. Following the adoption of the constitution of 1947, a certification rule was drafted premised largely on the U.S. Supreme Court's certiorari policy. In general, the final judgments of the Appellate Division in New Jersey are not to be reviewed except for "special reasons." This certification is an extraordinary remedy to be granted only at the "sound discretion" of the court (Friedelbaum, 1979, p. 202). Of the seven-member Supreme Court, three or more affirmative votes are necessary for the grant of a petition of certification. Most litigants never get beyond the Appellate Division, and few cases cross the certification barrier although the New Jersey Supreme Court has taken an expansive view "in regard to questions of legal standing; that is, the status of a litigant to invoke judicial processes by reason of a

direct, personal stake or involvement and real adverseness" (Friedelbaum, 1979, p. 203). Evidently the Supreme Court felt that the Belmar case was of sufficient general public importance to grant certification.

One of the factors that may have influenced the court and persuaded it to hear Belmar's appeal was the active involvement of the Attorney General's Office in this case. Not only had the Attorney General been an amicus curiae at the trial and appellate courts but the Acting Attorney General had also asked the Supreme Court for permission to intervene as a third-party defendant. The Attorney General's involvement implied that this was an important case with broad public policy implications. On July 7, the same day it granted Belmar's petition for certification, the Supreme Court granted the Acting Attorney General's motions to intervene as a "Third Party Defendant - Cross Appellant" as well as her cross-petition for certification.

An interesting aside to this case pertains the people who served as Attorney General while this case progressed from trial to appellate to Supreme Court. John Degnan was the Attorney General while the Belmar case was in Superior Court. He resigned to run unsuccessfully for political office and Governor Brendan Byrne (D) appointed James Zazzali to fill the vacancy. Mr. Zazzali was Attorney General from March 26, 1981 to January 19, 1982 when incoming Governor Kean (R) appointed Irwin Kimmelman Attorney General. So Mr. Zazzali was Attorney General just after the Belmar case had proceeded to the Appellate Division and while it was being prepared for the Supreme Court's appellate review. He had to disqualify himself from direct involvement in the case, though, because his former law firm had participated as an amicus curiae in the case. His law firm had represented the NJPBA, and he himself had argued the case in trial court and had helped work on the brief for the appellate court's review. Therefore, for more than one year, this

matter was prosecuted by the Attorney General's Office in the name of Judith Yaskin, Acting Attorney General.

Another factor which may have influenced the Supreme Court Justices to grant certification and hear Belmar's appeal was the increased attention that this case was getting from the news media, particularly newspapers. After the trial court's judgment there was very little newspaper coverage of the decision except in some of the local papers covering the Jersey shore communities. After the Appellate Division's ruling many newspapers in different parts of the state started picking up the story and reporting on it. The only truly statewide newspaper in New Jersey, the Newark Star Ledger, thoroughly covers the Legislature in Trenton, reports on stories with statewide significance, and is distributed throughout the state. A Newark Star-Ledger headline announced "Special Cops' Patrol Pending Definitive Ruling" (Seidenstein, 1981). Other regional newspapers had headlines such as "Appeals Court Lightens Curb on Part-time Police," "Appeal Court Stays Special Police Ruling," "Shore Can Ax Part-time Cops," and "Special Police Ruling Could Cost Towns." The Trenton Times, a widely read newspaper in the state capital and in central New Jersey, had two headlines less than a week apart: "Special Police Disarmed in City" and "Special Cops Get Back Guns, Arrest Power" (Heime, 1981a, 1981b). The latter story was written after the Appellate Division agreed to stay their controversial decision until the state Supreme Court decided whether to review the case. An editorial in an important New Jersey shore newspaper, the Atlantic City Press, focused on the appellate court's decision to sanction the use of armed temporary (not special) police officers to be used by the Jersey shore communities. The editorial entitled "Arming Summer Police" acknowledged the need for additional police manpower in the summer resorts:

> But the recent court wrangle has helped to focus attention on the responsibility that local police officials have to screen summer police applicants very carefully. The additional manpower that expands the range of a small town police force can seriously erode both the

> effectiveness and professionalism of that force, especially if the quality of the temporary personnel is too far below that of the normal complement. ("Arming Summer Police," 1981)

The editorial concluded that the appellate decision should not be viewed by the seashore communities as a "green light" to relax their law enforcement standards as they expanded their seasonal law enforcement ranks.

Did all of the newspaper coverage have an influence on the individual Supreme Court Justices, either in their decision to grant certification or their subsequent decision in the Belmar case? Judges do not comment on specific cases. Even if they would comment on the newspapers' influence on judicial decision making, the pat answer would be "No, the news media do not influence judicial decision making." But judges are human beings who, when they get up in the morning, may have a cup of coffee and read a newspaper. The Appellate Division's decision did not generate an inordinate number of news articles, but enough was written in the press to generate a general awareness throughout the state that an important problem and issue existed with special police officers in New Jersey. If not actually influencing the Supreme Court's final judgment, the newspaper articles and editorials cumulatively may have helped make the justices aware of the significance of this issue and its implications and thereby look with favor upon Belmar's request to review the case and grant certification. Certainly, though, the newspaper coverage stimulated the principal parties and the amici curiae as they prepared for the Supreme Court's review of the case.

All of the parties involved in the Belmar case reacted to the Appellate Division's decision and the pending review by the Supreme Court in a fairly predictable manner. The Borough of Belmar received "resolutions of support" from other municipalities throughout the state, particularly the shore communities that backed Belmar's use of special police officers. Belmar's Mayor Francis Pyanoe said he was "disappointed" in the appellate court's ruling from an economic standpoint

(DeSando & Patrick, 1981). In the summer of 1981 Belmar continued to do what it did the previous summer. In accordance with the lower court rulings, Belmar decided to beef up its police force in the summer months with fully trained regular officers from other communities hired on a temporary basis rather than depending solely on special officers for assistance. In summer 1981 Belmar hired 12 temporary police officers who carried guns and had police arrest powers and 25 unarmed specials for traffic control and other routine duties. The police chief and the mayor of Belmar noted that fully trained temporary officers were paid more than specials, so the court's judgment had a negative economic impact on the borough (Seidenstein, 1981). Buoyed by support from other municipalities and the League of Municipalities, Belmar pressed ahead with its appeal to the Supreme Court, still essentially arguing that specials could be armed and have police arrest powers and be employed where, and when and how local governmental officials saw fit.

The Belmar PBA was elated by the Appellate Division's unanimous decision in their favor. The President of the Belmar PBA at the time stated:

> It's a 3-0 decision. We just can't believe that the Appellate Division has upheld Judge McGann's decision because I had reservations about his decision too. I was happy for it though. It's like going to buy a car and it's a $12,000 car and you say to yourself that if I can get it for $10,000 I'm doing good. But if the salesman offers it to you for $6,000, you say, "Jesus, there's something wrong here." I'm happy about the 3-0 decision too because all our attorneys say that you can't appeal a 3-0 decision to the Supreme Court without a special reason to appeal. We're even elated more -- we figure that this is it. (R. Lynch, personal interview, August 6, 1986)

Even though the Supreme Court did agree to grant certification and review the decision, the Belmar PBA felt so confident that its lawyers did not revise their legal strategy as they awaited final judicial review. Although they had attempted to bar the Attorney General's change in status from amicus curiae to third party cross-appellant, they weren't overly concerned when the Supreme Court permitted that switch.

With the trial and appellate court decisions in mind and the change in its legal status in the case, the Attorney General's Office turned on its "afterburner" to prepare for the Supreme Court review. DAG Larry Etzweiler pointed out that the Attorney General felt the trial judge's decision was wrong, particularly as it prohibited specials from carrying firearms and having police arrest powers. The Attorney General felt that the judge was also wrong when he gratuitously clouded the decision by discussing temporary police officers and the role they could play in providing seasonal police protection. The Attorney General's Office viewed Judge McGann's decision as basically an aberration which would be corrected by the Appellate Division when they saw the judge's clear-cut misinterpretations and oversight of pertinent legal documents. When the Appellate Division ruled 3-0 to sustain Judge McGann's ruling (with only a slight modification), the Attorney General's Office was surprised, to say the least. DAG Etzweiler said of the appellate decision that the appellate judges were also wrong and perhaps came up with the incorrect decision because they had been somewhat lazy and had not fully done their legal "homework" concerning the issues of arming specials and giving them police arrest powers (L. Etzweiler, personal interview, June 23, 1986). Etzweiler pointed out that the appellate court's judgment showed that judges are human and can make mistakes just as anyone else can.

The Attorney General's Office geared up its legal resources and prepared an extensive brief for the Supreme Court's review with four key legal arguments in the brief. In the first the Attorney General agreed with the Appellate Division's opinion and judgment insofar as it addressed the legitimate duties and responsibilities of special police. The Attorney General supported the appellate court's decision that specials should only be used to perform the more mundane duties of policing and not interchangeably perform the functions of regular police. He did differ, though, from the court in that the Attorney General supported the

concept of specials acting as a supplement to regular officers during predictable (and non-emergency) events such as in summer resorts or during other seasonal activities. The Attorney General's Office also argued in its brief that however specials were use they should be trained.

> Thus when the Attorney General promulgated Formal Opinion No. 22 (1977), his reasoning relied heavily upon the lack of a statutory mandate for the training of special officers.... Parenthetically, Attorney General Hyland [the author of Formal Opinion No. 22 (1977)] was certainly not the first Attorney General of New Jersey to be concerned about special police and the adequacy of their training. At least so far back as 1969, Attorney General Sills was campaigning for the establishment of statutory standards for special police. (Supplemental Brief at 16)

The Attorney General very definitely argued against the Appellate Division's ruling that specials could not be armed nor exercise police powers of arrest. The Attorney General argued that a special police officer might properly perform routine or mundane police duties, but those duties might properly call for him to be armed or to exercise police powers of arrest, and that the Legislature surely intended to permit this. He noted that neither the appellate court nor the trial court discussed the effect of certain statutes, e.g., N.J.S.A. 40A:14-146, N.J.S.A. 2C:39-6 a(7), and others, which authorized special officers to carry weapons and exercise police powers of arrest. At the same time the Attorney General noted that the municipalities were obligated to train their special and temporary officers in all aspects of police work to which they would appropriately be assigned. Additionally, the Attorney General by virtue of his role as chief law enforcement officer of the state should be able to oversee and monitor the adequacy of this training to achieve uniformity and efficiency in the enforcement of the criminal law (Supplemental Brief at 35).

Points three and four of the Attorney General's legal brief presented to the Supreme Court dealt with the extraneous issue of temporary police. In essence the Attorney General called for temporary police officers to be viewed as regular police who are hired only for a temporary need. This would include even foreseeable

events which were of temporary duration such as a summer influx of tourists. But he also said that temporary police officers should be trained and this training (as with the training for specials and regular police officers) should be monitored by the Attorney General's Office.

All parties who are amici curiae in the appellate court are automatically invited to participate in the Supreme Court's appellate review in New Jersey. The New Jersey State Policemen's Benevolent Association felt much like its local and the Belmar PBA. The case had gone their way in the trial and appellate court decisions, and they had gained more than they had originally sought. So the state PBA felt confident that they, as amicus curiae, and their local, as respondents, were in a strong position: they had only to present the same legal arguments given in the lower courts and their legal position would be upheld and vindicated. There may have even been a feeling within the NJPBA and the Belmar PBA that since James Zazzali had been Attorney General for almost ten months from March 1981 to January 1982 that circumstances were "tilted" in their favor since Zazzali had previous intimate ties with the NJPBA as their attorney.

The New Jersey State Special Police Association continued in its role as amicus curiae and noted that the Belmar case affected specials throughout state, not only in shore communities. The Association argued that traditionally and according to statute, municipalities had set their own standards for special police officers, depending upon their local needs. Also, it was noted that even with the current PTC-approved police academies it was possible for probationary regular police officers to perform regular police duties for up to 18 months prior to enrolling in an academy. Therefore, special police officers did not have to attend centralized, PTC-approved police training academies, but they could be trained by their local police agencies (Seidenstein, 1981).

The New Jersey State League of Municipalities continued in its role as amicus curiae before the Supreme Court. It wholeheartedly supported the Borough of Belmar in its appeal. The League felt the determination of when and how to employ specials was a home rule issue which should be left up to each municipality to decide. In the League's view, also, it was entirely permissable by statute to arm specials and grant them police powers of arrest. Any training of special officers should be undertaken at the discretion of the local police chief.

The Final Judgment

The Belmar case was argued before the Supreme Court on January 25, 1982 and decided on May 10, 1982. In a dramatic decision the Supreme Court unanimously (7-0) reversed the Appellate Division's judgment and the complaint was dismissed. In summation, the court held as follows:

1. Special police officers may work full-time, part-time or on a continuous basis.

2. Special police may be designated to perform some or all of the duties of regular police.

3. Special police may be authorized to carry weapons and make arrests.

4. The appointments of special police officers may not exceed one year and they may be discharged at any time without cause.

5. Special police should be used for emergencies, both anticipated and unexpected. They may be used to supplement or augment the regular police force during the summer crunch at the seashore or on a particular weekday night when stores regularly remain open for shopping. Generally they should be assigned when feasible to less sensitive areas.

6. Special police may not be employed on a full-time annual basis as a subterfuge to avoid hiring regular police. But they may be hired part-time to supplement the regular police force -- the part-time consisting of a day or a segment of the year.

7. Municipalities have a duty to train special officers so that they may properly perform their assigned duties. If a municipality vests a special officer with the same responsibility as a regular officer, as Belmar apparently did, the municipality would do well to require the same or similar training envisaged under the Police Training Act (Belmar, 89 N.J. at 262-270).

The Significance of Belmar

The Supreme Court's judgment in the Belmar case was a landmark decision in several respects. First, aside from the Mularchuk case, this was the only case regarding specials to have reached the New Jersey Supreme Court. And whereas Mularchuk only dealt with a narrow range of issues, Belmar covered a broad spectrum of issues concerning the very essence of special policing. The Belmar decision had both an immediate impact and a long-term effect throughout the state.

The Immediate Reaction

The Supreme Court's decision in this case didn't completely satisfy any of the principal parties or amici curiae, but at the same time no party was completely dissatisfied with it either. The judgment seemed to give everyone at least a small victory and no one was totally defeated by the decision. This may well have been a conscious decision by the court as it sought to interpret a vague law which was being contested by powerful competing interest groups. It appears that the court made a judicious decision in the Belmar case.

Of course, since the lower court's judgment was reversed and the complaint dismissed, the casual observer's initial reaction would be that the Borough of Belmar was the clear-cut winner. While Belmar won the case it was not as clear-cut a victory as one might assume. An Atlantic City Press article about the Supreme Court's decision the day after it was handed down noted that while the case involved only Belmar, the decision affected a range of shore municipalities that face similar problems in the summer. Joseph Hillman, Jr., Belmar's attorney commented:

> All towns really treat the situation differently. Some prefer to limit the use of special officers to "eyes and ears" only. They use them as security guards, in effect -- rattle doors, give traffic tickets, direct traffic. They don't go chasing bank robbers. Belmar's situation is a little different. We need a complement of regularly trained police officers who can handle any type of situation that can occur. The town's been doing it since

> Belmar was created in 1888.... The court's ruling gives the community the flexibility it needs to handle the summer influx of vactioners. ("Special Police," 1982)

So as a result of the Court's decision the home rule concept was vindicated. Belmar could use specials (armed and with police powers of arrest) as it saw fit although the court clearly recommended that specials be assigned to less critical tasks and not be placed in high-risk situations. Following its reasoning reached in the Mularchuk case and along with the concept of vicarious liability, the Supreme Court noted that it is up to the municipality to assure that special police officers are both qualified and trained for the duties they are to perform. Obviously, the court would have preferred that the training of specials be administered on a uniform, statewide basis by an agency such as the PTC. But it pointed out that "Despite the recommendations of the Police Training Commission and the Attorney General, the legislature has rejected attempts to extend the Police Training Act to special police, leaving the training responsibility with each municipality" (Belmar, 89 N.J. at 266). And while this was not a direct issue in this particular case, the Supreme Court put Belmar and all municipalities throughout the state on notice that "special police may not be employed on a full-time annual basis as a subterfuge to avoid hiring regular police" (Belmar, 89 N.J. at 270).

This sentence alone was viewed as a victory and an important point to the original plantiff in this case. The Belmar PBA was disappointed with the Supreme Court's reversal of both lower courts' rulings, but this sentence helped salvage the decision as far as they were concerned. This was the first time that either the courts or Legislature had clearly and forthrightly said that specials should not replace or substitute for regular police. Both the local and state PBA felt this would strengthen the regular officer's job security and reduce the threat posed to it by the specials. The immediate reaction of the Belmar PBA was expressed by the PBA's

attorney, Laurence McHeffey, who said he was "disappointed" with the decision. In a newspaper article he said:

> Safety was the most important reason behind the court challenge. There was testimony about one special not knowing what the geographic confines of Belmar were. He was found patrolling in South Belmar, which is another town. (Perone, 1982, p. A5)

McHeffey noted that special officers in Belmar are required to go to school at night for only 13 weeks before the summer season. Regular officers must attend a full-time, six-month training course run by the New Jersey State Police. McHeffey said "I think it's a very good idea to have them [special police] trained as regular police if they're going to do the same thing." He added, though, that "the problem is that it leaves that decision up to the municipalities, and they are financially hard-put.... It leaves training up to good intentions" (Perone, 1982, p. A5). The president of the local PBA at that time, Richard Lynch, commented about why the Supreme Court completely reversed the lower courts' rulings:

> We were riding on top of the heap so long. We got a good decision out of McGann. We got a 3-0 decision out of the Appellate Division, which is tough. And then we end up in the Supreme Court and we have no friends whatsoever. I think what happened was that the case was so big that politics had to start getting involved in it. In earlier decisions we [the Belmar PBA] took away the power of a town to hire anybody they want, put him on the street with a gun to enforce the laws with no training whatsoever -- we took the specials completely off the street. There must have been a lot of pressure put on the Supreme Court. By that time the Attorney General had switched away from us.... Once we lost the Attorney General as a friend, we started losing. Then the governor must have put pressure on the Supreme Court. You say it doesn't happen, but I think it had to have happened. I think they [the Supreme Court] had a lot of information being pumped at them saying that we have to do something about this -- these earlier, lower court decisions are crazy. (R. Lynch, personal interview, August 6, 1986)

And yet, even with the Supreme Court's turnabout, Lynch acknowledged that the local PBA essentially fared well in the decision. He said:

> We only asked for job security. We only asked for specials to be trained and to leave us alone and not replace us. What we ended up with was exactly that.... They can't replace us with a special. Everybody said we lost a lot but I don't think that's the case. (R. Lynch, personal interview, August 6, 1986)

One of the legal points that was strongly endorsed by the Attorney General as a third-party defendant in Belmar was acceded to by the Supreme Court: the issue of the proper role and training requirements of temporary police officers which the trial court had gratuitously raised and the Appellate Division had expanded. In a footnote to its decision the Supreme Court sidestepped the whole issue by noting, "At trial the parties did not address themselves to the position of temporary police officers and no record has been made relating to them. We shall not consider their role in the police establishment" (Belmar, 89 N.J. at 261). Not having this extraneous issue muddy the waters of the court's legal decision perfectly suited the Attorney General.

Some knowledgeable observers of the Belmar case have said that the Attorney General was the real, clear-cut winner in this case. DAG DeVesa noted that all the parties in the case may have been winners in one sense or another:

> It's interesting that you say we won because everyone seems to feel that everyone lost and I think maybe everyone won. The bottom line is that the court took the position that I suppose was closest to our view but still somewhat different. You have three sides here in effect. One side says you can do whatever you want with specials: they're like regulars without tenure. Another side says that specials can't do much of anything. And you have us taking the position that specials can perform limited duties in limited time periods if they're properly trained. The court came down closest to our side by taking the position that specials were intended to perform supplemental police duties. They were not willing to limit the nature of the duties performed as some of our opinions had suggested, pretty much so they could do any police duty for limited periods of time. We were saying they could only do limited police duty for limited periods of time. They [the Supreme Court] agreed with us and the municipalities that they [specials] could carry firearms while on duty. They acknowledged, as we had asserted, that there was a common law duty, (and I think this is the critical part of the case from the standpoint of a whole host of issues), that there was a common law duty on the part of municipalities to train specials. There was no question that they didn't come under the Police Training Act. A plain reading of the act makes it clear that specials are not included. But we were arguing that there was a common law duty nevertheless to train specials and that you can't just put a badge on people, put a gun in their hands, and say, "Go out and enforce the law." The Supreme Court acknowledged that there was in fact a common law duty and also, and I guess most importantly, took the position that they could not be used to replace regular police officers. (F. DeVesa, personal interview, July 8, 1986)

Just as the principal parties had a somewhat mixed reaction to the Supreme Court's judgment, so too were the amici curiae mixed in their response. The New Jersey State PBA was particularly upset that the Supreme Court had reversed the lower court's ruling. The lower courts had given the Belmar PBA much more than they had initially asked for. The NJPBA probably had visions of small towns and seashore communities being forced to give up their armed specials altogether and significant numbers of full-time, regular police officers being hired by these same communities. Of course, more regular police in the state would mean more dues-paying members and a stronger union for the NJPBA. Richard Lynch of the Belmar PBA commented on the reaction of the state PBA:

> The state PBA was disappointed with the [Supreme Court's] decision. They wanted more. We [Belmar PBA] didn't want that much in the beginning, and we got more than what we wanted from the lower courts. They [NJPBA] didn't agree with us a lot. Zazzali didn't agree with us on some issues. But at the end I think they wanted more than we wanted. There was a flip-flop of different attitudes. (R. Lynch, personal interview, August 8, 1986)

And yet, Tom Murphy, a vice president of the NJPBA, felt that some small good did come out of the Belmar case. He said, "The Belmar decision gave the PBA a strong hold on why the specials should not be used and when you can hire them and when you can't hire them" (T. Murphy, personal interview, July 29, 1986).

The two remaining interest groups involved in this case after the trial court's decision were supportive of each other and directly supportive of the legal position of the Borough of Belmar. These were the New Jersey State Special Police Association and the New Jersey State League of Municipalities. The Special Police Association wanted to preserve the concept of an armed force of supplemental police officers who would assist a community in performing whatever tasks were assigned (and pick up a couple of dollars an hour for doing so). The League of Municipalities wanted to preserve the home rule prerogative and permit some of New Jersey's financially hard-pressed communities to save money by using specials

instead of regular police. The Supreme Court's decision favored both of these amici curiae but, again, not without certain stipulations and reservations, the key proviso being that specials cannot replace or substitute for regular police officers.

John Petroll, President of the New Jersey State Special Police Association, said that the Association spent approximately $16,000 in lawyer's fees as amicus curiae. Petroll felt there were several positive outcomes of the Supreme Court's ruling as far as specials in New Jersey were concerned. First, and most importantly, they had a right to exist as armed, uniformed officers with police powers of arrest. Also, all special police officers should be trained, not by the PTC, but by the local police agencies in a meaningful and comprehensive manner (J. Petroll, personal interview, July 31, 1986).

Special police officers in a number of communities throughout the state were elated by the decision as they returned to the job after boycotting it. Special police officers had walked off their jobs or threatened to after the Appellate Division had stripped them of their weapons and police powers of arrest in April 1981. This action by specials had forced some communities to cancel Memorial Day parades and other special events during the year (Perone, 1982, p. 1).

The League of Municipalities was relatively happy with the Court's ultimate verdict as the home rule principle was upheld although William Dressel, Assistant Executive Director of the League, expressed some ambivalence about the verdict. He said, "I didn't think it was a victory. The bottom line was that we still saw the need for legislation and the Supreme Court made it clear that municipalities would still have to have standards for the conduct of their special police officers" (W. Dressel, personal interview, August 18, 1986).

Many governmental officials from municipalities throughout the state were more positive in their reaction to the final judgment. A councilman, George Evans, in the small municipality of Dunellen said that the ruling would benefit small

towns. Evans, who was the police commissioner, said, "My reaction was that smaller towns just could not operate without special police" (Perone, 1982, p. A5). A police chief of Bound Brook said that the ruling would help budget-conscious municipalities because full-time officers wouldn't have to work so many extra shifts, saving taxpayers' money. The Chief, Anthony Cimino, expressed fears that Bound Brook's police department would "go down the drain" if the force could not be supplemented by specials. "For small towns like Bound Brook it's very beneficial," Cimino said. "It's a ruling that will help the municipality, certainly financially.... Now this gives a little breathing room to the regulars. It gives us a little bit more flexibility" (Perone, 1982, p. A5).

Some government officials were less than elated with the Supreme Court's decision. The police chief of one community acknowledged the difficult decision that had confronted the Supreme Court. Westfield Chief James Moran said the state's highest court had to wrestle with the survival of the Jersey shore in making the decision because special officers had said they would not patrol resort towns without guns. "It would've taken the wisdom of Solomon to make that decision," Moran said. "If they had said, 'No,' you might as well close the shore down" (Perone, 1982, p. A5). The provision in the court's ruling allowing special officers to wear sidearms was criticized by Hillsborough Police Commissioner Candy Kissanis. Special officers were not allowed to carry firearms in that Somerset County community even before the court's ruling. "Prudent, conservative caution is the direction the Township Committee needs to take with regard to arming special police officers and giving them full rank and duty," Kissanis said. "I get very nervous when I think of arming people to protect the public without proper training," she said, adding that full-time officers might resent allowing special police to carry sidearms without receiving as much training (Perone, 1982, p. A5).

Three days after the Supreme Court handed down its decision, a newspaper editorial entitled "Police Work a Task for Trained Officers" echoed committeeman Kissanis' sentiments exactly. The Gloucester County Times noted that a badge and a gun alone do not make a police officer. The newspaper pointed out that police work is a job for professionals who have been carefully screened and thoroughly trained. The newspaper felt that the Supreme Court's ruling was disappointing in its scope. The editorial recommended that specials be used for non-sensitive and non-critical tasks to free regular police for specialized tasks and to save taxpayers' money. It concluded, "Despite the Supreme Court's ruling on what is legal, the badge and gun can't qualify a person to function as a regular police officer. It is foolish and dangerous to send an amateur to do a professional's job" ("Police Work," 1982).

Long-Term Implications

The Belmar case pointed up the need for new legislation concerning special police officers. The law governing specials during the time of this case, 40A:14-146, was just too vague in many respects. It was almost a "non-law" as it didn't refer to how specials should be used or trained, and it left the specifics up to the discretion of each municipality. Even if the Supreme Court had not reviewed the Appellate Division's ruling or if it had sustained the ruling after review, there still would have been new legislation concerning specials. Of course, if the lower court's ruling had been left intact, the municipalities would have pushed for immediate legislation to enable special police to be armed and to have police arrest powers. Though the Supreme Court's ruling sustained the status quo to some extent, the indication was clear -- new, more definitive legislation concerning specials would be needed. The Supreme Court's ruling gave the Legislature some time, though, to prepare a comprehensive bill.

The New Jersey Supreme Court had a short-term and long-term agenda in the Belmar decision. The short-term, immediate ruling, within the confines of the

existing law and the specific facts of the case, was to sustain the continued use of specials in the traditional manner. But the long-term, implied agenda of the Court was to have a stronger, more clear-cut law with statewide standards and uniformity. The Dean of Rutgers School of Law at Camden commented:

> The courts of New Jersey, especially the supreme court, have become major sources of public policy since World War II. Increasingly, they have shared center stage with the governor and legislature, sometimes to the discomfiture of both. In the process, the supreme court has acquired a reputation as one of the most aggressive and innovative state supreme courts in the nation. (Pittenger, 1986, p. 160)

In addition, Dean Pittenger noted that the New Jersey Supreme Court "has tended to exalt state authority at the expense of local control and home rule" (Pittinger, 1986, p. 171). So while an initial, surface reading of the Belmar decision would seem to indicate that the principle of home rule regarding specials was sustained, a more critical analysis sees the court calling out to the Legislature for a clearer law with the state (through the Attorney General) playing a leadership role. The Supreme Court noted, however, that the Legislature had shied away from this issue in the past, and it had been basically weak and ineffective regarding special policing. The Court commented that the Legislature had rejected the recommendations of the PTC, the Attorney General, and numerous proposed legislative bills to extend the Police Training Act to special police, leaving the training responsibility with each municipality. And yet, it noted, "Municipalities do not have uniform guidelines or standards governing police training. As a result there is great variation in the instruction given to special police" (Belmar, 89 N.J. at 266). The decision added, "It is perhaps because of the diversity in tasks that the extent and intensity of training is left to the municipality under our present statutory scheme. Presumably [emphasis added], it will exercise that judgment wisely" (Belmar, 89 N.J. at 267).

The last sentence of the decision emphasized the responsibility of the municipalities regarding specials. "It is the obligation of the municipalities to see to

it that the special policemen are qualified for their job" (Belmar, 89 N.J. at 270). The unasked question, though, was would the municipalities live up to that obligation? The Supreme Court said that they hadn't done so in the past, and it implied that they probably wouldn't do so in the future unless there was some central (i.e., state-led) direction and control. The Supreme Court's judgment in Belmar suggests a willingness to take into account immediate political realities while preserving the court's leadership role.

It is important to note the role of interest groups in the Belmar case and their influence on the various courts since "underlying many of our court decisions, and thus much of American law, has been the work of pressure groups" (Makielski, 1980, p. 279). S. J. Makielski discusses two barriers that prevent a full understanding of the role of pressure groups in the judicial process. One is the nature of the American system of law. American legal thinking clings to the stated faith that civil legal proceedings are a contest between two individuals. "This means that journalistic -- and legal -- accounts of cases often overlook the collision between competing pressure groups and see the process not as a power struggle but as a 'rational' contest over points of law" (Makielski, 1980, p. 280). The second barrier to a true understanding is the deference granted to the law and to judges.

> Most Americans would apparently prefer to believe that the court system is somehow "above politics," that we are governed by laws not the men -- and the organizations influencing them -- who make and interpret those laws. This widespread deference is in no small measure a factor that influences pressure group behavior. As a result, group pressures are apt to be less overt when brought to bear on the judicial system, and thus less easily seen by the casual observer. (Makielski, 1980, p. 280)

Interest groups need two elements to get actively involved in a legal case: "standing" and technical skill. Both are important, but a pressure group without the requisite technical skills may never overcome the legal barriers and therefore never gain access to the court system. Obviously, in the Belmar case, a number of interest groups did overcome these barriers, but "their very existence places a premium on

legal skill, the money to hire that skill and to pursue a case over a long period of time, and an organizational base to gain the money and to carry on a protracted struggle" (Makielski, 1980, p. 285).

Legal standing is critical to bringing or getting actively involved in a case. If one doesn't have direct substantial interest in a case, then one will not be permitted to bring suit or become part of a case. Many interest groups are able to achieve a kind of "quasi-standing" through the filing of amicus curiae briefs. At one point in Belmar four amici curiae were involved. It is not clear how effective these briefs are in swaying a judge's thought processes. Probably a well-argued, carefully written, and thoroughly researched brief can tip the balance in a case where the issues are evenly balanced. In some cases, the appearance of a high-status pressure group (e.g., the Office of the Attorney General) in support of one side of a case may in a subtle way convince a judge of the merits of that position. Even though the results are difficult to measure, the ever-present possibility that an amicus curiae brief could make a difference was enough to attract a number of interest groups to Belmar. It can be concluded, then, that one can say that pressure group influence is at work in the judicial arena and helps set the agenda of the courts. Furthermore, "Group influence may shape judicial decision making through the amicus curiae brief and through propaganda campaigns" (Makielski, 1980, p. 303). In Belmar, there was no evidence of an interest group propaganda campaign, but numerous legal briefs were filed by interest groups which ultimately affected the Supreme Court to some degree.

