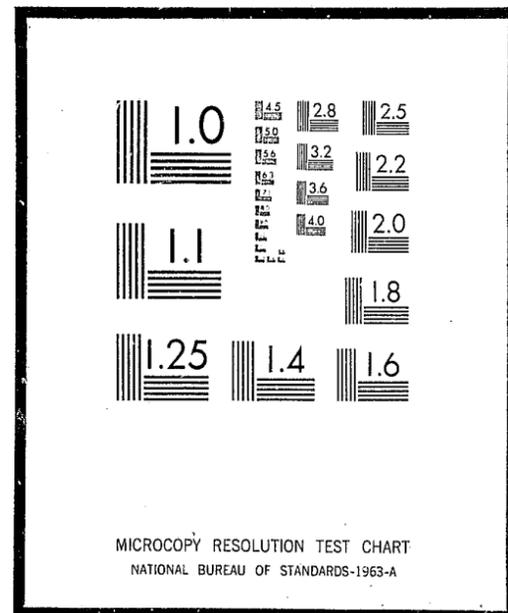


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## Private Police in the United States : Findings and Recommendations Volume I; R-869/DOJ

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FEBRUARY 1972



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## FOREWORD

The two principal investigators of the study reported herein were Sorrel Wildhorn (study director) and James S. Kakalik. Members of the Los Angeles law firm of Munger, Tolles, Hills, and Rickershauser conducted the analysis of the legal issues, drafted Chapter X of this report, and contributed significantly to the suggested policy and statutory guidelines.

Inquiries concerning this report should be directed to Sorrel Wildhorn at The Rand Corporation.

## PREFACE

This report is one of a series of five describing a 16-month study performed by The Rand Corporation under Grant NI-70-057 from the National Institute of Law Enforcement and Criminal Justice (NILECJ), Law Enforcement Assistance Administration of the United States Department of Justice.

The broad purposes of the study are essentially twofold. First, we seek to describe the nature and extent of the private police industry<sup>1</sup> in the United States, its problems, its present regulation, and how the law impinges on it. And second, we have attempted to evaluate the benefits, costs, and risks to society of current private security and, as specifically requested by the NILECJ, to develop preliminary policy and statutory guidelines for improving its future operations and regulation. The results of the study are intended for use by the private police industry and by the governmental agencies that regulate it, as well as by the general public.

The five reports comprising the study are:

R-869-DOJ      *Private Police in the United States: Findings and Recommendations*

This comprehensive summary report draws on information contained in R-870-DOJ, R-871-DOJ, and R-872-DOJ to develop the overall findings and recommendations of the study.

R-870-DOJ      *The Private Police Industry: Its Nature and Extent*

This descriptive report covers the nature, size, growth, and operation of the industry and its personnel. It also describes the results of a survey of private security employees.

R-871-DOJ      *Current Regulation of Private Police: Regulatory Agency*

<sup>1</sup> Throughout this study we have used the term *private police* to include all privately employed guards, investigators, patrolmen, alarm and armored-car personnel, and any other personnel performing similar functions.

### *Experience and Views*

Licensing and regulation of the industry in every state and several cities is described. This report also includes extensive data on regulatory agency experience, complaints, disciplinary actions taken, and the views of 42 agencies on needed changes in regulation.

R-872-DOJ

### *The Law and Private Police*

This report discusses the law as it relates to the private police industry. It includes a general discussion of the sources of legal limitations upon private police activities and personnel and sources of legal powers, and an examination of specific legal problems raised by these activities and by the relationships between the users and providers of private security services. The legal doctrines governing particular security activities are evaluated and recommendations for improvement are offered.

R-873-DOJ

### *Special-Purpose Public Police*

Descriptive information is presented on certain types of public forces not having general law-enforcement responsibilities. These include reserve police, special-purpose federal forces, special local law-enforcement agencies, and campus police. These data provide a useful context for analyzing the role of private police.

## SUMMARY

This report discusses and summarizes the findings and recommendations of a broad study of private police in the United States. The study's goals are both descriptive and policy-relevant. Its descriptive goals are to estimate the trends in resource allocation to public and private security and to describe the structure, functioning, and problems of the various types of private security forces. Its policy-relevant goals are to evaluate, where possible, the benefits, risks, and costs to society of current private security arrangements, and to develop and evaluate alternative policy and statutory guidelines for improving private security, with particular regard to roles, operation, conduct, licensing and regulatory standards, and legal authority and constraints.

A fundamental premise of the study is that private security services fill a perceived need and provide clear social benefits to their consumers and, to some extent, to the general public. Few would argue that, *ceteris paribus*, if private security services were drastically reduced or eliminated, reported crime, fear of crime, and prices of retail merchandise would rise. Thus, the thrust of the study *begins* with and *accepts* this premise. The research then focuses on examining alternative *incremental* or *evolutionary* policy and statutory guidelines that might improve the industry's effectiveness and reduce the seriousness and prevalence of its problems, without threatening its financial viability. That is, we have *not* attempted to build a theoretical economic and legal framework for analyzing the benefits and costs of *radical* alternatives to current public and private policing arrangements.

Because of limited time and resources and the paucity of existing data and analyses, we could not *demonstrate* beyond question the precise *nature* and *degree* of effectiveness of current private security arrangements, the true *prevalence* of the industry's problems and how they compare with similar problems attending the public police, and the *degree* of effectiveness of our proposed remedies or guidelines for the operation and regulation of the industry. Our judgments regarding these matters are based on *available evidence* and have been made in response to the study sponsor's specific request that such guidelines be a product of the study. Certain of the guidelines imply added, but modest, monetary costs. If society decides to improve private security's effectiveness and reduce the seriousness and prevalence of its problems, the consumer of private security services probably will have to bear these

modest additional costs. It must be emphasized that all the guidelines suggested in this report should be considered tentative and in need of testing in actual operating and regulatory contexts. Since all of the available data and analysis are included in the five study reports, however, the reader may also formulate his own conclusions.

Over the past few years, the public police have received a great deal of attention and serious study; the private police have not. But today, of roughly 800,000 public and private security personnel in the United States, only half are public police officers. And expenditures on public police (counting the costs of security devices as well as personnel) account for only roughly half of the \$8.7 billion spent annually on both public and private security.

Private security forces (guards, investigators, patrolmen, armored-car guards, guards who respond to burglar alarms, etc.) perform a variety of legitimate security roles; under current arrangements most of these roles are complementary (rather than supplementary) to those of the public police.

With the possible exception of private investigators and security executives, private security personnel are drawn from a different labor pool than are their public police counterparts. Private guards and patrolmen, in particular, tend to be older, less educated, much lower paid, and more transient than the public police. And private security personnel receive almost no initial or in-service training.

On the basis of evidence from several sources, including surveys of private security employees and of state and local regulatory agencies, interviews with security executives, security agencies' complaints and insurance-claim statistics, court cases, and media accounts, it is abundantly clear that a variety of potential and actual problems do exist with private security forces. But the evidence is insufficient to judge the precise extent of these problems. There are problems of abuse of authority, such as assault or unnecessary use of force (with and without a gun), false imprisonment and false arrest, improper search and interrogation, impersonation of a public police officer, trespass, illegal bugging and wiretapping, breaking and entering, gaining entry by deception, false reporting, and improper surveillance.<sup>1</sup> There are problems of dishonest or poor business practices, such as inaccurate reporting, franchising licenses, operating without a license, failure to perform services paid for, misrepresenting price or service to be performed, and negligence in performing security duties.

Current regulation and legal remedies need improvement. Licensing and regulation of private security businesses and employees is, at best, minimal and inconsistent, and, at worst, completely absent. Sanctions are rarely invoked. Moreover, current tort, criminal, and constitutional law has not been adequate—substantively or procedurally—to control certain problem areas involving private security activities, such as searches, arrests, use of firearms, and investigations. Finally, current law has not always provided adequate remedy for persons injured by actions of private security personnel.

<sup>1</sup> Many of these problems attend the public police as well, but the evidence is again insufficient to judge their precise extent. Nevertheless, even though the actual relative prevalence of such problems attending the public and private police is unknown, it is still useful to indicate policy guidelines for improving the private police.

Finding sweeping general solutions is not easy. However, we can make a number of specific policy and statutory suggestions that may alleviate some of these problems and, at the same time, improve the effectiveness of private security. We suggest, for example, state licensing of owners and executives of all types of private contract security businesses and directors of in-house security operations, and state registration of all types of private security employees. Licensing and registration statutes should provide for mandatory job-specific training (including firearms training where necessary), mandatory bonding or insurance requirements, certain job-specific personnel background and experience standards, and clear (and sometimes mandatory) provisions for sanctions such as fines, imprisonment, and suspension or revocation of licenses or registrations for certain violations or activities. To a large extent, the effectiveness of our proposed licensing and regulation scheme will depend on the regulatory agencies' access to information about problems, as well as their resources. Their current knowledge is fragmentary at best; our suggestions include ways of improving such access.

Other suggestions concern tort remedies, the applicability of constitutional standards, and specific statutory provisions. They include ways of controlling access to public police records; provisions giving individuals more control over the extent to which information concerning them is collected; ways of determining whether information obtained by private police in an illegal search of property should be admissible as evidence in either civil or criminal judicial or administrative proceedings; regulations concerning the wearing of uniforms and badges (which can lead to impersonation of, and confusion with, public police); criteria for determining the applicability of constitutional standards to activities of private police such as arrest, detention, search, interrogation, and the use of force; and regulation of the alarm industry, with special reference to false-alarm rates.

Finally, we suggest that the federal government should consider funding a research center that would continuously evaluate the costs and effectiveness of private security personnel and equipment.

This study should be viewed as a seminal work needing future development in several directions. For example, studies should be conducted of the basic cost-effectiveness relationships between inputs and outputs of private security for specific types of crime, specific segments of the security industry and specific types of consumers of private security; campus policing, business burglaries, and shoplifting and pilferage, are illustrative examples. Studies of ways of enhancing cooperation between public and private police should also be conducted. Needed, too, is fundamental theoretical work on the appropriate division of labor between public and private police and on the division of spending between public and private funds. Another direction is a class of activities in which the fruits of the research reported here would be refined and transferred to the appropriate people, business organizations, and public agencies. And finally, there is a need for descriptive studies and surveys aimed at increasing our basic knowledge of topics such as moonlighting by public police in private security and the deputization and commissioning of private police.

## ACKNOWLEDGMENTS

We would like to acknowledge a variety of people and organizations for their cooperation and assistance in this study. Executives in various private and governmental organizations granted extensive interviews, provided information, and/or made it possible to obtain responses to our security employee survey. We are particularly indebted to the following: Ray A. Sapp, General Manager, Operations, and Richard M. Bugbee, Public Relations, American District Telegraph Company; G. Ralph Kiel, Vice President for Public Relations, Wackenhut Corporation; Frederic E. Crist, President, and Paul J. Fitzpatrick, Vice President for Operations, William J. Burns International Detective Agency, Inc.; William C. Linn, Vice President for Administration, John J. Horan, Vice President and General Counsel, and George O'Neill, Director of Personnel, Pinkerton's, Inc.; Thomas W. Wathen, President, California Plant Protection, Inc.; Joseph J. Kelly, formerly General Manager, Southern California District, Wells Fargo Security Guard Services (Baker Industries) and now Chief of Police, Laguna Beach, California; Edward Klosterman, President, Shield Security; Don Pillsbury, Insurance Rating Bureau; Harold Schloss, Vice President, Royal Globe Insurance Company; William T. Trainer, Research Department, Merrill, Lynch, Pierce, Fenner, and Smith, Inc.; Harry Haacke, Assistant Vice President, Marsh and McLennan, Inc.; William Wright, Executive Director of the American Society for Industrial Security; Ron Smith, International Association of Chiefs of Police; James McGahey, President, United Plant Guard Workers of America; Vincent Gillen, President, Vincent Gillen & Associates; Jimmie James, President, National Detective Agencies, Inc.; William M. Weiss, Executive Vice President, Predicasts, Inc.; Morgan H. Cooper, Vice President, Oak Electro-Netics, Inc.; Seymour Gelber, State Attorney's Office, Dade County, Florida; John C. Marchant, President, International Association of College and University Security Directors; George Saunders and Robert Hedden, Underwriters Laboratories, Inc.; David Weinberger, private consultant; Clarence H. A. Romig, Associate Professor at the University of Illinois Police Training Institute; Neil Rosenthal and Joseph J. Rooney, Division of Manpower and Occupational Outlook, Bureau of Labor Statistics; Stanley Green of the U.S. Census Bureau's Census of Population; D. Wicoff of the U.S. Census Bureau's Census of Business; Ken Andersen and Dave McNeilis of

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## I. INTRODUCTION

Over the past decade this nation has experienced a 120 percent rise in reported Index crimes per capita.<sup>1</sup> With this sharp increase, fear of crime has become more pervasive, and this fear has been further spurred by civil strife and disorder—riots, bombings, political violence. One reaction has been to increase the resources devoted to the public police; public law-enforcement personnel and expenditures per capita increased 27 percent and 70 percent, respectively. Publicly employed guard personnel increased to the same extent. (Significantly, during the same time period, the purchasing power of the dollar declined 21 percent.) Another reaction has been a greatly increased investment in private security services and equipment, particularly those which are purchased. In per capita terms, security equipment sales rose approximately 120 percent; contract and security services expenditures and employment grew 170 percent and 130 percent, respectively. However, the number of private security personnel employed in-house, i.e., outside the contract security industry, remained relatively constant over the past decade.

Although the roles, effectiveness, and problems of public police in our society have received a good deal of attention of late, the private police have not been studied in any comprehensive and systematic way. But lack of knowledge about private police is only one of several valid reasons for studying them. There are two polar views of private security.

One holds that private security services (provided by high-quality personnel and equipment) effectively complement the public police by providing security and other related services in areas and situations where the public police do not—either because public police are not given adequate resources or because they are legally constrained from doing so. This view also holds that current controls and regulation are adequate, since private police seldom abuse their powers. The other view holds that the private security "industry" feeds on fear and provides ineffective security services by untrained, low-quality personnel who are a potential danger to the public and who, in fact, abuse their limited powers. This view also holds that current controls on, and regulation of, private police are inadequate. Thus, another reason

<sup>1</sup> The Index crimes are murder, rape, aggravated assault, robbery, burglary, larceny (\$50 and over in value) and auto theft. Data in this paragraph are derived from companion report R-870-DOJ.

for studying private police is to examine the extent to which each of these polar views reflects reality. The most important reason for undertaking this research, however, is to help provide a basis for improving the effectiveness of private police, while reducing their potential for abusing their powers.

