How Private Insurers Regulate Public Police

John Rappaport

ABSTRACT: Based on primary sources new to legal literature and interviews with over thirty insurance industry representatives, police chiefs, civil rights litigators, municipal attorneys, and consultants, my paper shows how police liability insurers are capable of effecting meaningful change within the agencies they insure—a majority nationwide. The paper describes and assesses the contemporary market for liability insurance in the policing context; in particular, the effects of insurance on police behavior. While not ignoring the familiar (and potentially serious) problem of moral hazard, the paper focuses on the ways in which insurers perform a traditionally governmental “regulatory” role as they work to manage risk. Insurers get police agencies to adopt or amend written departmental policies on subjects like the use of force and strip searches, to change the way they train their officers, and even to fire problem officers, from the beat up to the chief. One implication of these findings is that the state might regulate the police by regulating insurers. At bottom, the paper establishes that liability insurance has profound significance to any comprehensive program of police reform.