DAG Fred DeVesa commented about the overall impact and the long-term significance of the Belmar case:

> The Belmar case surprised some people but it didn't surprise us. But --this is an interesting commentary on the way reform is brought about -- people were kind of expecting that they could ignore this problem [concerning special police] for the time being because the court was going to come down and solve the problem.... The courts will move in and take action and they will set standards like they did in Miranda and like they did in some

> other areas. Here people were expecting the Belmar case to give us "the answer" and it was pretty obvious to us in the Attorney General's Office and I think to some others that a court, because of the "case or controversy" doctrine, is not really well equipped to set guidelines on the appropriate appointment, use, training, and all that of special police particularly when they're constrained by interpreting a statute that says very little. So subsequent to the Belmar case, a lot of people were disappointed. Many people think they lost the Belmar case. The Attorney General's Office wasn't entirely happy with it because the court refused to set limits on how special police could be used. The PBA obviously wasn't happy with it because it permitted them in ways the PBA was unhappy with. And municipalities didn't like the idea that there was some kind of training requirement that wasn't articulated, that there was this language that said they couldn't be used to replace regulars which, of course, didn't leave them much guidance. So there was this immediate reaction, like it was anticlimactic. This Belmar decision didn't really resolve much. And as a result, people began to see that there was a need for legislation. And so there were many attempts to begin moving toward legislation. (personal interview, July 8, 1986)

Anticlimactic or not, the judgment handed down by the Supreme Court in Belmar rendered the then current law regulating specials (40A:14-146) obsolete. The Belmar case was significant because it provided the spark for the creation of meaningful special police legislation and uniform special police training standards.

CHAPTER 4

TRANSITIONAL PERIOD

While the Belmar judgment pointed to the need for new, comprehensive special police legislation, that was something which was not about to happen quickly or easily. Too many competing interest groups had fought long and hard in the Belmar case for them to give up their vested interests, set aside their differences and come together to create a legislative bill regarding special police. And, of course, if a bill was to be written, which legislator was going to take the lead to write and sponsor such a bill and what was the bill going to say? These certainly were questions which could not be resolved overnight. The fact is that these questions were not quickly and easily resolved. There was a period of transition between the then current law (40A:14-146) regulating specials and the new law (P.L. 1985 c. 439) regulating them. Of course, from a legal point of view one could argue that there is no such thing as a transitional period between laws. If a law is to be repealed and replaced by another, then the current law is in effect until midnight on a certain day and the new law takes effect at one second after midnight on the following day so there is no gap or transition between laws.

But once the Belmar decision was handed down by the Supreme Court on May 10, 1982, the days of 40A:14-146 were numbered. A new law would have to replace it sooner or later. Although amendments were made to this law, these were only stopgap measures until a definitive law was written and approved. It could be argued that the transitional period ended on September 13, 1984 when A-2512 was introduced to the New Jersey Legislature. This is the bill which ultimately became the new law governing specials. Although the bill was amended several times and it didn't become effective until October 1, 1986, once A-2512 was introduced in September 1984, 40A:14-146 in essence became a "lame duck" law. Identifying a starting date for this transitional or gestation period between the old and the new

laws concerning specials is a little more difficult to do. Certainly the Supreme Court's decision in May 1982 presents a strong case for using that to identify the starting point of the transition. But there were events prior to this point in time which should be considered a part of the transitional period. These events occurred in 1980 and 1981 concurrently with the Belmar case and were related to that case in varying degrees. In and of themselves these occurrences are not that significant, but taken as a whole they did affect certain groups and actors who would come together to work on future special police legislation. It may be said that the major events in the period of transition occurred in 1982, 1983, and well into 1984. Other minor, but nevertheless important events occurred in 1980 and 1981 even before the New Jersey Supreme Court's dramatic decision, and they should be considered as part of the transitional period too.

Events Concurrent With Belmar

South Jersey Police Reserve Association

The South Jersey Police Reserve Association (SJPRA) is a fraternal organization which has members from approximately 27 reserve police units in six counties: Gloucester, Camden, Salem, Burlington, Cumberland, and Atlantic. This organization was started in the 1960s and meets about eight times a year. Membership dues are $5.00 per member and the organization is essentially not political in nature. It was primarily created to promote comradeship and act as an information clearinghouse between units. At any one time about half the units are dormant.

In 1980 the SJPRA tried to become more political and have some influence on some legislators and legislation concerning reserve/auxiliary policing in New Jersey. Two reserve officers from the Borough of Woodbury (the county seat of Gloucester County) were the primary officers of the SJPRA; Dennis Tallman and Herb Scholtz

were president and vice president, respectively, of the SJPRA. Scholtz also was the head of the 20-officer Woodbury reserve unit, and Tallman was the lieutenant of that unit. In April of 1980, before the trial court's decision in Belmar, the organization decided to form a committee to meet with legislators to solicit their advice and assistance for the "survival of our organizations" (H. Scholtz & D. Tallman, personal correspondence, April 22, 1980). Tallman and Scholtz were aware of the Belmar case which had been argued in Superior Court several months before. They had an inkling about the case through newspaper articles and word-of-mouth. And from what they knew about the case they were concerned about its possible ramifications and adverse affect on reserve/auxiliary policing throughout the state; therefore, they formed a "Committee to Preserve Special Police in New Jersey."

Once the trial court's decision was handed down in Belmar in May 1980, then the SJPRA became concerned with the collective future of reserve/auxiliary policing. The SJPRA held monthly meetings in the fall of 1980 to prevent specials and reserves from being "wiped out at the stroke of a pen" (Facciarossa, 1980). The committee created by the SJPRA was headed up by Dennis Tallman and sought the advice of area legislators in an effort to plan the most effective course of action. The committee wanted to push for legislation, regardless of the Appellate Division's decision in Belmar, that would require unified training for all specials in New Jersey. Tallman met with Congressman James J. Florio (D-1st Dist.), who advised the SJPRA not to wait until the decision was handed down. He advised the group to unify themselves and mount an offensive (Facciarossa, 1980). But there was only so much a congressman could do to assist in a matter pertaining to reserve/auxiliary policing within the state. Tallman contacted his local state Assemblyman, Martin Herman, to see if he could assist the SJPRA. Herman met with Tallman and some others once or twice, and he intimated that he could and would support specials through legislation designed to clarify their role, although Herman favored the

disarming of specials (D. Tallman, personal interview, August 22, 1986). Tallman argued against the concept of unarmed specials and reserves, stating that the gun was as vital a tool for the police officer as the hammer was for the carpenter. Of course, Tallman acknowledged the need for armed specials to be properly trained. Nothing was agreed on one way or the other at this stage.

At this juncture it is important to introduce Assemblyman Martin Herman, whose name will be mentioned with more and more frequency in the events surrounding the final passage of a comprehensive bill pertaining to specials. Herman was born in Philadelphia in 1939 and attended Temple University where he obtained both his undergraduate and law degrees. He moved to New Jersey and opened a law practice. He was a solicitor for a number of municipalities and townships over the years, and he also numbered among his clients a local of the PBA. A liberal Democrat, Herman was first elected from the conservative 3rd District in November 1974 during the Watergate backlash. The 3rd Legislative District is in the southwest portion of the state and includes all of Salem County and parts of Cumberland and Gloucester Counties. Starting in the Assembly in 1974, he managed to hang on (sometimes very narrowly) every two years even though he always seemed out of place in this growing but still largely rural district ("Herman Starts," 1986). He was made Chairman of the powerful Assembly Judiciary, Law, Public Safety and Defense Committee in 1978. So when the SJPRA approached Herman they did so with the knowledge that he was a respected and influential Assemblyman who might be quite helpful in assisting them with their concerns.

But the involvement of the SJPRA in the creation of special police legislation in New Jersey was short-lived. From 1981 on, not much was heard from the SJPRA in reference to special police bills, and other special police associations emerged to take its place on the legal and legislative fronts. One reason for this was that the SJPRA was an informal and relatively unorganized association with a small

membership. In a letter to the association's members written in January 1981, Dennis Tallman berated them for a poor turnout at the January meeting when only seven members from four units attended. Another reason was that Assemblyman Herman really didn't need or want them involved to any significant extent. In a press release in early March 1981, when A-3234 was being introduced in the Legislature, Herman did acknowledge the role of three key members of the SJPRA. The news release said, "The development of this legislation was initiated at the request of several area law enforcement personnel. Most notable in their efforts were: Herbert Scholtz and Dennis Tallman both of Woodbury and William J. Sample of the Cherry Hill Police" (M. Herman, personal correspondence, March 5, 1981). Dennis Tallman, President of the SJPRA at that time, said that he and the Association got the run-around from Herman and "he just totally tuned us out" (D. Tallman, personal interview, August 22, 1986). In essence the SJPRA had no real input to A-3234 nor were they consulted on any of the other subsequent special police bills. Why did Herman give short shrift to a home-grown special police association which was based in Woodbury where he had his law and local legislative offices? It may have had something to do with the fact that Woodbury's Police Chief, F. Dean Kimmel, ran against Herman in the November 1979 election. Even though he was still an active police chief, Kimmel ran on the Republican ticket and challenged Herman for his Assembly seat. Herman won the election by a little more than 3,500 votes, but he certainly may have felt less than enthusiastic about anything associated with the Woodbury Police Department. When Tallman and Scholtz, who were officers in the Woodbury special police unit, came to Herman as officers in the SJPRA and asked for his assistance, Herman may have seen a chance to slight his recent political rival (Kimmel) by giving the cold shoulder to the SJPRA.

The FOP Case

Another legal case concerning special police officers was being dealt with by the New Jersey courts at the same time the Belmar case was winding its way through the court system. Although this case occurred simultaneously with Belmar,it did not become as well known as Belmar nor did it have as broad an impact as that case. This was so because this case was settled by the trial court and not appealed beyond that level; it was also not viewed as a test case to be supported by numerous amici curiae. Gloucester Inter-County Lodge #51 of the Fraternal Order of Police v. Borough of Woodbury Heights, et al. was filed in the Gloucester County courthouse on November 24, 1980 and the decision of Judge Paul Lowengrub was handed down about a year later on November 12, 1981. Thus the case was filed after the trial court's judgment in Belmar and a verdict was issued after the Appellate Division's verdict in Belmar but before the final Supreme Court decision. The plantiff in Woodbury Heights, Gloucester Inter-County Lodge 51 of the Fraternal Order of Police (FOP), contended that Woodbury Heights was using special police officers to perform the same duties and functions of regular police officers. The effect of this was to deny overtime to regular police officers as well as to deny more full-time positions for regulars on the police force (Brennan, 1980).

The FOP is a statewide police union similar to the PBA. Both of these organizations are not only statewide in scope but are nationwide as well. In New Jersey the FOP is the smaller of the two. The FOP has approximately 7,500 members, including full-time sheriffs' deputies, county jail guards, and municipal police officers with locals in the Newark Police Department (1100 officers) and the Jersey City Police Department (900 officers). Although its headquarters is in Newark and its largest locals are in northern New Jersey, the FOP has membership in the southern part of the state (e.g., Gloucester, Camden, and Cape May counties) also. Lodge 51 of the FOP is the bargaining agent for the regular police in

Woodbury Heights and eight other Gloucester County municipalities. The lawyer for Local 51, Michael Ferrara, noted that the lawsuit was similar to the one filed by the police in Belmar. The complaint filed by Ferrara contended that the Borough's use of specials violated the New Jersey Attorney General's Formal Opinion No. 22 (1977). Noting that unqualified and untrained special officers should not be doing the work of full-time police officers, Ferrara said, "They (Woodbury Heights) are doing the same type of thing that Belmar did" (Brennan, 1980). He noted that specials also worked in many other towns, but the "Heights, apparently, is the most flagrant and that's why were seeking to knock out the use of the special police there" (Brennan, 1980). The attorney felt that if his clients were successful, the judge's ruling would have an effect in other municipalities. Besides being ordered not to use specials for regular police work, the union wanted the Borough instructed not to give the specials sidearms, uniforms, and badges.

The FOP won its case. The Superior Court judge's ruling, effective January 1, 1982, prohibited Woodbury Heights "from permitting the duties, powers and functions of regular police officers of the Borough of Woodbury Heights to be exercised by any individual not qualified by law to be appointed to the position of police officer pursuant to N.J.S.A. 40A:14-122; and N.J.S.A. 52:17B-66 et seq." (Woodbury Heights at pp. 1-2). Attorney Michael Waldman, another attorney representing Lodge 51, said the ruling upheld a state law requiring all officers performing the duties of a policeman to undergo a comprehensive training program approved by the state PTC. According to Waldman, the precedent for the case was set in April 1981 when a three-judge panel of the Appellate Division ruled (Belmar, 178 N.J. Super.) that specials could not perform the duties of regular police even during the summer season at the shore. Waldman said that the Woodbury Heights case did not directly affect other municipalities but "the more cases we win, the more the municipalities in the state will see the handwriting on the wall and get rid

of the special officers" (Lovejoy, 1981). Waldman said unions representing police in other municipalities may file suit to gain the same results. "We feel the same state statute applies everywhere. We contend the same results should occur in every municipality" (Lovejoy, 1981).

Understandably, many municipal officials and police chiefs were upset by the economic implications of this case. They felt that the ruling would create an obvious financial problem, especially for small communities. Pitman Police Chief Foster agreed and said, "I don't know how small police departments are going to manage. The people are going to suffer" (Lovejoy, 1981). Swedesboro Police Chief DeMora concurred and said that statewide enforcement of the statute would adversely affect his department. He noted that he was the only full-time officer in the borough but that 12 specials assisted him. "If specials could not be used for patrolling, that would hurt us" (Lovejoy, 1981). If small towns had to discontinue using specials as regular police officers, then they would have to either increase taxes to hire more regulars or disband their police departments and ask for state police protection. But, ironically, the Supreme Court's final judgment in the Belmar case saved these small municipalities from having to make either choice and permitted (at least for the time being) the continued use of specials as before. After the Supreme Court's ruling in Belmar in May 1982, the Woodbury Heights police chief said that the earlier FOP victory was "immaterial. It's like it never happened" (Barna, 1982, p. A7).

Failed Legislation

Bill A-1117 was introduced to the state Legislature on February 25, 1980 by Assemblyman Carl Orechio, R-Nutley. As was briefly mentioned in Chapter 3, this bill was the last in a series of bills introduced over the years by Orechio to have the Police Training Act modified so that specials would have to successfully complete a PTC-approved training program. A-1117 was filed with the Judiciary, Law, Public

Safety and Defense Committee which was chaired by Assemblyman Martin Herman. This bill was filed after the Belmar case was argued in Superior Court but before the court handed down its verdict. The bill never got out of committee. All of the previous bills introduced by Orechio never got out of committee either (even A-1248 [1978] filed with Herman's committee, too), but Herman may have made a conscious decision this time to put Orechio's bill on hold until he (Herman) could draft and introduce more comprehensive special police legislation in light of the Belmar and Woodbury Heights legal decisions.

Assemblyman Herman did introduce his own legislation concerning special police about 13 months after Orechio's bill. Herman and his co-sponsors, Kavanaugh, Saxton, and Smith introduced A-3234 on March 23, 1981, and it was sent to Herman's Judiciary, Law, Public Safety and Defense Committee for review. This was designated the "Special Law Enforcement Officers Act" (SLEOA), and it was broader and more comprehensive than any of Orechio's prior bills. If approved, the SLEOA would have repealed 40A:14-146 and been substituted for it. The Act generally provided for the regulation of the qualifications, powers, and duties of special law enforcement officers. The essential elements of A-3224 (1981b, p. 4) were mentioned in the sponsors' statement and, specifically, the bill provided for the following:

1. Clarify the permissible duties for which special law enforcement officers may be utilized based upon the current provision of N.J.S. 40A:14-146 as supplemented by the Attorney General's Formal Opinion 1977, No. 22;

2. Require minimum police training of 120 hours for special law enforcement officers prior to appointment, to be prescribed by rules and regulations of the Police Training Commission;

3. Limit to 12 hours per week the amount of time that special law enforcement officers may be employed by a local unit, but provide for an exception for resort municipalities which utilize special police during seasonal periods of tourist or visitor influx where their population increases by 25 percent.

4. Require the municipal governing body to establish limitations on the numbers of special policemen which they may employ, based upon a ratio of special policemen to regular police officers.

5. Prohibit any person serving as a special policeman to also serve as a school crossing guard, unless he shall separately qualify for, and be appointed as such pursuant to P.L. 1979, c. 82.

The bill, A-3224, was essentially drafted by Assemblyman Herman without much input from anyone else. Although Herman had met several times with members of the SJPRA, he had the bill drafted with the specific points he wanted in it by the Office of Legislative Services (OLS). With a nonpartisan staff of about 250 people and an annual budget of roughly $10 million, the OLS helps individual members of the Legislature by researching bills, drafting bills, and reviewing bills for proper technical form. Also, the OLS helps standing reference committees screen and modify bills by providing full-time professional staff to work under the direction of the chairman (Rosenthal, 1986, p. 126).

Assemblyman Herman found two Senate sponsors for his bill who introduced the exact same bill on the Senate side of the house. Senators Graves and Lipman filed S-3289 with the Senate County and Municipal Government Committee. Herman's chief aide from May 1983 to May 1985, Peter Traum, commented about this practice of introducing the same bill in both houses of the Legislature and the rationale behind it:

> Marty did that quite a bit for two reasons. One, it can expedite the process, getting it through both houses; you can have the bill in the Senate going through the same process that it's going through in the Assembly and then you can join the bills [substitute the primary bill for the other one] down the road.... It also, and Marty was famous for this, gives you someone who believes in the same thing you do in the Senate. It gives you an advocate in the Senate. (P. Traum, personal interview, July 16, 1986)

And certainly it didn't hurt one's bill if the legislators who sponsored a bill in the other house were themselves chairmen of standing reference committees. This was the case with S-3289 as Herman carefully chose the legislators who sponsored the Senate version of A-3234. Senator Wynona Lipman was chair of the Senate State

Government, Federal & Interstate Relations & Veterans Affairs Committee, and Senator Frank Graves was chair of the prominent Law, Public Safety and Defense Committee. It is also interesting to note who the co-sponsors were on Herman's bill, A-3234, and the rationale for choosing them. Peter Traum commented:

> Marty would think now who, if anybody, should I get to co-sponsor this? In general terms it could be your Assembly partner. A lot of times you would see Herman and Pankok because they were from the same Assembly district [the 3rd District]. Or, if Herman wanted something which would have to by its nature go to a committee other than his, he would normally seek out the chairman of that committee, discuss it with him or her, ask them if they would like to be a co-sponsor. It also gives you a friend as a committee chairman.... It could be just getting a committee chairman interested in what you're doing and his name on top of the bill is some help in getting it through the process. (personal interview, June 16, 1986)

None of Herman's co-sponsors of A-3224 were chairmen of committees, but Assemblyman Kavanaugh was a Deputy Assistant Minority Leader at the time; and Smith and Saxton were influential, veteran Assemblymen with the latter sent to Washington as a Congressman in 1982.

Neither of these bills, A-3224 or S-3289, got far along in the legislative process (see Appendix A for a description of the legislative process in New Jersey and see Appendix B for a legislative history of both these bills). Herman's bill, handled by his own committee, never even got past a second reading on June 22 and the Senate bill was given its first and only reading on June 15 before it too died.

The bill did not progress far in the Legislature for several reasons. One reason was substantive. These substantial criticisms will be discussed in depth in the concluding section of this chapter when A-526 is scrutinized. A-526 was an exact copy of A-3234 but it was introduced in the next (1982-83) legislative session, and different parties throughout the state had more time to digest the bill and criticize it. Also, another very definite problem with the 1981 attempt at creating a SLEOA was the fact that the bill was created solely by Herman with the assistance of the OLS. Other than two or three perfunctory contacts with representatives of the SJPRA, the various major interest groups that would be affected by this bill did

not even know about it until it was introduced, and then they had severe reservations about it.

A third, and probably the key reason behind the lack of legislative progress made by A-3234, was a matter of timing. There are two facets to a general discussion of timing and legislation. One has to deal with time in a physical sense, i.e., is there enough time left in a particular legislative session to introduce a bill and have it go through all the necessary legislative procedures in both houses for it to be signed into law by the governor before the end of the session? The other facet of timing and legislation has to do with what else is happening in the Legislature that particular session. Is there some budgetary crisis which has the attention of the entire state government? Is there some important controversial bill before a particular committee which is demanding all of its time and attention and therefore all other bills on that committee's agenda are backlogged until that bill is resolved? Has there been an exceptionally large volume of bills introduced in a legislative session which may thwart (or, perhaps, sometimes aid) a bill's progress? Time, then, can be quite crucial to the success or failure of proposed legislation. Timing may spell the difference between a bill being approved or its falling by the wayside.

Timing affected A-3234 in several ways; therefore, it is necessary to give some background information about the legislative process in New Jersey. Each Legislature is in session for two years, beginning on the second Tuesday in January of each even-numbered year. Each Legislature is divided into two annual sessions, but the state constitution specifies that all business from the first year may be conducted in the second year; therefore, the distinction between the two annual sessions is more ceremonial than practical. At the end of the second year, all unfinished business expires. Most of the key events and proposed bills surrounding the ultimate creation of the SLEOA took place during one of three Legislatures: the 199th (1/1/80 to 1/11/82); the 200th (1/12/82 to 1/9/84); and the 201st (1/10/84 to

1/13/86). Another point to keep in mind about the physical constraints of time is the amount of time that legislators are actually in Trenton "legislating." New Jersey's Legislature is a part-time, commuter legislature. In New Jersey each house sets its own meeting schedule. In recent years each has held an average of 40 sessions a year, normally held on Monday and sometimes Thursdays (except during recesses for the budget, the summer season, or election campaigns). In addition, other days are often devoted to committee meetings and public hearings. "For the legislator, life in Trenton is discontinuous, and the legislative process moves by fits and starts. It is almost impossible for anyone to give anything much attention for any significant length of time" (Rosenthal, 1986, p. 119). So in the case of A-3234, there really was not enough time left in the 199th Legislature for the bill to be approved. The bill was not introduced into the Assembly until late March of 1981 and usually at the end of June a two-month summer recess is taken. In the fall of odd-numbered years (e.g., 1981) the legislators focus on running for re-election in November so they can assume office at noon on the second Tuesday of the following January. Members of the Assembly serve two-year terms, so in essence every other year they are working hard to get re-elected and their attention to matters in Trenton may slip.

In addition to filing A-3234 too late in the 199th Legislature to have any significant action take place on the bill, a large volume of bills was introduced during that Legislature that A-3234 had to compete with. Almost 5,500 bills were introduced by the 120 members (80 Assemblymen and 40 Senators) of the 199th Legislature. That averages out to about 45 bills per member (Allen, 1984, p. 187). The odds are very much against any one bill being approved. "Most of the bills sponsored by members die along the way, usually in committee. Only one out of every eight or nine that are introduced make it through the process" (Rosenthal, 1986, p. 127).

Assemblyman Herman and his committee were also quite busy at that time. The Assembly Judiciary, Law, Public Safety and Defense Committee handled more bills than any other Assembly committee: approximately 25 percent of the 3,190 bills filed in the Assembly in the 199th Legislature. They also dealt with several controversial bills which were time-consuming. The committee labored over one bill re-enacting the death penalty in New Jersey. And Herman himself was a co-sponsor of a series of five bills which were part of a comprehensive revision of the New Jersey Code of Juvenile Justice. So both Herman and his committee had more important issues and bills to focus on during the 199th Legislature than special police officers and A-3234. Assemblyman Herman commented:

> We let those bills [A-3234 and S-3289] sit because I really didn't think that we had gone far enough with those bills .... We didn't push their adoption and we didn't push their passage. As you can see, it [A-3234] only got a second reading.... A-3234 was introduced in the last year of the 1980-81 session. And so we started to get some concerns and we let it sit for a while. (personal interview, July 7, 1986)

Increased Training of Specials

During the transition period more and more police departments gave increased attention to the training of special police officers. In some cases formal training programs were created for specials where none had existed in the past. In those police agencies that had prior training programs for specials, many of the programs were upgraded and expanded. This increased attention to the training of specials was clearly stimulated by the Belmar case and to a limited extent (in Gloucester and Camden counties) by the Woodbury Heights case.

The New Jersey shore communities also responded to the increased emphasis on the training of specials. The Stone Harbor Police Department was the first in Cape May County to create a formal training program for specials. Chief William Donohue (1982) had created a 56-hour training curriculum for specials in the late 1970s. Specials spent two days in firearms training and qualification and five days

in the classroom studying various subjects. In addition to this formal training, the new seasonal special officer was given two weeks of on-the-job training under the tutelage of a regular officer. In another Cape May County community, North Wildwood, Police Chief William Wiszt instituted a five-day training program for seasonal special officers in the early 1980s. It consisted of two days on the firing range, three days in the classroom, and some on-the-job training. But with the pressures of a short training period and the need to get specials on patrol by the Memorial Day weekend, the training program was haphazard at best. As far as training went at that time, Chief Wiszt said, "In plain English, we threw as much shit on the wall as we could and hoped that some of it stuck" (personal interview, June 19, 1986).

The Monmouth County Police Academy was the first PTC-approved academy in New Jersey to sponsor a mandatory, comprehensive training course for special police officers. Monmouth County, which has a great number of summer resort communities, including Belmar, implemented a 280-hour course as well as a 60-hour course for all new specials hired within the county after September 30, 1982 (P. Chaiet, personal correspondence, December 2, 1982). The 280-hour course was designed for special officers who were armed and carrying out the responsibilities of a regular police officer. The 60-hour course was created for unarmed specials who were not performing the duties of a regular police officer. This course had been created by the Monmouth County Police Chiefs Association at the instigation of Belmar Police Chief Jack Manutti, who had become chief in 1980 after the Belmar case had gone to trial. After receiving the Supreme Court's decision on special police in 1982, the Monmouth County Chiefs of Police appointed a committee chaired by Chief Manutti to study the decision and make recommendations. Chief Manutti acknowledged that the Belmar case was the catalyst for Monmouth County

Chiefs of Police agreeing to create a uniform, centralized training program for specials. He commented:

> When the Supreme Court dealt with the training issue, I knew that down the road that we'd have legislation. That, in itself, is why we in Monmouth County were the forerunners because we anticipated it. (J. Manutti, personal interview, July 19, 1986)

The Monmouth County police chiefs were well aware of Belmar and its implications and therefore acceded to the creation of countywide special police training standards.

Amendments to 40A:14-146

Six amendments were proposed to the law which regulated special police until the implementation of the SLEOA on October 1, 1986. Three of the proposed amendments were Assembly bills and three were Senate bills. The special police statute, 40A:14-146, had been in existence since 1971, but from then until 1982 no amendments had been made to it. During the 200th Legislature (1982 and 1983) five amendments were proposed, but only three of them succeeded and were made into law. In the 201st Legislature, another bill successfully amended the special police statute in 1985. All were created in response to the Belmar case. Although three of the amendments were introduced in February 1982 (about three months before the Supreme Court handed down its final decision) and two of them had been previously introduced as bills in the 199th Legislature, it was still Belmar that stimulated some action to strengthen and more sharply define 40A:14-146. The four amendments that became law (for a legislative history see Appendix C) and even the two that failed (see Appendix D) were all designed to fill in the gaps in the existing statute regarding specials. When the Supreme Court issued its final judgment in the Belmar case in May 1982, it became imperative to seek codification of some of the issues raised by the Court in that case because 40A:14-146 was a weak and ill-defined law which essentially gave local municipalities carte blanche to utilize

specials as they saw fit. The law was particularly vague in regard to the training of specials, leaving that entirely up to the discretion of the local police department. As was discovered in the PTC surveys, some communities trained their specials in a meaningful way, but in most the training was given in a perfunctory manner if it was given at all. Here is what 40A:14-146 looked like before any amendments were made to it:

> 40A:14-146 Special police; appointment; qualifications; duties.
>
> The governing body of any municipality, whenever they shall deem it necessary, may appoint special policemen for terms not exceeding one year and revoke such appointments without cause or hearing. They shall not be members of the police force, and their powers and duties shall cease at the expiration of the terms for which they were appointed or upon revocation of their appointments. They may be furnished with badges upon the deposit of sums to be fixed by the governing body, which may be refunded on the return of the badges. A fee to be fixed by the governing body may be charged for issuing to any such special policeman a certificate of appointment.
>
> No person shall be appointed as a special policeman unless he:
>
> (1) is a citizen of the United States;
> (2) is able to read, write and speak the English language well and intelligently;
> (3) is sound in body and of good health;
> (4) is of good moral character; and
> (5) has not been convicted of any criminal offense involving moral turpitude.
>
> No such special policeman shall carry a revolver or other similar weapon when off duty.
>
> Every such special policeman shall have his fingerprints taken and they shall be filed with the Division of State Police and the Federal Bureau of Investigation. He shall be under the supervision and direction of the chief of police of the municipality wherein he is appointed and shall perform his duties only in such municipality unless in fresh pursuit of any person pursuant to chapter 156 (uniform act on intrastate fresh pursuit) of title 2A of the New Jersey Statutes. He shall comply with the rules and regulations applicable to the conduct and decorum of the regular policemen of the municipality.
>
> Before any such appointment is made the chief of police of the municipality shall ascertain the eligibility and qualifications of the applicant and make a report thereon to the governing body. (Special Police, 1971)

As some people categorized it, 40A:14-146 was essentially a "non-law" which really didn't say much regarding the role, responsibilities, or training of special police officers in New Jersey.

A-630

A-630 was introduced by Assemblyman Harry McEnroe (D-Essex) on February 1, 1982 and referred to the Municipal Government Committee. The purpose of this bill was to supplement Chapter 14 of Title 40A (40A:14-146) of the New Jersey Statutes. It would have required each municipality appointing special police officers to adopt, by ordinance, a special police training course prepared by the police chief or director of public safety of the municipality. Each special had to successfully complete the training course within 14 days of appointment to be allowed to perform police duties. Special officers already serving at the time a municipality passed this ordinance would also have to complete this training course within 14 days of passage. A committee substitute for A-630 further required the PTC to develop and promulgate guidelines to help assist municipalities prepare appropriate special police training courses.

The bill moved slowly through the legislative process, but on the last day of the 200th Legislature, January 9, 1984, it was vetoed by Governor Kean. William Dressel of the League of Municipalities said that one of the problems with A-630 was that "the proposed McEnroe legislation just memorialized the old way of doing business as far as specials were concerned" (W. Dressel, personal interview, August 18, 1986). Initially the League had supported the bill but realized after the Belmar decision that a more comprehensive bill would be needed to address all the issues surrounding specials.

Ironically, another bill introduced in the Assembly about the same time caused the failure of A-630. Assembly Bill No. 526 was introduced by Martin Herman and others on January 12, 1982. This bill will be discussed more thoroughly

later in this chapter, but the point to note here is that that bill was much more comprehensive in scope than McEnroe's bill and that a number of interest groups were eventually brought together to have input into it. These interest groups ultimately had a stake in A-526 and not in A-630. The Assistant Executive Director of the League of Municipalities commented:

> At that time, McEnroe had a piece of legislation [A- 630] that had cleared both houses of the Legislature and was on the governor's desk. We were put in the precarious situation of opposing that piece of legislation because we already had put forth so much effort and time into the Herman legislation [A-526]. It was very difficult to come out at that particular point and say "Hey, we're opposed to standards, we're opposed to regulations" [for specials]. We accepted that and felt that the Herman legislation would take into consideration our concerns. We trusted him, he trusted us, we had a good rapport, and Marty did a tremendous job in bringing about all the interest groups that were involved with this. So we felt we had established a productive dialogue on the issue to address a very real problem that was not adequately addressed through the McEnroe legislation. The governor's office participated in the Marty Herman deliberations. We knew he wasn't going to sign the bill anyway, so we went with the Marty Herman legislation as being the only game in town. (W. Dressel, personal interview, August 18, 1986)

Governor Kean's veto message of A-630 clearly points up the inadequacy of this bill and the expectation of upcoming, more comprehensive legislation. Kean wrote:

> While I strongly believe that special police must be trained, I do not agree with the piecemeal approach proposed by this bill. I believe that uniform state training standards must be created for special police officers. The Attorney General also believes that the training of special police officers should be addressed on a statewide basis and not by each municipality.
>
> In light of PBA v. Belmar, we need to make comprehensive changes to the existing special police legislation. Such a proposal is presently before the Legislature as Assembly Bill No. 526. The Attorney General, the state PBA, the League of Municipalities and other groups have been working very closely with the Assembly Judiciary Committee in an effort to write an acceptable committee substitute for Assembly Bill No. 526. I have been informed that their work is nearly complete and that the Assembly Judiciary Committee Chairman expects to move this bill early in the next session. As a result, I believe it is prudent to wait until that bill reaches my desk before making any determinations as it appears that the bill will be a more comprehensive bill. (A-630, Governor's Veto Message, January 9, 1984)

S-979

S-979 was a fairly straightforward amendment to 40A-14-146. Its prime sponsor was Senator Wayne Dumont, Jr.(R-Sussex), and its co-sponsors were Republican Assemblymen Haytaian and Littell. The amendment permitted a municipality to appoint former full-time police officers as special police officers. The bill was introduced in the Senate County and Municipal Government Committee and amended in accordance with the governor's recommendations. Although the bill was clear-cut in its intent, previous versions of it, also sponsored by Dumont, had not gotten far either in the 198th or 199th Legislatures. It is unclear what, if anything other than indifference, stymied this bill. But after the final Belmar decision had expressed the need for trained special police officers, the municipalities jumped at the chance to recruit trained ex-cops as specials. Some municipalities had been doing that all along because 40A:14-146 did not address that specific issue one way or another. Almost a year after it was introduced, S-979 was signed into law on February 4, 1983. Then municipalities could expressly employ former regular police officers as specials.