## GOALS

This study has both policy-relevant and descriptive goals. It is intended to provide results that will be useful to the private police industry, the governmental agencies that regulate it, and the general public as well. The descriptive goals are:

- To estimate the trends in allocation of resources to private security, to the local public police, and to "special-purpose" public police in the United States, in terms of expenditures, employment, and equipment.
- To describe the current structure and functioning of the various types of private and special-purpose security forces, with particular emphasis on roles and functions; organizational structure; operations; personnel characteristics such as background, experience, training, earnings, transiency, and unionization; legal powers and restrictions; state and local licensing and regulation; and the interaction between private and public security forces.
- To describe the problems and potential abuses in private security from several viewpoints—those of security executives, security workers, regulatory agencies, and the public.

The policy-relevant goals are:

- To evaluate, when possible, the benefits, costs, and risks to society of current private security arrangements.
- To develop and evaluate alternative policy guidelines for the regulation and operation of private security forces with regard to roles, licensing, personnel standards and training, conduct and operating procedures, legal authority and constraints, and criminal, civil, and administrative sanctions.
- Based on the above preliminary evaluations, to recommend policy and statutory guidelines capable of improving the future operations and regulation of the private police.

## SECURITY SERVICES

Public and private security forces are highly diverse. They may be categorized in several ways: by who employs them—a public agency or a private business,

institution, or individual; by the degree of police powers they possess; or by the functions they perform. In this report we utilize all three ways of categorizing security forces, as appropriate to the discussion at hand. The terms *private police* and *private security forces and security personnel* are used generically in this report to include all types of private organizations and individuals providing all types of security-related services, including investigation, guard, patrol, lie detection, alarm, and armored transportation.

Public police employed by local agencies of government, such as cities and counties, have full peace-officer status and are responsible for enforcing *all* state and local laws in their jurisdiction.

There are a variety of law-enforcement personnel employed by federal, state, and local agencies who possess varying degrees of peace-officer powers. Generally they are responsible for enforcing a specific set of laws or are limited to very specific jurisdictions, or both. Some security forces employed by local, state, or federal agencies have few or no police powers. At one extreme are guards who are employed by or hired from contract security agencies to work in various governmental agencies; some have no police powers at all, some have very limited police powers. At the other extreme are "special-purpose" public police, such as the New York City Transit Police, the New York City Public Housing Authority Police, and campus police at some state universities. These forces have full police powers, but they work primarily in subways, in public housing projects, and on campuses. Between these extremes are various public police forces having limited power, who work for public agencies such as airports, harbors, parks, sanitation departments, and building departments, or who work for state or supracounty agencies, such as the Port Authority of New York. In this study such police organizations are represented in the category of "special-purpose" public police. This refers to all police with at least *some* peace-officer powers, who work for public agencies but are not regular city police or regular county sheriffs. In this category, too, are the *reserve* police in some municipal and county sheriff police departments.

Within the private sector there are a variety of security forces. They are either *contract forces* providing security services for a fee, or *in-house forces*, not for hire, providing services exclusively for the business institution or individual that employs them. Contract security agencies provide one or more of the following personnel services: guard; roving patrol (on foot or in cars); armored-car escort; central station alarm; and various investigative functions, such as credit, insurance, and preemployment background checks, and investigations in connection with civil and criminal court proceedings. Guard, patrol, investigative, and alarm services are also provided by in-house forces. Both types of security personnel are utilized by a wide variety of consumers, including individual citizens, banks, retail establishments, insurance companies and other financial institutions, hospitals, industrial firms, educational institutions, and apartment houses, and at recreational events. Most private security personnel have no peace-officer powers.

In some cases the public and private sectors overlap. A small fraction of the privately employed security personnel, which we shall call *special police*, are granted either full or limited public police powers by virtue of being deputized or

commissioned by local police or state agencies. The police powers of these special forces generally may be exercised only while on duty at a specified geographic location, such as their employer's or client's property. Another not uncommon situation is for public policemen to accept supplementary second jobs as private security personnel. These moonlighting public police generally retain their full police powers even while working for the private employers.

A much more detailed taxonomy and description of the various types of private and public security forces appears in companion reports R-870-DOJ and R-873-DOJ.<sup>2</sup>

## SCOPE AND PREMISES OF THE STUDY

All types of *private-sector crime-related security forces* are within the scope of this study. These include both contract and in-house guards, patrolmen, investigators, alarm personnel, armored-transport personnel, and all other privately employed persons and organizations performing similar functions. Public-sector security forces are considered insofar as they interact with private forces and provide a context in which the private forces may be studied.

The primary focus is on matters relevant to *private security personnel*. Security equipment is treated separately from personnel only to the extent of estimating gross expenditure trends by broad equipment category.

Excluded from the scope of this study are regular military security forces, the National Guard, community vigilante groups, and politically or ideologically oriented groups such as the Black Panthers, Minutemen, and Weathermen. Also excluded are organizations and personnel whose sole responsibilities are to provide security from fire and other noncriminal sources of injury.

The scope of alternative policy and regulation guidelines considered ranges from statutory controls to those which would be voluntarily implemented. Alternative sources of limitations on the private police include tort law; constitutional law; criminal laws controlling private activities; laws, regulations, and ordinances specifically regulating the private security industry; and laws specifically regulating private security functions performed either by private police or by any private citizen. In brief, we have sought to consider all classes of alternative guidelines.

The scope of this study does *not* include building a theoretical economic and legal framework for analyzing the benefits and costs of a variety of *radical* alternatives to current public and private policing arrangements. Limited resources, limited time, and a serious paucity of data relevant to gauging benefits or effectiveness were the major reasons for limiting the study's scope to *evolutionary or incremental* changes in the current private security industry. Thus, we have not analyzed each function or role of private and public policing to determine whether, on balance, the relative costs and benefits suggest that specific functions should be performed privately or publicly.<sup>3</sup> Rather, the alternative guidelines considered were within the

<sup>2</sup> A list of the reports in this series is given in the Preface.

<sup>3</sup> For example, at least one city government is currently giving consideration to providing some, or even all, of the police services privately.

context of current arrangements, whereby certain services are provided publicly and certain services are provided privately.

A fundamental premise of the study is that private security services fill a perceived need and provide clear social benefits to their consumers and, to some extent, to the general public. Few would disagree with the argument that, *ceteris paribus*, if private security services were drastically reduced or eliminated, reported crime and fear of crime would rise. The reader should not infer from the disproportionate space devoted to discussions of problems as compared to effectiveness or benefits that we eschew a balanced assessment of benefits and costs. The thrust of this study *begins* with and *accepts* the premise that private security provides significant social benefits. The research then focuses on examining alternative incremental policy and statutory guidelines which might improve the industry's effectiveness and reduce the seriousness and prevalence of its problems, without threatening its financial viability. Because few data and analyses exist that are relevant to gauging effectiveness in objective quantitative terms, this study could not *demonstrate* beyond question the precise *nature* and *degree* of the benefits of private security. Similarly, the data presented and the analysis of the industry's problems do not *demonstrate* beyond question the true *prevalence* of the problems we know exist, nor could we compare the public and private police in these terms. In addition, our discussion and evaluation of the alternative policy and statutory guidelines does not *demonstrate* beyond question the *degree* of effectiveness of the remedies proposed for the operation and regulation of the industry. These judgments were made on the basis of the *available* evidence in response to the study sponsor's specific request that such guidelines be a product of the study. Because all of the evidence collected and the analyses performed are presented in the five study reports, the reader has all the information that was available to the authors and is free to draw his own conclusions. In any event, all of the guidelines presented here should be considered tentative and in need of testing in actual operating and regulatory contexts.

Certain of the guidelines imply added, but relatively modest, monetary costs. In the end, if society decides to improve private security's effectiveness and reduce the seriousness and prevalence of its problems, the consumer of private security services probably will have to bear these additional costs (just as the buyer of new cars will bear the additional costs implied by improved safety standards or by stricter exhaust-emission standards).

## RESEARCH APPROACH AND INFORMATION SOURCES

Since information and description must precede analysis and recommendations, we began this study by obtaining data and suggestions from many sources including books, articles, reports, laws, court rulings, financial and insurance industry data, census and labor statistics, public law-enforcement officials, private security industry executives, "company privileged information" files, private

security employees, and officials and files of agencies that regulate the private security industry.

In developing guidelines our approach was "policy analytic." We analyzed each proposed alternative policy or statutory guideline in terms of both its potential benefits and its potential costs to the public, the consumers of private security, and the providers of security services. To a large degree, the breadth, depth, and relative emphasis of our analysis were influenced by the kinds of information available and the cost of obtaining new information. Where sufficient evidence was not available to support a policy guideline, we have generally refrained from making a firm recommendation. Rather, we have indicated the new data needed to analyze that specific guideline.

The interdisciplinary study team was composed primarily of systems analysts and lawyers with experience in criminal justice. The study findings and recommendations were reviewed by a variety of people, including an economist, a political scientist, several lawyers, a retired public police official, two state regulatory agency directors, and high-level executives of four major private security organizations. Not everyone consulted agreed fully with the recommendations, but many of their comments influenced the results. Wherever possible, we have endeavored to present opposing opinions and arguments, so that the reader may more easily interpret our findings in the light of specific local situations.

It is fair to observe that readily available published data and information concerning private police, and related matters, are incomplete, fragmentary, generally highly aggregated, or exhortatory in nature. In amassing this information, we found no existing comprehensive description of the nature and extent of private security forces. We explored all relevant, major information sources and amassed and analyzed most, if not all, of the available data.

In estimating nationwide expenditure and employment trends in private and public security we relied on a variety of published documents, since the cost of conducting a new survey or census is prohibitive. Publications of the U.S. Census of Governments provided such information for public police at federal, state, and local levels. The Census of Population provided employment trends as well as trends in earnings, age, sex, race, and education of personnel in private and public security occupations. The Census of Business provided employment and sales trends in the *contract* private security sector. Publications of the Bureau of Labor Statistics (BLS) provided trends in employment in the private and public security sectors by broad industrial category; the BLS also provided estimated employment figures for 1975.

Nongovernmental publications were also useful. Reports by brokerage firms such as Burnham and Company and Bear, Stearns and Company provided detailed information on sales and earnings of the large, publicly held contract security firms. A report on private security services and equipment by a private research firm, Predicasts, Inc., provided useful estimates of employment and expenditure trends into the late 1970s.

Fine-grain expenditure and employment data, by small or large geographical area, by type of security occupation, by type of premises secured, and by supplier (i.e., in-house or contract agencies), are simply not available. For example, on the

basis of published information, it is impossible to derive reasonably precise answers to the following sorts of questions: How many bank guards are employed in the United States? What proportion are in-house or contract guards? What are the characteristics of the personnel, and what is their total cost? How many private guards are employed in a specified city? How many security personnel are employed at retail establishments? What proportion are in-house or contract guards, detectives, and undercover agents? The situation regarding information on special-purpose public police is even more dismal. Although employment data and some expenditure data are available regarding law enforcement in the various federal agencies, this is not the case at state and local levels. It is presently not possible to estimate nationwide figures for airport police, police in state or local parks, police at public institutions of higher learning, and so on.

In describing the current structure, functioning, and problems of private security forces we relied on four broad sources: (1) published information; (2) face-to-face interviews with executives and managers in a modest sample of private security organizations, insurance organizations, guard unions, public police agencies, and state and local agencies that regulate the private security industry; (3) responses to a survey questionnaire by several hundred private security workers; and (4) responses to a survey questionnaire by state and local agencies that regulate and/or license private security businesses and personnel.

Published information utilized included two surveys of several hundred private firms that use security services (conducted by the American Society for Industrial Security), four survey reports on campus policing, Congressional Hearings on the Impact of Crime on Small Business and on Fair Credit Reporting, and The Report of the President's Commission on Campus Unrest, as well as several books and hundreds of articles in newspapers, magazines, and journals. In summarizing how private security is currently regulated, we consulted state and local licensing laws and administrative regulations.

In face-to-face interviews, executives of private security organizations were quite cooperative and candid in discussing many topics such as organization, structure, operations, personnel, and problems in the industry. Although many in-house organizations and many contract guard or investigative agencies provided us with their training material for guards, *none* was willing to provide training materials for investigators and undercover agents. Also, several firms would not even meet with us. Private security firms interviewed included the three largest and four moderate-size contract security agencies (including two purely investigative agencies), five in-house organizations (one industrial, one research, one bank, one large hotel, and one large retail store), one very large central station alarm firm, and one private patrol operator.

Executives in insurance organizations, including two insurance companies, the Insurance Rating Board, the National Insurance Actuarial and Statistical Association, and the Surety Association of America, were interviewed to explore the extent to which differential crime insurance rates reflect differences in effectiveness of private security programs and how they affect demand for private security services. Interviews were also conducted with officials of the American Society for

Industrial Security, the International Association of Chiefs of Police, and Underwriters Laboratories, Inc.

Officials in special-purpose public police organizations were also interviewed; these organizations included a sample of seven federal law-enforcement agencies, the General Services Administration (which provides government guards at many federal buildings and installations), the New York City Transit Police, the New York City Public Housing Authority Police, and one state university. These officials, too, were very cooperative and candid.

In attempting to assess potential problem areas in private security, we utilized several additional approaches. First, we surveyed by questionnaire several hundred guards, investigators, patrolmen, and central station alarm respondents. The questionnaire was designed to test their knowledge of their legal powers, to test their judgment in several hypothetical situations, and to elicit from them the frequency and nature of incidents in which they or other security employees had overstepped their authority or had been threatened with lawsuits as a result of their actions. Cooperating organizations included five contract security agencies (two large, one medium, one small), one government employer of guards, one guard union, one private patrol operator, one large central station alarm firm, and four firms with in-house security (one bank, one retail store, one research firm, and one manufacturing firm). Two of the four largest contract security agencies were willing to cooperate by asking a random group of their employees to voluntarily complete the questionnaire.

We also attempted to collect reliable statistics regarding complaints, insurance claims, lawsuits, and criminal charges brought against contract security firms and employers of in-house security personnel. Again, only one of the three largest contract security agencies was willing and able to supply those data.

A third approach was to seek incidents reflected in criminal and tort-case law that illustrated some of the potential problems and abuses. A fourth approach was to survey by questionnaire the public agencies which regulate private security. All states and a sample of cities were surveyed regarding the nature and frequency of complaints against private security firms and individuals, the relative importance of the various problems, and disciplinary actions taken by the agencies. Over 50 percent of those surveyed completed the 20-page questionnaire.

In all interviews and in both types of mail surveys, respondents were asked to, and often did, offer suggestions for improving various aspects of private security.

## A GUIDE TO THIS REPORT

This report discusses all of the study findings and recommendations regarding private security. *Special public* police forces are discussed separately in a companion report,<sup>4</sup> which considers municipal (*reserve*) public police forces, *campus* policing,

<sup>4</sup> R-873-DOJ.

several *federal* law-enforcement agencies, and two *special local* public police organizations.

Chapters II through VIII and Chapter X essentially summarize the in-depth research reported in the other three companion reports.<sup>5</sup> Chapter II examines the extent of private security forces and discusses the factors spurring growth in the private security industry. Chapters III and IV discuss how the roles and functions of security and policing are currently performed by the private and public sectors, how they interact, and the extent to which they are complementary or competitive. Chapter V discusses the measurement of effectiveness of private security. Chapter VI examines the personnel who work in private and public security. Chapter VII discusses training of private police—or, more accurately, the virtual nonexistence of meaningful training programs. Chapter VIII summarizes current licensing and regulation at the state and local levels, including the experience, views, and recommendations of the regulatory agencies. Chapter X<sup>6</sup> summarizes our work on how the law impinges on private security.

Chapters IX, XI, and XII essentially synthesize the study findings, present the underlying rationale for our policy suggestions, and outline needed work. In Chapter IX we compare and synthesize all of the information collected about the various potential problems in private security. An assessment is made of which problems seem to be most serious or prevalent. Chapter XI presents our policy and statutory guidelines, together with the underlying rationale and analysis. Finally, in Chapter XII we outline the kinds of studies, experiments, and activities that should be conducted in the future.

Much of the supporting analysis and detailed information used in arriving at the findings and recommendations of this study is presented in the four companion reports described in the Preface.

<sup>5</sup> R-870-DOJ, R-871-DOJ, and R-872-DOJ.

<sup>6</sup> This chapter was drafted by the staff of the Los Angeles law firm of Munger, Tolles, Hills, and Rickershauser, and it summarizes their basic legal analysis contained in R-872-DOJ. They also contributed significantly to the policy and statutory guidelines suggested in Chapter XI of this report.

## II. THE EXTENT AND GROWTH OF SECURITY FORCES <sup>1</sup>

### EXTENT

Crime-related public and private security services absorb considerable resources. In 1969, over 800,000 people were security workers, and well over \$8 billion was devoted to security services and equipment, i.e., 0.85 percent of the Gross National Product. One in every 100 persons in the civilian labor force, or one in every 250 persons in the entire population, was employed in security work, and over \$40 per capita was spent on security.

Table 1 displays a summary of resources devoted to security in the United States during 1969. In the public sector, 395,000 persons (49 percent of all security personnel in the United States) were employed as policemen or detectives at all levels of government, and about 120,000 (15 percent) worked as government guards or watchmen. The remaining 290,000 (36 percent) were employed in the private sector. Most of the latter (260,000) were private guards or watchmen; the remainder (32,000) were private detectives or investigators.

Thus, the ratio of total private-sector crime-related security personnel to total public-sector law-enforcement and guard personnel was about 4 to 7. Or, if government guards are included with the private security forces, because most guards and private investigators do not have public peace-officer powers, the ratio of security personnel with peace-officer powers to those without was about 1 to 1. That is, about 36 percent of all security personnel were employed in the private sector and about 64 percent were in the public sector; but counting government guards in the non-peace-officer category, about half of all security personnel have full police powers and half do not.

In 1969, between one-fourth and one-third of all privately employed guards and investigators worked for contract security firms; the remainder were in-house employees. In 1967, there were over 4,000 private establishments<sup>2</sup> providing contract guard and investigative services, but four firms (Pinkerton's, Burns, Wackenhut,

<sup>1</sup> This chapter summarizes some of the information given in R-870-DOJ, *The Private Police Industry: Its Nature and Extent*.

<sup>2</sup> A Census Bureau term basically meaning a physical location from which business is conducted.

Table 1

### SUMMARY OF ESTIMATED PUBLIC AND PRIVATE SECURITY FORCES AND EXPENDITURES IN THE UNITED STATES IN 1969 (N/A indicates data not available)

Type of Security Personnel or Organization	Numbers of People		Expenditures (\$ millions)	
	Security Personnel	Total Employment	Payroll Expenditures	Total Expenditures or Revenues
<b>Public Law Enforcement</b>				
Local police (city, county, township)	324,000 <sup>a</sup>	432,000 <sup>b</sup>	3,040 <sup>c</sup>	3,326 <sup>b</sup>
Reserve local police	N/A	N/A	N/A	N/A
Special local law-enforcement agencies	N/A	N/A	N/A	N/A
State police or highway patrol	39,000 <sup>a</sup>	} 54,000 <sup>b</sup>	} 455 <sup>c</sup>	} 621 <sup>b</sup>
Special state law-enforcement agencies	N/A			
Federal law-enforcement agencies	N/A <sup>d</sup>	36,000 <sup>b, d</sup>	344 <sup>c</sup>	492 <sup>b</sup>
Total Public Law Enforcement	395,000 <sup>e</sup>	523,000 <sup>c</sup>	3,839 <sup>c</sup>	4,430 <sup>b</sup>
<b>Public (Government) Guards (all governments)</b>				
Total Public Sector (police and guards)	120,000 <sup>e</sup>	N/A	N/A	~1,000
Total Public Sector (police and guards)	515,000	N/A	N/A	~5,400
<b>Private Sector Security</b>				
In-house detectives and investigators	23,900 <sup>e</sup>	N/A	N/A	N/A
In-house guards	198,500 <sup>e</sup>	N/A	N/A	N/A
Subtotal in-house security	222,400 <sup>e</sup>	N/A	N/A	~1,600 <sup>f</sup>
Contract detectives	8,100 <sup>e</sup>	N/A	N/A	N/A
Contract guards	59,400 <sup>e</sup>	N/A	N/A	N/A
Subtotal contract guards and detectives	67,500 <sup>e</sup>	~110,000 <sup>g</sup>	435 <sup>h</sup>	620 <sup>i</sup>
Patrolmen in contract agencies	} N/A (included in contract guards)	N/A	N/A	N/A
Armored-car services		(included in contract guards)	10,000 <sup>g</sup>	73 <sup>h</sup>
Central station alarm services	} N/A (included in contract guards)	N/A	N/A	120 <sup>k</sup>
Total Private Sector Security Equipment		289,900 <sup>e</sup>	N/A	N/A
Security Equipment	N/A	N/A	N/A	~800
Grand Total	804,000	N/A	N/A	~8,700

<sup>a</sup> Sources: FBI, 1969 *Uniform Crime Reports*, and telephone conversations with personnel at International Association of Chiefs of Police. Figures are for sworn officers. Local police total shown includes 287,000 sworn officers in cities and suburbs and 37,000 officers in county sheriff departments. State figures include state police and state highway patrol officers.

<sup>b</sup> Source: *Expenditure and Employment Data for the Criminal Justice System 1968-69*, LEAA, U.S. Department of Justice, December 1970. Expenditure data are for FY 1968-69, and employment data are for October 1969.

<sup>c</sup> Source: Bureau of the Census publications (*Census of Governments* for various years, *Public Employment in 1968*, and *Governmental Finances*).

<sup>d</sup> The 36,000 federal law-enforcement employees include all employees of only five agencies: FBI, Secret Service, Immigration and Naturalization Service, Bureau of Narcotics and Dangerous Drugs, and Bureau of Customs. But only a fraction of these employees are actually investigators or law-enforcement officers with police powers. From Hearings of the Committee on Government Operations, *Unmet Training Needs of the Federal Investigator and the Consolidated Federal Law Enforcement Training Center*, House Report No. 91-1429, U.S. Government Printing Office, 1970, it is estimated that the federal government's investigative force exceeds 50,000 employees.

<sup>e</sup> Source: Bureau of Labor Statistics publications and unpublished data. Excludes part-time employees unless their primary occupation is security-related.

<sup>f</sup> This estimate derives from two sources: Predicasts, Inc., and a Rand estimate, both of which are discussed in Chapter IV of R-870-DOJ.

<sup>g</sup> Sources: 1967 *Census of Business: County Business Patterns for 1968 and 1969*. Includes part-time employees. See footnote e above.

<sup>h</sup> Assuming payroll is 57 percent of revenues, as estimated in the 1967 *Census of Business*.

<sup>i</sup> Source: 1967 *Census of Business* data extrapolated to 1969, utilizing revenue growth ratios equal to those achieved by large contract detective agencies and protective service firms.

<sup>j</sup> Source: 1967 *Census of Business* data extrapolated to 1969, using revenue growth rates equal to those achieved by large armored-car firms.

<sup>k</sup> Source: Predicasts, Inc., Special Study 56, *Security Systems*, 1970.

and Globe), with less than 6 percent of all establishments, accounted for half the revenues. In 1967, the average guard and investigative service agency had 1.1 establishments and receipts of \$104,000, employed 22 persons, had average receipts per employee of \$4,800, and paid out 70 percent in wages.

The 1968 market breakdown for sales of private security equipment and services is estimated at about 35 percent financial, commercial, and retail; about 50 percent industrial and transportation; about 13 percent institutional; and only 2 percent consumer (i.e., private persons, residences, and automobiles).

The 1967 in-house private security employment breakdown by industry category was as follows: 46 percent in manufacturing; about 5 percent in agriculture, forestry, fisheries, mining, and construction; 12 percent in transportation, communications, and public utilities; 3 percent in wholesale and retail trade; 9 percent in finance, insurance, and real estate; and 21 percent in services (not including contract security firms). Educational services alone (grade schools through universities) absorb about 7 percent of all in-house guards plus some unknown fraction of all contract guards.

Expenditures on public law enforcement were over \$4.4 billion, excluding approximately \$1 billion spent on government guards and watchmen. In the private sector, expenditures were \$2.5 billion on security services plus an additional \$800 million on security equipment, or a total of \$3.3 billion. Of the \$2.5 billion expended in 1969 for security services within the private sector, about \$1.6 billion was spent for in-house guards, police, and investigators. About \$620 million was spent for private contract guard and investigative services, while about \$128 million and \$120 million were expended for armored-car and central station alarm services, respectively. In total, expenditures on public and private security were about \$8.7 billion.

## NATURE OF GROWTH

Between 1960 and 1969 the number of public law-enforcement personnel employed at all levels of government grew 42 percent, while population grew 12 percent.<sup>3</sup> During that period, publicly employed guards increased at the same rate as public law-enforcement personnel. But the overall increase in privately employed guards, watchmen, and investigators was only 7 percent (guard and watchman employment grew 6 percent, while detective and investigative employment grew 19 percent).<sup>4</sup>

Public law-enforcement expenditures during the 1960-1969 period enlarged by 90 percent, while the purchasing power of the dollar declined 21 percent. Although comparable figures for expenditure growth in private security are somewhat unreli-

<sup>3</sup> See Chapter IV of R-870-DOJ for the derivation of the data in this section.

<sup>4</sup> These increments do not include changes in the number of part-time private security guards and detectives. Part-timers account for between 20 and 50 percent of employment in major contract security firms, but the corresponding fraction in smaller contract firms, as well as in the in-house private sector, is unknown.

able, the most credible estimate places growth over that same period at approximately 150 percent. Since private-sector employment grew only 7 percent, the large expenditure growth appears to be due mainly to growth in security equipment revenues and to increases in wage rates and other costs.

While the total number of private guards and investigators grew slowly during the 1960s, *the contract segment grew rapidly*, almost doubling between 1960 and 1969. In contrast, employment of in-house guards and investigators may have declined slightly over that period. Whether viewed in terms of revenues or expenditures, growth in private contract protective services (guards, investigators, armored car, central station alarm) averaged 11 to 12 percent per year. In terms of employment, receipts, and number of establishments, this sector grew more than twice as fast as the service industries in general, themselves a rapidly growing sector of the economy.

The contract security industry that provides guard and investigative services may be characterized accurately as a rapidly expanding industry which is dominated by a very few large firms, but which includes several thousand very small firms as well. In recent years, the large firms have been increasing their share of the market, as Table 2 illustrates.

The growth of the contract security industry is much more rapid than that of either total private security or in-house security, so that the contract security industry continues to capture an ever-increasing fraction of the total. Why? The oft-cited explanations are that contract security services imply to the client such advantages as the following: lower cost (by about 20 percent); administrative unburdening (no need to hire, equip, train, etc., the security staff); flexibility in scheduling of relief manpower (in times of sickness, vacation, peak loads); and less involvement between security employees and regular employees (i.e., more impartial security employees).

## REASONS FOR GROWTH

Growth in public police expenditures and employment is generally assumed to be a "cost" of rising crime rates; while some persons point out that crime reporting may be improving over time, few dispute the thesis that the actual crime rate has risen, as have property losses and the fear of crime.<sup>5</sup> However, some observers have claimed, for example, that *all* of the increase in local public police budgets between 1900 and 1960 could be "explained" without referring to increases in reported crime, the explanatory factors being growth in inflation, population, number of registered motor vehicles, and urbanization.<sup>6</sup> If, in addition, public police "productivity"<sup>7</sup> did

<sup>5</sup> The June 1971 Harris Poll reported that 55 percent of the 1,614 households polled during the month were "more worried about violence and safety on the streets" in their own community, as compared to a year ago. See *Security Systems Digest*, July 7, 1971, p. 7.

<sup>6</sup> See, for example, David J. Bordua, and Edward W. Haurek "The Police Budget's Lot," *American Behavioral Scientist*, May-August 1970, pp. 667-680.

<sup>7</sup> The nature of the relationship between crime or crime rate and police action is largely unknown at this time.

Table 2

REVENUE TRENDS OF LARGE PUBLICLY OWNED PRIVATE PROTECTION FIRMS<sup>a</sup>

Firm	Revenue (\$ millions)							Comp. Annual Growth Rate, 1965-69 (% per year)
	1963	1964	1965	1966	1967	1968	1969	
<b>Guard and Investigative Services</b>								
Pinkerton's, Inc.	42.7	64.1	66.7	71.3	82.8	99.4	120.5	15.8
Wm. J. Burns Intl. Detective Agency, Inc.	41.0	43.2	48.2	55.9	66.5	82.8	97.1	19.0
Wackenhut Corporation	9.6	10.8	17.8	22.4	29.0	36.7	48.5	28.4
Walter Kidde and Co. (Globe Security Systems) <sup>b</sup>	....	....	22.8	25.3	29.0	39.4	46.3	19.4
Baker Industries, Inc. (Wells Fargo Security Guard) <sup>c</sup>	....	....	3.3	5.8	8.1	11.7	15.8	45.5 <sup>d</sup>
Total	93.3	118.1	158.8	180.7	235.4	270.0	328.0	....
Industrywide total	289 <sup>e</sup>	....	....	....	445 <sup>e</sup>	530 <sup>f</sup>	620 <sup>g</sup>	....
Percent of industrywide total	36	....	....	....	51	51	53	....
<b>Central Station Alarm Services</b>								
American District Telegraph Co.	70.9	74.9	78.7	81.8	87.4	93.3 <sup>h</sup>	97.2 <sup>h</sup>	5.5
Baker Industries, Inc. (Wells Fargo Alarm Services)	....	....	3.3	5.8	8.1	11.6	13.6	45.5 <sup>d</sup>
Holmes Electric Protective Co.	....	....	....	....	....	15.0	17.5	....
Total	70.9	74.9	82.0	87.6	95.5	119.9 <sup>h</sup>	128.8 <sup>h</sup>	....
Industrywide total	80 <sup>f</sup>	....	....	....	....	110 <sup>f</sup>	120 <sup>f</sup>	....
<b>Armored-Car Services</b>								
Brink's, Inc.	....	....	40.6	44.5	48.9	56.7	64.0	12.1
Baker Industries, Inc. (Wells Fargo Armored Service) <sup>j</sup>	....	....	2.6	4.7	6.6	9.8	13.0	45.5 <sup>d</sup>
Loomis	....	....	6.1	7.1	8.3	10.0	12.7	20.6
Total	....	....	49.3	56.3	63.8	76.5	89.7	....
Industrywide total	67.3 <sup>e</sup>	....	87.0 <sup>h</sup>	....	90.6 <sup>e</sup>	115.0 <sup>h</sup>	128 <sup>k</sup>	....
Percent of industrywide total	....	....	57	....	....	67	70	....