A-940

A-940 was introduced directly into the Assembly on February 22, 1982. Its prime sponsor was Assemblyman Eugene Thompson (D-Essex), and its co-sponsors were Assemblymen Herman and Zangari and Senator Lipman (all Democrats). This was the only amendment to 40A:14-146 that Martin Herman directly involved himself with. He had sponsored and was working on A-526 at this time, so he had no time for these peripheral amendments to shore up a basically weak statute. He may have gotten involved in A-940 because he saw an opportunity to strengthen 40A:14-146 immediately in the critical area of training for armed special police officers as he continued working on revising A-526. His support of A-940 would have also gained him legislative support for A-526 down the road when it was ready

for passage. It is interesting to note that A-940 was assigned directly to the General Assembly by the speaker of the house. Sometimes "consent" bills may bypass the committee system (called "no reference" because they are not referred to committee) and go directly to the floor for relatively easy passage (West, 1985, p. 59).

The bill was designed to amend 40A:14-146 as well as the Gun Control Law, N.J.S.A. 2C:39-6. This bill was essentially a parochial one which was sponsored by a Newark Assemblyman (Thompson) to enable Newark special officers to carry weapons off duty. DAG Larry Etzweiler mentioned this in his letter to Police Chief James Cillo who was President of the Morris County Chiefs of Police Association. Etzweiler wrote:

> The legislative history establishes that the primary purpose of the recent amendments [A-940 as well as S- 2055] was to allow certain Newark special officers to carry weapons off duty, and thus to provide a somewhat greater measure of police protection for this city on a 24-hour-a-day basis.... Commensurate with their enhanced weapons- carrying authority, these Newark special officers were required to receive additional training both in the use of firearms and in other aspects of police work. However, in reviewing the subject, it appears that the Legislature concluded that it would be wise to require an upgrading of the qualifications and training of all special police officers, both in Newark and elsewhere throughout the state.
>
> Thus, the additional state-wide qualifications for appointment as a special officer, to wit, soundness of mind and the possession of a high school diploma or three years of prior experience, were somewhat subordinate to the Legislature's primary purpose of training and enhancing the weapons-carrying authority of certain Newark special police officers. (L. Etzweiler, personal correspondence, March 18, 1983)

According to the sponsors' statement the justification for this bill was "to provide special police protection in large urban centers where the incidents of violent crimes are exceedingly high and the municipal police force is critically understaffed" (A-940, 1982, p. 4). The bill never mentions the city of Newark by name, but it provides this extra protection for "any municipality having a population in excess of 300,000, according to the 1980 federal census" (A-940, 1982, p. 3). This type of ploy is used by legislators because they want to circumvent the constitutional prohibition of legislators' writing "special" legislation. New Jersey's

constitution prohibits the Legislature from passing private, special, or local laws in a number of categories including the regulation of the internal affairs of municipalities and counties. The Legislature can pass only general laws affecting all cases within any of these categories. However, the Legislature may group any of these categories into classes and then legislate separately for each class (West, 1985, p. 41). A-940 is a classic example of this ploy as the only municipality in the state with a population of more than 300,000, according to the 1980 census, was Newark.

Aside from being the largest city in the state, another unique thing about Newark is how special police officers are used in that city. Newark specials do not work for the police department nor are they supervised by the police. Essentially they are armed private security guards who individually contract out their services to the business community in the city. They are paid by the private employer, and they don't patrol the streets or have anything to do with the city police force. This tradition of "deputizing" private security officers as specials has existed for many years in Newark. Most of these specials are in uniform when they work for their private employer but their uniform is distinct (by Newark ordinance) from that of the regular police officer. So with A-940, Newark's small army of specials was trying to expand its weapons-carrying authority to include off-duty as well as on-duty status.

This bill would permit Newark special police officers who also reside in Newark to carry firearms while off duty within the city limits of Newark provided that the specials: (a) successfully complete a PTC-approved firearms training course; (b) successfully complete all other training courses required of regular Newark police officers within three years of the passage of this act; and (c) obtain and carry an annual gun permit issued by the director of the municipal police force.

Another smaller portion of A-940 did not specifically pertain to Newark, but it affected all special police officers throughout the state. These proposed changes

were quite significant and as DAG DeVesa said, "This amendment [A-940] put a little bit of 'flesh' on 40A:14-146 as suggested by the Belmar case" (personal interview, July 8, 1986). These proposed modifications of the special police statute were that specials should possess a high school diploma or its equivalent and that specials should be "sound in mind" as well as "sound in body." Also, before the chief of police appointed any specials, he or she should ascertain not just the applicant's eligibility and qualifications but also their "character, integrity, and psychological fitness." And the most important part of the proposed amendment, which would affect all specials in the state, concerned mandatory training. A-940 proposed that no person shall be appointed as a special policeman unless he

> ...is capable of obtaining a passing grade in a course of study on firearms, powers of arrest, and criminal law and procedure, given by the appointing authority under the supervision and control of the local police department. (A-940, 1982, p. 3)

This section of A-940 meant that for the first time in New Jersey's history there would be some clear statutory direction regarding the training for special police officers. The wording of the amendment still didn't mean that there would be any statewide uniform training standards for specials as administered by the PTC, but at least it would be mandatory that specials successfully complete some type of locally administered training program. This local training program would minimally have to encompass "firearms, powers of arrest, and criminal law and procedure."

A-940 proceeded to passage fairly smoothly with one serious roadblock thrown in its path. When the bill came before him in August 1982, Governor Kean refused to sign it. He issued a conditional veto and returned it to the Assembly with his objections and recommendations for amendment. In his conditional veto message Governor Kean referred to the Belmar case and the need for comprehensive firearms training for special police officers. Kean warned, "If any mishap occurs involving a special policeman and his firearm (either on duty or off duty], the

municipality might be held pecuniarily liable under the doctrine of respondeat superior" (A-940, Governor's Conditional Veto Message, August 5, 1982). Therefore, Governor Kean concluded that "In order to meet the statutory objective of this bill and yet safeguard urban residents from mishaps to the fullest extent possible, I am recommending insertion of language that will make clear that no special police officer will be permitted to carry a weapon while off duty until he has completed the training courses referenced in this bill" (A-940, Governor's Conditional Veto Message, August 5, 1982). At the governor's recommendation, A-940 was amended and a sentence added to the bill clarifying the issue that no Newark specials would be able to carry a firearm off duty until they had successfully completed all the mandated training (not just the firearms training). As the bill was worded, it meant that the Newark specials had to complete the same training as regular Newark police officers. At that time in 1982 Newark police officers were attending a 280-hour training academy. If Newark specials wanted to carry off-duty, they would have to complete all of the same 280-hour course, but they had a three-year grace period (from when the bill was approved) in which to complete the training.

A-940 was signed into law on October 26, 1982 as L. 1982, c. 154. Under the revised bill, Newark had three years, i.e., until October 26, 1985, to train those special officers whom it wished to designate for the enhanced weapons-carrying authority; but those specials would not be permitted to exercise their authority until their training was complete. More importantly, though, for specials throughout the state, for the first time mandatory training of special police officers would be required. As a practical matter, this meant that local police departments created or expanded the training programs for specials offered either in-house or at one of the 15 PTC-approved regional police academies. Rudimentary special police training programs were created which encompassed "firearms, powers of arrest, and criminal law and procedure," and on an average they ranged anywhere from 40 to 70 hours.

S-2055

A-940 was the largest and most significant of all the amendments proposed to 40A:14-146. But, as sometimes happens, that bill breezed through the Legislature without much in-depth scrutiny except for the governor's recommended amendment to the bill. The final three amendments to 40A:14-146 were not amendments to the original special police law but to the changes of it brought about by A-940. Three amendments were needed to modify one hurried and perhaps ill-advised prior amendment. The first "amendment to an amendment" was moved through the Legislature during the Christmas holiday in 11 days. S-2055 was introduced directly to the Senate under an emergency resolution by Senator Lipman, who was one of the co-sponsors of A-940. Because of poor and inaccurate wording, A-940 would have required anyone who was to become a special policemen to have successfully passed a training course of study on firearms, powers of arrest, and criminal law. Several years before this bill was implemented, parking authority officers and parking meter enforcement officers were required by statute to become special police officers. So, as literally interpreted, L. 1982, c. 154 (A-940) would have required "meter maids" and even unarmed specials to successfully pass the required special officer training course. This was not the intent of the Legislature when it approved A-940. The sponsor's statement of S-2055 declared that "This bill amends N.J.S. 40A:14-146 so as to make the requirement of passing a course of study on firearms a requirement for special policemen to bear firearms and not a requirement to be a special policeman" (S-2055, 1982b, p. 3).

S-2055 was introduced on December 20 and signed into law on December 31, 1982. Thus, if a special officer simply checked parking meters or otherwise had no occasion to enforce the criminal law or to carry firearms, he or she was under no obligation to receive the mandated training. One of the purposes of S-2055 was to ameliorate some of the harshness which the Legislature perceived in A-940. Another

minor revision concerned the qualification for a high school diploma. A-940 required a high school diploma. S-2055 revised this to provide that three years of prior experience would suffice in lieu of a high school diploma.

A-3224

This amendment was also intended to ameliorate some of the effects of L. 1982, c. 154 (A-940) but it failed to be approved. It was introduced to the Assembly Municipal Government Committee on March 3, 1983 but went no further then a second reading on May 5 before it died in the Assembly. Its prime sponsor was Assemblyman Guy Muziani (R-Cape May) and its co-sponsors were seven Republicans: Assemblymen Miller, Wolf, Hendrickson, Rod, Chinnici, Smith; and Assemblywoman Cooper. This proposed amendment wanted to delete four words from the amended 40A:14-146. A-3224 did not want the police chief being held responsible for ascertaining a special police officer's soundness of mind and psychological fitness. The sponsor's statement charged that:

> It is, however, wholly inappropriate to charge the chief of police with the responsibility of ascertaining the psychological fitness of a candidate. Few chiefs possess the professional qualifications and expertise that are essential to effectively assess the psychological fitness of an applicant. This bill would amend the section to free chiefs of police from the unwarranted and inappropriate responsibility of having to ascertain the psychological fitness of persons being considered for appointments as special policemen. (A-3224, 1983b, p. 3)

Assemblyman Muziani felt that A-3224 didn't progress far because the Democrats were in control of the Legislature, and they weren't moving any bills, especially ones backed by Republicans such as him (personal interview, July 25, 1986). William Kearns, Jr., a lawyer from Willingboro, was Chairman of the League of Municipalities Special Police Study Committee. Kearns acknowledged that A-940 was poorly and inappropriately worded in requiring the chief of police to determine a special's soundness of mind. But Kearns conjectured that another reason why S-3224 didn't go anywhere legislatively was that the League and other interest groups

had already been working for a year on revising Herman's bill, A-526. Legislators probably surmised that A-526 would address Muziani's concern and many others as well at one time and in one bill (W. Kearns, personal interview, June 10, 1986). Muziani's concern was not a critical issue and could well wait until the expected comprehensive new legislation arrived.

S-589

The only amendment to 40A:14-146 to be made in the 201st Legislature was S-589. It was introduced at the start of the new Legislature on January 10, 1984. It was submitted to the Senate Law, Public Safety and Defense Committee by its prime sponsor, Senator Wynona Lipman (D-Essex) and its co-sponsor, Senator Graves (D-Passaic). This amendment was also designed to modify the effects of some parts of L. 1982, c. 154 (A-940).

Before the bill's passage, it was amended several times in both the Senate Committee and on the floor of the Senate. The amended bill required that training completed by a Newark special in any PTC-approved course would be credited towards the 280 hours of training required by the bill. Also, the committee amended 40A:14-146 to replace the term "special policeman" with the nonsexist term "special police officer" in recognition that women could be specials.

The main thrust of S-589, however, was to shift control of Newark's special police officers from the director of public safety to the police chief. At that time the director of public safety was not well-disposed towards specials whereas the police chief was. The director of public safety was also reluctant to issue permits to specials to carry guns while off duty. It was felt that Newark's police chief was more receptive to specials being armed off duty; therefore, S-589 would clearly place the specials under the direction of the police chief rather than the director of public safety.

Summary Regarding the Amendments

The six proposed amendments to 40A:14-146 should all be viewed as part of a short-term, piecemeal solution to a complex problem. The four amendments that were approved typified a band-aid approach to the overall issues regarding special police officers in New Jersey. The amendments were stopgaps to shore up a basically weak and ineffective law -- a law that had outlived its usefulness. As Bill Kearns of the League of Municipalities said in referring to 40A:14-146:

> I think it was looked at from the beginning that the old legislation was too simplistic and did not set sufficient standards. That legislation was written for a much simpler time. Again, that sounds sort of corny, but we have moved into a much more urban structure and more mobile society throughout the state than when that legislation was written. (W. Kearns, personal interview, June 10, 1986)

The long-term solution to all the issues surrounding specials was new, comprehensive legislation. Assemblyman Herman, the Attorney General, the League of Municipalities, and others realized this and started working toward that end. The amendments made to 40A:14-146 were not totally for naught, however. Although some of the amendments were relatively trivial and inconsequential, some of them had substance and validity. Many of these substantive amendments eventually found their way into the SLEOA.

A-526

A-526 was Assemblyman Martin Herman's second attempt at repealing 40A:14-146 and replacing it with the SLEOA. Herman's previous bill, A-3234, was a half-hearted attempt at creating a SLEOA, but this time Herman meant to get seriously involved in the creation of new legislation which would rectify many of the ills associated with special police officers in New Jersey. But while his intentions were honorable, he was not able to succeed and pass legislation regarding specials during the 200th Legislature.

A-526 was pre-filed which refers to a bill which is "waiting in the wings" and is ready to be introduced at the start of the new Legislature. With the start of the new legislative session on January 12, 1982, Herman's bill was introduced and referred to the Assembly Judiciary, Law, Public Safety and Defense Committee. The 200th Legislature was to be Herman's third term as Chairman of that Committee. Along with Herman the bill's sponsors were the same as had previously sponsored A-3234 with the exception of Saxton who had become a Congressman and was replaced by Thomas Pankok. Pankok was Herman's Democratic colleague from the same Assembly District (the 3rd) as Herman. Not only did A-526 have basically the same sponsors as its predecessor, it was, word for word, the same bill as A-3234. Even the same sponsors' statement was attached to the bill as had been on the old bill. Assemblyman Herman had become involved in this issue of special policing, and he meant to stick with it until some corrective legislation was approved. He commented on why he got involved with the issue in the first place:

> I had some local concerns [e.g., the SJPRA]. You'll find that many of these things came as a result of just being around. It was a topic which received some debate, of course. I had always believed that there was a need for special officers, but I also believed that they probably could be better trained. I also believed that they should <u>not</u> take the place of regular officers; some people use them as budget cutters and I didn't think that that was appropriate. And the real question then was how did one develop an appropriate balance in this state given that the special police law [40A:14-146] we had before was really a "non-law"? It was a couple of paragraphs saying nothing much and not giving much direction. (M. Herman, personal interview, July 7, 1986)

Herman was a great supporter of what he referred to as the "Benjamin Franklin philosophy of government" which encouraged volunteerism and citizen participation throughout the entire fabric of the local community. Herman felt that volunteers such as firefighters, ambulance and rescue squad personnel, Little League baseball coaches and others were the true backbone of the local communities. He felt that the real need in special police legislation was in writing a bill which would strike a balance between the volunteer, citizen police officer (i.e., special officer)

and the full-time regular officer. And the balance to be struck should have a net positive result for those who needed police protection and paid the taxes -- the citizens (M. Herman, personal interview, July 7, 1986).

1982

It should be noted that A-526 was introduced before the final Belmar decision was rendered by the New Jersey Supreme Court and before any amendments were introduced (much less approved) to modify 40A:14-146. If the Appellate Division's judgment was allowed to stand unchanged, then the municipalities were going to be stuck with weak and impotent special police units whose officers could not be armed or exercise police powers of arrest. In light of the appellate decision, if armed specials were to survive, a new law replacing 40A:14-146 had to be introduced or amendments had to be made to it. Both legislative tactics had to be implemented to assure that at least one approach succeeded and specials could continue to be used more or less as they had in the past. In the preceding section of this chapter the amendments proposed and approved to 40A:14-146 were discussed. As Herman's prior bill (A-3234) to rescue specials had failed, the legislative effort to replace 40A:14-146 altogether had to continue if all legislative bases were to be covered to ensure the survival of special policing in the state.

Initially, not much happened with A-526. Herman's committee added a minor amendment to the bill and issued a committee statement on March 8. The amendment permitted the PTC to waive the minimum 120-hour training requirement for a special who had had comparable previous training experience. During the time since this bill was introduced most of the interest groups concerned with reserve/auxiliary policing had gotten copies of the bill and were mulling it over to consider what their response to it should be. One person satisfied with A-526 (even without the amendment) was the mayor of Point Pleasant Beach. The Borough of

Point Pleasant, a shore community in northern Ocean County, is not far from Belmar. Mayor Daniel Hennessy sent a letter on March 9 to the mayors of 47 shore municipalities, the League of Municipalities, and the local media "to urge passage of this much needed legislation [A-526]." He further stated, "I have reviewed this bill with our Borough Attorney and Chief of Police and they feel that this bill, if passed, would solve our problems with special police that are needed in seashore communities in the summer tourist season" (D. Hennessy, personal correspondence, March 9, 1982). He also said that he intended to contact the appropriate legislators in Trenton and urge their support of the passage of A-526.

This relatively quick support of A-526 may have been engendered by several reasons, the primary one being that if the Supreme Court sustained the Appellate Division's judgment in the Belmar case, the shore communities would find themselves critically shorthanded in providing adequate police protection in the upcoming summer of 1982. A new law in the state regulating specials (i.e., A-526) would render moot any legal decision dealing with specials and 40A:14-146. Herman's bill also required that specials receive 120 hours of PTC-approved training in such areas as firearms, human relations, juvenile psychology and other appropriate topics. In addition, seasonal specials could work up to 40 hours per week for not more than three months per year provided they received at least 40 additional hours of police training as prescribed by the PTC. So summer specials at the Jersey shore would have to receive a minimum of 160 hours of training, but Mayor Hennessy may have figured that 160 hours of training for his specials was still a lot less than the approximately 280 hours of training that his regular officers were undergoing in police academies. If legislators, the courts, or the PTC were allowed to set training standards for specials, then perhaps they would be closer to the 280-hour standard than the 160-hour one. The mayor may have also supported the bill because he felt it was essentially innocuous. Dennis Tallman of the SJPRA

felt that way about the bill, and he said it really didn't spell out any guidelines for the training of specials. He also called A-526 "a very light, sugar-coated type bill" (D. Tallman, personal interview, August 22, 1986). The mayor may have seen the bill in the same light.

But most other parties and interest groups did not view the bill in such a benign manner. In March the League of Municipalities formed a Special Police Study Committee, an ad hoc committee headed by Chairman William Kearns, Jr., a municipal solicitor for Willingboro and a former mayor of that community. Also on that committee were Gregory Fehrenbach, a Manager of Ocean Township; Joseph Hillman, Jr., a municipal solicitor for Belmar who had represented that borough throughout the landmark trial; and Catherine Frank, a three-term mayor of Montgomery Township and also the Executive Administrator of the New Jersey State Association of Chiefs of Police.

Some police chiefs, both individually and collectively, started to respond to A-526; they were generally negative toward it. Police Chief William Donohue of Stone Harbor had authored an article about the seasonal special police in New Jersey in a recent issue (February 1982) of the FBI Law Enforcement Bulletin. He contacted the Office of the Attorney General, a number of legislators (including the sponsors of A-526), and the Point Pleasant Beach Mayor and criticized a number of provisions of the bill, particularly as it would affect resort community police departments. He commented that there were certain parts of the bill which "would hinder rather than help my fellow Chiefs of Police" (W. Donohue, personal correspondence, March 16, 1982). The Cape May County Police Chiefs Association came out even more strongly against A-526. The president of the association wrote letters to Assemblyman Herman, other legislators, and the Attorney General in which he said that the association was "adamantly opposed" to the bill and that "There is no question that some type of legislation is needed, but most resort

communities could not operate under this bill in its present form" (R. Frederick, personal correspondence, March 22, 1982).

Joseph Hillman, the Belmar attorney on the League's Special Police Study Committee, wrote a letter criticizing many provisions of A-526. He acknowledged that Herman's bill was trying to "resolve a very complex and controversial issue" but that the statute was trying to set an "arbitrary, capricious and unreasonable limitation on the local government's managerial prerogative" (J. Hillman, personal correspondence, April 8, 1982). He criticized such points in the bill as its limiting specials at non-shore communities to working a maximum of 12 hours a week. This would be an awkward restriction since shifts are eight hours and 12 hours represented 1 1/2 shifts. To cover three shifts, two specials would have to work half shifts. Hillman counselled all concerned parties to wait for the final Supreme Court judgment in the Belmar case before acting on this bill as the "implications of the Supreme Court ruling will far exceed the subject matter of this legislation" (J. Hillman, personal correspondence, April 8, 1982).

Not much transpired with A-526 in the spring of 1982 because the sponsors and the interest groups were waiting to see what the Supreme Court would do with Belmar. As discussed in Chapter 3, on May 10 the Supreme Court allowed specials to continue in their roles provided they received some meaningful training prior to being used as armed specials with police arrest powers. On May 5, prior to the Supreme Court's decision, Edwin Stier, who was the chairman of the commissioners of the PTC as well as the Director of the Division of Criminal Justice, asked Leo Culloo (the Executive Secretary of the PTC) to draft a plan for the training of specials based on the provisions of A-526 (L. Culloo, personal correspondence, June 8, 1982).

In early June, Leo Culloo forwarded a 14-page memorandum to the Police Training Commissioners. In it he outlined a training program based on A-526, but

he indicated that the bill should be substantially revised. Culloo's conclusions and recommendations concerning A-526 were as follows:

> Conclusion - The present legislation is seriously flawed because: (1) the legislation does not deal with the training of Special Law Enforcement Officers in a realistic and practical manner, and (2) there is no fiscal note accompanying the bill. Recommendation - Assembly No. 526 should be withdrawn in the Assembly or allowed to die. A new bill should be drafted based on input from knowledgeable local officials and the PTC. (L. Culloo, personal correspondence, June 8, 1982)

Shortly after the Belmar decision, Assemblyman Martin Herman called Bill Dressel of the League of Municipalities to discuss the League's concerns with A-526. According to Dressel, Herman realized there were some aspects of the bill that the League would not accept. Dressel said:

> He [Herman] called us. He said that we should get together because I was either going to work with him or against him but we should try to create something we could live with. (personal interview, August 18, 1986)

At the meeting Herman continued to stress the need for compromise and accommodation on A-526. Dressel met Herman at his Woodbury office. According to Dressel, Herman said:

> "Look, we have not agreed on a couple of things in the past and I don't particularly agree with you guys [the League] on certain issues. But, in essence, let's kind of put all that aside. You need me and I need you and we're going to have to work these things out." He [Herman] knew that if he didn't have us then he wouldn't have a bill and he bent over backwards to address our concerns. (W. Dressel, personal interview, August 18, 1986)

This accord reached between Dressel and Herman set in motion more than three years of deliberations concerning special police legislation between the League and Assemblyman Herman.

After the summer of 1982 the police chiefs from around the state also started to make their presence felt on this bill. In mid-September the New Jersey State Association of Chiefs of Police (NJSACOP) formed an ad hoc Special Police Committee. The chairman was Police Chief William Donohue of Stone Harbor. Another police chief from Cape May County, Bill Wizst from North Wildwood, was also on the committee along with seven or eight other police chiefs from

departments throughout the state. The NJSACOP represents nearly all of the almost 450 police chiefs in New Jersey. Cathy Frank was selected as the association's first executive administrator in April 1982, and she also worked closely with the committee. But she was on the Special Police Study Committee for the League of Municipalities as well. So Cathy Frank was to play a unique part in the creation of special police legislation. Not only was she the only female among the principal participants, but she also played more than one role in the deliberations as she represented three different interest groups at once: the NJSACOP as executive administrator; she represented the League of Municipalities as a member of their Special Police Study Committee; and she was one of the commissioners of the PTC. She felt that the three different groups were so close in what they wanted and in what they were thinking that it really didn't pose any conflict for her (C. Frank, personal interview, June 6, 1986).

Assemblyman Herman certainly was aware at this point in the fall of 1982 that many different groups were concerned with A-526 and that there were many different criticisms of it. He asked the Attorney General for assistance in revising the bill. He wanted the Attorney General to contact the principal parties, find out specifically what their concerns were, and develop an amended version of the bill. At this stage and as Chairman of the Judiciary, Law, Public Safety and Defense Committee he didn't have the time to get directly involved with the particulars of the bill's revision, so he asked the Office of the Attorney General to take the lead on the modification of A-526. Herman commented:

> I'm a big person for consensus.... I have been a long-time proponent of getting all parties involved in all sides of the issue. And most times you realize that things are not in black and white and just shades of grey -- that there is a whole spectrum of involvement. And I like to take that spectrum and put them all into the same room which is how we got started here. (personal interview, July 7, 1986)

DAG Frederick DeVesa, Deputy Director of the Division of Criminal Justice, contacted the principal interest groups and met with them individually during the

fall. The FOP, PBA, League of Municipalities, and NJSACOP all met with Fred DeVesa at the Justice Complex in Trenton. It should be noted that when the police unions became directly involved, they too created their own individual ad hoc subcommittees regarding special police legislation. By mid-November, DeVesa and his staff had drawn up a proposed revision of A-526. The new proposal had been developed as a result of the initial discussions held by the Division of Criminal Justice in conjunction with the several interest groups and the PTC. The Attorney General hoped that this proposal would be adopted by Herman as the Assembly Committee Substitute for A-526. A committee substitute to a bill may be made after public hearings or a committee's own deliberations indicate that a bill requires substantial revision. A committee may offer a committee substitute for a bill provided that "a bill so offered as a substitute shall cover substantially the same subject matter as contained in the original bill" (Allen, 1984, p. 181).

A draft copy of this proposal obtained the PTC's endorsement and was sent to all the interest groups who subsequently sent it to all the members on their special police subcommittees. This proposal created by the Attorney General's staff had several significant differences from A-526. It broadened the definition of special law enforcement officers to include any person whose public duties included any power to act as a regular police officer. Thus, temporary police officers and constables would have fallen under this definition. Some other significant changes appearing in the proposed committee substitute for A-526 included:

1. Clarifying the New Jersey residency requirement to mean residency during the term of the special's appointment, in recognition of the fact that many of the specials who are employed in a resort municipality (particularly in Cape May County) are college students who reside outside the state (e.g., Pennsylvania) during the rest of the year.

2. Mandating that specials only work 16 hours per week (rather than 12) in non-resort communities. In shore communities specials could be employed up to four months (rather than three), and no maximum limitation was placed on the number of hours per week a special could work (rather than 40).
3. Clarifying the fact that the chief of police or other chief law enforcement officer could authorize a special to exercise full police powers of arrest and carry a weapon when on duty and when properly trained.
4. Deleting the specification of the number of hours of training based on the belief that that should be left to the expertise of the PTC.

The Attorney General dropped the specific number of hours of training for specials from the revised bill for several reasons. He noted that the statute regarding training for regular officers did not specify the number of hours but left it up to the sound discretion and expertise of the PTC. This amendment also permitted the PTC to fashion the curriculum on the basis of the specific job function to be performed by the special officer. It also permitted the PTC to waive the training reqirements if a person had successfully completed an equivalent police training course. The primary reason for deleting the specific number of hours that specials had to undergo was emphasized by Leo Culloo of the PTC:

> The only thing I was interested in was the hours. In talking with my counterparts in other states some of them are locked into legislation covering the training of regular officers. One of the difficulties in those states is that when you attempt to modify your curriculum, it goes through legislative review again and it's a long process which may or may not come to pass. (L. Culloo, personal interview, July 17,1986)

Culloo didn't want the PTC locked into a certain number of hours when they developed a training program for specials. The Attorney General and eventually Assemblyman Herman saw merit in this and decided to leave the discretion in regard to training with the PTC. The training issue was really the sole concern of

the PTC throughout numerous revisions of both A-526 and its successor, A-2512. The PTC was concerned with the implementation of training in terms of how it would be accomplished, staffing, costs, and so on.

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A-526 was essentially dormant during the spring and summer months. The subcommittees from the four interest groups (the PBA, FOP, League of Municipalities, and NJSACOP) were meeting among themselves. Letters and telephone calls were going back and forth among subcommittees. Not only did members of these subcommittees deal with the proposed Assembly substitute to A-526, but the general membership of these organizations also wanted to be kept informed and to put in their opinions. All of this took time as the second annual session of the 200th Legislature slowly ticked away.

One of the members of the League's subcommittee, Joseph Hillman, was strongly against the redraft of A-526. He felt that the bill as it was written would probably eliminate or severely curtail the use of specials except in non-resort communities. Additionally, he wrote to Bill Dressel, the bill appeared "to be an unreasonable and unnecessary interference with the management prerogatives of the local law enforcement agencies" (J. Hillman, personal correspondence, January 13, 1983). On April 19, Dressel, Hillman and the rest of the League's subcommittee had a two-hour meeting with Herman at his office to express their concerns with this redraft and make recommendations about amending it.

The special police subcommittee of the NJSACOP was also getting negative feedback about the redraft of A-526. The Monmouth County Police Chiefs Association only supported two sections of the bill, which had 11 sections in total. They expressed their displeasure with the bill in a letter to the President of the NJSACOP (H. Morrell, personal correspondence, February 22, 1983). They also expressed their reservations about the bill to the new chairman of the Special Police

Committee, James Gormley, Police Chief of Montville Township in Morris County. The subject of specials was even the topic of one of the seminars at the police chiefs' annual training conference during the summer of 1983. More than 30 police chiefs attended the seminar to listen to Leo Culloo of the PTC and to express their concerns with various portions of the redraft.