<sup>a</sup>Data in this table have not been adjusted to compensate for the reduced purchasing power of the dollar over time; between 1959 and 1965, that purchasing power declined about 8 percent, while it declined an additional 14 percent between 1965 and 1969.

<sup>b</sup>Guard services and equipment only.

<sup>c</sup>Wells Fargo Security Guard Group only (part of Wells Fargo Protective Services Division). Data prior to 1968 assume that the Security Guard Group revenues are 27 percent of total revenues of Baker Industries, Inc.

<sup>d</sup>Annual growth rate for entire corporation. Total income was \$54.9 million in 1969 and \$11.9 million in 1965. The large growth rates were due, in part, to acquisitions.

<sup>e</sup>Source: Census of Business, op. cit.

<sup>f</sup>Source: Predicasts, Inc., op. cit.

<sup>g</sup>Source: 1967 Census of Business data extrapolated to 1969, using revenue growth ratios equal to those achieved by large contract guard and investigative agencies.

<sup>h</sup>At least 80 percent of the ADT total revenues are attributable to central station alarm services.

<sup>j</sup>Wells Fargo Alarm Services Group only (part of Wells Fargo Protective Services Division). Revenues prior to 1968 are assumed to be 27 percent of total revenues of Baker Industries, Inc.

<sup>k</sup>Wells Fargo Armored Service Group only (part of Wells Fargo Protective Services Division). Revenues prior to 1968 are assumed to be 22 percent of total revenues of Baker Industries, Inc.

<sup>k</sup>Source: 1967 Census of Business data extrapolated to 1969, using revenue growth ratios equal to those achieved by large armored-car firms.

not change materially during that period, an inference that public police are increasingly overburdened (in terms of anticrime activities) would be reasonable. As a consequence, the demand for supplementary private security services and equipment should rise.

But there may be additional underlying factors generating increased demand for private security. Most observers would include some or all of the following:

- Increasing business losses to crime (\$3 billion in 1968).
- Insurers raising rates or refusing coverage, so that security measures are used increasingly as a substitute for insurance.
- Insurers requiring the use of certain private security systems or granting premium discounts when certain private security measures are used.
- The federal government's need for security in its space and defense activities during the past decade and, more recently, the need for security against air hijackings, violent demonstrations, and bombings of federal, state, and local government facilities.
- The basic business trend toward purchases of specialized services, which may contribute to the growth of the contract security forces.
- The nation's growth and advancing state of the art in electronics and other scientific areas, which has sparked new and distinct manufacturing branches of several protection companies, providing greatly improved security devices, especially for intrusion detection.
- The general increase in corporate and private income, which has resulted in more property to protect and, at the same time, more income to pay for protection.

### III. PUBLIC AND PRIVATE FORCES—COMPLEMENTARY OR COMPETITIVE? <sup>1</sup>

#### THE PUBLIC/PRIVATE ISSUE

The issue of what levels and types of police services are to be provided at public expense to different segments of the population is extremely complex and sensitive. The answer has varied markedly over time. Presently, greatly differing amounts of public police services are provided in different cities, and even in different areas within single localities. These variations over time and geography might be explained by changes in the needs for public police services, the demands for police services, the beliefs of political and police decisionmakers, the public ability to pay for quality public police service, and/or the nature, quality, and cost of the private police forces operating in the community. Consideration of these criteria of efficiency, need, and social welfare might reveal that unequal provision of services is appropriate.

Since decisions about the appropriate allocation of public and private police (i.e., the public/private police issue) depend on local situations, we shall not attempt to make specific recommendations here; our intent is, rather, to present some of the conceptually important subissues that should be incorporated into the decision process.

Economic theory holds that services provided by the government (in contrast to those provided privately) generally have one or both of the following characteristics: (1) widespread benefits to the public, some of whom may consume without paying for the service; (2) sufficient economies of scale that a natural monopoly situation exists.<sup>2</sup>

The usual prescription for the first case, where some individual citizens consume the service without paying, is public ownership and production of the service,

<sup>1</sup> A more detailed discussion of the material in this and the next two chapters appears in Chapter VI of R-870-DOJ.

<sup>2</sup> Since costs decline as volume increases, competition among firms would lead to monopoly as the firms expanded, lowered costs, and captured the market; and the monopoly would then charge higher prices and provide a lower volume of service output than would prevail under competitive conditions.

with publicly subsidized or free consumption. In the second case, where a natural monopoly situation exists that implies lower service output and higher prices, the general textbook prescription is either to publicly operate the service or to regulate it. We suspect that a careful analysis of the economic theory would show that public police should perform such services as riot control and investigation of major crimes. The difficulties in resolving the public/private police issue arise in cases that are borderline from the viewpoint of economic theory. Such borderline situations include preventive patrol inside high-rise residential buildings or in industrial parks; crowd control at recreational events; investigation of minor thefts of property from retail or other businesses; and response to burglar alarms (most of which are false).

In situations where either the public or private police are capable of providing the particular service, at least three criteria should be used in deciding the issue: (1) the relative cost and quality of the public and private forces, (2) the nature of the security services that will be available to various population groups (i.e., the equity with which the services would be distributed), and (3) the degree to which the delegated legal police powers will be exercised in an acceptable manner (by public or private police), rather than abused. Currently, most private security forces would be preferred if monetary cost were the only criterion but probably would not be preferred if a high-quality force were needed (although the private police industry is capable of providing high-quality personnel on demand). Equity in distribution can be measured in many ways, but private forces clearly are distributed more in accordance with ability and desire to pay than are public forces. Theoretically, public police distribute protection "equitably" to each citizen and organization, but the distribution of services, in fact, varies markedly, depending on whether the measurement criterion used is police man-hours per citizen, per crime, per value of property, or per call for service. Since the coercive potential of legal police powers can be abused easily, persons given such extraordinary powers are generally held directly responsible to the citizenry, by making them direct government employees or by tightly regulating them. It is indeed possible, however, that intensive regulation of private police may lead to their legal and social assimilation to a form of public police and to a recognition of their having special powers, immunities, and constraints. This is in fact what happened with "public" police who started out only with the citizen's power of arrest.

#### HISTORICAL OVERVIEW OF ROLES

During the nineteenth century and until 1924, when the FBI came into existence, public police were local in nature, and law enforcement beyond local boundaries was provided mainly by private detective agencies, such as Burns, Pinkerton's, and the Railway Police. For example, Pinkerton's not only protected industrial properties, they also offered nationwide detective services and often arrested criminals and brought them to justice. But over time, the respective roles and functions

of public and private police have changed. As public police forces developed, the private security forces shifted their roles increasingly from investigative to guard services. In terms of numbers of personnel, guard services now predominate over all other types of private security services.

Today, certain general principles have emerged which in practice define the roles of and relations between public law enforcement and private security in the United States. With some notable exceptions, in which responsibilities overlap, these principles are:

- The public police have the primary responsibility for maintaining order, enforcing the laws, preventing crime, investigating crimes, and apprehending criminals.
- Public property is policed primarily by the public police.
- Policing private property is the primary responsibility of the owner, the management, or the householder, all of whom may provide or purchase private security services and equipment.
- The private police are primarily concerned with crime prevention and detection, rather than crime investigation or criminal apprehension.
- When invited or called, public police will enter private property for the purposes of restoring order and enforcing the law.
- When they have not been called, public police may enter private property, if this is necessary to stop a crime from being committed or to make an arrest. Depending on crime patterns, they sometimes patrol private property which is readily accessible to the public, such as shopping-center parking lots.
- The public police can, and sometimes do, advise owners, managers, and householders with regard to crime-prevention measures, i.e., they play the role of consultants in encouraging crime prevention.

As a general rule, then, private police are concerned with private interests, and their major functions are the prevention and detection of crime on private property and the gathering of information for private purposes. Public police are primarily concerned with the public interest and with events in public areas; they have responsibility for the prevention of serious crimes against the person; they have responsibility for apprehension of criminals; and they respond to urgent calls and requests from the public. Therefore, most private security services in our society complement public police services. But in some situations, such as in residential patrol or stake-outs by public police on private property, their roles are supplementary. Generally speaking, however, under current arrangements such supplementary roles involve only a small proportion of the efforts of both public and private police. Reserve and other special-purpose public police, on the other hand, typically supplement the public police forces, since they generally perform some or all of the public police functions.

## CURRENT ROLES AND FUNCTIONS

The major functions of private guards are to prevent, detect, and report criminal acts *on private property*, to provide security against loss from fire or equipment failure, to control access to private property, and to enforce rules and regulations of private employers. Generally, these are services that public police either do not perform because of resource limitations, or cannot perform because of legal constraints. In a few situations, however, private guard services supplement public police services. For example, private guards are sometimes deputized by local law enforcement to provide limited police services, such as traffic direction and traffic enforcement in the immediate surroundings of the private property on which they work, because local public law enforcement cannot spare the resources. As another example, private guards are often hired by citizen groups to patrol public streets in residential neighborhoods in the hopes of deterring street crime, because the residents feel that the quantity and/or quality of public police protection is inadequate.

Private armored-car guards and services provide for the secure transfer of valuables between locations; public police generally do not. In this case, the public and private forces are complementary. Private patrolmen often must use public streets in the course of regular patrols to prevent and detect crime on private premises. Their presence on public streets is incidental rather than primary, and they are thus complementary to the public police force. But to the extent that crime is deterred by visibility of any security personnel on the street, private patrol services supplement public police in that *all* citizens in an area derive some direct benefit.

In terms of relative frequency, the primary activities of today's private investigator complement public police services. Private investigators perform preemployment background investigations of job, insurance, and credit applicants; undercover work to detect employee dishonesty and pilferage in industrial and retail concerns; prevention of shoplifting in retail stores; and investigation of insurance and workmen's compensation claims. They also perform investigations related to divorce suits, but this role is declining as the divorce laws are liberalized. Generally, none of these functions is performed by public police, but there is one area in which public and private investigators do compete: criminal investigations. This activity comprises only a small part of the average private investigator's work, however, and often he works for an attorney hired to defend the accused. Private and public investigators supplement each other in some areas, such as in the investigation of certain types of crime or crime targets; for example, the Burns International Detective Agency is retained by both the American Banking Association and the American Hotel-Motel Association to supplement public investigative agencies.

Alarm systems generally complement the functions of public police because they are intended to prevent crime (if the alarm system is conspicuous), to detect crime, and to report crimes that occur on private premises where they are installed. However, when actively investigating the potential intrusion, which usually turns out to be a false alarm, the alarm respondent supplements the public police effort.

#### IV. INTERACTIONS BETWEEN PUBLIC AND PRIVATE POLICE

The relationships and interactions between public and private police are quite variable, depending on the particular city or county, the type of security job, the setting in which the private policeman works, the policy of his employer or client; and so on. The relationships range from cordial, close, and cooperative working arrangements to very limited, formal contacts required by law (e.g., where a police department licenses or commissions private police personnel or businesses), or none at all.

A recent survey probed such relationships.<sup>1</sup> Of 121 responding police departments in cities with populations in excess of 25,000, 11 percent described the relationship as excellent, 39 percent as good, 40 percent as fair, and 5 percent as poor. When queried as to whether the establishment of a close, well-defined working relationship with private agencies would be considered valuable, 83 percent of the police departments answered affirmatively, whereas only 12 percent responded negatively.

Cooperative arrangements take many forms. Public police may provide private police with arrest records; they may operate a nightly call-in service for security agencies, dispatching patrol cars to check on those guards who fail to call in periodically; they provide retail merchants with bulletins describing known shoplifters; they respond to calls for aid; they complete investigations begun by private police. In addition, some public police departments provide private police with radios preset to the police frequency; some freely exchange information; and some permit the installation of direct-dial alarms and/or central station alarms which simultaneously notify the police department. Reciprocally, private police often act as extended eyes and ears for the public police; they occasionally assist in serving warrants and citations on private property or in traffic control around private property; they report suspicious persons and circumstances to public police; they may make preliminary investigations; they may make, or assist in making, arrests; and they may apprise public police of impending, unusual situations, such as strikes.

<sup>1</sup> Richard S. Post, "Relations with Private Police Services," *The Police Chief*, March 1971.

The private police view of the relationship is consistent with perceptions of the public police. In the main, private security executives feel that public police are helpful and that their relationship with them is good. We conducted a survey of 275 private security workers which revealed that 77 percent believed that the public police are helpful when called. Ten percent said public police are only helpful sometimes, and only 5 percent said they are usually absent when needed and fail to arrive promptly when called. When queried as to what they thought the typical public policeman's attitude toward them was, 61 percent felt that public police view the private security service as being valuable and helpful, 22 percent felt that public police were indifferent toward them, and 12 percent thought that public police felt superior to them. The private security employees generally felt that public police viewed them in a more favorable light than did either the general public or their fellow nonsecurity employees.

In terms of actual contact with public police, 7 percent of the private security employees in our survey said they called local police for assistance once or twice a week; 14 percent called once or twice a month; 30 percent called once or twice a year; 15 percent called when necessary; and 27 percent never called. Very few felt that local public police wanted them to make more arrests; 25 percent thought that local police wanted them to make fewer arrests; and 20 percent thought that local police felt that the status quo was satisfactory.

Many private security contractors feel that public police who moonlight in private security jobs constitute unfair competition. The extent of such moonlighting cannot now be ascertained because there are no published comprehensive statistics. But even if reliable comprehensive statistics could be gathered (perhaps by a survey of public police agencies<sup>2</sup>), the mere fact that police moonlight is not necessarily a problem. In fact, if the aim is to have more private police who have training equivalent to that of public police, moonlighting is a positive good, insofar as illegal methods for soliciting such work are not used. One view holds that the market mechanism should determine who provides security services. That is, if a user desires an off-duty policeman because he feels he will be more effective (due to better training and broader powers) than a private policeman, he should have that option. Some police agencies feel that moonlighting creates a conflict of interest. Others deny a conflict of interest but limit the number of hours per week that police may moonlight on *any* job, on the theory that extensive moonlighting makes the policeman less effective in his primary job. Still others are neutral, and some even encourage their personnel to moonlight in private security.

Sixteen state and 26 local regulatory agencies surveyed, many of which are police agencies, had few suggestions to offer regarding the relationship and interaction of private and public police agencies. However, many voiced a strong desire that private police should report all crimes, and any information relevant to a crime, to public police agencies. These views, no doubt, reflect a serious concern shared by

<sup>2</sup> It is not at all clear, however, that candid responses would be forthcoming, since some police agencies deny their sworn personnel the opportunity to moonlight in private security. Those policemen who disobey such rules would certainly not admit to it. Thus, such a survey would almost certainly underestimate the extent of moonlighting.

many observers; namely, that private police, with their employer's or client's explicit or tacit approval, often mete out their own justice rather than invoking the formal processes of the public system of criminal justice. This private system of justice invokes its own sanctions, such as dismissing a dishonest employee, transferring the errant employee to a less sensitive job, inflicting physical injury on a suspect, releasing a shoplifting suspect with a warning on the condition that he make restitution, and so on. However, other observers feel that society is better served under such private arrangements than it is by invoking the formal process.

Other suggestions from regulatory agencies ranged from the very general to the specific:

- There should be a predetermined, clear-cut policy for public/ private police interaction.
- Private police should call the public police whenever they effect an arrest or whenever they encounter some difficulty demanding police action.
- Private police should maintain a 24-hour communication capability with local public police.
- Private police should be deputized in times of emergency, such as riot, flood, tornado, and uncontrolled fire.

But a persistent minority of responding public police agencies, both in the Post survey and in our regulatory-agency survey, opted for either the status quo or for reduced interaction. Grounds for such positions included the following: Closer relationships would be unnecessarily burdensome and would create a responsibility for training; private security personnel cannot be trusted because low-quality, untrained personnel are attracted to such work; the private policeman's lack of training would reflect on the public police; the private police tend to become overzealous; the high personnel turnover in private security precludes close working relationships; private agencies would use public police services to further their own interests and profits; and it would be impossible to control private police.

One last comment regarding public police/ alarm company interaction is in order. False alarm rates<sup>3</sup> are generally very high—usually over 95 percent and sometimes over 99 percent—for central station alarm arrangements, and particularly for alarms directly dialed into police headquarters. Police departments are divided in their opinion on this matter. Some view residential and commercial alarm systems as quite valuable and are willing to expend resources in responding frequently to false alarms on the grounds that these systems do prevent crime as well as aid the police in apprehending suspects. Others refuse new direct-dial alarm hookups and are even considering disconnecting the ones they currently handle.<sup>4</sup>

In short, the relationships between the public police and private police parallel those that exist between any "professional" and "paraprofessional" groups. Some public police will tend to look on the private police as relatively unqualified persons

<sup>3</sup> The police generally define a false alarm as a situation in which no crime complaint is filed.

<sup>4</sup> For example, the White Plains (New York) Police Department. See *Security Systems Digest*, November 11, 1970, p. 5.

who might be mistaken for public police by citizens, and who might create an unfavorable reaction to the public police in general. The likelihood of improved relationships between the two will depend upon, among other things, a clarification of roles, opportunities for cooperative ventures, and the degree to which private police are supervised or regulated locally (i.e., at the municipal or county level) rather than at the state level.

## V. THE EFFECTIVENESS OF PRIVATE POLICE

Chapter IV discussed various issues affecting decisions on the appropriate allocation of particular police and security services between public and private forces. It also described how the roles and provisions of these services are currently split between the public and private sectors. Focusing solely on the private sector now, some basic questions are, What are the costs and benefits of the various types of private security services? What information is needed to make such estimates? Which criteria are appropriate for measuring the benefits or effectiveness of each service?

A major premise of this report is that private security services fill a perceived need and provide clear social benefits to their consumers and to the general public. There seems no doubt that crime rates would be higher if there were no guards protecting property, if there were no security men escorting the movements of large quantities of money, if there were no alarm systems, or if no one investigated the background of job and credit applicants. It is also interesting to speculate on how much higher retail merchandise prices would be if there were no private police. However, the questions that need to be answered here have to do with the degree of effectiveness of various types and mixes of private security forces and devices in different situations.

To provide meaningful answers to such questions, it is necessary to focus separately on each type of security service, examining alternate ways and mixes of ways of privately providing each service. One natural way of categorizing security services is by their objective or function. Broadly speaking, private security performs three classes of functions: (1) information gathering (e.g., preemployment checks, insurance or credit-application checks, insurance claim investigations, antipilferage undercover work in retail and industrial establishments, criminal investigations, marital investigations); (2) maintaining order on, and proper access to, private property (e.g., guarding sporting events, recreational events); and (3) protection of persons and property by preventing and detecting crime, reducing losses to crime, and/or apprehending suspected criminals (e.g., guarding homes and commercial, institutional, and industrial establishments, antishoplifting activities in retail establishments, armored transport of valuables, alarm systems, surveillance systems, locks, and mobile patrolling).

To be sure, some security activities have more than one function. The guard at a football game may also be there to protect concessionaires from theft or robbery. The undercover agent's information may lead to the arrest of persons suspected of pilferage, and thus to prevention of crime and reduction of losses to crime. And the plant guard's job may involve access control, as well as protection of property and prevention of crime. But a systematic approach to cost and benefit analyses in private security implies relating resource inputs to effectiveness for each function.

In what follows, we shall discuss appropriate criteria, outline the information needed for performing cost and effectiveness analyses, discuss the availability of such information, and describe work that has already been done. To anticipate, our general conclusions are that (1) *little systematic work has been done, and consequently, the degree of effectiveness is not well known*; and (2) *little of the required quantitative information is available to perform cost-benefit analysis*. It should be noted that performance of such analyses requires close cooperation of the users and providers of private security services. The executives we contacted in the contract security industry could not provide us with quantitative evaluations of the effectiveness of their services.<sup>1</sup> However, those executives pay careful attention to costs, since the low bidder often wins the contract.<sup>2</sup> Perhaps the relative lack of information on effectiveness stems from the greatly increased demand for contract security services over the past decade, the limited supply of such services, the fact that purchasers of such services are, for various reasons, often interested in obtaining low-cost, rather than high-quality, service, and the fact that such effectiveness evaluations would require extensive and costly data collection.

It must be remembered that there are two dimensions to effectiveness, or benefits. First, there are the objective, or measurable, benefits; for example, the reduction in losses to crime effected by a specific security program, or the number of burglars caught after, as compared to before, a particular alarm system was installed. The other dimension is the user's or purchaser's *perceptions* about benefits. A homeowner may feel more secure when he contracts with a central alarm services firm, even though there might be few objective benefits. On balance, it must be concluded that users perceive the benefits of private security as being worth the cost, since private services are increasingly in demand.

### INFORMATION-GATHERING SERVICES

In both theoretical and practical terms, cost and benefit analyses of the information-gathering services offered by private security are conceptually straightforward,

<sup>1</sup> We queried executives of the five largest contract companies on this point, on the assumption that it would be in their self-interest to have evaluated the effectiveness of their services; that is, if a particular service which costs \$x per year could be shown to reduce losses to crime by several times that cost, it seems logical that the potential client would be more likely to purchase the service.

<sup>2</sup> The fact that the low bidder often wins the contract indicates why wage rates and personnel quality are low and perhaps suggests a low level of sophistication among the buyers of private police services. Wage rates and personnel quality are discussed in the next chapter.

if somewhat subjective. What is the cost of doing an accurate preemployment check? An accurate insurance or credit check? An insurance-claim investigation? These monetary costs are readily obtainable. We have not presented them because the necessary effectiveness data are not available to complete the cost/benefit comparison. Effectiveness of information gathering can be measured by criteria such as the number or proportion of reports containing information that changes a decision to hire, issue credit, or take other actions; measures of the consequences of those changed decisions; measures of the quantity and effects of incorrect information; or the number or proportion of reports for which illegal methods are used to collect the information. Except for some anecdotal horror stories about the consequences of incorrect reports, we did not locate any reliable information on any of the above-mentioned effectiveness criteria. In theory, collecting such data should be relatively straightforward, in practice, it would prove difficult.

Evaluating the effectiveness of undercover investigators would be somewhat more difficult because of problems in double-checking the reports. Unlike background investigators, two undercover investigators may not be able to verify each others' information easily.

#### MAINTAINING ORDER AND CONTROLLING ACCESS

Evaluating the costs and effectiveness of private police for maintaining order and controlling access is also relatively straightforward. Over a substantial period of time, the costs and performance of individual in-house guards (or groups of guards provided by different contract agencies) can be evaluated. Objective performance, or effectiveness, can be judged in terms of the number and nature of occasions when order is maintained; the number and nature of complaints, insurance claims, or lawsuits resulting from the guards' actions or behavior; the frequency with which guards deny unauthorized access; and so on.

#### PROTECTING PERSONS AND PROPERTY

Evaluation of costs and effectiveness for the function of protection of persons and property is much more complex and difficult than it is for the two functions discussed above. Here, there are often many relevant criteria to choose among, as well as many alternative types of security services, devices, or mixes of security services and devices.

Relevant general criteria of effectiveness, which should be compared over a period of time prior to, and after, implementing or purchasing a security service, are the type and volume of crime occurring or deterred; direct dollar losses to crime; social costs attributable to crime (e.g., fear, injuries, and indirect economic costs such as medical costs and lost wages); the number of criminal suspects apprehended and

convicted; and the number of improper actions taken by security personnel. For specific security services, there may be additional, particularly relevant criteria. For example, in evaluating the cost-effectiveness of transporting valuables by armored car, it might be necessary to consider the expected dollar losses per 100 trips, the expected dollar losses per 1,000 miles, the fraction of trips that result in a robbery, and so on. In evaluating central station alarm service, additional criteria might include overall false-alarm rate, false-alarm rate attributable to electrical or mechanical failures, mean elapsed time in responding to alarms, and the percent of time for which the elapsed response time was less than a certain value. Depending on store policy, antishoplifting security programs might also be judged on the basis of the fraction of losses that resulted in restitution. Frequency and seriousness of complaints or lawsuits lodged against security personnel are also relevant criteria.

In evaluating costs and benefits of alternative mixes of security services intended to, say, protect an industrial plant, careful attention should be paid to proper cost elements and cost comparisons of diverse services. For example, alternative security elements may be guards, closed-circuit television (CCTV), and other detection and surveillance equipment, perimeter fencing, and special locks. Since the security alternatives that are equipment-intensive may involve high initial (compared to recurrent) costs whereas the labor-intensive alternatives, such as guards, involve little or no initial costs but high recurrent costs, comparisons of alternative mixes based on 1-, 5-, or 10-year system costs may look very different. And, in addition to the general effectiveness criteria cited above, the ability to obtain crime insurance as well as the insurance premium discounts available (if one or more specific security services are installed) may also be viewed as relevant criteria. For example, for some central alarm systems, insurance premium discounts of up to 70 percent are available. This premium saving alone may pay for part, or all, of the annual alarm system service charge.

Few comprehensive cost and benefit assessments of security services have been conducted. One reason for this is the paucity of relevant reliable data. Private security users and employers generally do not collect them; and federal, state, and local agencies do not collect them. However, the Underwriter's Laboratory collects some relevant data related to alarm equipment and central station alarm services. The UL issues data annually on burglary attempts against premises with UL-certified systems; however, no statistical comparisons are made either with similar premises without certificated systems or with those having no systems at all.

The few reasonably systematic attempts at benefit analysis of private security services in the last few years have all been relevant mainly to alarm systems. One analysis was made of alternative protective systems for small business establishments.<sup>3</sup> That analysis considered only "pure" protective systems, such as local alarms, direct-dialing alarms to police stations, and central station alarm system, or no protection. Ten-year system costs were compared with expected 10-year losses

<sup>3</sup> See the Small Business Administration's *Report on Crime Against Small Business* (Appendix C, "Protective Devices Systems"), transmitted to the Select Committee on Small Business, U.S. Senate Document No. 91-14, April 3, 1969.

with various sensor coverages. In addition, assuming that a central alarm system was already installed, a tradeoff analysis of losses and costs was conducted for various assumptions regarding possible reductions in police response time to alarms. A second attempt was the 1968 Small Business Administration (SBA) follow-up field survey (to one of the studies sponsored by the National Crime Commission in 1966) of business crime and insurance problems.<sup>4</sup> This survey studied crime rate and losses to crime in various businesses in different locations, with and without various private protective services and equipment. However, the study did not attempt to distinguish the degree of effectiveness by type of business, by type of merchandise sold, by degree of vulnerability to crime, or by whether or not the central station service conformed to UL standards.

A third attempt was an experiment sponsored by the Law Enforcement Assistance Administration, which involved a relatively inexpensive simple alarm system designed primarily to catch burglars, not to reduce losses to crime.<sup>5</sup> The system was installed in 350 Cedar Rapids, Iowa, business establishments which were favorite targets for burglars, but whose owners typically found alarms too expensive. For an initial cost of about \$100,000 for the first year (\$185 to buy and install each alarm, plus \$150 per year in maintenance and phone line charges per installation), 40 burglars were caught in the first 18 months—more than in the previous four years combined. The conviction rate was 100 percent.

A fourth study consisted of an evaluation of the effectiveness of the Oakland, California, burglary-prevention ordinance.<sup>6</sup> The study results attempted to show that large decreases in the volume of burglaries occurred at those businesses which complied with the ordinance and that most of the burglaries that occurred at businesses which did not comply could have been protected against had they complied. The study also attempted to demonstrate that burglaries were not displaced from commercial to residential premises by the burglary-prevention ordinance.

All of these studies focused sharply on alarm systems. As stated earlier, alarm systems today have very high false-alarm rates,<sup>7</sup> usually over 95 percent and sometimes over 99 percent. In Los Angeles, police cite the overall rate as in excess of 95 percent. Moreover, they cite cases which illustrate the disbenefits caused by faulty alarm systems and false activations:<sup>8</sup>

A local company recently went into bankruptcy leaving 75 subscribers in possession of direct-dialing systems. The subscribers are unable to obtain service under the warranty, so faulty, error-prone equipment is in use.

During the past three months 47 false alarms were received from one location serviced by a reputable company. All were attributable to error on the part of the subscriber's employees.

<sup>4</sup> Some of the findings of this survey are summarized in Chapter III of R-870-DOJ.

<sup>5</sup> See, for example, *Security Systems Digest*, November 25, 1970, pp. 13-14, and "To Catch A Thief: Antiburglar System Works in Iowa Town," *Wall Street Journal*, November 24, 1970.