The two special police subcommittees for the police unions also had problems with sections of the redraft, though the FOP had fewer. Tom Possumato, the President of the FOP, said that at the early meetings with the Attorney General's staff, "We were told outright that there was going to be a bill, so let's sit down and draft something we can all live with" (personal interview, July 10, 1986). And since the FOP's largest membership bases, Newark and Jersey City, were not threatened by the use of special officers, Possumato and the FOP were relatively relaxed regarding special police legislation. Not so the PBA. They were against the use of specials generally, and they were especially opposed to the expanded use of specials by certain municipalities where specials were being employed instead of regular police officers. This basic philosophy colored their view of any special police legislation, especially legislation as vague (in their estimation) as A-526 whether in its original or revised version. As Tom Murphy, Vice President of the PBA, stated:

> There was even a revision of A-526. I think A-526 came out under a lot of criticism. It didn't say a whole hell of a lot. It wasn't much of an improvement over the existing [40A:14-146] legislation. (personal interview, July 29, 1986)

The pace surrounding A-526 picked up in the early fall of 1983. Herman still had not yet formally introduced a committee substitute for A-526, but the 200th Legislature was going to expire on January 9, 1984. Four months prior to that, on September 9, the Special Police Committee of the NJSACOP held a meeting at their state office in Pennington. In the minutes of the meeting it was noted:

> A point was made that both the League of Municipalities and Mr. Donald Belsole of the Attorney General's Office are waiting for us to come up with guidelines and tell them exactly what we want. Otherwise they may

> be telling us. An effort will be made to suggest legislation and standards for special police that will appease everyone. (J. Gormley, personal correspondence, September 23, 1983)

Assemblyman Herman scheduled two meetings of the Assembly Judiciary, Law, Public Safety and Defense Committee for October 5 and October 11. But because there was a major revision of the committee substitute for A-526 at the last moment, the committee did not consider A-526 at its October 5 meeting. This last-minute revision of the Assembly committee substitute meant that the League's Special Police Study Committee and the other interest group subcommittees did not receive the redraft until October 3. On October 3, Bill Dressel of the League notified Frances Marchetta, Assemblyman Herman's committee aide, that the League would not testify on October 5 nor on October 11 because his subcommittee had not had enough time to review the bill (W. Dressel, personal correspondence, October 13, 1983). Dressel also informed Marchetta that the League would not take any formal action on the revised bill until after the League's Legislative Committee met on October 26. Needless to say, Herman was not pleased that the League didn't testify on October 11. The NJSACOP and other interest groups did manage to send representatives to the Assembly committee meeting on October 11, but they also had some reservations about this major redraft.

DAG Mark Cronin became the legislative liaison in the Division of Criminal Justice in May 1983. He worked under Fred DeVesa's direction, and it was he who did the major revision on Assemblyman Herman's committee substitute for A-526 at the end of September. Cronin commented about why and how the redraft was written:

> We were getting ready to go into a meeting with Assemblyman Herman and everybody else, and Fred DeVesa was looking at the bill and said he didn't like the structure of it. He didn't like the structure of our working draft. There were too many things going in too many directions. It didn't read well -- it was not a good piece of work. So he said, "Start from scratch and put it together the way it should look." I sat there in my office for three days looking at this thing and finally, about 6:00 one evening, I walked into Fred's office. I said "Fred, I don't know what to do

> with this; I'm not even sure what it is you want." And he sat there and just took it apart and put it back together again and worked some of the language and at other places he said, "You draft language for it." But what we did was a cut and paste and redraft, and we walked into the meeting and handed it out and everybody seemed to like it or at least agree that it was a good skelton to be fleshed out. It seemed that the redraft solved a lot of problems that people were having with the bill. (personal interview, June 23, 1986)

The major redraft of the committee substitute for A-526 was so good, in fact, that it became the structure for the bill (A-2512) that eventually got signed into law. That redraft had the basic look and feel of the actual SLEOA. One of the major changes found for the first time in this draft was the creation of a new section which established three special police officer classifications. The PTC would establish appropriate training standards for each category of special police officers. A Class Three Special Police Officer would perform routine traffic and crowd control duties. The officer would not have police arrest powers and would not carry firearms. A Class Two Special Police Officer would have police arrest powers and carry a firearm. The officer would perform general police tasks under the direction and control of a full-time regular police officer. A Class One Special Police Officer would have police arrest powers and carry firearms, and he or she could operate independently of a regular police officer. The draft envisioned minimal training for Class Three specials; more extensive training including firearms training for Class Two specials; and extensive training, basically similar to that given regular police officers, for Class One specials. This three-tier concept was wholeheartedly endorsed by the President of the NJSACOP, Howard Runyon who was also the Police Chief of Passaic Township and the President of the International Association of Chiefs of Police all in the same year, 1983-1984.

Assemblyman Herman did not formally introduce the committee substitute for A-526 because of the hurried manner in which it had been presented to all the interest groups. The various groups tried to have one or two meetings of their special police subcommittees in October to analyze the latest draft. Fred DeVesa of

the Attorney General's Office called a meeting of all the interest groups -- the PBA, FOP, NJSACOP, the League, and the PTC -- to meet at his office on October 28 to discuss the committee substitute. The day before the meeting, John Trafford, the Executive Director of the League of Municipalities, sent Assemblyman Herman a letter noting that the League approved the proposed Assembly committee substitute for A-526 "in principle" but there still were a number of amendments that the League recommended be made to the legislation (J. Trafford, personal correspondence, October 27, 1983). So the League gave conditional approval to the special police legislation as was also the case with the other interest groups. But the key phrase was "conditional approval." There were to be many more meetings and more than two years passing between "conditional approval" and approved legislation.

After the October 28 meeting, Fred DeVesa called all the parties back for another meeting on December 7 to try to iron out differences and reach a consensus of opinion. And so time ran out on A-526. Consensus could not be reached and the interest groups still had too many divergences of opinion. Bill Dressel of the League wrote Herman just prior to Christmas:

> We are committed, as I'm sure you are, to resolving this issue early in the upcoming legislative session, and we would like the opportunity to discuss our concerns before A-526 is pre-filed. (personal correspondence, December 22, 1983)

Assemblyman Herman did not bother to pre-file A-526, though. He was astute enough to realize that the consensus he sought on special police legislation was still not present. Not only did the different interest groups that had been consulted on A-526 still have certain reservations, but a whole new set of interest groups wanted to have input into any kind of special police legislation. There were at this time at least four identifiable special police officer associations in New Jersey. They had certainly known about the Belmar case. They may have had an inkling about A-3234 and they surely knew about A-526. These interest groups felt

that if a new law would be regulating special police, they should have some input. The special police officer associations were the SJPRA, which has been mentioned previously; the New Jersey State Special Police Association, involved in Belmar as amicus curiae; the New Jersey Special Police Benevolent Association; and the United States Reserve Police Officers Association. Just before the end of the 200th Legislature, Charles Dickert, the Executive Director of the U.S. Reserve Police Officers Association, wrote to Martin Herman. Dickert acknowledged receiving the proposed committee substitute of A-526 (dated 9/27/83), and he made a number of comments and suggestions regarding it. But Dickert concluded the letter by berating Herman for ignoring both his association and the New Jersey State Special Police Association throughout the deliberations on A-526. He claimed that both associations represented about 90 percent of all specials in the state and they were

> Never invited to any meetings, never asked about our opinion in this case and never heard. We might not have a deciding voice in the whole situation, but at least when it comes to matters of Special Police Officers, which are volunteers, we feel that the least we can expect is the courtesy to be informed and questioned about our opinion. Here are people who are involved who are also organized and nobody should deal with them as if they were cattle that everybody bids on. (C. Dickert, personal corresponence, January 6, 1984)

It is true that, with the exception of the SJPRA, none of the special police associations had had any kind of formal input into A-526. Dennis Tallman of the SJPRA had one brief meeting in Trenton with First Assistant Attorney General Thomas Greelish in April 1982 (T. Greelish, personal correspondence, April 23, 1982). But that was the last time that Tallman or his association heard from any party regarding special police legislation. It appears that the other special police associations did get copies of some of the drafts of A-526, but that was the extent of their involvement. So now Assemblyman Herman was confronted with juggling a whole new set of concerns in his quest for consensus as he struggled to create special police legislation.

Conclusion

As discussed in Chapter 3, the decision handed down by the Supreme Court in the Belmar case set the stage for the creation of new, more comprehensive special police legislation in New Jersey. The inadequacies of the existing special police legislation, 40A:14-146, were underscored by the Supreme Court. Implicit in the court's judgment was the invitation for a legislative remedy to cure or mend the special police situation in the state. The court could not create a new law on its own. Chambliss and Seidman (1982) note that an appellate court's "primary job is dispute-settling. This limits the scope of their creativity as rule-makers (p. 243)." Although the Supreme Court did mandate some change regarding specials (e.g., in the area of training), it was not radical change. This type of incremental change is the norm rather than the exception and should be expected in most appellate court decisions. "The nature of the institutional constraints on appellate courts dictates that their choice in general will lead only to incremental change; they favor a return to equilibrium without changing existing institutions more than is required to maintain existing power relations" (Chambliss & Seidman, 1982, p. 244). Assemblyman Herman commented on the significance of Belmar:

> It didn't influence me a whole hell of a lot other than it really provided a catalyst publically to get some of the people talking. If you don't have a legislative remedy, you're going to have a judicial one and you may not like the one you have.... I don't think the Supreme Court had the ability or the wherewithal within the confines of that limited factual situation to deal with all the ramifications. And the Court has said that, from time to time, they'll have to respond to an issue because the legislature as a whole has not dealt with the issue. (personal interview, July 7, 1986)

One approach to the Supreme Court's implicit challenge for a legislative solution to the special police issue was a rush to amend the existing special police law. This was only a short-term, stopgap measure which did not change the underlying fact that 40A:14-146 was a vague and weak law. A-940 was supported by special interest groups from Newark who got what they wanted. But the bill's wording and implications were not examined well either by the legislators or by the

interest groups. Three amendments were drafted and two were approved to clarify and rectify the effects of that one ill-conceived amendment. The amendment process clearly was not the best way to resolve effectively the special police dilemma.

Assemblyman Herman took it upon himself to create the comprehensive police bill that was needed to fill the legislative void. A-3234 was an attempt which never really got off the ground. The legislation was too little, too late. There were extensive inadequacies in the bill, but more importantly, not many interest groups or people knew about the bill. They had no input into its creation and they were not contacted after its introduction. The key reason behind the lack of progress of A-3234, though, had to do with timing or, more specifically, the lack of time. A bill introduced in late March of the 2nd annual session of the Legislature just doesn't have enough time in most cases to pass before the Legislature expires. Add to this the volume of other bills and the crush of legislative business that confronted Herman and his committee members, and it is easy to understand why the bill never got anywhere.

Assemblyman Herman persevered, though, and A-3234 was re-introduced as A-526 in the 200th Legislature. The bill still had its flaws, but now at least all the primary interest groups were contacted and their input was sought. Herman's contact with the various interest groups and his assertion that there would be new special police legislation in New Jersey with or without their assistance caused all the interest groups to focus their thinking on A-526 and on the issue of specials in general. Special police subcommittees were formed and input from the different groups' statewide memberships was sought.

With A-526 and continuing with A-2512, the power of the group theory approach to politics emerges. "Group theory takes as its basic unit of analysis the human group. Politics is viewed in terms of interest group activity and the struggle

among groups in pursuit of their goals" (Pavlak, 1981, p. 110). Throughout the deliberations on A-526 the struggle between different interests was observed. Sometimes there was overt dissension between different interest groups (i.e., the PBA and the League of Municipalities), but most of the time the dissension was more mannerly and took place behind the scenes. This inter-interest group conflict will be discussed more fully in the next chapter and in the conclusion, but it should be noted that conflict did not take place only between interest groups. There was dissension within the diverse interest groups also on one issue or another. This was observable as A-526 was being scrutinized, and it became more readily apparent when A-2512 was under discussion.

For the most part, Assemblyman Herman did not participate in the numerous meetings that the interest groups had at the Justice Complex. Herman gave the role of mediator to the Division of Criminal Justice where Fred DeVesa filled that role for most of the 200th Legislature. Also, Herman used the Attorney General's Office for its drafting skills. Mark Cronin and some others wrote the many drafts and revisions to A-526. Even though A-526 did not win approval, the shape and look of the bill that eventually passed (A-2512) was created in late September 1983 as the proposed committee substitute. So the Attorney General's staff played an important role at this stage, but there was only so much that anyone from the staff could do to resolve all the concerns and disagreements about the bill. Since Herman, the primary sponsor of the bill, did not play an active, hands-on role in the deliberative process, it would have been unreasonable to have expected this bill to progress far in light of the divergence of opinions about many portions of it.

Herman may not have taken part in an active and direct manner at this stage for two reasons. One is that the bill just wasn't ready yet. It was not a good, comprehensive piece of legislation at this point and rather than trying to force the

issue, he decided that the best course of action was to do nothing. Cathy Frank commented:

> A-526 died only because we were still working on it at that point. We hadn't come to any agreement at that point to make it acceptable to everybody. We weren't going to go and fight; we wanted to do all our arguing, fighting, debating in the room with all of us. We didn't want to do it on the floor. And we didn't want the Assemblymen and Senators to take sides. When this went through [the Legislature], it had to be something that we didn't have any large opposition on. And anyone who opposed it at that point had no real voice because they had had plenty of time to voice their opinions before. (personal interview, June 6, 1986)

Even one of the DAGs felt that A-526 was not in its best format and was not a good piece of legislation at the end of 1983. Mark Cronin said:

> We supported the bill [A-526] but we didn't think that it was ready to be signed into law. It wasn't that we opposed the bill, but there were things that had to be done with it. We supported the concept of the bill more than some of the specifics in it. (personal interview, June 23, 1986)

Another reason why Assemblyman Herman may have stepped aside from an overly active role with A-526 had to do with time constraints. Herman was still chairman of the busiest committee in the Assembly, and numerous other bills and legislative chores demanded his attention. Approximately 7,100 bills were introduced in the 1982-83 session. This represented a 29 percent increase in the number of bills introduced from the previous legislative session. The Judiciary, Law, Public Safety and Defense Committee handled 25 percent of the bills introduced in the Assembly, so Herman had to use his time in both a frugal and fruitful manner. Herman probably felt that since the different interest groups were far from reaching a consensus on many issues regarding special police legislation, his time would be better spent elsewhere while DeVesa and the Attorney General's Office thrashed out some of the major areas of contention. Eric Redman (1973) wrote about politics in Washington, D.C. that "The maintenance of sanity on Capitol Hill demands that legislative ambitions be elastic; politics, as we are so often told, is the art of the possible (p. 110)." This comment applies to legislators in Trenton as

well. Herman realized that A-526 was not possible at this juncture, but he, with the assistance of the Attorney General's Office, had laid the groundwork for A-2512.

Peter Traum, Herman's legislative aide, had this conclusion about A-526:

> Marty just never had the time to wrap it up because it was a very time-consuming bill. Marty put an awful lot of work into it. He just didn't have the time, I don't think, in that session to wrap it all up. He was meeting more resistance on that bill. Not so much resistance, "We hate the bill, we're going to stop it at all costs." All those interest groups had their parochial interests, of course. And there were quite a few groups and it was tough to make sure that everyone could live with the bill. I don't think anyone outright opposed the concept; it's just that they had different opinions of how to go about it. (personal interview, July 16, 1986)

The demise of A-526 was not the end of the effort to create special police legislation in New Jersey. The two years of effort spent on A-526 were really just the beginning of the journey which ultimately resulted in the SLEOA. Therefore, the time spent on this bill was not wasted. During the two years much had been accomplished. With the exception of the special police officer associations, all of the interest groups had been consulted on the special police issue. A bill was in place which had the conditional approval of the various parties. And, perhaps most important of all, Assemblyman Herman had put everyone on notice throughout the state that there would be a new special police bill. Herman was not about to let the legislative process stop until a new law was approved.

CHAPTER 5

FINAL PUSH: THE 201ST LEGISLATURE

A-526 became A-2512 during the 201st Legislature. This was a continuation of the process that had begun during the previous legislative session. The transformation from one bill to the other did not come about quickly or easily; and even though the new Legislature started on January 10, 1984 it wasn't until September that A-2512 was introduced in the Assembly. Before discussing that transistional period and the entire process of gaining consensus, it is important to examine some concurrent litigation which had an indirect impact on the creation of the SLEOA.

Concurrent Litigation

Two legal cases were decided in 1984 and 1985 that had a tangential affect on the creation of special police legislation. The Elmwood Park litigation had its inception late in 1983 when Elmwood Park's local chapter of the New Jersey State Special Police Association challenged an October 1982 order by then-acting Bergen County Prosecutor Robert Carley. The prosecutor had said that special officers could carry weapons only when on official police duty. On March 22, 1984, Superior Court Judge Harvey Smith ruled that Elmwood Park's special police could carry firearms only on official duty paid for by the borough (Taplin, 1984).

The specials could not carry firearms when providing security services for and being paid by private businesses and landlords, even when those services were required by the borough. In ruling against the specials, Judge Smith said the special officers could carry weapons only when on duty, specifically assigned and supervised by the chief of police, and paid for by the municipality (Taplin, 1984).

This was an issue that was important to all special police officers. Most specials in New Jersey received a minimal hourly wage while performing active duty for the police department. Some specials and many reserve units actually

provided free, voluntary service to the community while on duty. But virtually all specials and reserves got paid when working for some organization other than the police department. Churches, contractors, bars, discotheques, apartment complexes, and many other private employers throughout the state all had occasion to use the services of specials at one time or another. These private employers often paid specials more than they were paid while working for the police department. If, for example, specials made $5.00/hour while working for the police department, they could make $10.00/hour while working for a discotheque. Another point was that the regular officer who worked for the private employer might not work for less than $15.00/hour to do the same job. So special officers across the state viewed the private employer jobs as an excellent opportunity to make some significant extra money which was often paid in cash with no tax deductions taken out. Obviously, since specials worked cheaper than regular police officers when performing the same job for private employers, specials were often offered private assignments before regulars. Certainly this created some friction and animosity between specials and regulars as they vied for private, off-duty jobs.

The New Jersey State Special Police Association appealed the trial court's judgment. The Appellate Division handed down its decision (New Jersey State Special Police Assn. v. Atty. Gen., et al., 201 N.J. Super. 75 [1985]) more than one year later on April 25, 1985. It affirmed the lower court's ruling. The Appellate Division agreed that special police officers may not carry handguns while privately employed in police-related activity without first obtaining a permit. This ruling meant that many specials lost private security jobs which required them to be armed unless they had an individual permit to carry a firearm. This case probably upset special police officers throughout the state even more than Belmar.

The Elmwood Park case directly affected one section of A-2512. As the law was being drafted and after the trial court issued its 1984 decision, both the

Attorney General and the Special Police Association asked Assemblyman Herman to include a provision in the bill which would clarify the right of specials to work for private or quasi-public (e.g., boards of education) employers (L. Loigman, personal correspondence, March 26, 1984). The Attorney General suggested an addition to A-2512

> ...to codify the result of the Elmwood Park litigation...This language does not prohibit or restrict employment of those who hold office as a special police officer. It merely assures that while they are employed by a private party they shall be subject to the same rules applicable to all private employees. (M. Cronin, personal correspondence, June 11, 1984)

This type of provision eventually found its way into the final version of the SLEOA.

Another piece of litigation was also occurring simultaneously with the creation of the SLEOA. This case had only an indirect impact on special police legislation, but nevertheless it should be briefly discussed. Ironically the case was heard before the same Bergen County judge who had heard the Elmwood Park case, Superior Court Judge Harvey Smith. New Jersey State Policemen's Benevolent Assn., et al., v. City of Englewood, et al., Docket No. 00694-84 PW (Bergen County, October 31, 1984), concerned the City of Englewood's use of auxiliary police officers.

John Chaffiotte, president of Englewood Local 216 of the PBA, was the first witness in the nonjury trial of a PBA lawsuit that sought to curtail the duties of Englewood's auxiliaries. He testified that members of the city's auxiliary police force, uniformed volunteers who carried no guns, had endangered the safety of regular police officers, performed improperly on many occasions, and contributed to the decline in the number of regular police on the department. Chaffiotte testified that tension between the regular police and the auxiliaries had increased because the numbers of regulars had diminished (from 93 to 76) as the numbers of auxiliaries (20 to 39) had almost doubled and they were given more responsibility. Chaffiotte

said the concept of police professionalism was one of the reasons for the suit. He also stated:

> You don't have volunteer doctors at the hospital.... I look at police work as a profession, not a part-time factory job, the way auxiliaries look at it. They are not professional. They don't know what they're doing, and they're not properly trained or supervised. (Sasson, 1984, p. C-1)

Lt. James Arena of the New Jersey State Police (NJSP) also testified at the trial in October 1984. He was the state coordinator of auxiliary police services. The more than 100 auxiliary police units throughout the state are regulated by the NJSP Office of Emergency Management. In 1984 about 2,500 auxiliary officers possessed police arrest powers while on duty, but these unpaid volunteers were armed at the discretion of the local community. While Englewood only armed its auxiliaries with night sticks, Mace, and handcuffs, other neighboring communities such as Ridgewood, Paramus, and Passaic permitted the auxiliaries in their large units to carry firearms while on duty. Arena testified at the trial that Englewood's training for auxiliary police was "not in compliance with the state regulations" and that the routine, unsupervised patrol duty performed by auxiliaries was not considered training (Sasson, 1984, p. C-4). Arena also indicated that Englewood's use of auxiliaries was not consistent with the mission of auxiliary police to provide support services in the event of floods, riots, labor strikes, and other civil disasters. He also noted that under a 1980 directive issued by Col. Clinton Pagano (Superintendent of the NJSP and State Director of Emergency Management) all members of the auxiliary police had to be residents of the municipality where they held such membership (Sasson, 1984, p. C-4). Only some of Englewood's auxiliary officers were city residents.

Judge Smith agreed with the PBA that Englewood's auxiliaries had exceeded their statutory authority. He ruled that only Englewood residents could serve as auxiliary officers thus eliminating three quarters of the force. He also ruled that auxiliaries should be limited to duties which would prepare them to help police in

emergencies. He specifically barred them from patrolling the streets in department cars without direct police supervision -- one of the key complaints of the local PBA. John Chaffiotte, head of the local PBA, called the decision "a giant step for professional law enforcement" (Lundstrom, 1984, p. B-1).

This case had a significance that extended far beyond Englewood. Even the New Jersey Attorney General filed an amicus curiae brief in this case because of its statewide implications. The Englewood case clarified the fact that auxiliary police officers should not take the place of regular police officers. It also decreed that auxiliary police could not take the place of special police officers and that auxiliaries were distinct not only from regular police but from specials as well. This was the broad impact of Englewood. Lt. Arena and the NJSP were never really involved in the creation of special police legislation because auxiliary police in New Jersey were both different and apart from special police (J. Arena, personal interview, June 11, 1986).

Gaining Consensus

The 201st Legislature started on January 10, 1984. There was a Democratic majority in both houses and a Republican, Thomas Kean, was Governor. Assemblyman Martin Herman had won re-election, entering his sixth term in the Assembly since he first took office in 1974. This was also his fourth term as Assembly committee chairman. But instead of being chair of the Judiciary, Law, Public Safety, and Defense Committee, he was chair solely of the Judiciary Committee because of the heavy workload which had always confronted this broad-based committee. The Assembly divided the responsibilities of the committee, and Herman retained chairmanship of the Judiciary Committee while Assemblyman Joseph Bocchini (D-Mercer) was appointed chairman of the new Assembly Law, Public Safety, and Defense Committee. The separation of the one committee into two was more efficient and corresponded to the way the committees were arranged

in the Senate. This rearrangement of committee responsibilities gave Herman more time to focus on the creation and passage of special police legislation.

His first task was to gain a consensus on the language from all the concerned interest groups, so he had to bring all the major interest groups together to hammer out a compromise and gain general agreement. He had not been able to do this successfully with A-526 in the previous legislative session, but now he could devote more time to this task. In this legislative session Herman would play more of a direct, hands-on role than he had in the last session; and he started doing this right away, two weeks after the new Legislature was in session.

On January 18 another redraft of A-526 was sent out by DAG Fred DeVesa to all the interest groups. This revised bill incorporated all of the suggestions made by the groups at their October and November meetings at the Justice Complex in Trenton. DeVesa wrote to Herman, "It is my belief that this draft represents, in most respects, the positions of those organizations on the various issues" (F. DeVesa, personal correspondence, January 18, 1984). It was hoped that the redraft would provide a common ground from which every party would be able to move quickly toward completion of a statute acceptable to all.

On January 25, 1984, all of the interest groups with the exception of the special police associations met with Assemblyman Herman in Trenton for several hours. He hoped that this would facilitate compromise and help gain consensus for a special police bill. Herman had utilized this consensus approach before in creating some difficult and involved pieces of legislation. He had done it in the late 1970s when he had worked on rewriting New Jersey's criminal law and creating Title 2C (the new New Jersey Code of Criminal Justice). He had also used the consensus approach in forging new legislation in the early 1980s when a massive revision of the New Jersey Code of Juvenile Justice was undertaken. Assemblymen Herman commented on the consensus approach to creating new statutes:

> I've long held a view that nobody has a monopoly on truth, justice, and the American way. Most people have something positive to offer even from the standpoint of it just being their perspective. I got a committment from basically all of these people that if you want to participate in the process [of creating a new law], you can't have 100 percent of your way 100 percent of the time. And that was my committment if you wanted to participate on my subcommittee, that we would work it out and that the majority would rule. Unless there was something totally offensive to me and then I would rule. But, of course, I would look to forge a consensus and nobody thought we could do that on this issue; but we did it. (personal interview, July 7, 1986)

Of course, if a legislator is truly engaging in a consensus approach to creating legislation, then he or she has to be open and receptive to new ideas and not narrow or close-minded. Herman acknowledged this:

> I feel that one has to have a balanced approach and that the only philosophy one should have in looking at a piece of legislation is to have no philosophy. It's to allow the facts to take you to your conclusions. Unfortunately, a lot of people in the legislative process, legislators and proponents and anatagonists alike, start off with conclusions and then look for facts that bolster their conclusions, whatever their philosophy is. I think that's a poor way to legislate. (personal interview, July 7, 1986)

Peter Traum was Assemblyman Herman's legislative aide from May 1983 to May 1985. His involvement in the creation of special police legislation was indirect. He fielded telephone calls from the different interest groups, arranged meetings between these groups and Assemblyman Herman, kept Herman abreast of the voluminous correspondence, and so on. Traum described the look and feel of the meeting on January 25 and subsequent ones as well.

> Marty was the best facilitator that I have ever met in my life. He would bring all of these interest groups together and put them all in a room together. Then they would talk page by page, section by section, piece by piece, word by word of what was in it and what could be done. Some things they came to a consensus on and other things they didn't. Marty would just put aside what they didn't come together on and go ahead with everything else. And then drafts would be typed up saying this is the latest draft, there are still some areas of dispute and would be sent out to everyone. And then more correspondence would come in pointing out other potential problems or disagreements. So in about another month we would get together and then hammer again, hammer again until everything was worked out. (personal interview, June 16, 1986)

A master mail distribution list had the addresses of one or two of the primary people from each interest group, including respresentatives from the special

police associations. For example, if a letter questioning some aspects of the proposed legislation was sent by the PBA to Assemblyman Herman, copies of the letter were made by the PBA and forwarded to all the other parties on the mail distribution list. After the January 25th meeting quite a bit of correspondence and a number of telephone calls and meetings were generated within and between interest groups concerning various aspects of the latest revision of A-526. Interestingly, all parties still referred to the proposed special police bill as A-526 even though that bill had formally died at the end of the 200th Legislature.

The January 25th meeting did not satisfy everyone's concerns. It would still be almost eight months before a new special police bill would be introduced in the Assembly. During that time there were to be many telephone calls, letters, and face-to-face discussions between Herman and others. The conception of special police legislation was no easy matter even this second time around during the 201st Legislature.

The most tangible outcome of the January meeting was yet another revision of A-526. A redraft dated February 28, 1984 was sent out to all parties on the mail distribution list (about 20 in total) on March 9 by Frances Marchetta, the aide to Herman's Assembly Judiciary Committee who had held that position for several years. Marchetta was an attorney who took the thoughts of the different interest groups and helped shape them into legally correct and legislatively proper language, working often with DAG Mark Cronin. Assemblyman Herman commented about her role as well as Mark Cronin's:

> The point is that the Attorney General's Office represented the overall state law enforcement point of view. And, of course, the Attorney General's Office has a lot of good talent. Mark Cronin was a bright young man and I felt very comfortable with him. He was intellectually honest and had no particular axe to grind . I used everybody I possibly could in the process. He and Fran provided great drafting abilities.... The Attorney General's Office and legislative staff were the professionals as far as I was concerned for drafting. That was their designated role. (personal interview, July 7, 1986)

Cronin elaborated on Marchetta's role and the actual mechanics of drafting and redrafting special police legislation:

> Fran and I were the ones that were taking everybody's suggestions and ideas and putting them into the bill.... She and I did some of the drafting independently, and some of the drafting we did together. Fran's role was to duplicate, almost like a Xerox machine, anything she was told to do by Assemblyman Herman. In her role as aide to the committee, she was not allowed to have an opinion, basically, and she wasn't allowed to have any influence.... I didn't have those fetters when I was writing. I could take a basic suggestion that Assemblyman Herman said to put into the bill and attempt to word it as favorably as I wanted to reflect the Division of Criminal Justice's position or of whoever I thought was correct on the issue. I could be a little more partisan than she was, although still attempting to follow the instructions that we had been given on any given issue where new wording was required. But I think the whole process worked out well because if I went too far, Fran would say "Look, this isn't really what they wanted to do; we've got to get back to the mid-ground here." (M. Cronin, personal interview, June 28, 1986)

One significant change in the draft legislation of February 28 was the reversal of the Class One and Class Three special police officer categories. Earlier the Class One officer was to be the armed special who possessed police arrest powers and the Class Three special was to be unarmed with no powers of arrest. The Class Two officer was to have responsibilities and privileges somewhere between those two categories. But in creating a redraft of the bill, Mark Cronin and Fran Marchetta reversed the functions and powers of Class One and Class Three special officers. Cronin and Marchetta used this as a ploy to make the proposed special police statute more palatable to the special police officers throughout the state.

> Some of the current specials might wind up not carrying a weapon anymore. So a lot of specials out there were going to lose some power and status. Fran and I sat there one day and said, "How do we make this go down better?" Rather than calling the guy [who loses his weapon-carrying authority] a Class Three, we'll make him the Class One. The guys who carry the guns won't care what they're called because they'll have their guns and they'll feel good about it. The guys who don't get to carry the guns anymore will get to say, "Hey, I'm a Class One special." So it was a completely psychological thing that we did.... I really think it helped "buy" a lot of specials who otherwise would have been really vociferous. I am not going to say that that was a broad political strategem. But, at least to Fran and me, it looked like a good way to mollify somebody who might be upset. (M. Cronin, personal interview, June 23, 1986)

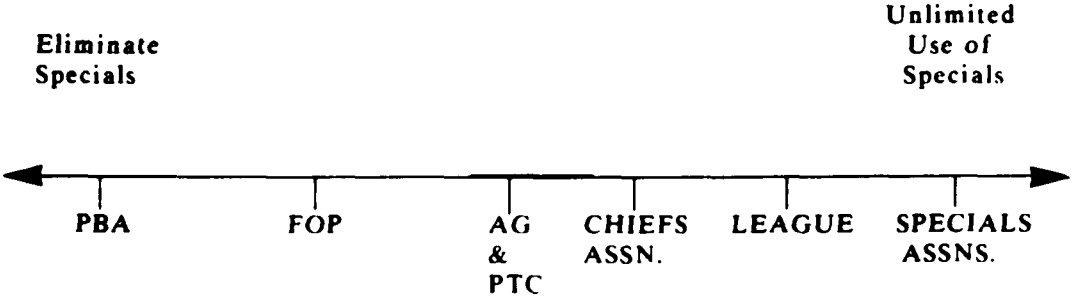
By this time in the legislative process the various interest groups had aligned themselves into one of three camps. These different camps were created when A-526 was alive and were solidified with the advent of the 201st Legislature. Leo Culloo of the PTC commented on the broad alignment of the interest groups:

> Obviously, those people representing management interests were looking at the bill in terms of management prerogatives. Management, the Chiefs and League of Municipalities, were looking at management prerogatives in terms of discipline, work hours, and the criteria for selection [of specials]. Those representing union groups were looking at issues such as constraints on the number of hours they're going to work, on the types of uniforms they are going to wear, and so on and so forth. And, of course, the specials themselves were looking for some type of protection that they could continue in existence. (personal interview, June 17, 1986)

Culloo forgot to mention the role that his organization, the PTC, and the Attorney General played. The PTC and Attorney General tried to balance the competing viewpoints of management, union, and special police interest groups and at the same time develop a bill that was in the best interest of all citizens. So, in actuality, the Attorney General and the PTC constituted a separate, fourth set of state government interest groups. Figure 1 places the nine interest groups involved in the creation of special police legislation on a continuum. At one extreme was a viewpoint that called for the total elimination of specials. Although certain factions in the PBA went that far in their demands, the more moderate leadership of the PBA just didn't want specials to be armed and have police arrest powers. Although the FOP was also a police union, they were not as strongly opposed to specials as the PBA. At the other extreme of the continuum was the viewpoint that the use of specials was a home rule issue and that specials should be employed in an unlimited manner depending on local ordinances. The three special police officer associations came closest to this viewpoint although they did support the concept of state standards of training for specials.