<sup>6</sup> See Kearns, Sgt., John G., "Legislation in the Field of Crime Prevention," *Security World*, June 1969.

<sup>7</sup> The false-alarm rate is the percent of alarms for which no crime complaint is filed with the police.

<sup>8</sup> See "View from the Badge," *Security World*, October 1969.

One direct-dialer made 22 false calls to our Communications Division in a single day.

In Beverly Hills, California, a survey of 1,147 alarm calls to which police responded in the last three months of 1970 revealed that 99.4 percent were unwarranted.<sup>9</sup> The alarm industry itself admits to a 95 to 96 percent false-alarm rate.<sup>10</sup>

The problem of false alarms is not confined to self-dialers alone; they occur within any type of system currently in use. The SBA study suggests that equipment problems account for 35 to 50 percent of the false alarms, subscriber error accounts for 25 to 35 percent, and the remainder (20 to 40 percent) are from unknown causes, i.e., the trouble cleared before investigation could be made or completed.<sup>11</sup> However, alarm-company personnel believe that the majority of these "unknowns" are actually subscriber infractions.

What is the result of high false-alarm rates? In responding to these alarms, police expend valuable resources which could be better utilized elsewhere. Or, as in some cities, police reduce the priority of alarm responses so that in busy periods they may arrive too late to apprehend the burglar. In others, they refuse new direct-dialing alarm hookups and are even considering disconnecting the ones they currently handle.<sup>12</sup>

The reader should not infer from the disproportionate space devoted to the effectiveness of alarm systems that we have slighted other security services such as guards, mobile patrols, etc., in our investigation. There simply has been no quantitative evaluation of other services and, as we indicated above, relevant data have not been gathered. Thus, it is not possible to perform a systematic quantitative analysis of their relative cost and effectiveness. Currently, consumers of private security services must make decisions primarily on the subjective basis of "professional judgment."

<sup>9</sup> See "Beverly Hills to Regulate Private Alarm Systems—Too Many Dry Runs," *Los Angeles Times*, January 31, 1971.

<sup>10</sup> See "False Alarms, An Industry View," *Security World*, October 1969, p. 31.

<sup>11</sup> *Ibid.*, pp. 38 and 186.

<sup>12</sup> For example, White Plains, New York, is one such city. See *Security Systems Digest*, November 11, 1970, p. 5.

## VI. PRIVATE SECURITY PERSONNEL

Who works in private security, and how does his lot compare with that of sworn personnel in public police agencies? A 1957 New York State Legislative report on private detectives observed, "To an extent of which the public is perhaps unaware, licensed private detectives often engage men of scant ability and little stability."<sup>1</sup>

The typical private guard<sup>2</sup> is an aging white male, poorly educated, usually untrained, and very poorly paid. Depending on where in the country he works, what type of employer he works for (contract guard agency, in-house firm, or government), and similar factors, he averages between 40 and 55 years of age, has had little education beyond the ninth grade, and has had a few years of experience in private security. Contract guards earn a marginal wage—between \$1.60 and \$2.25 per hour, with premium-quality contract guards earning \$2.75 per hour—and often work a 48-hour or 56-hour week to make end meets. In-house guards receive \$.50 to \$1.00 per hour more than their contract counterparts, primarily because in-house security personnel tend to receive wage gains in line with those obtained by their non-security, unionized fellow employees. If employed only part-time, a contract security guard works 16 to 24 hours per week, usually on weekends. He often receives few fringe benefits; at best, fringe benefits may amount to 10 percent of wages. But since the turnover rate is high in contract agencies, many employees never work the 6 months or 1 year required to become eligible for certain of these benefits. In-house guards tend to receive better fringe-benefit packages which are more in line with nonsecurity personnel of their company. Guards have diverse backgrounds, but most are unskilled. Some have retired from a low-level civil service or military career. Younger part-timers are sometimes students, teachers, and military personnel on active duty. Part-timers account for 20 to 50 percent of the total guards at some large contract firms. Annual turnover rates range from less than 10 percent in some in-house employment to over 200 percent in some contract agencies. The precise extent to which guards are unionized is unknown, but the proportion is estimated

<sup>1</sup> Report of the New York State Joint Legislative Committee to Study Illegal Interception of Communications and Licensed Private Detectives, State of New York, March 1957.

<sup>2</sup> Here we combine all guard occupations, including the industrial guard, the armored-car guard, the alarm respondent, etc., because the data do not permit accurate, comprehensive distinctions to be drawn among them. For more detailed descriptions of personnel, see Chapter VI of R-870-DOJ.

to be no more than 10 to 12 percent. And the overwhelming proportion (an estimated 90 percent of all *unionized* guards) are employed in-house, rather than by contract agencies.

The typical private investigator or detective is a somewhat younger, white male (averaging 36 to 47 years of age), has completed high school, has had several years of experience in private security, and earns between \$6,000 and \$9,000 annually, if employed full-time. Investigators have varied prior experience; some have backgrounds in local or federal law enforcement and in military security or intelligence, although many have had no previous law-enforcement experience.

Public police are generally younger (in 1960 the median police age was 15 years lower than the median guard age), better educated (typically, high-school graduates), better paid (the median 1970 annual entrance salary was \$6,848 for all cities and \$7,800 for cities having over 250,000 population, compared to the less than \$4,000 earned annually by private security guards who work 40 hours per week), and are eligible for substantial fringe-benefit packages (up to 33 percent of wages). Because lateral entry is rare and maximum age restrictions are imposed, public police enter the force young and remain on it. Public police have considerably lower turnover rates, and fewer work part-time.

*In general, public police draw on a different labor pool than do private security forces, with the possible exception of private investigators and security executives.* The principal differences that lead to separate labor pools are the nature of the work, the levels of wages and fringe benefits, the age and education requirements of public police, and the lengthy public police personnel screening policies. Only a small percentage of private security personnel have ever applied for a public police job, and former law-enforcement officers seldom switch to nonmanagement private security employment.

In our 1971 survey of 275 in-house and contract security employees (guards, investigators, central station alarm respondents), we asked their reasons for working at their present jobs and the answers were revealing. Fully 40 percent indicated that they had been unemployed and this was the best job they could find;<sup>3</sup> about 25 percent said they enjoyed doing any type of police or security work, while 13 percent preferred private security over public law-enforcement work.

<sup>3</sup> Since about three-quarters of all respondents worked in Southern California, the high 1971 unemployment rate there may have introduced additional bias (over and above that already present in the sample). See Chapter IX of R-870-DOJ for a description of the survey questionnaire and results.

## VII. TRAINING <sup>1</sup>

It is obviously very easy to become an armed private policeman in Dade County. George Fader proved it. He worked only one night. On a Tuesday morning he applied for the job with \_\_\_\_\_ Corp. On Wednesday he was hired, uniformed, armed, and given a patrol car. "They sent me to Gables Estates all by my little self," Fader says. "The man I relieved said, 'Here's a map of the place; go patrol it.'"<sup>2</sup>

### AN OVERVIEW

Although current private security training programs vary considerably in quality, most are inadequate. The total prework training, plus initial on-the-job training, is less than 2 days for a great majority of the private security workers in the United States today. Retraining, if any, is typically done on the job through bulletins or by the immediate supervisor. The inadequacy of training is admitted, as well as apparent. In contacting a wide variety of people in private security, we found virtually unanimous agreement regarding the necessity for training guards. Furthermore, the existence of significant variations in quality among guard training programs was never questioned. However, the consensus that training is needed does not imply agreement on the issue of *how much* training is needed, or on whether training should be made *mandatory*.

Our survey, which contacted 275 security employees, further showed that most guard personnel do not know their legal powers and authority. In response to test questions, over 97 percent of the security employees made serious errors that could lead to civil suits or criminal charges. The survey also indicated widespread disagreement and uncertainty even as to what the employee's company policy was for handling specific but common types of incidents.

<sup>1</sup> Full details are provided in Chapter VIII of R-870-DOJ.

<sup>2</sup> "Security Guards Only Casually Regulated," *The Miami Herald*, July 19, 1970, pp. 11-A and 11-B.

## PUBLIC POLICE TRAINING PROGRAMS

In recent years, the trend in training public police has been toward formal classroom programs as a supplement to on-the-job experience. A 1966 survey of 269 public police agencies indicated that 97 percent had formal training programs ranging from 1 to 12 weeks, with a median length of 6 weeks.<sup>3</sup> Almost all police departments in cities having over 250,000 population conduct their own training programs, which are up to 20 weeks in length.<sup>4</sup>

While public police training programs are more lengthy than those for private security training (weeks or months, as compared to hours or, at most, days), even they are still considered inadequate by many observers. In 1967, the President's Commission on Law Enforcement and Administration of Justice recommended:<sup>5</sup>

Formal training programs for recruits of all departments, large and small, should consist of an absolute minimum of 400 hours of classroom work spread over a 4- to 6-month period so that it can be combined with carefully selected and supervised field training.

Thirty of the existing state statutes specify minimum required public police training hours; these range from 72 to 400 hours, with an average minimum length of just under 200 hours. Twenty-one states specify in-service training requirements.<sup>6</sup>

The formal initial training currently given *federal* law-enforcement personnel varies from 2 to 19 weeks, depending on the agency. Retraining programs are routinely scheduled in most agencies, providing from 1 to 3 weeks of retraining every 1 to 2 years. If armed, the personnel typically receive firearms retraining every 3 to 6 months.

The U.S. General Services Administration (GSA) provides a large portion of the guards that protect federal property. Approximately 75 percent of these 3,400 uniformed federal guards are appointed by the GSA Administrator as "special policemen" with the same powers as sheriffs and constables to enforce federal law on federal property. Until 1971, the basic initial training course has been 2 weeks in length and has been conducted as a class rather than on the job. Plans to increase the training period to 4 weeks are under consideration and have already been implemented in certain regions. Weapons training is given initially, and a refresher course is given once a year. Every 2 years each guard is sent through a 1-week refresher course covering all topics of importance. Approximately 20 percent of the refresher course is devoted to the legal aspects of the job. In addition to the class, each guard has a pocket-sized manual summarizing the information taught and a loose-leaf desk manual, and each receives on-the-job training by a supervisor.

<sup>3</sup> *Report of the Task Force on the Police*, the President's Commission on Law Enforcement and the Administration of Justice, U.S. Government Printing Office, 1967, p. 11.

<sup>4</sup> *Ibid.*, p. 138.

<sup>5</sup> *Ibid.*, p. 139.

<sup>6</sup> John J. Thomas, "The State of the Art—1970," *The Police Chief*, August 1970.

## PRIVATE SECURITY TRAINING PROGRAMS

The training a private guard currently receives before beginning work is typically no more than 8 to 12 hours, and many guards, including some who are armed, receive less than 2 hours of training. A small fraction of the guard forces attend formal prework training programs of 1 or 2 weeks duration. These longer training programs are sometimes required by contract, particularly for service at certain government installations. Many of the smaller guard forces, both contract and in-house, have essentially no training programs. Men in those smaller forces learn to perform their assignments from their fellow employees, with an occasional bit of instruction from the guard supervisor.

Larger guard forces tend to have more structured training programs, and the men are usually provided with a pocket-sized manual containing general instructions and information. The principal advantage of the structured programs is that the training information they provide is more likely to be accurate and comprehensive than that in an unstructured program. Although a pocket manual is not useful when rapid action must be taken, it can be of some value when there is time to consult it, or if the guard consults it occasionally in his spare time on the job. However, with a few exceptions, the information contained in these manuals is too vague and general to be of much use. We have examined several of these manuals in detail and find them, like the training curricula described in the next subsection, to be fairly comprehensive but extremely shallow in their coverage.

Temporary security service employees are generally given even less training than permanent employees. Typical prework training for temporary employees varies from none to 1 day's worth.

Initial on-the-job training periods vary markedly in the different training programs. It is not uncommon for a new guard to spend an hour or less with a supervisor and then be assigned to work alone. But typically, he would spend a few hours with a supervisor or fellow employee before working alone.

In summary, total initial prework training, plus initial on-the-job training, is less than 2 days in duration for a majority of the private guards in the United States today.<sup>7</sup> An occasional private guard force will receive up to 4 weeks total initial training.

The guards themselves, and some executives of the United Plant Guard Workers of America (UPGWA), describe the training programs as being even briefer than was indicated by the security executives we interviewed. In many instances the guards and the executives were employed by the same organization. We speculate that these differences in the descriptions could be attributed to changes in training programs over time, to incomplete implementation of the executives' training orders, or to employees not recognizing certain methods of instruction as training.

The 275 private security employees we surveyed were primarily guards, patrolmen, or central station alarm respondents. Two-thirds reported that they received no training before actually beginning work; less than 7 percent received more than

<sup>7</sup> According to descriptions provided by security organization executives.

8 hours of prework training; and 19 percent were put to work by themselves the first day. The remainder typically received small amounts of on-the-job training by a supervisor or fellow employee. While almost half of those surveyed were armed, less than one-fifth reported having received *any* firearms training!

A recent UPGWA survey of plants where guards are primarily in-house, i.e., they work directly for the company rather than for a contract firm, also produced interesting results. For example, *only 8 percent of the plants furnished firearms training* (ranging from one-half hour to 8 hours, typically consisting of 2 hours), but *29 percent equipped their guards with firearms*.

The survey we conducted contained several questions to test the guards' knowledge and their reactions to several hypothetical situations. The questionnaire contained a total of 44 chances to make a "mistake." Twenty of these 44 potential errors were "major," i.e., they could result in improper security employee actions with potential civil or criminal liabilities. The results were shocking: Over 99 percent of the security workers made at least one mistake; the average was over 10 mistakes. More significantly, over 97 percent made at least one *major* error; the average was 3.6 major errors, any one of which could potentially lead to civil or criminal charges against the employee and/or his employer. It seems very reasonable to conclude that these men were not well trained. And these results are especially significant in view of the fact that our survey was biased in favor of higher-paid, better-educated security workers, and they were allowed to think before responding to the questions. That is, they were not forced to make the decisions in a crisis situation.

The majority of the private guard forces in the United States do not have any formal training program, or any specified curriculum. Thus, it is the exception rather than the rule when a guard force has written guidelines to assist personnel in training. Initial prework training programs in three large contract agencies consist of the following:

*Company X:* Twelve hours of training are allocated among 17 very general topical areas, at the discretion of the local trainer. These topic areas are described only briefly and superficially for the trainer in a list covering approximately 1½ typed pages.

*Company Y:* A 2-hour presentation of approximately 50 narrated slides is shown to each new guard.

*Company Z:* A 10-hour basic guard course is presented to a class by an instructor using a training manual plus supporting reference materials.

The topics covered by the three contract agencies' training programs are very similar. They are also similar to the material covered in the GSA federal guard training program. The differences between the few-hour training programs and those of 3 or 4 weeks duration are mainly in the depth of the instruction rather than the breadth. The short programs outlined above cover most topics fairly accurately, but very briefly; material is presented once without much explanation or example. The learning resulting from such cursory programs can only be very minimal.

Material from one of the three training programs described above contained an

especially relevant point: It was apologetically indicated that a few minutes time is insufficient to cover all legal points adequately. However, the high points would be talked about. True, the trainer can *talk* about the *high points* in a few minutes, but can the guard *learn* in a few minutes?

The typical training given to patrolmen, alarm respondents, private investigators, and supervisory personnel is just as inadequate, in terms of length, depth, and quality, as that given private guards.

## VARIOUS VIEWS ON TRAINING

In response to our survey, 26 state and local agencies that regulate the private security industry advocated mandatory training for certain types of private security personnel, while only 2 opposed it. A smaller majority, 18 regulatory agencies, favored mandatory retraining, while only 5 opposed it. Those recommending retraining typically favored firearms retraining 1 to 4 times each year, and other types of retraining 1 or 2 times each year. They recommended training programs ranging from 12 to 150 hours; the average was 58 hours. The recommended retraining programs ranged from 3 to 24 hours and averaged 12 hours. The Ohio Peace Officers Training Council, which has studied the issue of training private security personnel in some detail, recommends an initial 120-hour program. Training topics most frequently mentioned were the use of firearms, the law, and the legal authority of private security personnel.

Executives of contract security firms feel that the issue of training is very important and that current private security training programs are in need of improvement, but that because of strong price competition, high employee turnover rates, and the abundance of very small private security firms, cost is a major factor inhibiting the industry from providing more training.

The official responsible for the GSA federal guard forces also recommended a formal training program for all private guards, for a variety of reasons: Without training, the guard learns by trial and error, but there is little control over the quality of the learning. In addition, without training, the guard might be handicapped by not knowing how to cope with unusual situations. The GSA official also viewed a training program as a means of screening out misfits before they become problems. Finally, the well-trained guard is more capable in adapting to changes and exercising proper discretion. The GSA does not view their current initial 2-week training program as completely satisfactory. Their current recommendations are a minimum of 4 weeks training for both GSA guards and private contract guards who work at federal installations, since both perform basically the same functions.

The UPGWA management wants industry and the government to help establish effective training programs for industrial guards and security personnel. The union's depth of concern about training is reflected in a set of recommendations which they are currently asking management of certain industrial firms to adopt.

The union recommends that the initial training program be at least *40 hours* in length and that periodic *16-hour* retraining programs be given twice a year. All training programs would be entirely at company expense, with the employee receiving full wages during training.

In commenting on a UPGWA survey of 188 industrial plants employing in-house guards, in which 67 percent of the plants surveyed reported no training in the last two years, union executive Charles E. Lamb expressed strong views on the current lack of private security training:<sup>8</sup>

I think it is important to note the balance at the bottom of each training category which reports no training. It is the opinion of this union that this lack of training detracts very considerably from the quality of industrial security.

... there is great need for training in the industrial security area and from the many comments of our members, they want very badly to be trained.

The union also surveyed contract agency guards but has not yet compiled the data. With regard to training in contract agencies, Mr. Lamb commented:

... However, from long experience in representing the Agency guard, I can tell you that I have yet to see the guard agency who actually trains guards to any extent at all.

Our survey of private security personnel revealed that less than 1 percent of the employees surveyed felt that they received too much training. Initial training was said to be "not enough" by 43 percent of the respondents, while 51 percent felt that they did not receive enough on-the-job training. Finally, in response to the open-ended question, How would you improve the private security force in which you work?, about three-quarters of the employees made suggestions. Half of those making suggestions recommended improved training; it was the improvement most often suggested by the employees.

In closing, we quote an apt comment from an ex-guard who was beaten while trying to stop a robbery:<sup>9</sup>

This business is one big goddamned rip-off. Those folks [clients] don't want real security. If they did, they would pay for it. For \$1.60 an hour, I wouldn't stick my neck out again. Anybody who does is crazy. I got no stick, no gun, no power. I just stand around looking cute in my uniform. Don't let anybody tell you a guard doesn't need training. If I'd had it, I might have known what the hell was going on.

<sup>8</sup> Private communication from Charles E. Lamb, UPGWA, August 3, 1971.

<sup>9</sup> James Norell and John Acqualino, "Scarecrows in Blue," *The Washingtonian*, August 1971.

## VIII. CURRENT LICENSING AND REGULATION

This chapter summarizes the licensing laws and related regulations of private security businesses and personnel in all 50 states and some local jurisdictions.<sup>1</sup>

There are two major differences between state and local regulations: First, *approximately half the cities with population over 25,000 regulate some aspect of the industry, but about three-quarters of all states regulate some segments of the industry.* Second, *cities tend to regulate categories of the security industry that are not regulated by the states.* In general, it appears that state and local regulations complement each other.

### STATE LICENSING AND REGULATION

The licensing<sup>2</sup> and regulation of the private security industry<sup>3</sup> at the state level is characterized by a lack of uniformity and comprehensiveness. The laws, in fact, often exclude many types of security businesses and personnel operating within the state.

There is wide variation among states in the extent and quality of regulation. The industry is virtually unregulated in 12 states—typically, those states which are

<sup>1</sup> Detailed descriptions of each of the statutes and ordinances summarized appear in R-871-DOJ.

<sup>2</sup> *Licensing* is used in this report to mean the permission of a specified governmental agency which must be granted *before* a business or person can lawfully engage in an activity. Note that some jurisdictions use the terms *permit*, *commission*, or *appointment* in lieu of the term *license*.

*Registration* is used here to mean the required submitting of certain information to a specified governmental agency by a business or person within a specified time *after* beginning to engage in an activity. The governmental agency usually may deny the registration if minimum qualifications are not satisfied. Registration, as defined herein, includes the procedure followed by several states in which a police-records check is made by a state agency for each private security employee, even though the states themselves may not call the procedure registration.

<sup>3</sup> As stated in the Introduction, *private police and private security agency, force, industry, and personnel* are comprehensive generic terms used in this report to include all types of contract and in-house services, including investigation, guard, patrol, lie detector, alarm, armored transport, and the furnishing of security advice. *Contract agencies* are those that provide security services for a fee, while *in-house forces* provide security services, not for hire, exclusively in connection with the affairs of the one business that employs them.

neither heavily industrialized nor densely populated. Regulation in the remaining 38 states ranges from virtually automatic licensing of private investigative agencies only to some very comprehensive regulatory programs embracing most types of security agencies and involving high licensing standards plus mandatory state screening and registration of employees. Regulation of the industry has been undergoing rapid change; several states have recently enacted, or are presently considering enacting, new laws.

While several current state laws concerning private security are relatively comprehensive, and while nearly every regulatory feature we suggest in this study exists in some state law, we feel that no single law presently in force has adequate scope and quality. In short, no state today has a model law. A model statute would incorporate the most desirable features of several state and local statutes plus a few not now in any existing law. In our view, California, Connecticut, Delaware, Florida, Illinois, Michigan, New York, Ohio, Texas, and Wisconsin have some of the better statutes, in terms of standards and scope. In contrast, some state statutes are silent on nearly all topics except licensing fees. For example, Alabama, Alaska, Louisiana, and Tennessee appear to have no specific regulation beyond the collection of a business or occupational license fee; this fee ranges from \$25 to a percentage (0.25 percent or 0.5 percent) of the gross business receipts of the licensed agencies.

Usually, state-level regulation of the private security industry is conducted by only one agency. The Department of Public Safety or the State Police serve as the regulatory agency in 10 states, and a special Regulatory Board serves in 12 states.<sup>4</sup> The tightest standards appear to have been established in these states. The weakest standards, existing in states where the Department of Revenue has responsibility, consist of little more than collecting a license tax for the privilege of conducting business.

In some of the states that do not regulate private police, regulatory authority is explicitly delegated to the cities and/or counties, but in most of those states the security industry is not mentioned in any state statutes. The states that do regulate usually allow additional local regulation, but in a few cases it is expressly prohibited.

The business and personnel categories that are regulated vary widely among states. Twelve states do not regulate at all; some states, such as Alaska, license only contract investigative agencies; other states, such as Wisconsin, license contract investigative, guard, and patrol businesses, and license or register all employees of contract investigative, guard, and patrol agencies but do not regulate polygraph examiners and in-house security forces. In contrast, Florida has a very stringent licensing requirement for individual polygraph examiners but does not register employees of contract investigative, guard, or patrol agencies. One of the weak points in many state laws is the complete omission of major categories of security businesses and personnel from regulation. A total of 34 states regulate private investigative businesses; 26 regulate guard or patrol businesses; 17 license or register private contract investigative employees; and 12 license or register private con-

<sup>4</sup> These are the most frequently used regulatory agencies.

tract guards or patrol employees. *No state has mandatory regulation of in-house guards or investigators.*

Businesses that are less numerous than guard and investigative agencies tend to be less regulated, even though they perform significant security functions and are susceptible to many of the same problems as are the guard and investigative segments. To our knowledge, only 4 states explicitly regulate the central station alarm companies,<sup>5</sup> 6 states explicitly regulate armored transport companies,<sup>5</sup> 11 states license polygraph examiners,<sup>6</sup> 4 states license repossessors, and only 1 state licenses insurance investigators. The special police<sup>7</sup> are regulated by several states.

Many categories of private investigators and guards are explicitly excluded from licensing requirements for reasons that are not clear to us. Even though they perform the same types of investigative activities as contract investigators, both insurance and credit investigators are explicitly exempted from licensing in 22 states. Most of the remaining states that license contract investigators implicitly exclude most insurance and credit investigators (who work for a single employer) by licensing only contract investigators and excluding in-house investigators working "for a single employer" rather than "for hire." Similarly, in-house guards are often not regulated at the state level, even though they perform exactly the same jobs as contract guards in many cases. Since both contract and in-house personnel may have to deal with the public, it appears that current state regulation is not aimed at specific types of security activities or at personnel that make contact with the public, but rather at some of the businesses that sell security services.

Licensing is the method of regulation for private security agencies in all of the 38 states that impose any controls. Certain types of employees, usually investigators or polygraph examiners, must be licensed in 14 states. A total of 13 states register certain categories of security employees; typically, the remainder set standards for employees but play no direct role in the screening of personnel. The registration of employees (submission of employee data to the state for approval) takes a variety of forms. The weakest form of registration requires only that employee fingerprints, without names, be submitted to a state agency for a criminal-records check. Stronger registration requirements<sup>8</sup> specify that detailed data on each employee be submitted to the state regulatory agency; explicit approval of employees is required for continued employment, although the approval may not be a stringent procedure (in one state, for example, a letter from the local police constitutes approval). In Ohio the state issues an identification card if the employee is approved, and an employee not yet possessing the card may work for a client only if the client is warned that the employee has not yet completed registration. Registration rules generally specify that data on the employee must be submitted to the state within a brief time after

<sup>5</sup> These services may be included in guard or patrol categories in some additional states.

<sup>6</sup> For more details on polygraph legislation than we present in this series of reports, refer to C. Romig, "The Status of Polygraph Legislation in the 50 States," Parts I, II, and III, *Police*, September, October, and November 1971.

<sup>7</sup> Recall that this term is used to mean those private security personnel who are given some law-enforcement powers not granted to ordinary citizens.

<sup>8</sup> For example, those in force in Connecticut, Delaware, New Mexico, Ohio, Texas, and Wisconsin.

date of employment; this time ranges from "immediately" to 10 days. Temporary employees are excluded from registration requirements in 3 states.

The administrative requirements for obtaining a license generally follow a similar format in each state. An application is completed, an investigation is made concerning the applicant, and, if he is found to be of "good character, integrity, competency, and ability," he is required to post a bond and is issued the license. Typical statutory provisions for a licensee and his employees include the following:

1. There is a *license period* of 1 or 2 years.
2. An average licensing *fee* of \$150 is levied, plus \$3 per employee if registration is required. The licensing and registration fees range from \$10 to \$500 per business and zero to \$5 per employee.
3. An average *bond* of \$6,000 must be posted. The 26 states requiring bonds set amounts ranging from \$500 to \$400,000. In two states insurance may be purchased in lieu of the bond.
4. A *criminal-records check* is required on the licensee and each employee—the former in all the states that license one or more types of security agencies, the latter in half of those states.
5. *Grounds for denial* usually include a conviction for a felony or crime involving moral turpitude, or not being of "good moral character, integrity, competency, reputation, or honesty."
6. *Grounds for revocation* usually include all of the grounds for denial plus violation of any regulation or "demonstrated unworthiness or incompetency."
7. There are no provisions concerning how the regulatory agency is to learn of or handle *complaints, bond or insurance claims, or court proceedings* against a licensee or his employees.
8. *Penalties* of up to an average maximum of \$1,100 and/or 7 months imprisonment may be imposed for violation of regulations or provisions of the licensing act. The maximum fines range from \$20 to \$5,000, and maximum imprisonment ranges from 2 months to 5 years. Licenses may be suspended in 10 states and may be revoked in nearly all licensing states.
9. There are no provisions granting private security officers special legal *police powers* not possessed by ordinary citizens. However, in a few states, and in many cities, a small percentage of all private security personnel are commissioned as "special policemen."
10. A minimum age requirement of 21, but no maximum age limit, is set in 16 states. An additional 9 states have a minimum age requirement of 25.
11. There may be a requirement of U.S. *citizenship*, but not state *residency*. Only 6 states require residency of up to 2 years.
12. No minimum level of required *education* is specified, except in two states that require a licensee to be a high-school graduate, and one state that requires licensees to be literate. Two states require high-school graduation, and 1 requires a college degree for polygraph examiners.
13. Prior relevant *experience* averaging 2½ to 3 years is required for *licensees*

in 23 states. The range of required experience is from 1 to 10 years, and the amount required may depend on the nature of the experience. Typically, only one person in the security agency management need satisfy these experience requirements. For a polygraph examiner's license, 7 states require a 6 to 12 months internship under a licensed examiner; 5 other states require up to 5 years experience as an investigator but will accept certain types of Bachelor's degrees as a substitute for experience.

14. *Written examinations* are required for contract guard and patrol agency licensees in 8 states and for contract investigative agency licensees in 11 states, but examinations are not required of a licensee's employees. Seven states conduct examinations of prospective polygraph examiners.
15. *Training* is generally not mentioned in the statutes. There are exceptions, however: California will be instituting a mandatory weapons-training program for armed personnel; Ohio requires 120 hours of training at an approved school for all private security personnel, who must be commissioned by local jurisdictions,<sup>9</sup> and for every armed person employed at an educational institution; Vermont requires private investigative agency licensees to pass either an approved training program or a comprehensive examination; and 10 states that license polygraph examiners require graduation from an approved training school and/or 6 to 12 months internship.
16. Requirements usually specify that approved *identification cards* be carried, and that guard *uniforms and badges* not resemble those of the public police.
17. *Special handgun or concealed-weapons permits* are required by many states and are not generally granted automatically with the agency license or employee registration. Most licensing statutes are silent on this point, but 12 indicated that an additional weapons permit must be secured. Two statutes specify that handguns could be carried by private security employees only while on duty.
18. *Special regulations*, in addition to those categories of regulations summarized above, appear in many of the statutes. These rather specific rules generally make certain private security practices either mandatory or illegal. Special regulations concern, for example, advertising, use of weapons, record-keeping, or polygraph-examination procedures.
19. Licensing or registration is required of some, but not all, types of contract security *employees* in about half the states that license some types of contract security agencies.