Figure 1

CONTINUUM OF INTEREST GROUPS
CONCERNING SPECIAL POLICE LEGISLATION



The NJSACOP and the League of Municipalities favored the utilization of specials but acknowledged the need for some type of state control and uniformity on the entire issue. And the Attorney General and the PTC were at the mid-point as they tried to balance the interests of the others. DAG Mark Cronin commented about the management interest groups:

> Now the Chiefs of Police were taking a position mid-ground between our [the Attorney General's] position which was on the middle of the spectrum and the League of Municipalities. The League's interest obviously was in having carte blanche administrative discretion to use specials. They weren't objecting so much to training so long as it was reasonable and didn't price specials out of the reach of municipalities. On the other hand, they weren't particularly happy about hourly limitations and the percentage of specials on the force.... But the chiefs were somewhere in the middle, between us and the League, because they needed the specials to operate within the budgets that the towns would give them and still provide enough police protection.... They liked the flexibility of the specials. I think they also liked the fact that specials aren't organized and unionized. (personal interview, June 23, 1986)

Some of the key issues under contention among the four sets of interest groups are alluded to by Cronin. While most of these contentious issues were important and substantive, several of them were minor, but these seemingly trivial issues were important at the time to one or more of the parties involved.

The police unions wanted items in the bill to protect their regular officers' job security and their ability to earn overtime pay and to moonlight. It should be noted, though, that discussion of the police unions and their expectations is really discussion of the PBA rather than the FOP. The PBA, a much larger union than the FOP, played a more forceful and assertive role throughout the Belmar case and the entire legislative process. The FOP's largest chapter in Newark was not threatened by specials who in essence acted as a private security force in that city, so the FOP was fairly passive throughout the legislative process. Certainly the police unions wanted to have in any special police bill a clear-cut statement that specials should not replace or substitute for regulars although they knew that specials were not going to be eliminated altogether. The Supreme Court had stated in Belmar that special police had a valid role to play in the New Jersey law enforcement community, and Assemblyman Herman had stated that also. So the unions' next step was to ensure that any special police statute was as confining as possible, including restrictions on the number of hours per week a special could work. A-526 initially proposed that specials (in non-resort communities) could only work 12 hours per week and in resort communities only 40 hours per week. They also wanted some concrete statement in any proposed bill that would declare that armed specials with police arrest powers should not exceed a certain percentage of the total number of regular police officers.

The unions also backed a provision that specials could work in only one municipality rather than several. And in line with the Elmwood Park case, the unions wanted specials prohibited from working on off-duty, private security details. A seemingly trivial issue like the type of uniform engendered strong feelings in both police unions and led to many hours of discussion and debate. Basically both unions didn't want specials to wear the same uniform as regulars. Tom Possumato of the FOP said:

> In that area we had the same concerns as the PBA. In, for example, Newark the police officers wear a black shirt and a special officer wears a light blue shirt. We wanted that distinction because they are not getting the same training as a police officer, and we felt that if the special is out there taking police action, we wanted to define the difference between the regular police officer and the special.... For example, if the special did something wrong, we as police did not want to be criticized, "Hey, look what this police officer did." In reality it was not a police officer. (personal interview, July 10, 1986)

The management-oriented interest groups, the NJSACOP and the League of Municipalities, had similar outlooks on all the major issues except one which will be discussed shortly. As far as uniforms were concerned, the management interest groups were diametrically opposed to the unions' position. The management groups did not want properly selected and trained specials to be stigmatized by a uniform that was different from the regular police officer's. They felt that this would create some practical problems on the street if citizens perceived that the special was a "second-class cop" and then demanded that they be served by a "real cop." The management interest groups felt that separate uniforms for specials would defeat the whole reason for having specials in the first place which was to assist the regular police. Leo Culloo of the PTC commented about this issue:

> The Chiefs Association and the League of Municipalities also said it's a management prerogative. We should be able to determine what type of uniform they [specials] will wear.... This is an exaggeration of the issue but probably if you listen to the unions you'd want neon lights on specials' uniforms. And if you listen to management people they would want something like a microdot on specials' uniforms. [personal interview, June 17, 1986)

The management special interest groups also differed from the police unions on the number of hours per week that specials could work as well as what percentage of the police force specials should comprise. Management groups wanted specials to work as many hours per week as possible in both resort and non-resort municipalities. They also wanted police departments to be able to employ specials up to at least 50 percent of the complement of the number of regular officers. And

they felt that in resort police agencies there should be no restriction on the number of specials employed during the peak tourist season.

The New Jersey cap law was discussed in Chapter 3. It was envisioned that additional costs would be associated with any proposed special police legislation. Municipalities would have to provide additional training for specials, equipment for them, and so on. The management interest groups wanted the state to pay for these additional costs. Barring that, they wanted any related costs for the use of specials to be considered outside the cap restrictions on municipal expenditures.

One issue where the Chiefs of Police and the League disagreed was on a seemingly trivial point concerning the proper terminology for the police chief executive in any proposed bill. In New Jersey most of the 482 police chief executives are entitled "chief of police." But in some communities the police chief executive is entitled "public safety director" or "director of public safety." Newark, New Brunswick, and about five percent of New Jersey police agencies are headed solely by public safety directors. The NJSACOP only represents police chiefs and has no use for public safety directors for several reasons.

The primary resistance stems from the fact that directors of public safety are not eligible for tenure whereas police chiefs are. Additionally, department heads (i.e., the director) can be fired by the local administrator or governing body (depending on the town's form of government) while it is difficult to oust a police chief. And, if a police chief retires, state law requires that an officer from within the department be named to replace the outgoing chief. Not so with a department head who can be appointed regardless of where he previously worked.

The Police Chiefs Association wanted Assemblyman Herman to use "chief of police" whenever he discussed the police chief executive's responsibility in any proposed statute. The League, though, represented all municipalities, those with police chiefs as well as public safety directors, and they wanted the bill to apply to

all police agencies regardless of what the police chief executive's title was. Cathy Frank of the NJSACOP said directors of public safety had been replacing police chiefs in some communities and that "the word 'director' has a negative connotation in everything the Chiefs of Police do" (personal interview, June 6, 1986). Bill Dressel of the League felt that this was essentially a home rule issue.

Three special police officer associations were involved in the later stages of the creation of a special police bill. The New Jersey State Special Police Association was the oldest and largest of the three and had been involved in Belmar as amicus curiae. The U.S. Reserve Police Officers Association was created in New Jersey (the Association has divisions in several other states) in 1980. It had about 500 members who were volunteer (i.e., auxiliary and reserve) police officers throughout the state. The third special police association was the smallest and newest of the three. The New Jersey Special Police Benevolent Association was established in 1982 with just several hundred members. The membership primarily worked as special officers in Cliffside Park, Fairview, and several other northern New Jersey communities. The three special police associations agreed on most of the key issues relating to special police legislation; they concurred with the management interest groups on most points. Just like the management groups, the special police groups were diametrically opposed to the unions' position on almost everything. Understandably, the special police interest groups wanted to continue to be employed as they had been in the past with as few controls as possible. They agreed with the League of Municipalities that special policing was a home rule issue.

If there was to be a new statute concerning special police, then the special police associations wanted as few restrictions as possible. They wanted the uniforms of specials to be the same as the regulars. They concurred with the management groups that specials should not be overly restricted as far as the number of hours per week that specials could work and the actual numbers of specials that could be

hired by a police agency. For example, the New Jersey State Police Association wrote to Herman and the other members of the Assembly Judiciary Committee that "the limitation [on the number of specials a municipality can hire], if any, should be 100 *percent of the regular police force*" (M. Noto, personal correspondence, August 22, 1984).

The special police groups worried that any special police training standards created by the PTC would be unnecessarily long and cumbersome and probably would discourage people from becoming specials and reserves. Achille Gaetano, the President of the New Jersey Special Police Benevolent Association, suggested in a letter to Frank that "the basic minimum of 120 hours should be set [for specials] and weapons qualification should coincide with the standards set for regular patrolmen" (personal correspondence, March 16, 1984). The special police interest groups argued that the PTC should develop an evaluation process to review any prior training as well as experience that special officers had, allowing the PTC to waive any or all of the newly created special police training standards for specials who had the appropriate background. At the same time the interest groups urged that specials be appointed for two years rather than the traditional one year. They reasoned that since specials were being forced to meet higher training requirements and were spending more time in training, specials should enjoy a longer period of tenure. In a letter to Marchetta, an attorney for the New Jersey State Special Police Association wrote that "a longer period of appointment would be a logical counterpart to an extended training requirement" (L. Loigman, personal correspondence, March 26, 1984).

Some serious disagreement arose among the special police associations concerning one aspect of the proposed bill. The recent drafts of the bill had included a whole section devoted to specials working in the City of Newark. This section was the verbatim reproduction of L. 1982 c. 154 which had amended the

existing special police statute, 40A:14-146. Assemblyman Herman had been one of the co-sponsors of A-940 which had become law in October 1982 and which permitted Newark specials with the appropriate training to carry their guns off duty while they were in Newark. The New Jersey State Special Police Association's main chapter of specials was in Newark, and they wanted to maintain that right. The State Special Police Association lobbied hard for that point, and as Assemblyman Herman had initially supported the concept, it was incorporated into the proposed bill. The U.S. Reserve Police Officers Association and the New Jersey Special Police Benevolent Association vehemently objected to this right which was to be granted to specials in Newark but nowhere else in the state. They both felt that special police officers who had the appropriate training should be permitted to carry firearms off duty regardless of what municipality employed them. Or, barring that, no specials should be permitted to carry weapons off duty anywhere in the state, including Newark. This issue created some dissension among the special police interest groups.

The Office of the Attorney General and the PTC comprised what could be labeled the state government interest groups. DAG Fred DeVesa commented, "The master plan of the Attorney General is to develop some minimum levels of performance and some accepted standards of police operations [in New Jersey]" (personal interview, July 8, 1986). Another DAG, Mark Cronin, had this comment on the Attorney General's concerns regarding proposed special police legislation:

> Our position was fairly close to Assemblyman Herman's. We didn't like this notion -- they [specials] are frequently called by the PBA "rent-a-cops." We don't like towns to rely on them too heavily, and we saw a lot of towns that would have maybe a police chief and several specials. We thought that was a poor way to run a department because specials can't be as professional, as trained, as experienced as a full-time professional police officer. We knew that the municipalities needed some use of specials, but we wanted to make sure they were trained and qualified. That was our interest. (personal interview, June 23, 1986)

The Attorney General was concerned with the training standards for specials although the actual specifics of the requirements were left up to the PTC to

formulate. DAG Cronin noted that the Attorney General "wanted complete training [of specials] and that's been our consistent position with respect to all legislation regulating all types of police officers -- campus police, human services police, everybody. If they've got a gun, they have to go through a complete process" (personal interview, June 23, 1986).

The PTC had only a minimal amount of input into the creation of special police legislation. When A-526 was still alive, Leo Culloo of the PTC had asked that the specific number of hours of training for specials be deleted from the bill. He felt it would be much better if that was left to the discretion of the PTC, and his request had been honored. Culloo also recommended that the PTC should be able to issue appropriate certificates to specials who had satisfactorily met the standards for each class of special officer (i.e., Class One, Class Two, or Class Three) and that the PTC should be able to waive training for someone who had prior training. Both of those PTC recommendations were incorporated into the redrafts of A-526. One important concern of the PTC had to do with the training costs associated with proposed special police legislation. After reviewing the February 28, 1984 draft, Culloo sent Marchetta a letter concerning the need for a fiscal note to be attached to any proposed bill. He wrote:

> The PTC will require an additional appropriation of $130,000 to implement its training responsibilities under this legislation. As you are undoubtedly aware, current PTC training programs normally operate during the daytime Monday through Friday. The training of "specials" will require a different training plan. It will be necessary to train "specials" in the evenings and on weekends. This will necessitate the employment of additional PTC staff to work during those time periods. (L. Culloo, personal correspondence, March 30, 1984)

Charles Dickert, Executive Director of the U.S. Reserve Police Officers Association, and others disagreed with the PTC's monetary request. Dickert wrote to Assemblyman Herman:

> We completely disagree with an appropriation of $130,000 for the Police Training Commission. This amount could jeopardize the passage of the

> bill or at least delay it.... It is their [PTC] job for which they get paid to monitor and control these activities and the costs will ultimately be borne by the Municipalities. (personal correspondence, April 17, 1984)

Assemblyman Herman concurred with this statement and no fiscal note was attached to A-2512 when it was approved. It should also be kept in mind that not only was there dissension on some issues among like-minded interest groups but there were differences of opinion within many of the interest groups concerning key points. For example, one issue which created internal dissension in several interest groups was whether to have two or three classes of special police in the proposed legislation. Howard Runyon, Police Chief of Passaic Township and President of the NJSACOP, supported the concept of three classes of special police officers. The Class One special would not be armed and would do parking enforcement and crowd control. The Class Three special would be armed, fully trained, psychologically tested, and able to perform on his/her own similarly to a regular police officer. The Class Two special would be armed and have more training than the Class One special, act under the direct supervision of a regular officer and be "authorized to aid a full-time officer whether on foot patrol or in a patrol vehicle" (Proposed Assembly Committee Substitute for A-526, dated December 28, 1983). Some police chiefs supported this concept of having three categories of specials as did some municipal administrators in the League, so the early redrafts of A-526 contained the three classes.

But a majority of the police chiefs and municipal officials favored two classes of specials. They felt that Class Two was an extraneous, impractical category. If the Class Two special was supposed to operate under the supervision of a regular police officer, what would happen in a foot chase situation? If the special and the regular got separated while pursuing a suspect on foot, what would happen if the special took police action (e.g., used deadly force) while operating independently? Would that expose the community to a negligence law suit? James

Gormley, head of the Police Chief's Special Police Study Committee, as well as Bill Kearns, head of the League's Special Police Committee, both favored having only two classes. Either the special officers were fully qualified and trained and could act in a manner similar to regulars, or they weren't and should be restricted to performing only mundane tasks.

The Attorney General and the FOP also supported two classes of specials. In a letter to Assemblyman Herman, DAG Cronin wrote that Class Two officers should be deleted from the draft legislation.

> In our view, this classification is unnecessary because these officers would perform the same duties as Class Three officers. There would be little difference in training and, hence, no appreciable savings to the local units. Moreover, this duplicative classification has the potential to create confusion and litigation regarding the proper deployment of these officers. (M. Cronin, personal correspondence, June 11, 1984)

When A-2512 was finally introduced in September 1984, this viewpoint prevailed and only two classes of special police officers were in the bill.

Another issue which created dissension internally in the two management-oriented interest groups centered on whether a municipality was considered a resort or a non-resort community. The revisions of A-526 did distinguish between specials employed in the two types of communities. Initially, for example, specials employed by non-resort communities could only work a maximum of 12 hours per week whereas specials working in resort communities could work up to 40 hours a week. The term "resort municipality" primarily referred to the Jersey shore communities during the summer season. Only a few non-shore communities could be considered resorts during part of the year: primarily several townships in the Vernon Valley area in Sussex County in northwest New Jersey that enjoyed an influx of ski enthusiasts during the winter; and Jackson Township in cental New Jersey, the home of the Great Adventure Amusement park which attracted a large number of tourists from the northeast region during the summer months. But essentially, when the proposed special police legislation discussed resort municipalities, it was focusing on

the approximately 35 communities spread throughout the four seashore counties. As the poet Walt Whitman said 100 years ago, "It is the seaside region that gives stamp to New Jersey." The shore communities had a strong identity and some political clout, and they were determined to bring these factors to bear on the special police bill. They wanted to be sure that their collective voice was heard and their needs considered by Assemblyman Herman as well as the interest groups they were part of. The shore communities had some special needs and problems, and they made their beliefs known both within the League and the Police Chiefs Association.

The shore communities felt they were being short-changed in the redrafts of the proposed bill. They were unhappy even with the 40-hour-per-week limitation on the use of specials. Many of the shore communities had routinely employed specials six days a week in the summer. Also many specials worked overtime as well, so the average special often worked 50 hours or more per week in the season. Forty hours per week was far too restrictive, and it would force the shore communities to either hire and train more specials or pay their regulars overtime at a much higher rate.

The proposed bill also required that special police have "successfully undergone psychological testing as required of all full-time police officers" (Proposed Assembly Committee Substitute for A-526, dated December 28, 1983). This did not mandate that all specials in New Jersey should be psychologically tested; this was not even mandated for regular police officers. But it did mean that if a police agency gave a psychological test to its regular police officer applicants, then it also had to give the same exam to its special police officer applicants.

While the psychological testing of police candidates is well-accepted in professional law enforcement circles, the shore police chiefs had some problems with it as it applied to specials. First, the shore police chiefs and even non-shore police chiefs saw no need to give any psychological exam to the special officer who would not be armed nor have police arrest powers. The shore chiefs also felt that to

require the same psychological exam as was given to the full-time regular officer would be too costly and time-consuming. Exams where the applicant is interviewed by a psychologist can cost around $250.00 and take several days to arrange and conduct. A shore community hiring 50 summer specials and giving them this type of exam would suffer a severe financial hardship. The shore police chiefs called for an abbreviated and less extensive psychological exam for summer specials than was given to the regulars.

The shore community officals also urged the League and the Police Chiefs Association to seek clarification of another small but nevertheless important segment of the proposed bill. The drafts of the proposed legislation declared that any special had to be a resident of New Jersey. This was a problem for shore communities like Cape May County with its small year-round population. During the last 20 years or so they had been recruiting summer special police applicants from among the criminal justice majors in a number of Philadelphia area colleges and universities, most of whom were Pennsylvania residents. If Cape May police departments could not recruit non-New Jersey residents for their summer special police positions, then they would be hard put to meet their seasonal manpower needs. The shore officials were successful in pressuring their respective interest groups to seek a change in the wording of the residency requirement. Before A-2512 was introduced, the section was modified so that any special officer had to be a state resident "during the term of appointment." This change occurred explicitly because of the insistence of the shore communities.

Chief Gormley, the head of the Chiefs' Special Police Study Committee, acknowledged some of the internal friction created in his organization by competing factions:

> What it boiled down to was the shore chiefs had certain concerns that the rest of us, including myself, didn't. I can understand their concerns, and I

> still think they are going to have problems even today with this bill, in implementing it and giving the specials the training that the PTC is requiring of them. (personal interview, June 4, 1986)

William Kearns, head of the League's Special Police Committee, discussed the internal dissension among the League's membership:

> One of the things we had to face early was a clamoring from the shore communities that there should be no restrictions whatever in their use of specials. They had a unique problem; they had to be able to deal with that problem; and there shouldn't be any restrictions on them. Quite frankly, though, that simply wasn't going to happen....primarily according to Marty Herman. (personal interview, June 10, 1986)

According to Kearns, the League tried to strike a balance between the shore and non-shore municipal officials and develop a position which was in the interests of what was "good government."

There was also internal dissension among the membership of the PBA. This had not fully surfaced in the spring but by the fall of 1984, after A-2512 was introduced, the differences emerged and created some obstacles when the bill reached the Senate. Bill Dressel of the League noted that in the PBA "some splinter groups did surface. But you have that with any organization" (personal interview, August 18, 1986).

What the PBA did attempt to do during the spring was circumvent Herman's bill and have some other legislator sponsor a special police bill that would express the PBA's point of view. Such a bill would have stripped the specials of virtually all their power and authority. The PBA felt that Herman's consensus approach in creating the special police statute was causing the PBA to compromise too much and would result in a bill giving specials much more responsibility than the PBA wanted them to have. They therefore attempted to circumvent Herman's bill and have someone sponsor a special police bill that met with PBA approval.

In late April of 1984 the PBA approached Assemblymen Dean Gallo (R-Morris) and Joseph Bocchini (D-Mercer) about sponsoring a special police bill favorable to the PBA. Gallo was the Republican minority leader of the Assembly

and Bocchini was Chairman of the Assembly Law, Public Safety, and Defense Committee. When the other interest groups learned of the PBA's attempt to create a new special police bill, they were upset. Chief Gormley of the NJSACOP even went so far as to contact Senator Leanna Brown (R-Morris) and discuss the possibility of her sponsoring a companion bill to Herman's. Gormley wrote to his Special Police Committee members:

> This Bill would include our wording and eliminate the things we were against. We learned that the PBA has Assemblyman Gallo and Bocchini sponsoring a Special Bill of their choice. We also learned that Assemblyman Herman has stated that no Bill other than the one we have worked on will get to the floor.
>
> As all Bills go through his committee, we felt it was unwise to proceed with a companion bill. We will try to get the wording and things that we want in this Bill when it comes to the floor. (personal correspondence, June 4, 1984)

Cathy Frank, representing both the Chiefs Association and the League, contacted Gallo's and Bocchini's offices when she learned of the PBA's intentions:

> I said, "Look, we have a group going that's getting all the input. They [the PBA] have just as much chance to put input into this bill, and we're not in favor of starting another bill and starting from square one when we've come this far." I don't believe that either of the potential sponsors were that anxious to get involved in it once they realized what the situation was. (C. Frank, personal interview, June 6, 1986)

This attempted end run by the PBA never really got off the ground. Assemblyman Herman wasn't going to permit its occurrence, and the bill died before it was even born; neither Assemblymen Bocchini nor Gallo ever introduced such a bill.

Five months after the January meeting Herman called all the interest groups together for a meeting in Trenton to settle any remaining objections and get the bill introduced in the Legislature. One and a half years were left in the Legislative Session and 1985 was a gubernatorial election year. Bill Kearns of the League said:

> We were coming to the winding down of that [201st] Legislature. We had a gubernatorial election year coming up and we didn't know if those players

> would be back again. We were faced with a situation that if this bill didn't move effectively by the end of the summer of '84, forget it; it was dead. (personal interview, June 10, 1986)

The three special police interest groups were invited to this meeting also. The meeting was originally scheduled for Friday, June 29, but it had to be canceled due to the Legislature's holding an all-night session until 6:00 a.m. Just scheduling meetings with representatives from all the interest groups and other concerned parties proved a tedious and time-consuming task. Fran Marchetta had this responsibility and it took her several days to do it; it was already July and some people were taking summer vacations. It was also particularly difficult to schedule a date and time convenient for the special police organization representatives to attend. They had full-time day jobs which were non-governmental in nature; therefore, it was more difficult for them to take time off. Marchetta persevered, however, and a new meeting was scheduled for Tuesday, July 17.

The meeting took place in the State House Annex on a hot and muggy day; it lasted from 1:00 p.m. to well past 5:00 p.m. Some 25 people were present, seated around a long, narrow table in the middle of a relatively small room used for committee hearings. The environment was difficult to work in because it was a still July day, the room wasn't air conditioned and the windows didn't open. DAG Cronin recalled that physically uncomfortable setting:

> With that many people in the room, even with the doors open, things got a little close and I think that tended maybe to get people on edge.... I also recall that a lot of people were smokers but Herman didn't allow any smoking. After about an hour there would be no oxygen left in the room, and people would be sweating with their shirt sleeves rolled up. Those who were craving cigarettes were getting very anxious. Things were getting a little testy. (personal interview, June 23, 1986)

But Herman made it quite clear at the beginning of the meeting that a special police bill would be introduced in the Assembly by the early fall, and the bill would be the one they were all involved with at that meeeting and not any other bill. DAG Cronin commented:

> Herman would do a good job of moderating and he would say to people directly, "No, I won't consider that" or "That's a good issue; I think we should take that into consideration." And he would act as a moderator, basically, while everybody put their cards on the table and said "This is what I want" or "This is what we need." (personal interview, June 23, 1986)

In addition to acting as moderator at this meeting Herman also acted as the final arbiter on several issues where gaining consensus from all the interest groups was seemingly impossible. As he stated:

> There has to be some commander-in-chief. Every committee needs a chairman; every bill needs a sponsor. And somewhere along the line you have to have someone calling the shots. (M. Herman, personal interview, July 7, 1986)

Marchetta made another draft of the proposed bill based on the discussion and changes recommended at the July 17 meeting and by mid-August that draft was distributed to all the interest groups and others in attendance at the meeting.

Correspondence was sent to Marchetta and Herman in late August and early September from the interest groups. Many of the letters merely pointed out cosmetic changes. The New Jersey State Special Police Association wrote all the Assembly Judiciary Committee members to express its displeasure with a provision in the bill which restricted the special officer from carrying a firearm while working a private duty assignment (M. Noto, personal correspondence, August 22, 1984).

Bill Kearns bemoaned the 25 percent limitation placed on Class Two special officers in non-resort municipalities. He felt a higher limitation would have offered municipalities more flexibility in meeting their departmental requirements. However, he noted,"We recognize the purpose of this legislation, and we believe this language, as presently drafted, is a good-faith effort and is workable but is not ideal from the municipal point of view" (W. Kearns, personal correspondence, September 4, 1986). He and the League promised to actively support the bill's speedy enactment. Donald Belsole, the Director of the Division of Criminal Justice,

sent Herman a last-minute letter with a number of technical changes for the draft prior to its introduction.

Taking into account the recommendations of the Attorney General and some of the interest groups, Marchetta created a new draft, dated September 12. On September 13, the special police bill was presented to the Assembly Clerk, numbered, given first reading, and referred to the Assembly Judiciary Committee. Finally, after all this time, the SLEOA had taken shape and had been introduced to the 201st Legislature as A-2512.

Moving Through the Legislature

So much preparation had gone into laying the groundwork for A-2512 that one might assume that the bill's passage through the Legislature was accomplished quickly and easily. In reality, the bill's legislative journey was anything but anticlimactic (see Appendix E). The bill was only signed into law on the last day of the 201st Legislature, 16 months after it was introduced. The passage of A-2512 proved to be Herman's last accomplishment as a legislator because he lost in the November election, terminating his 12-year legislative career.

Things appeared to start off fairly smoothly for the bill. When A-2512 was finally ready to be introduced, Assembly Herman went to the Speaker of the Assembly, Alan Karcher (D-Middlesex), and asked him to assign the bill to Herman's own Judiciary Committee. As mentioned earlier in this chapter, Herman had been Chairman of the Assembly Judiciary, Law, Public Safety, and Defense Committee. With the start of the current Legislature that committee was divided into the Judiciary Committee, which was still chaired by Herman, and the Law, Public Safety, and Defense Committee chaired by Joseph Bocchini. Just on the basis of the bill's subject matter (i.e., special police), A-2512 should have routinely been assigned to Bocchini's Committee. But Karcher certainly knew that Herman had been working on the creation of a SLEOA for several years and wanted to see it through

to its successful conclusion. The speaker has total discretion in assigning bills to reference committees and since the junior Assemblyman, Bocchini, didn't object, Karcher assigned A-2512 to the Assembly Judiciary Committee. After all, what legislator knew that bill more intimately than Herman?

It is interesting to note the identity the co-sponsors of A-2512. All the members of Herman's Judiciary Committee were made co-sponsors of the bill: Assemblymen Thompson, Kern, Shusted; and Assemblywoman Perun. And the primary co-sponsor of the bill was Assemblyman Bocchini. As a courtesy to him and because of his position as Chairman of the newly created Law, Public Safety, and Defense Committee, Joseph Bocchini became the prime co-sponsor of A-2512 (M. Herman, personal interview, July 7, 1986). Assemblyman Bocchini recalled that Herman literally sat behind him in the Assembly Chambers, and they would often discuss the bill as Herman engaged in the drafting process. Herman asked Bocchini to become the bill's prime sponsor and was able to keep Bocchini closely informed on the bill's progress (J. Bocchini, personal interview, August 7, 1986). Bocchini had even sent his committee aide and his personal aide to the July 17 meeting in Trenton. Peter Traum, Herman's aide, suggested another possible reason for having Bocchini co-sponsor the bill. As mentioned earlier, the PBA had approached Bocchini in an attempt to have him sponsor another special police bill. This attempted circumvention of Herman's bill was not successful in part because the bill was not Herman's bill alone anymore but now belonged to Herman and Bocchini. By making Bocchini a co-sponsor, "Herman made a successful end run around the PBA's attempted end run" (P. Traum, personal interview, January 23, 1987). Herman was able to co-opt any potential Assembly resistance to the bill even before it fully materialized.

The bill did sail through the Assembly quickly and easily. Even though the Judiciary Committee and the Assembly as a whole made some amendments to the

bill, it was moved through the Assembly and given to the Senate in just 5 1/2 weeks. The few amendments that were added in the Assembly were not significant and dealt largely with changes in wording. Probably the most significant of the amendments was proposed by the full Assembly. The bill had been introduced with a 25 percent limitation on the number of Class Two specials a non-resort community could employ. As a sop to small (i.e., fewer than eight regular officers) police departments, the Assembly amendment permitted any size police agency to employ at least two Class Two special officers.

In the Senate the bill was referred to the Judiciary Committee whose Chairman was John Lynch (D-Middlesex). On November 1, Assemblyman Herman wrote to Lynch asking him to schedule A-2512 for consideration and discussion by his committee. He wrote that A-2512

> is a piece of legislation that I have worked on for close to 3 years. It has the support of the New Jersey State League of Municipalities, the FOP, the Attorney General's Office, the New Jersey Special Police Assn., and the New Jersey State Assn. of Chiefs of Police. The Governor has indicated that he will sign it. I believe it to be an extremely important piece of legislation. (M. Herman, personal correspondence, November 1, 1984)

Herman concluded his letter by stating that he didn't think A-2512 "would create any serious or extended discussion." This may have been wishful thinking on his part. And yet the very fact that in the letter to Lynch he mentions that the bill has the support of the FOP, but fails to mention the PBA's position (the most influential of the state's police unions), indicates that he was aware of some resistance to the bill. Resistance and obstacles to the SLEOA did manifest themselves in the Senate, though, particularly from November 1984 to March 1985.

The resistance which did eventually surface in the Senate came from two distinct sources. One was the PBA, which still attempted to fight a rear guard action against the passage of the bill. The Jersey shore communities presented the other major source of resistance. Through their police chiefs and government officials, the shore communities demanded more adequate consideration of their

unique concerns, although they were not totally opposed to the bill. The resistance really developed because of factionalism within the larger interest groups. While both the League of Municipalities and the NJSACOP were generally supportive of the bill by this time, the Jersey shore communities still felt that they were not getting adequate attention.

The PBA's internal dissension had not become fully visible by November, but it was alluded to in a speech made in January of 1985. By that time Donald Reiman, a police officer with the Borough of Hillsdale in Bergen County, had replaced Tom Murphy as the chairman of the PBA's ad hoc special police committee. Reiman, in a speech before the Senate Judiciary Committee, mentioned that A-2512

> was introduced, amended within committee, amended again on the floor of the Assembly and voted on by the Assembly within a very short space of time. As a result the communication between our special committee and the balance of the PBA's executive board of delegates, which only meets monthly, did not allow enough time to fully review the entire contents of A-2512 prior to its passing in the Assembly. As it turned out, the original committee was not in tune [emphasis added] with the rest of the board of delegates regarding A-2512. (personal corresondence, January 28, 1985)

The splinter groups that had arisen in the PBA and the management interest groups (i.e., the shore communities) had been caught unprepared by the rapidity with which A-2512 had moved through the Assembly. These resistance groups were determined to be prepared when the bill reached the Senate. Assemblyman Guy Muziani (R-Cape May) was one of the key legislators actively representing the shore communities' concerns in the Senate. He acknowledged that the quickness of the bill's passage through the Assembly had really not given him time to represent the shore's viewpoint and to propose amendments. Muziani said:

> The fact is that that bill [A-2512], I don't know how it happened, but there was not that much being said about it in the Assembly. It came up and got through and I can't really tell you how it happened. (personal interview, July 25, 1986)

Once the shore police chiefs (particularly the ones in Cape May County) realized that A-2512 had been approved by the Assembly and already was on its way

to the Senate, they urgently contacted Assemblyman Muziani with their concerns. He was to endorse those concerns and propose several amendments to the bill when it was debated in the Senate Judiciary Committee.

It appears that Senator Lynch was favorably predisposed. While his Senate Judiciary Committee would listen to all the interest groups and consider (and eventually approve) amendments to the bill, it does not appear that he was ever willing to scuttle it as the PBA proposed. An indication of this is revealed in a handwritten note on an inter-office memorandum written on December 3. In addition to being a part-time State Senator, Lynch was the part-time Mayor of New Brunswick. He had asked New Brunswick's Director of Police, James Gassaro, to review A-2512 and provide him with some feedback. In a two-page memo sent to Mayor Lynch, Director Gassaro was quite positive in his comments about the bill and concluded:

> I therefore recommend that you support the Bill, as I see it as an excellent opportunity to finally establish uniform standards for Special Police Officers throughout the State of New Jersey. (personal correspondence, December 3, 1984)

In a handwritten note at the end of the memo Lynch wrote, "Sounds good. Please have Tumulty schedule." This comment was probably directed to Lynch's legislative aide and the "Tumulty" mentioned was John Tumulty who was the aide to the Senate Judiciary Committee. Tumulty was an attorney who was, in essence, Fran Marchetta's counterpart in the Senate.

The Senate Judiciary Committee held four public hearings in which A-2512 was one of the bills under consideration. At the December 13 meeting of the Committee, DAG Mark Cronin discussed a problem with the amendment which had been added to the bill on the floor of the Assembly in October. After this meeting, Bill Dressel of the League wrote to Senator Lynch saying that the League as well as the Attorney General's Office had agreed to the Assembly floor amendment in previous discussions. The amendment had added language which "would ensure

communities that have a small police force (3-5 members) the ability to have at least two class (two) officers" (W. Dressel, personal correspondence, December 18, 1984).

The Senate Judiciary Committee next met on January 17 and prior to that meeting the Jersey shore communities had drummed up support for their concerns with the bill which they expressed through the Cape May County Chiefs of Police and municipal administrators as well as through an extensive letter-writing campaign. The Borough of Avalon and the City of Wildwood both passed resolutions calling on the State Senate to carefully scrutinize A-2512 for its adverse affects on New Jersey's shore resort communities and to make prompt and positive amendments to the bill to correct its deficiencies.

In the same vein, Avalon Police Chief Joseph Foley (representing the Cape May County Police Chiefs' Association) wrote Senator Lynch asking for serious consideration of the proposed amendments. Foley wrote, "I hope and pray there is some way that these amendments could be added to this bill in order to head off a monetary disaster if this bill is left unchecked" (J. Foley, personal correspondence, January 4, 1985). These amendments were initially drafted by the Cape May County Prosecutor, John Corino, pursuant to a request made at the Cape May County Chiefs of Police meeting on December 13, 1984. They were forwarded to a number of parties, including Assemblyman Muziani who modified them and carried them forward as his own into the Senate Judiciary Committee meetings. The crux of the suggested amendments was the creation of an additional classification of special police officer entitled "Seasonal Resort Law Enforcement Officer." In order for this Seasonal Resort special to be armed, he or she would have to successfully complete the same PTC-approved firearms training that regulars undertook as well as a minimum training program of at least 70 hours. Another suggested amendment would eliminate the maximum 40-hour-per-week restriction that seasonal special officers could work.

Both of these proposed amendments were obviously designed to facilitate the use of Class Two specials by the shore police departments. Muziani felt that the 40-hour restriction on a seasonal special's work week was "inadequate and unreasonable in light of the needs of resort communities and may create unnecessary cost burdens on local taxpayers. Hours worked should be at the discretion of the Chief of Police" (Muziani, 1984, p. 2). The proposed amendment concerning the training of seasonal resort specials was designed to reduce the amount of training that they would have to undergo. Instead of receiving the close to 300 hours of training required of other Class Two specials, Class Two resort specials could receive a minimum of 130 or 140 hours of training. This would make it easier for the Cape May police departments to train their out-of-state summer specials.

A contingent of police chiefs and officials from Cape May County and other shore communities spoke at the January 17 meeting of the Judiciary Committee, but no vote was taken then. Throughout this time Assemblyman Herman was being kept informed on all the proposed amendments to his bill. Herman was a political realist and realized that he would have to accept some amendments to A-2512. Bill Kearns of the League said that the amendments were "all done through Marty Herman. There is nothing in that bill that was done over his objection. None of this stuff was ramrodded by him" (personal interview, June 10, 1986). Bill Dressel of the League even wrote Bill Kearns a letter in early January informing him of the January 17 meeting and stating:

> Enclosed are amendments which have been approved [emphasis added] by Assemblyman Herman. In addition, there are some suggested amendments from Assemblyman Muziani. I believe most of Assemblyman Muziani's comments are presently addressed in A- 2512. (W. Dressel, personal correspondence, January 10, 1985)

The League of Municipalities sent out a letter in mid-January to all 11 members of the Senate Judiciary Committee, stating that "The League Legislative Committee endorses Assembly 2512, as amended" (W. Dressel, personal

correspondence, January 16, 1985). The Judiciary Committee next met January 28, this time hearing from representatives of the State PBA.

By this time the internal dissension within the PBA had surfaced. Tom Murphy, a Trenton policeman and the 4th Vice President of the PBA, had been the chairman of the ad hoc PBA committee dealing with special police since the days of A-526. Murphy had seen A-526 come and go, and he had been present at the January and July 1984 conferences regarding A-2512. But by early January 1985, Murphy had been removed from the PBA's special police committee and assigned to another project. He was replaced as chairman of that committee by Donald Reiman. Murphy conjectured that the PBA factionalism regarding the legislation was motivated by personal financial considerations. He felt that Reiman was heading a splinter group that wanted to eliminate specials totally. This dissident group wanted to protect some lucrative off-duty jobs from being taken over by special officers who would work for less money than the regular officers. (T. Murphy, personal interview, July 29, 1986). Whatever the specific reasons for the internal dissension, the PBA appeared to have changed its views regarding A-2512 by the January 28 meeting.

When Donald Reiman spoke to the Senate Judiciary Committee on that date, he told them that the PBA "is totally opposed to A-2512. The PBA requests that this committee not vote its approval of A-2512, nor release this bill from committee for consideration by the entire New Jersey Senate" (personal correspondence, January 28, 1985). In his speech, Reiman said that he saw A-2512 for the first time in November 1984, and he declared that the original special committee (headed by Murphy) "was not in tune with the rest of the board of delegates regarding A-2512" (personal correspondence, January 28, 1985). He said that the PBA had many significant problems with A-2512 and recommended that the bill be scrapped and a

new piece of legislation be written and introduced. Reiman concluded his statement to the Judiciary Committee by emphasizing that the PBA had

> very strong feelings on this issue and it has become a priority legislative issue. We would like to work out an amicable solution. In the meantime, however, A-2512 is a piece of legislation which we strongly urge you not to vote out of committee. (personal interview, January 28, 1985)

Assemblyman Herman had not been present at the January 28 meeting but Reiman astutely sent him a letter a few days later which essentially re-stated the major points he had made to the Judiciary Committee, although in a lower key. He stated that there were some sections of A-2512 to which the PBA was totally opposed and concluded his letter by stating that "We look forward to a meeting, in the near future, with you and those other interested organizations" (D. Reiman, personal correspondence, February 2, 1985).

The PBA's resistance to A-2512 continued at the next and final meeting of the Senate Judiciary Committee. A vote on the bill as well as on several proposed amendments was to be taken by the Committee members after its last public hearing on the issue on February 25. Tumulty wrote to the members of the Committee, saying that the "following proposed committee amendments approved by the sponsor [emphasis added] are attached for your review" (J. Tumulty, personal correspondence, February, 25, 1985). Herman had accepted nine relatively insignificant amendments. Tumulty also noted that Assemblyman Muziani had proposed four additional amendments to the bill.

PBA President Frank Ginesi showed up at the February 25 meeting. This was the only time that he had been directly involved in the special police bill, and his presence was to lend weight to the PBA's opposition to A-2512 and its call for a new bill. Cathy Frank of the NJSACOP recalled that "Frank Ginesi showed up at the very last meeting and tried to reverse everything. He and I went out in the hallway and had a little confrontation" (C. Frank, personal interview, June 6, 1986). During the meeting, Herman had been on the floor of the Assembly trying to garner support

for another piece of legislation that he was sponsoring. After Peter Traum informed him of Ginesi's presence and the PBA's dilatory tactics, Herman made his way over to the Committee's chambers in the State House Annex. Herman buttonholed Ginesi in a small room just next to the meeting room. According to Traum, Herman lambasted the PBA for its eleventh hour about-face on A-2512 and reminded Ginesi that Tom Murphy and the PBA had been kept informed of and involved in every step of the bill's creation and the consensus approach had appeared to make this a statute that all interest groups could live with. He objected to the PBA's last minute opposition. Herman assured Ginesi that this bill had the endorsement of Governor Kean and that it was going to become law with or without the PBA's support (P. Traum, personal interview, January 23, 1987).

The PBA backed down on its opposition perhaps because it realized that Herman was serious and committed to the bill. Ginesi was also astute enough to realize that the political forces, including the governor, had come together on this issue and if the PBA totally opposed it, they would be isolated and gain nothing.

The Senate Judiciary Committee voted on A-2512 later in the day and approved it with a number of amendments, many of which were minor. A number of definitions of terms were clarified, including one extending the definition of "seasonal period" from four to six consecutive months for shore communities. Two amendments modified the qualifications for appointment of specials. One amendment permitted former full-time police officers to be appointed as specials and have the PTC waive training if appropriate. The other permitted specials hired by resort communities to undergo less extensive psychological testing than regular officers.

Additional amendments to the bill included:

1. Inserting language from P.L. 1985, c. 45 dealing with the requirements for carrying off-duty weapons by Newark specials.

2. Adding language that specials were to be considered on duty when performing security duties for private entities only when assigned and supervised by the police chief. These on-duty private security duties were included in the number of hours a special could work.
3. Adding a "grandfather" clause establishing that no special officer performing the duties of Class Two specials as of March 1, 1985, would be terminated to meet the 25 percent "cap" on the total number of Class Two specials a non-resort police agency could utilize. These specials would be allowed to continue their service provided that they met the training requirements.
4. Increasing the number of weekly hours a seasonal special could work from 40 to 48.

Assemblyman Muziani had had some success in amending A-2512. The seasonal period was extended, seasonal specials did not have to undergo as costly a psychological testing process as regulars, and the work week for summer specials was extended. But he had failed to create a new category of "seasonal resort" special officer who would not have to meet the new stringent training standards. One Cape May County police chief commented that he felt that, all in all, the concessions that Muziani got in the bill were "junk" and that Muziani had not done a "hell of a lot" for the local communities regarding A-2512. Perhaps Herman characterized it best when he discussed the tumult surrounding the Senate Judiciary Committee meetings and the amendments eventually adopted by that Committee:

> I considered those minuscule amendments. Nudnick amendments. They were not substantive amendments, just amendments to accommodate. (M. Herman, personal interview, July 7, 1986)

Herman's confrontation with Frank Ginesi had helped pave the way for a resumption of the bill's legislative progress but because of the crush of other legislative business, the bill was stalled in the Senate until the fall of 1985. During

spring 1985, NJSACOP sent out letters endorsing A-2512 to all Senators and Assemblymen; it noted that the Chiefs Association had been part of the extensive deliberations during "the last two years to assist Assemblyman Martin Herman in drafting a bill that would most nearly accommodate the needs of municipalities in regard to the duties and training of special police" (C. Frank, personal correspondence, 1985). The letter concluded by urging all legislators "to support this legislation in its entirety with no substantial changes. The sponsor and the Judiciary Committee are to be complimented for this responsive legislation" (C. Frank, personal correspondence, 1985).

The League of Municipalities endorsed A-2512 and informed all its members of the bill's progress in the February 1985 issue of New Jersey Municipalities, the League's monthly magazine. Dressel wrote to Herman:

> This legislation, once enacted, will offer a "workable" statutory response to the Supreme Court's 1982 Belmar decision on special law enforcement officers and we realize this could not have been achieved if it was not for your leadership and perseverance. (personal correspondence, March 5, 1985)

The FOP endorsed A-2512 as amended and informed its membership of that. The FOP also sent out letters of endorsement to the Assembly and Senate Judiciary Committees and several key legislators (T. Possumato, personal interview, July 10, 1986).

Before it adjourned for the summer recess, though, the Senate did take some further action on A-2512. Senator Carmen Orechio (D-Essex) made the last substantive amendment which was proposed, accepted and given a second reading in the Senate on the same day. The amendment created a "wild card" special officer, allowing each municipality to designate one special officer to work without regard to the hourly limitations in the SLEOA. Orechio had wanted this amendment particularly for some of the smaller northern New Jersey towns. One special could then work parades and special occasions without being concerned about the hourly

restrictions. Also, in case a regular officer died or was injured, a special officer could fill in until a new regular was prepared. There were no objections, but before it could be given a third reading and voted on, the Senate took its summer recess. Early in September when the Senate had returned, A-2512 as amended was unanimously approved. The bill was sent to the Assembly on the same day.

The Assembly still had to vote on all the amendments made to the bill in the Senate, but the press of political business forced the Assembly to delay considering A-2512 for over two months.

On Election Day in early November 1985 the cause of special police legislation received an unexpected setback as Martin Herman's political career came to an end. He and his Democratic colleague in the 3rd Legislative District, Thomas Pankok, were narrowly defeated in Governor Kean's statewide Republican landslide and Herman's days in the Assembly would be over on January 13, 1986, when the 201st Legislature expired. Hopeful of a comeback attempt in 1987, Herman's immediate concern was the successful passage of A-2512. Governor Kean's massive victory had not only swept Herman and Pankok out of office but a number of other Democrats as well. For the first time in more than 10 years the Republicans would control the State Assembly (although not the Senate) in the upcoming Legislature. The whole political agenda could change and if A-2512 didn't pass in the 201st Legislature, there was a good chance that meaningful and comprehensive special police legislation was dead for the forseeable future in New Jersey.

On November 18 the Assembly approved all the amendments to A-2512 that had been adopted by the Senate. But it also added its own amendment on that date which meant that the bill now had to once more return to the Senate where the full Senate would have to vote on the new Assembly amendment. The Assembly proposed that the bill become effective "immediately" upon the governor's approval.

On December 9 the Senate voted to accept the Assembly's revised effective date of the bill.

The SLEOA was now completely amended and approved by both houses of the Legislature, and it was forwarded to Governor Kean for his final scrunity. John Trafford, Executive Director of the League of Municipalities, sent Governor Kean a letter of endorsement which did, however, point up a problem associated with the bill's effective date:

> The only deficiency we see in it [the bill] is its effective date. Unfortunately, late in the legislative process the measure was amended to read "effective immediately" upon your signing it into law. All groups, that we know, concur in the opinion that you ought to sign the legislation as is and expect early in the next legislature to sign remedial legislation changing the "effective immediately" date to a date one year from enactment of the remedial legislation. If this posture is too tentative for you to base your signing of Assembly 2512 into law, we respectfully request you conditionally veto it making it effective one year from its enactment. (personal correspondence, December 20, 1985)

The governor did not act immediately on A-2512. This was partly because of the volume of bills which came before him for action as the 201st Legislature moved into its final days, but also because of the uncertainty and confusion surrounding the effective date. Herman quickly introduced A-4324 on December 12; this would have changed the effective date of the SLEOA to October 1, 1986 instead of "immediately." If the bill could be approved as "emergency" legislation or else ramrodded through in some other way, then the governor could sign one bill right after the other. However, Herman's new bill got no further than a second reading in the Assembly.

There never really was a question of whether Governor Kean would sign A-2512 into law. Herman and others had been virtually assured that if the SLEOA reached the governor's desk, it would become law. The governor himself had made this perfectly clear in his veto measure of the McEnroe bill, A-630, in early 1984. Also, as was noted in Chapter 3, Assemblyman Thomas Kean had been a co-sponsor of a bill as early as 1970 (A-918) which dealt with the creation of upgraded training

and standards for specials. Obviously the governor was personally concerned about special policing and his assistant counsel, Steven Carnes, had kept him thoroughly informed about the progress of the bill. After final passage of A-2512, a "passed bill memo" was submitted by Carnes to the governor. This memo is typically one or two pages long and includes a summary of the bill; a review of its legal, fiscal, and political impacts; and a recommendation concerning the governor's appropriate action. It is very important, and sometimes it is the only document on which the governor relies in making decisions about whether or not to approve bills (Linkey, 1986, p. 109). In his memo to Governor Kean, Steven Carnes recommended that he sign and approve A-2512 (S. Carnes, personal interview, March 26, 1987).

After the Christmas holiday season and on the last day of the 201st Legislature, the SLEOA was finally signed into law. The date was January 13, 1986, which was 16 months to the day after the bill had first been introduced in the Assembly, and at least 15 years since such legislation was first proposed. January 13 was also Assemblyman Herman's last day in Trenton and the passage of this important piece of legislation on that day was a fitting farewell present.

Postscript

The starting or effective date of A-2512 was modified almost as many times as the body of the bill itself. Section 15, the last section of the proposed statute, dealt solely with when the bill would become effective once it was signed into law. It was originally introduced with an effective date of "October 1, 1985." Five weeks later (October 18) the bill was amended on the floor of the Assembly to take effect "60 days after enactment." Next, the Senate Judiciary Committee amended the bill (on February 25, 1985) to return it to its original wording as being effective on "October 1, 1985." Once October 1 had come and gone and the bill had not even been approved by both houses, the Assembly again amended the bill (on November 18) to make it effective "immediately" upon the governor's approval. Assemblyman

Herman was the prime instigator behind the last date change in the Assembly. His reasoning was that the bill had originally been introduced with an effective date of October 1, 1985; the Senate had approved the bill with that date; and all the concerned parties had known about the bill and its date since September 1984 when it was first introduced (S. Carnes, personal interview, March 26, 1987).

By the time the Assembly acted on the bill, October 1 had already passed and hence the effective date had to be changed. Herman assumed that all the interest groups were ready for the bill and its impact in the fall of 1985 and therefore advocated amending the bill to make it effective immediately upon the governor's signature.

However, the last amended date was probably the poorest of the three from the perspective of most of the interest groups. The interest groups were not as prepared for the bill as Herman thought. Many of them were skeptical that the SLEOA would be enacted into law, and once it was they were not prepared to handle the bill's impact.

The interest groups took notice of the bill and raised a hue and cry after the Assembly approved it with the immediate starting date. Most of the interest groups argued that they needed some lead time between the bill's passage and when it took effect. The PTC needed to develop and implement new statewide training programs for specials. Special police associations had to inform their members about the new mandated training. Police Chiefs needed time to train their specials and bring them up to standard, particularly in the area of firearms training. Municipal officials had to allocate and budget increased monies for the training and equipping of specials. The shore communities in particular were concerned about the bill becoming effective immediately. That meant that the seasonal specials hired for summer 1986 would have to be fully qualified and trained under the provisions of the new bill. Assemblyman Muziani and many others felt that the lack of lead time

would create severe hardships for summertime policing in Cape May County as well as in other counties.

It is understandable why the Senate, on December 9, approved the Assembly's amendment of the effective date even if it was a poor one. If A-2512 were to be signed into law by the governor by the end of the Legislature, there was no time for further amendments. Herman acceded to the demands of the interest groups and promised to introduce a "clean-up" bill to rectify the problems associated with the starting date. As mentioned previously, this bill would have changed the effective date of the SLEOA to October 1, 1986. Herman introduced this bill on December 12, 1985, and if it had been signed into law before the end of the current legislative session, then there would have been almost nine months lead time before the bill affected all municipalities. This would have permitted the Jersey shore communities one last summer under the regulations of the old special police statute. However, because of the volume of legislative activity that needed attention at the end of the two-year legislative session, Herman's bill died on the day it was introduced. When Governor Kean signed A-2512 into law on January 13, it became effective on that date.

All the concerned groups were aware that a new bill to change the effective date would be introduced shortly . In a newsletter to the membership of the NJSACOP, Cathy Frank said "We have been assured that the 'effective immediately' clause will be changed as a technical problem to read October 1986" (C. Frank, personal correspondence, December 1985). The League of Municipalities sent Assemblyman Muziani a copy of A-4324 (1985), noting that with the SLEOA effective immediately, "There is no way, at this point, that summer 1986 specials could be trained in time for summer appointment" (W. Dressel, personal correspondence, January 16, 1986). The League asked Muziani to sponsor and revive

the bill proposing the October 1 effective date and move that remedial legislation through the General Assembly as soon as possible.

Muziani introduced A-1776 in the Assembly Law, Public Safety, and Corrections Committee on January 30, 1986, proposing to change the effective date of P.L. 1985 c. 439 (the SLEOA) to October 1, 1986. In a letter to the Committee Chairman, William Dressel of the League wrote:

> The immediate effects of this measure, if not postponed, will cause severe budgeting and administrative problems since local governments and the police training commission simply need more time to comply with the comprehensive provisions of C. 439, P.L. 1985. (personal correspondence, January 29, 1986)

In the meantime, since the SLEOA was effective on January 13 and no extension to the effective date had yet been enacted, Leo Culloo and the PTC had to begin carrying out its responsibilities and create training curricula; arrange training sites; consider waivers of training; design and issue special police officer insignias; and approve certain psychological testing programs for specials employed by shore communities. On March 13, Culloo presented a "SLEOA-Training Plan" to the Police Training Commissioners in a 14-page memorandum. The PTC proposed that Class Two special officers fulfill almost the same training requirements as regular police officers (PTC, 1986, p. 5). Some of the training given to regulars could be modified or eliminated when specials were trained, but essentially Class Two specials would receive approximately 300 hours of training. By mid-March the PTC had things pretty well in hand, at least on paper if not in actual practice. They had, for example, not yet started to evaluate the requests for partial or full waivers of training. In his memo Leo Culloo emphasized to the Police Training Commissioners the problem associated with the effective date of the SLEOA:

> The recruitment and training problem faced by resort municipalities can be more readily addressed if pending legislation is enacted that would delay implementation of the effective date of the Special Law Enforcement Act until October 1, 1986. The PTC, however, must proceed

> with planning based on the current law and, as a result, the PTC may have to consider an emergency training measure for the resort municipalities. (PTC, 1986, p. 7)

The Atlantic City Press published an editorial in early February entitled "Training Summer Cops Is A Necessity." This was one of the few newspaper stories written about either A-2512 or the SLEOA up until this point, and it indicated that at least the shore newspapers were starting to become aware of the passage and implications of the SLEOA. The editorial wholeheartedly supported the new law's requirement that special police be comprehensively trained, but it expressed mixed feelings about Muziani's request for an extension of the bill's effective date and commented:

> Resort towns may get an extension on the effective date of a state law requiring more training for special police officers. If the extension is granted, the respite should be used wisely so this year's "emergency" isn't repeated.... Lawmakers in Trenton may not agree that an extension is necessary. In that case, the resorts are going to have to do the best they can. But if the deadline is extended, there better be no excuses next year. ("Training Summer Cops," 1986)

A-1776, changing the date to October 1, 1986, was signed into law on March 24, almost two months after it was introduced. On October 1, 1986 New Jersey finally had a new law regulating special police.

The League of Municipalities and the Office of the Attorney General continued their efforts to inform police chiefs and municipal officials of their responsibilities under the new law. The League and the Attorney General sponsored a joint half-day seminar on the SLEOA in central New Jersey on May 14, 1986. This meeting and the publicity surrounding P.L. 1985 c. 439 was generally successful in informing most municipal management officials of their new responsibilities.

Conclusion

The SLEOA became effective on October 1, 1986. This brought to a conclusion nearly a decade of controversy over the role that special police officers should play in the New Jersey criminal justice system. The Act contains provisions

governing nearly all aspects of the appointment, training, and assignments of the thousands of special law enforcement officers in the state.

None of the interest groups that had come together to create the SLEOA was completely satisfied with it. Mark Cronin of the Attorney General's Office said:

> Nobody got everything they wanted in this bill, but I think that we all did very well. I think for that reason, it's a good piece of legislation. (personal interview, June 23, 1986)

DAG Fred DeVesa echoed Cronin's sentiments

> Although the bill doesn't represent what any one special interest group wanted exactly, it does seem to hit the main points and it does seem to accomplish the reform that was being sought. It legitimizes the ability of municipalities to use special police under certain circumstances without any question. It deals with the police union concern that specials might be used inappropriately to replace regulars. It deals with the Attorney General's concern that untrained, non-professional people would be used to do police work regularly and routinely. So the bill really deals with a lot of concerns that there were. (personal interview, July 8, 1986)

Although many parties to this bill felt that there were no real losers in the final version of the statute, not everyone shared that viewpoint. Dennis Tallman of the South Jersey Reserve Police Association felt that "This bill [the SLEOA] and everything they're doing is designed to eliminate special police. I don't think they want us" (personal interview, August 22, 1986). Tallman felt that the SLEOA was totally unfair and that Herman "just sold us [specials and reserves] down the river, and I don't know why" (Resnick, 1986, p. 2). He felt that the new law gave the state too much control over specials, and he believed the state could eventually eliminate them. Achille Gaetano, President of the New Jersey Special Police Benevolent Association, indicated that the overly-extensive training mandated for Class Two status would discourage people from becoming special officers in the future.

Certainly a faction within the PBA was unhappy about the passage of A-2512. Special police would still be very much on the scene in the New Jersey law enforcement community after the SLEOA took effect. In fact, some police union critics of the bill could charge that "this bill will institutionalize specials and

actually bring about the very harm that the police unions are trying to avoid. This bill is legitimatizing specials, and you're saying that there can be specials and they can do certain things" (F. DeVesa, personal interview, July 8, 1986).

Splinter groups also developed within the League of Municipalities and in the Police Chiefs Association. The Jersey shore communities, particularly the ones in Cape May County, were unhappy with many of the key sections of the approved legislation. Former Stone Harbor Police Chief, Bill Donohue, said, "The PBA, particularly in North Jersey, has got to love the bill, and you have to empathize with them and understand why.... Everybody except Cape May County would love the bill" (personal interview, June 19, 1986). Of course, the Cape May municipal officials and police chiefs were concerned about the extensive training requirements that Class Two specials had to meet and the associated cost factor with that increased training.

It is not unusual for factions to appear within interest groups. As a matter of fact, "The larger the group, the more likely there will be differences in attitude ranges and the intensity with which interests are held among members" (Makielski, 1980, p. 59). But the various factions were not able to block the Act on their own nor break the general consensus on it. And it should be emphasized that "It is almost always easier to block a proposal than to secure its passage, which is to say that most groups have more defensive power than offensive force" (Burch, 1975, p. 83). Assemblyman Herman's consensus-building approach to creating the SLEOA was able to overcome the resistence present in several of the interest groups. When the most serious challenge to the bill developed from a faction within the PBA, Herman was able to meet it head-on and force the dissidents to back down.

Many individuals felt that A-2512 would never be approved because of the number of diverse interest groups directly involved. Dressel, of the League, felt that the SLEOA would <u>not</u> become law and was known to tell people, "You're never

going to see it" (personal interview, August 18, 1986). DAG Cronin observed, "I was impressed that anything could get done more than I was depressed that it took several years to do it" (personal interview, July 23, 1986).

Assemblyman Martin Herman was the key figure in the creation and passage of the SLEOA. This was an important bill to him because it filled a need in the state's law enforcement community. And even though there was little publicity or constituent support for this bill, Herman worked long and hard on it for almost five years. He felt that creating a "balance" in the bill was the key to its eventually reaching enactment.

> Everyone had to respond to certain provincialisms. But I think that by and large when we wound up working it out the bill made sense for the state. Recognize that this was a diverse state with different problems in different areas. But we did develop a balance which says that volunteerism is important; that volunteers should be trained; that they're a supplement to full-timers and not a replacement for them; and that we do recognize regional concerns such as the problem in dealing with Newark, dealing with the summertime police, and then creating the two categories of special police officers. (M. Herman, personal interview, July 7, 1986)

Because of the interest groups involved and the political realities at this time, the reforms embodied in the SLEOA will surely have a significant impact on law enforcement in New Jersey.

CHAPTER 6

ANALYSIS

Review

Legislative History

The Special Law Enforcement Officers Act became effective on October 1, 1986. This marked the end of almost ten years of debate and controversy surrounding special police officers in New Jersey. The SLEOA, initially introduced in the Legislature as A-2512 by Assemblyman Martin Herman, repeals the statute which had regulated specials since 1971 and requires more rigorous qualification standards to become a special as well as improved training.

Two legal cases contributed to the entire initiative to create more meaningful standards for special police. One civil case, Mularchuk, was decided by the New Jersey Supreme Court in 1960. The Court's ruling extended the concept of vicarious liability to a municipality for permitting untrained specials to carry firearms and be authorized to utilize deadly force. The impact of Mularchuk, though, was relatively insignificant when compared with another civil case. The Belmar case took two and a half years to be resolved by the state court system. The State Supreme Court ruled in May 1982 that Belmar, a resort community at the Jersey shore, could employ special police officers during the busy summer season to supplement its regular police force. Those specials could carry weapons while on duty and exercise the same arrest powers as regular police officers. The Belmar case had a far-reaching effect on New Jersey's law enforcement community. A careful reading of the court's lengthy decision reveals that the Supreme Court was critical of the inadequacy of the existing law regulating specials in the state.

Belmar was the catalyst for new special police legislation. While the Supreme Court decision essentially perserved the status quo regarding specials, it also clearly pointed out the need for more comprehensive legislation in this area. During the

Belmar case a number of key interest groups emerged as amicus curiae. This clearly emphasized the point that interest groups use the courts as one means of gaining access to public policy making and to either advance or block some action in which they have an interest (Makielski, p. 280). These groups re-emerged during the SLEOA debate and were joined by other interest groups to shape the new legislation.

While Belmar was before the appellate court in 1981, Assemblyman Herman drafted A-3234 to address some of the trial court's concerns regarding specials. This bill and a subsequent bill (A-526) introduced by Herman in 1982 did not progress far in the Legislature. Both bills were inadequate in several respects, and they were criticized by a number of parties throughout the state.

Rather than write a whole new law regarding specials as Herman attempted to do, other legislators proposed amendments to the existing law in 1982, 1983, and 1984. Six amendments were introduced during these three years and four of them became law. But these amendments were an example of "too little, too late." These stopgap pieces of legislation could not adequately strengthen a basically unsound law. A totally new and comprehensive bill was needed to rectify the problems surrounding special police.

Assemblyman Herman persisted along those lines, and a new bill, A-2512, was introduced in September 1984. This bill was stronger and more comprehensive than the prior bills. For the first time A-2512 created two classes of special police officers. Class One specials are authorized to perform limited, minor duties and are strictly prohibited from carrying or using firearms. Class Two specials are authorized to exercise full police powers, carry firearms, and perform duties similar to those of a regular police officer. Herman enhanced the bill's chances of legislative approval when he sought the advice and active support of nine interest groups: (1) the New Jersey State League of Municipalities; (2) the Division of Criminal Justice (Attorney General); (3) the Police Training Commission (PTC); (4)

the New Jersey State Association of Chiefs of Police (NJSACOP); (5) the New Jersey State Lodge, Fraternal Order of Police (FOP); (6) the New Jersey State Policemen's Benevolent Association (PBA); (7) the New Jersey State Special Police Association; (8) the New Jersey Special Police Benevolent Association; and (9) the United States Reserve Police Officers Association. After 16 months of debate and amendments (by both the Assembly and Senate Judiciary Committees and by both houses of the Legislature) and political manuvering, the SLEOA was finally signed into law by Governor Kean on January 13, 1986.

Provisions of the Act

Perhaps the most significant reform included in the Act is that which requires that special law enforcement officers be adequately trained prior to the commencement of their duties. The legislation specifically mandates that special law enforcement officers successfully complete a training course approved by the PTC before commencing their duties. Additionally, no special law enforcement officer may carry a firearm until he or she has successfully completed the same basic firearms training course that has been approved for regular police officers. Approximately 300 hours of training are required for Class Two (armed) specials and about 60 hours for Class One (unarmed) specials. The PTC certifies those officers who have successfully completed the training and issues certificates that clearly state the category of certification the officer has been granted (Dressel, 1986).

The legislation expressly states that special law enforcement officers may be employed only to assist municipal police departments. They may not be employed to replace or substitute for regular police officers or to, in any way, diminish the number of full-time officers employed by the municipality. The legislation further provides that special law enforcement officers shall not be regular, full-time members of any police department and shall not acquire tenure beyond the terms of

their one-year appointments. In addition, specials are only permitted to work in one police agency at a time and no public officials with any kind of budgetary or supervisory responsibilities over the local police department can be appointed as a special. Specials are authorized to perform police duties only in the appointing municipality unless in "fresh pursuit" of any person.

As a further safeguard against the over-utilization of special law enforcement officers, the Legislature has included statutory limitations on the number of officers that may be appointed and the number of hours they may be employed. As a general rule, the number of Class Two officers may not exceed 25 percent of the total number of regular police officers employed by any municipality. Moreover, specials may not be employed by a municipality for more than twenty hours per week except in cases of emergency. Specials are not permitted to be armed off duty. There are exceptions to these general rules that govern Newark, resort municipalities, and a few other unusual situations (DeVesa, 1986). For example, every municipality may employ at least two Class Two specials, and one special officer may work without regard to the hourly limitations in the Act. Shore communities may employ specials for up to 48 hours per week during seasonal periods, and the shore communities are exempted from the 25 percent restriction altogether. Properly trained special officers in Newark are permitted to carry a firearm while off duty and within the city limits.

Interest Groups and Law Enforcement

Criminal justice in the United States is an integral part of the American political system, making criminal justice a political institution. "Given its concern with the allocation of justice, criminal justice represents one of the core subsystems of any polity" (Pavlak, 1981, p. 115).

Different forces help shape important policy issues in the American political system. Many theorists argue that the key impact upon public policy making is the

influence of interest groups. The group theory approach generally holds that public policy is the result of input from different and sometimes competing interests and that interest groups constitute the basic element of political analysis. Interest groups have had a profound effect on the laws and policies regarding many societal matters, including criminal justice. Yet, there has been relatively little direct research concerning interest group influence and operations on criminal justice or, more specifically, law enforcement policy making (Fairchild, 1981, pp. 181-182). This dissertation was undertaken to make a contribution to the small body of research literature pertaining to interest groups and their effect on law enforcement policies. The thesis is a micro-exploration of the creation of one aspect of law enforcement policy in the state of New Jersey in the mid-1980s.

Fairchild (1981) notes that it is difficult to generalize about interest groups and their effect on criminal justice policy making because the economic, social, and cultural context of each state is unique to some extent (p. 188). This uniqueness has a significant impact on the structure, power, and goals of interest groups in any particular state. In the past, many New Jersey authorities claimed that interest groups exerted a great deal of influence in state affairs. More recent research also indicates that "New Jersey has a pressure group system which can best be described as fairly strong" (Burch, 1979, p. 111). An indication of that strength is that there are nearly 450 lobbyists representing almost 900 organizations registered with the New Jersey Attorney General's Office, in accordance with the provisions of the 1971 Legislative Activities Disclosure Act. This dissertation has examined the role and relative strengths and weaknesses of the interest groups involved in the creation of special police legislation in the Garden State. But in a case study such as this one, the researcher risks dwelling upon the unique aspects of the subject at the expense of a broader representativeness. A case study, if it is too narrow in its examination of a particular event, place, and time, may not contribute to a more general

comprehension of events or ideas. Although New Jersey is unique in many ways and may not be easily compared with other cases, this concluding chapter will focus on broad concepts and issues pertaining to interest groups and reserve/auxiliary policing that are universal in scope.

The major theoretical argument of this thesis is that interest group politics had a significant impact on the creation of the SLEOA. Many interest groups tried to influence the shape of the legislation to serve their own ends as well as to protect their interests. Some of these initially got directly involved in the special police issue via the Belmar case. Others did not come upon the scene until the drafting stages of A-2512 in 1984. Regardless of when a particular interest group got involved, however, the point is that the nine interest groups did influence, to varying degrees, public policy. The general term which political scientists use for this process of influence is "gaining access." "To a large extent, then, the struggle to gain and maintain access to key decision points within government forms the 'stuff' of politics" (Pavlak, 1981, p. 111). The groups with the most limited range of interests were the three special police associations. They were basically one-issue organizations so that they only had to gain and maintain access to the government on the single issue of special policing. It should be noted, particularly concerning these groups, that access does not necessarily equate with influence over the decision making process.

Which factors determine the success of a group in gaining access to key decision points and having an effect on the governmental process? An interest group's power is difficult to define and evaluate. If we think of an interest group's power as being indicated by the group's success in achieving its goals, we can say that the basis for interest group influence stems from at least five major variables. Makielski (1980) identifies numbers, organization, leadership skills, status and image, and money as the determining factors (p. 89). A group that ranks high in each of

these variables has a greater probability of success than one that is lacking in some or all. But, of course, even command of these resources can be negated by other factors. Ultimately, group power is determined by "a combination of group resources, the situation in which the group finds itself, and the extent to which it is challenged by other power forces" (Makielski, 1980, p. 89).

The different interest groups had varying degrees of power and influence over the shaping of the SLEOA. Cathy Frank, who was actively involved throughout the entire legislative process, felt that three of the interest groups were far and away the most active and influential. She listed the PBA, NJSACOP, and the League of Municipalities as being the true "activists" regarding the creation and eventual passage of A-2512 (C. Frank, personal interview, June 6, 1986). To this group of three active and influential interest groups should be added a fourth, the Attorney General. Most contemporary group theorists acknowledge that governmental institutions are actively involved in group politics (Pavlak, 1981, p. 112). Pavlak notes that "Government is by no means a passive, mechanistic actor having little independent impact on the outcomes of group struggle in the political arena" (1981, p. 112). The Attorney General's Office had exhibited an ongoing interest in the special police issue since the mid-1970s, and they were an integral part of the activist core of interest groups involved in the SLEOA.

Before examining the four interest groups with the most power, it will be instructive to examine the interest groups with the least power in the special policing arena. As previously mentioned, the groups with the least influence were the special police associations. This is not to say that their collective voice was not heard on some issues and these will be noted later. It must also be recognized that all three of the special police associations involved in the legislative process did not possess equal amounts of group power. One group was clearly more powerful than the other two. Nevertheless, in general, the special police associations exerted

relatively little influence. There are many reasons to explain this relative lack of power.

Reference to Makielski's five major variables of group power shows that the special police associations were relatively weak in all areas. In the first place the numbers of members that each group represented was difficult to accurately ascertain, but the largest of the groups, the New Jersey State Special Police Association, only had about 1,000 members statewide. The U.S. Reserve Police Officers Association had about 500 members, and the New Jersey Special Police Benevolent Association had approximately 300 members. The New Jersey State Special Police Association was founded in 1938, and it clearly had more power and prestige than the other two special police groups. That they had a fairly strong organizational structure, effective leadership, and solid finances is evidenced by their involvement with the Belmar case as amicus curiae. The U.S. Reserve Police Officers Association was established in 1980 and appeared to exercise a small degree of power stemming from its clear-cut organizational structure, financial assets, and its leadership. As much as anything else, the leadership of Charles Dickert, the executive director, probably accounted for whatever power the association possessed. Dickert sent out provocative correspondence to Martin Herman and others and generally acted as a gadfly. The weakest of the three groups was the New Jersey Special Police Benevolent Association which had been founded in 1982. Its membership was not only small but limited geographically to a number of northern New Jersey communities. The leadership, the organization, status and image, and financial resources of this group were minimal. It should be recalled that a fourth special police association was involved in the special police issue. The South Jersey Police Reserve Association had become involved in the special police issue during the early stages of the Belmar case in 1980. Yet it was not invited to participate in the creation of the SLEOA. Several factors contributed to this association's not

being able to gain access to the special police bill. Its membership was small (approximately 200) and restricted to just six counties in southern New Jersey. Also its financial resources were limited. But primarily, as was discussed in Chapter 4, it was denied access because of a political squabble between Assemblyman Herman and the Woodbury police chief.

The three special police associations that were "officially" consulted on the SLEOA appear not to have had much overall impact on the bill. They were not even actively brought into the discussions surrounding the bill until January 1984 when the key sections and the "look" of the bill were already essentially in place. Assemblyman Herman invited and "permitted" these special police groups to participate in the legislative process more for his own political reasons than for the input that these groups could contribute. "Occasionally, a group's 'access' to the policy making process may in reality be a matter of the group depending on the favors of a strong political figure who uses the group to his own ends" (Makielski, 1981, p. 8). By involving the three special police associations (however minimally) in the drafting of A-2512, Herman was then able to list these groups in the sponsor's statement to the bill and say that these interest groups had been consulted and had endorsed the bill.

Along with the special police associations there were two other interest groups that were not part of the activist core that helped create the SLEOA. Both the PTC and the FOP played relatively passive and inactive roles. This is not to say, though, that either one was without meaningful power as was the case with special police associations, but they chose not to use it to a great extent. The main concern of the PTC was over the training aspects of A-2512 and getting extra funding to help carry out any additional training requirements for specials. Since the PTC represents the police training "experts" in the state and since the SLEOA was going to give them jurisdiction over the training of specials, Leo Culloo and the

PTC were able to make significant recommendations regarding training. Except in regard to the training aspect of the proposed bill the PTC played a relatively inactive role in the SLEOA. One reason for the apparent passivity of the PTC was that administratively they came under the control of the Attorney General's Office. Any concern of the PTC automatically became a concern of the Attorney General who then acted on it although the PTC never succeeded in getting a separate financial appropriation for the training of specials.

The FOP is a statewide police union similar to the PBA, but it didn't play nearly as active a role in the special police legislative process as did the PBA. It could have exerted more power regarding A-2512 but it chose not to. Although the FOP is not as powerful as the PBA in New Jersey, it still has 7,500 members throughout the state, is well-organized, has effective leadership, and is financially sound. The FOP was concerned about the misuse of specials, and one of its locals had fought and won the Woodbury Heights case that was discussed in Chapter 4. So the FOP was not totally passive regarding specials but it was not overly threatened by them either. This may have been partly because in the FOP's two largest locals (which accounted for more than one-fourth of the union's membership) special police were no threat to the regular police officers' job security. No specials at all worked in Jersey City, and in Newark the specials were totally separate from the city's police department, essentially acting as a private security force.

As previously noted, the interest groups that exhibited the most power and influence upon the SLEOA were the PBA, the New Jersey State Association of Chiefs of Police, the League of Municipalities, and the Attorney General's Office. The PBA had significant power because it was an important public employee union which proved the axiom that there is strength in numbers. The PBA has a membership of about 23,000 officers throughout the state, more than three times the size of the FOP. Of course, the PBA is not just any public employee union, either.

The union represents the vast majority of municipal police officers and county and state correction officers in New Jersey. In recognition of their power and influence, Governor Kean had been very solicitous of the PBA regarding criminal justice-related policy matters since 1982 when he had first taken office. Regarding the PBA's large membership, it must be kept in mind that an interest group "with a large membership can claim to be speaking for a significant portion of the electorate. As such a spokesman, further, it constitutes a genuine political threat to office-holders" (Makielski, 1980, p. 90). If such an interest group is disappointed in the behavior of an elected official, it may seek to punish him or her at the next election. However, even though the PBA membership represented the largest constituency of any interest group involved in the SLEOA, there is no indication at all that the PBA (or any other interest group) directly pressured any politican (e.g., Herman or Kean) with its ballot box clout.

The League of Municipalities represented virtually every one of the 567 municipalities in the state. The League possessed a great deal of political power, perhaps more power than any other interest group.

> When it comes right down to it, 567 municipalities and their governing officers have a lot more political power than does the Division of Criminal Justice, or the Chiefs of Police, or even the PBA. Because what you're talking about is the governing structure of the government itself -- the local government in every town in the state. And every Assemblyman and every Senator knows who these people are and is dependent, to a large extent, upon their political good-will in building his own power base. (M. Cronin, personal interview, June 23, 1986)

Even though the League was in a position to have a tremendous influence on the special police issue and the SLEOA, it exercised its power judiciously.

NJSACOP represents the interests of all of New Jersey's police chiefs. The only police chief executives in the state not represented by NJSACOP are the 20 to 30 police agencies headed by public safety directors. This Association, headed by a strong executive administrator, shared many of the same concerns as the League, but it also wanted police management operational issues considered in any new special

police legislation. This interest group played a very active role in the creation of the SLEOA.

The last activist interest group was the Attorney General's Office. The Attorney General is the chief law enforcement officer in the state and, as such, obviously has a keen interest in any criminal justice-related matter. The Attorney General's Office even employs a director of legislative policy who monitors any legislation affecting the Department of Law and Public Safety. The Attorney General has had a long-standing interest in special policing as evidenced by the issuance in 1977 of Formal Opinion No. 22. The active role played by the Department of Law and Public Safety in the special police legislative process was demonstrated by the extensive drafting and redrafting of the SLEOA done by a deputy attorney general.

The motivations of interest groups has long been examined by political theorists. Whether the interest groups involved in the SLEOA were influential or not, they all shared a common motivation to some extent. The primary interest that brought these groups together in the political arena regarding special policing was economic self-interest. It is not unusual that these groups, or other interest groups, are strongly motivated by economic interests. "A fundamental concern of large numbers of pressure groups is, simply, material gain" (Makielski, 1980, p. 22). It should be added, though, that while some interest groups are concerned about material gain, others are equally motivated by the possible loss of economic benefits. Certainly interest groups are not solely motivated by economic concerns. Social and ideological interests affect groups as well. While often an overlap of concerns influence interest groups, in the political issue under scrutiny, economic interests were a prime motivating factor to one extent or another.

It may be easier to appreciate the economic motivations of the interest groups if one recalls the orientation and viewpoint of each. As noted in Chapter 5, the

interest groups were broadly aligned into one of four categories. The management-oriented groups consisted of the League and NJSACOP. Both of these groups were concerned with the day-to-day operations of running a police agency and the impact special police had on that agency. Small police departments throughout the state often used special officers as less expensive versions of a regular police officer. For example, a community that actually needed eight full-time regular police officers to provide comprehensive police protection might try to "make do" with a police department composed of three or four regulars. The rest of the necessary police protection would be provided by the inexpensive special police officer.

As it appeared inevitable that there would be a new comprehensive piece of legislation regarding special police, the focus of the management groups became one of trying to minimize the costs associated with any change. These groups were minimally successful in this regard. The passage of the SLEOA had a negative economic effect on the New Jersey municipalities that employed specials, especially the Class Two (armed) specials. Under the new law, armed specials could use only department-supplied firearms which had to be left at the station at the end of a shift, so communities had a steep initial outlay for purchasing sidearms. The community was also mandated to supply a uniform and appropriate equipment to all specials, although the special could be charged a "reasonable fee" for it. A community could not charge, however, for the costs of training or issuing a certificate of appointment. PTC- approved police academy training for specials was an additional cost passed on to the local communities as was psychiatric testing of special police applicants. The management groups also were not successful in getting these additional costs placed outside the New Jersey cap law and the restrictions placed on municipal expenditures.

One further economic concern of the management groups was related to the vicarious liability issue and municipal liability insurance. Some police chiefs and

municipal administrators were aware that while the SLEOA would cost their communities some additional expenditures, in the long run, these costs would probably be more than offset by a diminished vulnerability to civil litigation. In our litigious society municipal governments are increasingly the target of civil law suits. The biggest target in a community is its police department and police operations. Bill Kearns, the Chairman of the League's special police subcommittee commented:

> Some municipalities were concerned about lawsuits but some were not. Some have still not yet recognized that they are serious targets for litigation.... If they haven't been hit by a lawsuit, then they haven't recognized it, particularly the smaller communities. (personal interview, June 10, 1986)

Improved training is often the key in preventing lawsuits for negligent police officer performance and in winning any suits that are filed. The leadership of both the League and NJSACOP were aware of the vicarious liability potential as they employed special police officers; after all, the Mularchuk case had dealt with that issue in 1960. The SLEOA meant vastly improved and standardized training for special officers statewide. The increased costs stemming from the SLEOA would be money well spent if a municipality's liability insurance premiums were held down because of the improved training and performance of specials.

The PBA and the FOP, the union groups, viewed specials almost as scabs taking jobs away from regular police officers. The regulars' off-duty job assignments were jeopardized by the special as well. The special often worked cheaper than the regular in the various off-duty security jobs that the police were frequently offered.

The three special police associations were clearly in the special police-oriented category. The members of these associations had a vested interest in continuing to perform their role as special police officers. Usually the special officer did not work full-time for the police department. However, the part-time

income derived from acting as a special officer was an important source of secondary income for a number of people. If a special was paid $5.00/hour and worked 20 hours/week for the police department, then he or she supplemented his/her income by $100.00 each week. Add to this any money paid to the special from off-duty security jobs and one can appreciate the economic stake that specials had in the whole issue of special policing.

As the SLEOA moved towards its final form, the special police groups wanted to be sure they didn't bear the economic costs associated with the new requirements of the bill. For the most part they lobbied successfully as they claimed that specials were basically "minimum wage" police officers who provided an important public service at minimal cost to the communities. The special police groups won concessions in the SLEOA as the bill mandated that the special officer could not be charged for his or her psychiatric screening exam, sidearm, training in the academy, or certificate of appointment. However, specials could be charged a reasonable fee for their uniforms, and municipalities did not have to pay the special officer for time spent in training.

Lastly, the Attorney General's Office and the PTC comprised what could be categorized as the state government interest groups. These groups, too, had an economic interest in special policing although it was not as direct and immediate as it was for the others. It was noted, for example, that the PTC hoped to hire more employees and have its budget increased so that it could more effectively supervise the training requirements of the SLEOA. Indirectly, the Attorney General also had economic concerns regarding specials. If the PTC's scope and responsibilities were expanded as a result of the SLEOA, then that would broaden the Attorney General's authority as well. But in a more important economic sense the Attorney General's office had to seek to provide some balance between the competing economic

concerns of the various interest groups and the public safety needs of the citizenry of New Jersey.

The relative economic concerns of the interest groups can also be observed in the continuum presented in Figure 1 on page 150. The union interest groups had the most to lose economically through the unrestricted use of specials; therefore, they favored eliminating or severely limiting the employment of specials. The special associations were obviously at the opposite end of the economic spectrum and wanted to continue to be used with as few restrictions placed on them as possible. The management groups leaned in that direction also, but were somewhat constrained by the vicarious liability issue. The state government interest groups were at the mid-point of the continuum, trying to provide a balance between the competing economic demands. But as one considers this continuum, a proviso should be added. "As logical as it may seem to classify groups by their interests, it must be noted that a pressure group is a human institution, bringing together individual wants and purposes which, in the mind of the person involved, often are not so clearly defined as they may first appear to the outside observer" (Makielski, 1980, p. 26).

Thus group boundaries may be difficult, if not impossible, to determine empirically. The alignment of the interest groups regarding special policing was not as clear-cut for the individuals in a particular group as is implied by Figure 1. This is primarily because many individuals were not solely members of one interest group or another. Group memberships overlapped and this presented a quandary for the affected individual. Interest group theorists have noted that this often occurs and was by no means unique to this particular political issue. There was a good deal of evidence of overlapping and sometimes conflicting membership by individuals in more than one interest group. As Pavlak (1981) says, "Who should be counted as belonging to a particular group: its formal membership only, only those who

participate actively in group activity, or all those who profess to share the group's values?" (p. 114). Under the latter and more liberal interpretation of group membership, many instances of dual membership were observable.

For example, one set of clearly overlapping memberships arose for the police chiefs. They were members of the management-oriented NJSACOP but had all started their careers as rank-and-file patrol officers and may have shared some of the same sentiments as the union interest groups. Nationally, law enforcement interest groups are generally divided between associations of executives (e.g., the International Association of Chiefs of Police) and unions of line officers (e.g., the PBA).

> While this division of law enforcement organizations into executive and line organizations reflects the hierarchical relationships between these two types of personnel it cannot be compared to traditional class differences.... Most police executives come up through the ranks within their own departments and are therefore peculiarly tied to the thinking of line officers and to the organizational climate of their own departments. (Nagel, Fairchild & Champagne, 1983, p. 10)

Nevertheless, "despite shared values, the organizational interests of managers and the rank-and-file diverge rather sharply, leading to contrasting perspectives on operative policy" (Scheingold, 1984, p. 227). Approximately 70 percent of New Jersey's police departments employed special police officers to some extent. So whatever qualms about specials police chiefs may have had when they were patrol officers obviously were set aside when they were confronted with the daily reality of trying to stretch a limited resource -- the police department budget. There may have been some police chiefs, though, who secretly hoped that the New Jersey Supreme Court would have sustained the lower courts' severe restrictions on the use of specials. This would have forced many communities to increase taxes and hire more full-time regular officers if they were to continue having a police department. One police chief from a shore community, North Wildwood, expressed this sentiment when he said he was against the exemption granted to resort municipalities to

exceed the 25 percent cap on the total number of Class Two specials that could be employed. He felt that if the shore communities were prohibited from over-utilizing specials, then the city fathers would be forced to hire more year-round regular police officers (W. Wiszt, personal interview, June 19, 1986).

Overlapping and possibly conflicting group memberships confronted other parties as well. It must be remembered that there was no restriction against regular officers working as special officers in other departments. Some regular officers would routinely moonlight as specials in a neighboring police agency. This was particularly so in regard to regular officers working at shore communities during the summer. So it was not unusual to have PBA or FOP members also employed as part-time special officers. Also, some police officers and even some police chiefs started their careers as special police officers either in their own or in some other police department. Where did their group allegiances lie then? In addition, some municipal officials were special police officers in the town where they held legislative office -- often a legal ploy to permit a city official to carry a firearm. Was this a conflict of interest as a member of the city council worked as a special under the supervision of the police chief, yet acted on the chief's police budget? With the passage of the SLEOA both legislators and regular police officers were prohibited from becoming special police officers in any community.

Related to the concept that individual members of any interest group should be viewed as unique people with multi-faceted and, perhaps, competing allegiances is the idea that within every interest group are not only individuals who differ from the group's credo but also one or more collectives who differ from it. Organizational factions occur within interest groups and given the nature of human beings it is almost inevitable that they occur. Also, "All formal organizational schemes are modified by 'informal organization,' that is, a pattern of roles and interactions that by-pass the paper organization" (Makielski, 1980, p. 51). Informal

organization may be a product of internal power struggles such as one faction attempting to gain control over the decisions of the organization against the resistance of others. Also, "The larger the group, the more likely there will be differences in attitude ranges and the intensity with which interests are held among members" (Makielski, 1980, p. 59). This appears to have been the situation which occurred in the PBA as internal factions appeared which attempted to block the passage of the SLEOA. With a group like the PBA, its large membership and broad geographic base can be politically advantageous but might also increase the probability of internal dissension and factionalism.

Organizational factions also developed in the League of Municipalities and NJSACOP because of the geographic dimension that affected these interest groups. "Particularly in state and local politics, this sense of territoriality affects the degree to which a group will feel impelled to engage in pressure activities" (Makielski, 1980, p. 32). So even though municipal politicians from the shore were members of the League and police chiefs from the shore were members of NJSACOP, they also realized that they, as officials at shore communities, had some different and perhaps competing interests with their association colleagues from non-resort areas. Thus, factions developed both within the League and the Police Chiefs' Association which spoke out and tried to influence the SLEOA with the best interests of the shore communities in mind. For example, most shore police chiefs and municipal officials did not agree with the North Wildwood police chief's sentiments regarding the 25 percent cap. They clearly felt that they should be able to use as many special police officers during the season as necessary; therefore, they fought for (and won) an exemption from that restriction.

Even a special police association experienced factionalism in its organization. The oldest and largest of the special police groups, the New Jersey State Special Police Association, had a significant splinter group within it. The Newark chapter

of the Association consisted of approximately 250 special officers which was about one-fourth of the organization's total membership. The Newark specials were not part of the police department and functioned instead as private security guards. If the SLEOA became law, the Newark chapter of specials did not want to lose its economic benefits as well as the ability to carry firearms off duty in Newark. The leadership of the chapter lobbied in conjunction with the Association as a whole, but they also did some lobbying on their own to protect their unique self-interests. The Newark chapter lobbied successfully and won several concessions that found their way into the wording of the SLEOA. A whole section of the bill was changed to accomodate the Newark specials. A-2512 was modified in the Senate Judiciary Committee (with Herman's concurrence) to have it conform to the language of the Lipman bill (A-589, which shortly became P.L. 1985, c. 45) concerning the carrying of weapons by the Newark specials. When the SLEOA became law, the Newark specials were exempt from a number of the law's restrictions. For example, they were permitted to carry firearms off duty, they could work more than 20 hours per week, and no restrictions were placed on Newark (a non-resort community) concerning the number of specials that the city could appoint.

These factions within the different interest groups developed to a significant degree because of "three characteristic divisions [that] have shaped New Jersey's political culture" (Zukin, 1986, p. 9). The first is the division between North and South Jersey. These two regions have fundamentally different personalities as far as population densities, land usage, and economies. The schism between north and south is so great that in 1981 a number of South Jersey counties voted on a proposal to form a separate state. "Few South Jerseyans were actually serious about secession; rather they saw the vote as a way to draw attention to their concerns" (Zukin, 1986, p. 9). Most southerners complain that they don't get their fair share of state spending and that the laws made by the state legislature (where the balance of

power is tilted toward the north) overregulate them without any financial aid to carry out the mandates. Assemblyman Herman commented about the north/south schism when he noted that "most partisanship [in New Jersey] is geographic, not political" (personal interview, August 7, 1986).

This unique aspect of New Jersey's political culture helped create the factions which presented themselves in the League of Municipalities and NJSACOP. In regard to special policing it wasn't so much the split between north and south as between shore and non-shore communities although three of the four counties that are home to shore municipalities (Cape May, Atlantic, and Ocean) are in South Jersey. The fourth seashore county, Monmouth, is in Central Jersey but has more of a southern than northern Jersey orientation. The municipal administrators and police chiefs from the shore counties were afraid that their needs and wants would be ignored by the SLEOA, so they formed factions within the League and NJSACOP to agitate and lobby for their unique situation. Assemblyman Muziani and other shore politicans were mobilized to ensure that the shore communities were considered in the bill as much as possible. These factions from the Jersey shore were fairly successful in making their voices heard and having an impact on the SLEOA. A number of exceptions were carved into the bill as a result of lobbying efforts by the shore communities.

Another characteristic division shaping the state's political culture is the division between the cities and the suburbs. There is a great disparity in New Jersey between wealthy suburbs and destitute cities. The issue regarding special policing was not so much affected by the urban/non-urban split as it was by the division between Newark and all other communities in the state. In many respects Newark is far and away the primary city in the state. Its population of more than 330,000 is 100,000 more than the next largest city, Jersey City. Even though a changing economic picture and urban decay have hit Newark hard, the city still is

home to almost five percent of the state's jobs and five percent of its population. The special police situation in Newark contributed to the relative passivity of the FOP during the legislative process. It also contributed to the somewhat strident lobbying efforts of the Newark special police officers. They sought to ensure that they were treated separately and more liberally by the drafters of the SLEOA. For the most part they succeeded in their efforts. Although this did not endear them to other special police officers throughout the state either in their own or in other special police officer associations, they achieved what they set out to do -- protect their unique economic interests as a private security force in Newark.

The third and last division shaping New Jersey's political scene is the clash between local and state authority. "Many New Jerseyans have a stronger sense of identification with their communities and neighborhoods than they do with the state as a whole" (Zukin, 1986, p. 9). This is the "home rule" issue which appears in many areas of the nation in one form or another. This issue is particularly pronounced in New Jersey where there are 567 separate municipalities in what is the fifth smallest state in the United States. Even today, despite the growth of state government in recent years, the tension between state control and local autonomy is an important facet of the Garden State's political culture.

The home rule issue, however, did not really contribute to factionalism regarding the special policing issue. As a matter of fact, it appears that all the factions and all the interest groups were united in their support of local control and home rule -- all, that is, except two. Both of the state government-oriented interest groups, the PTC and the Attorney General's Office, naturally leaned more toward a stance of statewide standards and uniformity regarding specials. The home rule issue was a significant underlying factor throughout the special police legislative process. It colored many issues to some degree, and it pitted the Attorney General and the PTC against the rest of the interest groups.

The majority of the interest groups supported home rule under the guise of favoring "management prerogatives," "accountability," and "efficiency." State government interest groups favored state control over specials under the guise of "uniformity," "standardization," and "professionalism." Since, as one political wag commented, the concept of home rule in New Jersey is viewed almost as a divine right by municipal officials, it is interesting to discuss some points about it. First, home rule in New Jersey is a myth as far as the law is concerned. "Legally and constitutionally, there is very little to stand in the way of the state exercising complete control over municipalities," according to Donald Linky, a lawyer and former director of Governor Brendan Byrne's Office of Policy and Planning (Sinding, 1984, p. 8). But there are those who say that the concept of home rule is a political reality nonetheless. The state's 567 municipalities constitute a major political force which exercises considerable power, more than in most other states. Essentially it might be said that regarding home rule, the law is on the side of the state and tradition is on the side of the municipalities.

One individual described home rule as "a state of mind in New Jersey" (Sinding, 1984, p. 11). It's really a euphemism or a catch-phrase that has multiple meanings depending upon who is using the phrase and in what context. It should also be pointed out that "Opposition to state control -- while rationalized by a statement that the principle of home rule should be preserved -- is often motivated by fear: fear that the state will further the interests of a broader public than that present in a given municipality" (Sinding, 1984, p. 12). Several members of different interest groups expressed a concern about the state having a "hidden agenda," a fear held by many of the state's takeover of special policing followed, perhaps, by a takeover of the total police function. This feeling was expressed somewhat by Bill Kearns of the League of Municipalities:

> They [the Attorney General's Office] wanted something much more with uniformity and state control. I think the underlying philosophy is that the

> Attorney General's Office would like to see more police departments under the control of the Attorney General's Office as the top law enforcement officer of the state and less divergence with local control. (personal interview, June 10, 1986)

However, DAG Fred DeVesa denied the state had any type of hidden agenda for taking over special policing, or regular policing, for that matter:

> I have worked for several Attorney Generals, and I have never seen one that really had an interest in taking over, if you will. The feeling has always been that police work, the police power, ought to be exercised at the local level as long as certain minimum standards are complied with. And I don't think that philosophy has ever changed. (personal interview, July 8, 1986)

The ongoing tension between home rule and state control was to affect all the interest groups and influence most of the issues to some degree or other throughout the special police legislative process.

Building Consensus

In an article reviewing contemporary research about interest groups and their involvement in criminal justice politics, Professor Erika Fairchild reached several conclusions. One of the most relevant to the special police situation in New Jersey was that "criminal justice legislation is generally conceived by small numbers of influential legislators, administrators, and interest group representatives and enacted on a consensual basis by state legislatures" (Fairchild, 1981, p. 188). This statement applies to the special police issue in the Garden State as the SLEOA went through the legislative process. The bill was generally enacted on a consensual basis without open conflicts and without major public or media involvement.

Several indications prove this was the case. The newspapers, for example, were not interested in the special police issue as the SLEOA took shape and went through the legislative process in 1983, 1984, and 1985. Newspapers from around the state carried few articles about any aspect of special policing, much less the political and interest group activity in Trenton. The newspapers had covered the Belmar case as it wound its way through the state court system in 1980, 1981, and 1982. After

the SLEOA was approved by the governor in early 1986, articles started to re-appear about special policing and the implications of the new law, particularly for the shore communities. But while the SLEOA was being hammered out in Trenton, it was essentially a non-story as far as the press was concerned. This indicates that the various interest groups chose not to use the press to air their differences. The differing viewpoints of the interest groups were not aired in public through the media. Disputes were settled away from the public's eye. Just as the media weren't interested in the special police legislative process, neither was "John Q. Citizen." First, of course, the media weren't informing him at all about the issues or the process and, second, even if he had knowledge of the issues, there is no indication that he would have cared about them one way or the other. After all, the SLEOA dealt with a change in administrative law and not criminal law. Administrative law in general is less exciting and controversial than criminal law. Special policing is not a "glamorous" and stimulating topic even in police circles. It does not attract the public's interest as capital punishment does or the police use of deadly force, for example. No citizens or citizen groups (other than the special police officer associations) were involved in the special police legislative process.

Another indication of the consensual nature of the legislative process is that partisan politics was never a factor in the SLEOA. This was commented on by representatives of all the interest groups. The bill never became a Democract or Republican issue in a narrow partisan sense. Somewhat indicative of this is that in the four votes taken on A-2512 as it was in the Legislature, all the votes were unanimously in favor of the bill (see Appendix E). Bill Kearns of the League of Municipalities cautioned, however, that unanimous or lopsided votes in the Legislature do not have much significance. First, Kearns asserts that only a few legislators in the Assembly or Senate really know and understand any particular bill. And second:

> Take a look at how many bills pass unanimously. The [argumentative] process takes place in the committee unless you have a very, very strong philosophical dispute, a partisan-type thing. When you have a split on a bill of any significance, it's usually because it's a Republican/Democrat split on the philosophical approach to something. Any bill you wind up with, you may have one or two people opposing. But having lopsided votes in the Legislature doesn't mean a lot. (W. Kearns, personal interview, June 10, 1986)

It's important to re-examine Professor Fairchild's statement that "criminal justice legislation is generally enacted on a consensual basis without open conflicts" (Fairchild, 1981, p. 181). While this is true in regard to the particular topic under scrutiny in this dissertation, it must be pointed out that there was strong disagreement over certain aspects of the SLEOA.

While there may have been a general consensus on the goals of a special police bill, there was little consensus on the means to achieve them. This lack of agreement on the means, though, should not be unexpected. As Scheingold (1984) notes, "Although softened by accomodations and cooperation, the clash of values and interests typifies the criminal process" (p. 203). The concerned interest groups disagreed on major points as well as trivial ones and yet, ultimately, a consensus was reached on the SLEOA; the bill was approved without any overt display of dissension. This did not occur by chance. Assemblyman Herman played a key role in helping facilitate the interest groups' reaching consensus.

Herman conscientiously worked on creating consensus among the interest groups. He wanted the SLEOA to be a good bill and one that all the parties could live with. Over the years, as sponsor of many significant pieces of controversial legislation, he had employed the consensus-building approach quite successfully. He was eventually able to do this with the special police bill as well.

Herman commented:

> I recognized I needed a broader approach to deal with the problem [of specials]. The more I got involved with it the broader the problem. It started stimulating my intellectual juices. That's because I respect the process. And I'm talking about the communication process, not just the legislative process, and everybody has something to offer. I'm a great

> believer in bringing people in and stealing their intellectual abilities because I feel that, given the opportunity, people will participate in the process and contribute to it. You don't put together a good bill just from the standpoint of taking it out of a textbook. A good piece of legislation is the amalgam of the human experience. They all have something to offer and the key is to bring their collective experiences and their viewpoints into focus and try to adjust them and make the system work. (personal interview, July 7, 1986)

With so many competing interest groups involved in the creation of special police legislation, Herman was in a good position to create compromise. This may seem to be paradoxical, but it has been shown that where and when interest group competition and opposition is strong, much of the power of a pressure group is reduced. What occurs, in effect, is a situation of "countervailing-forces," where one interest group helps to negate another opposing one. This opposition forces interest groups to bargain, to compromise, and to moderate their claims (Makielski, 1980, p. 102). The governmental legislator being pressured by two or more powerful and contending interest groups is in a advantageous position.

> He need fear neither group and can listen to the advice and information provided by both. Ultimately, he can act as "broker," finding a compromise solution, claiming credit for resolving the conflict, and congratulating himself for protecting "the public interest." In this situation, the pressure group may find the tables turned on itself: instead of applying pressure to a government official, it may find itself being pressured to be "reasonable" and to avoid taking an unbending stance. (Makielski, 1980, p. 103)

A similiar situation exists as far as rival interest groups are concerned. Some of the fiercest interest group struggles may be between rivals with similar interests rather than opposing groups. Interest group rivalry was present to some extent in the special police issue, particularly among the two police unions, the PBA and FOP. As with opposing groups, Assemblyman Herman was in a position of being able to play rivals off against one another. If the PBA was intransigent on a certain issue, then Herman could point to the FOP's often more moderate view regarding that issue and thus coerce accomodation.

It would be a mistake to view Herman's role solely as one of acting as a passive broker or reactive referee who just made sure that the different interest groups participated in the legislative process according to the "rules of the game" and that their demands balanced out. He certainly did act as a referee at times, but overall he played an activist role in both the creation and the passage of the SLEOA. Before examining his role in depth, something must be considered which in essence forced him to play the role of an active, assertive legislator. Professor Rosenthal (1986) comments:

> Some bills are of relatively little concern to the legislature or governor, but of major interest to organized groups. Referred to as special interest legislation, these bills affect the members of one or several groups more directly than the general public. With regard to issues of this sort, the legislature plays a reactive role, acquiescing to group interests or refereeing battles fought out between two or more interest groups fought out on legislative terrain. Although members take sides and many serve as advocates or agents, the involvement of the legislature overall is relatively slight. (pp. 127-128)

Even though few legislators were interested in the special police issue and even though the media and the average citizen didn't care about it, Herman still felt it was an important issue because the public interest was at stake. After all, in many communities special officers possessed police arrest powers, were armed, and had the legal authority to deprive citizens of their freedom or even their lives. If specials did not perform their jobs up to par, then the public's safety was potentially in serious jeopardy. Herman, as both a lawyer and Chairman of the Assembly Judiciary Committee, felt that a citizen should be able to expect to get the same high caliber of service from the special officer as he or she received from the regular officer. If specials were acting for all intents and purposes as regular police officers, then their level of performance should be similar or the public interest was being ill-served.

Some group theorists would challenge the concept of a "public interest" or a "public good." They argue that these terms are simply abstractions which do not

exist apart or separate from the interest group political process. "If a public interest exists, it is whatever results from the struggle of competing interest groups and does not exist as an independent entity of political life" (Pavlak, 1981, p. 113). But surely it is overly simplistic to say that public interest does not affect the actions of individual legislators on certain issues. "The evaluation that each person in a position of responsibility gives to opposing presentations of the public interest may well be heavily influenced by the activities of organized lobbying associations, but these associations are not the sole determinants of the content of a decision" (Zeigler, 1964, pp. 23-24). Aside from the special concerns held by the nine different interest groups, Herman considered and balanced three other broad factors related to the public interest.

One aspect of the public good that had to be considered and handled fairly, pertained to the Jersey shore and tourism. Tourism in New Jersey has grown so rapidly in the 1980s that the state now ranks fifth in the nation in attracting visitors. The tourist industry in the Garden State, the second largest industry in the state, generated $11.5 billion in expenditures in 1986 for goods and services. Every year millions of people travel to the Jersey resort communities, primarily at the shore. Families with children comprise much of the tourist population. Assemblyman Herman and others felt that the state, as well as every community, had an obligation to see that these tourists, as well as New Jersey residents, felt secure in their persons and that their property was protected. Even though the influx of tourists was a seasonal phenomenon, the state could ill-afford to provide summer police protection for tourists via an unprepared, poorly trained special police officer. That would be unfair not only to the tourists but also to the New Jersey taxpayer in that, if tourist revenues fell off because of the public's perception of a lack of safety at the Jersey shore, ultimately the taxpaper would bear the cost of decreased state income.

In regard to the taxpayer, Herman had to consider not only the effect of seasonal police officers on the tourist industry but also the more immediate financial impact on the taxpayer in small communities throughout the state. If special police officers were eliminated altogether or their use was severely curtailed by a piece of special police legislation, then a number of small communities would have to come up with increased revenues to hire more full-time regular officers or close their local police departments. How would the SLEOA balance the interests of the average New Jersey taxpayer and the need for professional, competent policing throughout the state? This was a part of the quandary confronting Herman.

In regard to policing and regardless of the narrow special interests of many parties, what was in the best interests of professional (i.e., competent and efficient) law enforcement? This was a third area of the "greater good" that confronted Assemblyman Herman. Both of the influential national reports coming from the President's Commission on Law Enforcement and Administration (1967) and the National Advisory Commission on Criminal Justice Standards and Goals (NACCJSG, 1973d) recommended that police agencies consider using reserve/auxiliary police provided they were properly selected, trained, and supervised. These reports suggested that reserve/auxiliary police personnel could play a vital role, one similar to the army reserve or National Guard: a sort of citizen-soldier of policing. There are no indications, however, that Herman consulted these reports as the SLEOA was drafted. But the Attorney General's Office was well aware of both of those national reports as well as their own PTC and other in-state reports (see Chapter 3) which for the most part echoed the recommendations of the "experts" regarding reserve/auxiliary police made by the NACCJSG. The Attorney General's Office played an important role in redrafting A-526 and transforming it to A-2512 which was eventually approved. It is interesting to note that the SLEOA compares favorably with the recommendations made in national and state reports as well as

matching the recommendations made by the increasingly active and prestigious Commission on Accreditation for Law Enforcement Agencies (see Chapter 2 for a further description). So good professional law enforcement practice was another facet of the complex equation in determining what was best in the public interest.

Just as some group theorists would challenge the concept of "public interest," others would be skeptical about the role of the individual in the group legislative process. These interest group theorists lose sight of the fact that the actions of individuals can have a significant impact. There may be a tendency to dismiss the individual political actor as being of relatively little importance or to argue that individual behavior is only important in the group context (Pavlak, 1981, p. 113). However, it should be emphasized that there are some charismatic and forceful political actors who may get involved in an issue who have the capacity to significantly affect it. One individual did play an influential and pivotal role in the creation and passage of special police legislation in New Jersey. Without the involvement of Assemblyman Martin Herman the SLEOA may never have become a reality. After all, Herman was the creator and driving force behind the SLEOA. Starting in 1981, even before the Appelate Division had handed down its decision in the Belmar case, Herman was the primary sponsor of three different versions of the SLEOA. He introduced these bills in three different legislative sessions, and he stayed with this bill tenaciously through to its final approval. Even after Herman's re-election defeat in early November 1985, he, as a lame duck, continued to strongly and skillfully push for the bill's passage up until the last day of the 201st Legislature when the governor signed the new law into existence. What engendered Herman's fierce and long-term committment to special police legislation? Herman, himself, said:

> This was an important bill to me in many respects because this was a bill that I worked on that did not get a lot of publicity. This was sort of what I would call an in-house labor of love because it was not like the revision of the criminal code, or juvenile justice, or family court, generic

> drugs, or raising the drinking age to 21, or the "no smoking" bills that I actively co-sponsored. It didn't have that type of public dynamic. It didn't mean that it wasn't important. It was a very important bill. And it just served another need that I felt had to be met. (personal interview, July 7, 1986)

Although many key individuals were involved in the creation and passage of the SLEOA, it is doubtful that any played a more crucial and indispensable role than Herman. His importance in regard to the SLEOA relates to two factors: his unique professional and personal characteristics. In relationship to his professional responsibilities as a legislator, Herman was unique in many ways: He was (a) a lawyer who had been both a former PBA and municipal attorney. This gave him insight into and credibility with management and police union interest groups; (b) a Democrat in a Democratically controlled Legislature. Throughout his tenure in office (1974-1986) the Democrats had controlled both houses of the Legislature; (c) a six-term, 12-year veteran politican who knew the ins and outs of state government in Trenton; (d) a four-term, eight-year Chairman of the Assembly Judiciary Committee and its predecessor, the Assembly Judiciary, Law, Public Safety, and Defense Committee. These committees handled a large amount of important legislation introduced in the state, particularly anything pertaining to criminal justice matters. As Chairman of these powerful and influential committees, Herman wielded significant political clout; (e) a two-term, four-year Assistant Majority Leader of the Democrats (1982 to 1986); (f) the sponsor or co-sponsor of over 100 pieces of legislation signed into law during his legislative tenure. Many of these bills were substantial and important pieces of legislation. A Herman-sponsored bill was known for the most part as being a "quality product"; and (g) a legislator from southern Jersey who did not come from the shore area or an area overly dependent on specials.

While Herman's impressive professional credentials as a legislator contributed substantially to his effectiveness in regard to special police legislation, his personal

characteristics should not be overlooked. Although, as group theorists note, it is difficult to observe and quantify an individual's attitudes, beliefs, and other personality traits, an attempt should be made to do so. Since the unique personal attributes of an individual may have as much to do with his or her political impact as anything else, it may be instructive to examine other people's perceptions of Assemblyman Herman. This compilation of descriptions of him were excerpted from one magazine article ("Herman Starts," 1986) and one newspaper article (Goodman, 1986) as well as interviews with several people from different interest groups. Herman was variously described as:

> The best and brightest of the South Jersey legislators; steered major legislation into the books; intelligent, witty, and innovative, though admittedly abrasive at times; acerbic, outspoken; bragged about the many laws he supported; an antismoking crusader; relentless critic of the Division of Motor Vehicles; a prime sponsor of sweeping reforms of the state's criminal code; partisan critic of the Kean administration; hard for anyone to attack Herman's intelligence or legal knowledge; few legislators have been as intolerant of criticism; in legislative committee meetings he delighted in bullying witnesses who disagreed with him; intemperate; workaholic; tough person; couldn't fight him; short and cocky.

From this compilation of numerous comments, an overall picture of Assemblyman Herman's personal characteristics emerges. While few critics could find fault with his professional credentials as a legislator, a number of people criticized Herman's temperament and personality traits. In essence these critics felt that, at times, Herman could behave as an abrasive, belligerent bully. And yet, in considering these facets of Herman's personality, aren't these, to a certain degree, the personality traits that one has to possess to be an effective and efficient chairman of an important state legislative committee? While no definitive answer can be given to this question, it is important to note that the overwhelming consensus regarding Herman was that he was an effective and efficient chairman. And the SLEOA did become law. So Herman's personal style complemented his professional credentials and contributed to the pivotal role he played. He was an indispensable political actor who had a significant impact on special police

legislation. Without his active involvement, it is doubtful that the SLEOA would have come to fruition.

Not only was Herman the right man for the job of sponsoring and guiding the passage of the SLEOA, he was also available and in position at the right time. Timing and just plain luck often play a role in the legislative process (Redman, 1973). The New Jersey Supreme Court's Belmar decision was the key event in the creation of a special police bill. Without the Belmar case, Assemblyman Herman could never have won approval for comprehensive special police legislation. When events happened and how they happened all contributed to the time being ripe for the SLEOA. It has been said that nothing is more powerful than an idea whose time has come. By the mid-1980s the time had come for new, comprehensive special police legislation. Herman was in the right place at the right time, and he was able to seize the momentum and increase its speed until a "critical mass" had been achieved and the passage of the special police bill was assured.

Conclusion

While it is true that each state's social, economic, and political culture is unique to a certain extent, in all states interest groups play an active role in the creation of criminal justice legislation. This was clearly the case in New Jersey in regard to a new special police bill. The interest groups that took part in the political process in New Jersey, their viewpoints and their methods of lobbying, are probably similar to interest groups involved in reserve/auxiliary legislation in other states. It is hoped that this case study has shed some light on these interest groups and their motivations. If legislators, citizens, or others in any state are seriously interested in promoting the advancement of reserve/auxiliary policing, then this thesis can act as a blueprint to these parties in identifing potential obstacles and possible pitfalls to avoid. Perhaps this thesis will, in a small way, contribute to the

ability of law enforcement to create a more capable brand of reserve/auxiliary policing in the United States.

Certainly this dissertation is not the final word on the SLEOA. The period of time under scrutiny in the thesis ends at October 1, 1986 with the actual implementation of the Act. Some of the police management and operational problems were alluded to in the case study, but the full scope of these will not have appeared for one or two years or, perhaps, longer. There will be a need for research concerning these important operational issues, particularly if the SLEOA needs to be modified in any way. Several other areas are in need of future research. These issues may provide grist for future New Jersey policy makers. Other developments have already taken place to a limited extent. If these developments increase in scope or accelerate, there may be a need for some type of official recognition and discussion. The developments are:

1. The decrease in the number of police departments in the state. Several police departments have already been disbanded since the SLEOA became effective. Four small police departments (Upper Deerfield, Tuckerton, Lawrence, and Southampton) in Cumberland, Burlington, and Ocean Counties could not or chose not to meet the mandates of the new law. Policing in those communities is now being provided by the New Jersey State Police. Some other communities are exploring the possibility of merging police departments or contracting for police coverage from a neighboring municipality.

2. The total number of special officers employed statewide is diminishing. An informal telephone survey undertaken by the PTC in the fall of 1986 disclosed that there were approximately 4,500 specials in the state (A. Salerno, personal interview, November 13, 1986). In a written survey conducted in December of 1975 the PTC identified 5,056 special police officers in New Jersey. By June 1982 the PTC (1982) had projected that there were at that time approximately 5,500 special officers (p. 3). Regardless of which figure one accepts, it appears that the use of specials has decreased.

3. The ratio of specials categorized as Class Two versus Class One will change. In the future there will not only be fewer specials in general, but more of them will be Class One (unarmed) rather than Class Two (armed). Police departments will both re-evaluate their need for and assignment of special police officers. In light of the time-consuming and costly training required to qualify Class Two special officers, police departments will opt instead to use specials in non-critical and less hazardous tasks. This will probably not happen as much at the shore communities as it will in other parts of the state.

4. The number of auxiliary police officers and auxiliary police units will increase. Police departments will create auxiliary police units and increase their use of the volunteer auxiliary police officer. Some police agencies that have eliminated specials or have been forced to curtail their use may still perceive a need for trained and qualified supplemental manpower in case of civil disorders or disasters. They will be able to satisfy this need through the creation of an auxiliary police unit which comes under the jurisdiction of the New Jersey State Police and not the SLEOA. Some police departments may do this as a ploy to get volunteer (i.e., free) supplemental police protection and also to circumvent the rigorous and costly restrictions of the SLEOA. Auxiliary policing is currently under much less demanding controls and training requirements than is special policing.

It is unfortunate but true that what was written in a 1984 magazine article still applies today in New Jersey. "Statewide standards for local police are still perceived as a threat to home rule by municipal governing bodies and local police" (Sederis, 1984, p. 18). Ideally, perhaps, all the local governments who employed special police officers in the state should have come together and established a high quality set of standards governing the use of special police. But this certainly was not about to happen with 567 municipalities in the state, the vast majority of those employing specials. Essentially, local governments are poorly equipped to handle issues of a statewide magnitude and special policing is one of those issues. New Jersey's 21 county governments would not have been much better than the municipalities in tackling the special police issue. The Belmar case showed that special policing was a statewide problem which would require a statewide solution.

It was, therefore, up to the concerned interest groups and politicians to seek a solution to a complex problem. "Reconciling the self-interest of citizens with the broader public interest is, in part, what the conflict between home rule and state supremacy is all about" (Sinding, 1984, p. 14). It took a legislator such as Assemblyman Herman to perform an intricate balancing act of trying to solve a difficult problem, reconcile competing interest groups, and still represent the common good. Herman used the consensus approach to hammer out a solid piece of legislation. This approach was in keeping with the best traditions of democratic

government with decisions largely arrived at by political compromise with the public interest kept in mind.

The following two quotes are representative in regard to the generally held perspective regarding the SLEOA. Mark Cronin of the Attorney General's Office said:

> Nobody got everything they wanted in this bill, but I think we all did very well. I think for that reason it's a good piece of legislation. (personal interview, June 23, 1986)

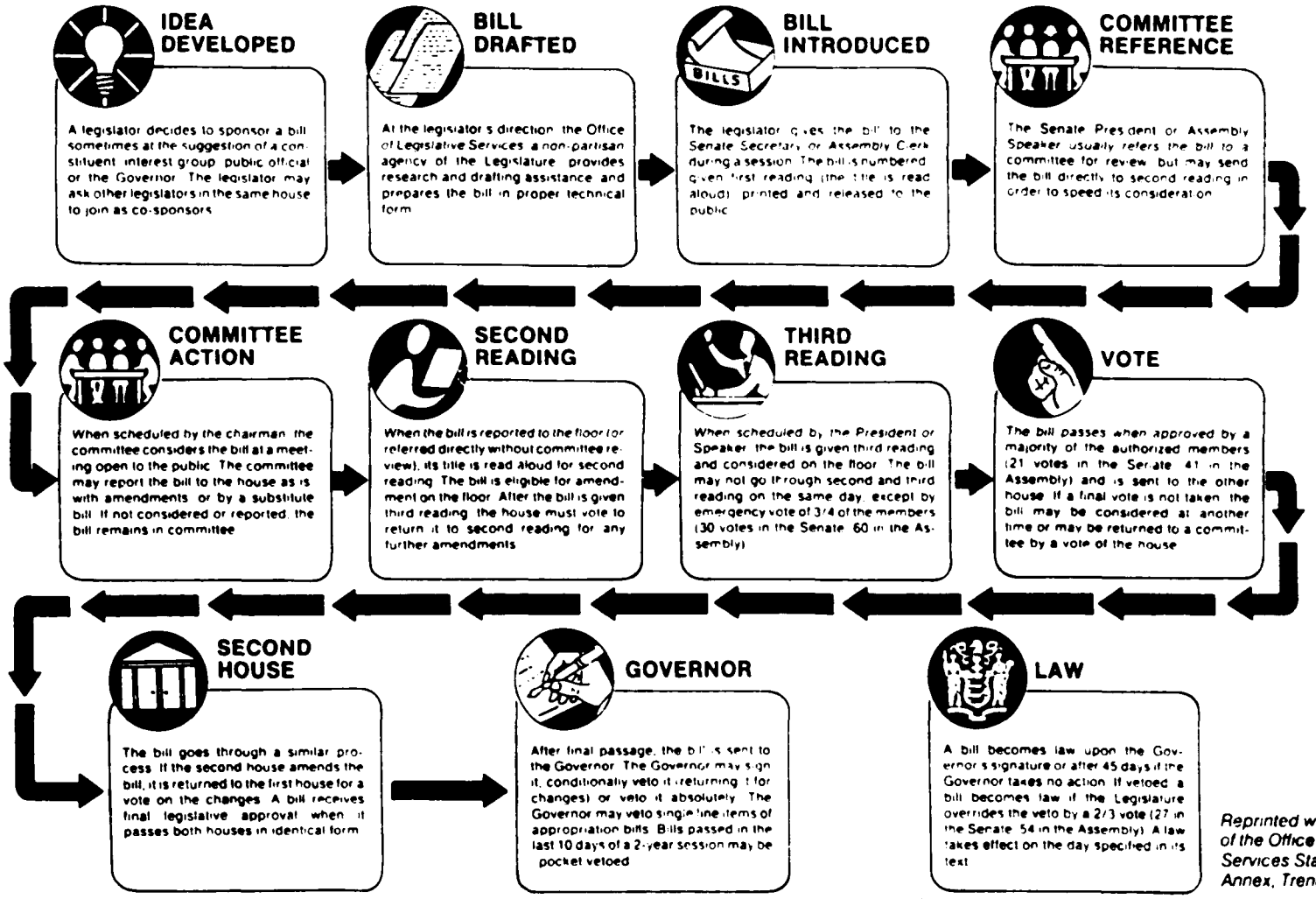
Discussing this bill, William Kearns of the League of Municipalities commented:

> But on the whole we hammered out something that was acceptable to the interest groups and acceptable in a way that it [the bill] is not the horse designed by committee that turns out to be a camel. It's something that is basically good legislation. Does it need some fine tuning? Absolutely. I defy anybody to name any piece of legislation that has gone through the first time and has not, over some period of time, had to have some fine tuning or some modifications made to it. (personal interview, June 10, 1986)

The newly created standards for special police officers enacted in the SLEOA will have a significant effect on law enforcement in New Jersey. By approval of this Act the Legislature has made it clear that police powers should be exercised primarily by permanent, full-time, professional police officers. But it did acknowledge that the citizen volunteer still could play an active role in policing. In those situations where it is necessary to use special law enforcement officers, the Legislature has provided a statutory mechanism to help ensure that specials are properly selected, sufficiently trained, and effectively supervised to perform police duties. Obviously, implementation of the Act will not be an easy task. The training and certification of some 5,000 special officers will be an expensive and time-consuming process. Questions regarding the legislative intent behind some of the statutory provisions will need to be resolved. Four new bills have already been introduced in the Legislature which would modify the Act. The realignment of delivery of police services will initially place added strain on already overburdened

law enforcement agencies. But the short-term sacrifices should, in the long run, result in the overall improvement of the quality of police service in the state and should be well worth the effort.

THE PATH OF LEGISLATION IN NEW JERSEY



Appendix B

Legislative History of Failed Attempts at Creating a Special Law Enforcement Officers Act

1981

1. A-3234 Herman, Kavanaugh, Saxton, Smith

   Mar. 23 - Designated the "Special Law Enforcement Officers Act," provides for the regulation of the qualifications, powers and duties of special law enforcement officers.

   Mar. 23, 1981 -- Judiciary, Law, Public Safety and Defense Com.
   June 22, 1981 -- Reported, 2nd reading.

2. S-3289 (A-3234 - 1981) Graves, Lipman

   June 15 - Designated the "Special Law Enforcement Officers Act," provides for the regulation of the qualifications, powers and duties of special law enforcement officers.

   June 15, 1981 -- County & Municipal Government Com.

1982

3. A-526 (A-3234 - 1981) Herman, Kavanaugh, Smith, Pankok

   Jan. 12 (Pre-filed) - Designated the "Special Law Enforcement Officers Act," provides for the regulation of the qualifications, powers and duties of special law enforcement officers.

   Feb. 1, 1982 -- Judiciary, Law, Public Safety & Defense Com.
   Mar. 8, 1982 -- Reported with com. amend.
   Mar. 8, 1982 -- 2nd reading.
   May 13, 1982 -- Judiciary, Law, Public Safety & Defense Com.

Appendix C

Legislative History of Amendments to 40A:14-146

1982

1. S-979 (S-783 - 1980) Dumont; Assemblymen Haytaian, Littell

   Feb. 8 - Permits a municipality to appoint former full-time police officers as special policemen.

   June 21, 1982 -- Passed in Senate. (31-0)
   Oct. 18, 1982 -- Substituted for A-1299.
   Oct. 18, 1982 -- Passed in Assembly. (64-0)
   Dec. 6, 1982 -- Returned by Governor with recommended amendment.
   Dec. 20, 1982 -- Amend. as recom., passed in Sen. under em. res. (29-0)
   Jan. 27, 1983 -- Re-enacted in Assembly. (58-0)
   Feb. 4, 1983 -- Approved, Chapter 55, 1983.

2. S-940 (S-887 - 1982) Thompson, Herman, Zangari; Senator Lipman

   Feb. 22 - Permits special policemen of certain municipalities to carry firearms on their persons while off duty within the municipality where employed.

   Mar. 1, 1982 -- Passed in Assembly. (43-29)
   Mar. 15, 1982 -- Substituted for S-887.
   June 3, 1982 -- Passed in Senate. (25-13)
   Aug. 5, 1982 -- Returned by Governor with recommended amendment.
   Aug. 5, 1982 -- Amended as recommended.
   Sep. 20, 1982 -- Re-enacted in Assembly. (66-5)
   Oct. 18, 1982 -- Re-enacted in Senate. (25-6)
   Oct. 26, 1982 -- Approved, Chapter 154, 1982.

3. S-2055 (A-2298 - 1982) Lipman

   Dec. 20 - Provides that before a special policeman may bear firearms he must pass a safety course on firearms.

   Dec. 20, 1982 -- Passed Senate under emergency resolution. (30-0)
   Dec. 30, 1982 -- Passed in Assembly. (76-0)
   Dec. 31, 1982 -- Approved, Chapter 226, 1982.

1984

4. S-589 (S-3534 - 1983) Lipman, Graves

Jan. 10 (Pre-filed) - Changes the requirements for carrying weapons off duty for certain special police officers.

Dec. 6, 1984 -- Passed in Senate, amended. (30-3)
Jan. 3, 1985 -- Passed in Assembly. (42-10)
Feb. 13, 1985 -- Approved, Chapter 45, 1985.

Appendix D

Legislative History of Failed Amendments to 40A:14-146

1982

1. A-630 McEnroe

   Feb. 2 - Requires the training of temporary police officers.

   Oct. 18, 1982 -- Com. Sub. passed in Assembly. (61-0)
   Nov. 28, 1983 -- Passed in Senate, amended. (37-0)
   Dec. 8, 1983 -- Senate amend. passed in Assembly. (65-0)
   Jan. 9, 1984 -- Vetoed by the Governor.

1983

2. A-3224 Muziani, Miller, Cooper, Wolf, Hendrickson, Rod, Chinnici, Smith.

   Mar. 3 - Removes the requirement that chiefs of police assess psychological fitness of special police.

   Mar. 3, 1983 -- Municipal Government Com.
   May 5, 1983 -- Reported with com. amend.
   May 5, 1983 -- 2nd reading.

Appendix E

Legislative History of the Special Law Enforcement Officers Act

1984

1. A-2512 Herman, Bocchini, Perun, Thompson, Kern, Shusted

Sept. 13 - Designated the "Special Law Enforcement Officers Act."

Sep. 13, 1984 -- Judiciary Com.
Oct. 11, 1984 -- Reported with com. amend.
Oct. 11, 1984 -- 2nd reading.
Oct. 18, 1984 -- Amended.
Oct. 18, 1984 -- 2nd reading, amended.
Oct. 22, 1984 -- Passed in Assembly, amended. (73-0)
Oct. 22, 1984 -- Received in Senate.
Oct. 22, 1984 -- Judiciary Com.
Feb. 25, 1985 -- Reported with com. amend.
Feb. 25, 1985 -- 2nd reading.
June 27, 1985 -- Amended.
June 27, 1985 -- 2nd reading, amended.
Sep. 12, 1985 -- Passed in Senate, amended (33-0)
Sep. 12, 1985 -- Received in Assembly.
Nov. 18, 1985 -- Assembly concurred in Senate amend. by amend. (66-0)
Dec. 9, 1985 -- Assembly amend. passed in Senate. (34-0)
Jan. 13, 1986 -- Approved, Chapter 439, 1985.

Appendix F

Amending the Effective Date of the Special Law Enforcement Officers Act

1985

1. A-4324 Herman

Dec. 12 - Amends the effective date of the "Special Law Enforcement Officers Act."

Dec. 12, 1985 -- No Ref., 2nd reading.

1986

2. A-1776 (A-4324 - 1985) Muziani

Jan. 30 - Amends the effective date of the "Special Law Enforcement Officers Act."

Feb. 13, 1986 -- Passed in the Assembly. (69-0)
Mar. 10, 1986 -- Passed in Senate. (34-1)
Mar. 24, 1986 -- Approved, Chapter 2, 1986.

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