*The principal difference between current regulation of private investigative forces and regulation of private guard forces is not in what detailed regulations are established, but rather in whether any regulations are established at all. If states regulate both guard and investigative forces, the regulations for each do not usually*

<sup>9</sup> Commissioning by cities and counties does not necessarily imply that special police powers are granted.

differ greatly. However, 34 states license contract investigative forces, while only 26 license either contract guard or contract patrol agencies.

*The principal differences between the regulation of businesses and the regulation of employees are much more marked than are those between the regulation of different types of agencies.* First, twice as many states regulate businesses as regulate employees. Second, *businesses* are licensed *before* beginning in business, and at least one person in the firm must meet detailed standards, but *employees* typically need undergo only a criminal-records check *after* they begin work. Generally, security *employees* do not have to meet any educational or experience standards, nor do they have to pass written examinations.

## LOCAL LICENSING AND REGULATION

Licensing and regulation of private security at the local level, like that at the state level, is characterized by its lack of uniformity and comprehensiveness. Typically, local laws exclude many types of security businesses and personnel from regulation. Furthermore, according to one survey,<sup>10</sup> only 54 percent of cities with population over 25,000 regulate any portion of the private security industry. (In that survey, 121 of 357 city police departments responded.) "Special police" is the category most often regulated. Forty-five percent of the survey respondents indicated that certain categories of private security personnel possessed some police powers above those granted to every citizen. We suspect that regulation is less prevalent at the local level than at the state level because localities have been preempted in this field by the states. However, several states specifically authorize additional local regulation beyond that which is state-imposed.

While several current local laws are relatively comprehensive, we found none with sufficient scope and quality to be considered a model statute. However, in our view, Dallas, Denver, Oakland, and St. Louis have some of the better existing statutes. Dallas, Beverly Hills, and Oakland have particularly strong alarm statutes. For example, the Dallas alarm statute specifies stringent and detailed controls on the alarm businesses, on alarm devices, and on operating procedures; but it fails to specify adequate controls on the private security personnel that respond to the alarms.

To further illustrate the stricter types of ordinances and regulations of the private security industry established by cities and counties, we summarize below the statutes of 19 localities. The localities selected were either in states with no regulation at the state level or in states that reportedly had relatively strict regulatory laws. The regulatory agencies in many of these localities also responded to Rand's survey<sup>11</sup> with details of administratively established regulations which do not ap-

<sup>10</sup> Richard S. Post, "Relations with Private Police Services," *The Police Chief*, March 1971.

<sup>11</sup> See Chapters IV and V of R-871-DOJ, *Current Regulation of Private Police: Regulatory Agency Experience and Views*.

pear in the language of the local ordinances. The local police departments are responsible for administering the regulations in 15 of the selected localities. Contract investigative agencies are licensed by 8 localities and 11 of the states in which the 19 localities are located. In 2 of the cities, both the state and the city license these investigative businesses. Contract guard and private patrol agencies are licensed by 10 to 13 localities, respectively, and by 9 of the states. In 5 cases, both local and state licenses are required for the patrol agency.

These 19 localities take a significantly stronger stand than do their respective states on the issue of *employee* licensing or registration. Contract investigators are licensed in 6 of the localities but registered in only 5 of the states; contract guards are licensed or registered by 10 of the localities but by only 3 of those states; contract patrolmen are licensed or registered by 13 localities but by only 3 of those states. Finally, several cities, but no states, license or register in-house security personnel. Oakland, for example, licenses in-house uniformed or armed security personnel but does not give them special police powers. In contrast, no state in the United States has mandatory licensing of in-house guards or investigators.

The specific standards and requirements that personnel must meet are generally the same for all categories that are licensed or registered in a single locality. The typical statutory provisions for a licensee or his employees in the 19 localities summarized include the following:

1. There is a license period of 1 year.
2. A licensing fee of from \$5 to \$250 is charged for agencies, with an average fee of \$57. A fee of \$3 to \$10 is charged per employee, with an average fee of \$7.
3. A mandatory bond of from \$1,000 to \$25,000 must be posted; the average bond is \$5,000. One locality requires \$200,000 insurance, but no bond. Another requires a \$100,000 bond or insurance.
4. A criminal-records check must be made of the security agency manager and all registered or licensed employees.
5. Grounds for denial usually include a conviction for a felony. Other common grounds are conviction of a crime involving moral turpitude or not being of "good character." One or more localities deny a license on the basis of conviction of a misdemeanor, drug addiction, a false statement on the application, a dishonorable military discharge, certain types of arrests, or violation of any regulation of the licensing statute.
6. Grounds for revocation usually include all of the grounds for denial plus the violation of any regulation. Other reasons are a justified complaint, action not in the public interest, failure to go to the scene of an alarm, or not rendering competent service.
7. Penalties include revocation of licenses and from \$100 to \$1,000 maximum fines and/or 2 months to 2 years (maximum) imprisonment. The average maximum fine and imprisonment are \$400 and 7 months, respectively.
8. Provisions for granting certain types of private security officers special police powers not possessed by ordinary citizens exist in 9 of the 19 locali-

ties. The exercise of such powers is typically restricted to on-duty hours at assigned locations.

9. There is a minimum age requirement of 21 years in half the localities, but never a maximum age limit.
10. There are citizenship requirements in 9 localities, but residency requirements in only 6.
11. There are educational requirements in only 3 of the 19 localities. Literacy or high-school graduation are the two levels specified.
12. A requirement for prior relevant law-enforcement or security work of 2 or 3 years duration exists in only 3 localities.
13. A provision for a written examination exists in 1 locality.
14. Mandatory training program requirements ranging from 5 to 120 hours in length have been established in 4 localities.
15. Some localities require that approved identification cards be carried and that guard uniforms and badges not resemble those of the public police.
16. A mandatory (additional) handgun permit is required if such weapons are to be carried, in 9 localities. Such permits may or may not be required in the remaining localities, but the licensing statute is silent on this point. Seven localities require a weapons proficiency test. Four allow the loaded gun to be carried only on duty. Five require that every weapon discharge must be reported.
17. The provision is sometimes made that specific regulations may be established by the regulatory agency. (The reader is referred to the "other information" section of each local statute summarized in Appendix B of R-871-DOJ for examples of these special regulations. The Dallas alarm statute summary is especially recommended as indicative of the detail to which regulations are sometimes specified.)

## IX. PROBLEMS

Since a major objective of this study is to suggest and evaluate general guidelines for increasing the benefits of private security and reducing its costs and risks to society, it is necessary to examine the relevant problems, both potential and actual. We have indicated previously that users of private security services apparently perceive the benefits as outweighing the costs, because investment in private security has risen sharply over the past decade. We have also indicated that for certain private security services the benefits are evident; for others it will be possible to measure benefits only after appropriate data have been collected and carefully analyzed.

The other side of the coin is the recognition of potential and actual disbenefits of private security. What are these? And what information is needed to judge which are potential problems, which are actual problems, and which are sufficiently serious or prevalent to be called abuses?

Accurate comprehensive data bearing on these questions are unavailable. Thus, we have attempted to collect, compare, and evaluate information from several sources. In face-to-face interviews, private security executives spoke candidly of some of the industry's problems, as they saw them. A survey of several hundred security workers provided an estimate of the frequency and nature of incidents in which those workers or their peers had overstepped their authority or had been threatened with criminal charges or a civil suit. From this same survey we were also able to make inferences about *potential* problem areas by testing the workers' knowledge of their legal powers and by testing their judgment regarding actions they would take in several hypothetical situations that are likely to be encountered.

From statistics of complaints and insurance-claim dispositions over a 5-year period, which were provided by a very large contract security agency, we were able to at least rank-order the justified complaints by type and indicate their relative frequency. However, this information does not provide the *true* frequency of each type of incident involving the interaction of security personnel, members of the public, and persons suspected of violating the law or company regulations.

Using information from a survey of all state and many local agencies that regulate the private security industry, we were also able to rank-order the types of complaints, at least those of which the agencies were aware. Again, true absolute

or relative frequency of incidents and complaints could not be accurately assessed because the informal system for capturing such information is inadequate.

Finally, an analysis of the legal problems, court cases, and accounts of incidents in the news media and from other sources added to our understanding of the problems that arise from practices and actions of private security personnel.

By comparing and evaluating information from these diverse sources and examining them for consistency, we have been able to make strong inferences about the nature and seriousness of these problems.

### THE VIEWPOINT OF SECURITY EXECUTIVES

The problem areas recognized and articulated by top management of various private security companies provide significant insights into the state of the industry's operations. We interviewed dozens of executives of both large and small private security forces, including most of the major contract security agencies. Their concerns are best revealed by their own words. Although the quotations below are attributable to individual private security executives, each typifies a viewpoint which was expressed by several executives representing different organizations.

We conclude that if management itself recognizes and articulates certain problems, these problems should be taken very seriously.

#### Licensing and Regulation of Standards

- "The private security industry needs strong licensing laws and stiffer personnel standards in all states to weed out undesirable, fly-by-night operators and hooligans. For example, the . . . State law is a laugh."
- "There should be equal treatment of in-house and contract security personnel with regard to licensing and other regulation."
- "Even in states with strong licensing laws, enforcement of these laws lacks teeth."
- "Anyone can get a license in some states."
- "Licensing and regulation laws should aim for some uniformity and should not be used as a revenue source."
- "Businesses or personnel involved in insurance investigations, credit investigations, collection or repossession, and investigation for attorneys often are not regulated. They should be."

#### Personnel Quality, Screening, and Training

- "Good supervision is needed because of the poor labor market we are forced to draw upon."
- "We can't afford to give our men more training; we wouldn't be competi-

- tive dollarwise.”
- “In screening our own potential security employees, we shy away from arrestees, especially for theft or morals charges; we can't take a chance.”
- “The difference in quality between a \$1.60 per hour guard and a \$2.00 per hour guard is that the \$2.00 per hour guard is a 'person'.”
- “Some standards are a joke. While we require a physical exam for employment, if the man can take three steps he passes the physical.”

#### Legal Problems (Potential and Actual) Flowing from Actions and Practices

- “It would be dangerous to give police powers to private security personnel because these powers would be abused.”
- “We couldn't trust most of our guards with guns.”
- “Private guards think they have a lot more legal powers than they actually have.”
- “Many actions that our security people take could lead to lawsuits by those people affected.”
- “A certain percent of our security people like to play cop but can't get on the force.”
- “We get many letters threatening lawsuits; 90 to 95 percent of the claims are legitimate.”
- “Our investigators operate strictly by the law, but some companies will do anything.”
- “Common practices of private investigators include inaccurate or false reporting; trespassing on private property to spy on or photograph the person being investigated; searching premises illegally when the person being investigated is absent; and posing as someone other than a private investigator when obtaining information from neighbors.”

#### Interaction with Public Police

- “Many of the crimes are not reported to the public police.”
- “Off-duty public police who moonlight for private clients are unfair competition, because they have broader arrest powers, can work on public streets, can handle traffic, and they pose less potential liability to the client. In some jurisdictions, a client will not receive on-duty services of local public police unless he hires off-duty police to moonlight as private security officers.”
- “Oh, yes, we have access to police records.”
- “Although it's illegal, from time immemorial we have paid the ... City Police Department for police records.”
- “The police got mad when we made more arrests than they wanted us to make.”

Impressions gleaned from these interviews suggest that the most frequent sources of complaints are negligence in allowing clients to suffer losses and theft or other dishonest acts on the part of the contract security firm or its employees. Less frequent, but nevertheless of great importance to society at large, are complaints involving private security personnel in cases of false arrest or improper detention, illegal search and seizure, improper interrogation, assault or use of unnecessary force (sometimes involving the use of a gun), invasion of privacy, extortion, blackmail, illegal access to confidential public records, impersonation of public police, and trespass.

The executives interviewed indicated that many of the complaints (up to 95 percent) are justified. However, few cases are settled in the courts, since the insurance companies generally pay out-of-court settlements. Executives of the medium-size companies seemed hard put to recall more than one or two court cases in the past year, and the large firms each claimed that fewer than 10 cases (of all types) involving their firm had been settled or were pending in the courts during the same period.

#### INSURANCE-CLAIM STATISTICS

Only one very large contract security agency, which provides guard and investigative services, made available statistics of personal-injury insurance claims based on security-employee actions over a period of 5 years. The total was 136, or 27 per year, on the average. These incidents involved the claims shown in the table below, listed by rank-order and relative frequency. Assault and false arrest and improper detention together accounted for 82 percent of the total. These incidents result largely from improper actions of private guards, since guard services represent 90 to 95 percent of the business of this firm. However, claims charging false arrest and improper detention often involve store detectives; defamation claims involve both guards and investigators; and claims charging trespass, invasion of privacy, and malicious prosecution usually involve investigators.

	<i>Percent of Incidents</i>
1. Assault (use of unnecessary force) .....	45
2. False arrest or imprisonment .....	27
3. Defamation .....	13
4. Improper detention .....	10
5. Trespass .....	2
6. Invasion of privacy .....	1.5
7. Malicious prosecution .....	<1

The disposition of those claims is quite interesting. No claim reported in the three most recent years (1968, 1969, and 1970) had been settled by payment to the

claimant. The only closed cases for those years were those resulting in no payments. It was necessary to go back 5 full years, to 1966, to find that nearly all claims filed during the year had been settled. Of the claims filed in 1966, 10 resulted in no payment, 14 resulted in an average payment of \$1,685 each,<sup>1</sup> and 2 were still pending in April of 1971.

### PROBLEMS INFERRED FROM RESPONSES OF SECURITY WORKERS

We believe that the results of our survey of private security workers are indicative and suggestive of problems, even though the sample size was small (about 300 respondents from 13 organizations) and not fully representative of the total population of private security workers. About 80 percent worked in the Southern California area, while 20 percent worked in various other areas throughout the United States. Over 75 percent were guards, about 3 percent worked for a private patrol operator, about 9 percent were employed by a large central station alarm firm, about 5 percent worked in retail security, and 1 percent were investigators.

We asked the management of a cross-section of different types of security forces to allow their employees to be interviewed and fill out a 20-page questionnaire. Participation was voluntary, and several firms declined to cooperate even though they were guaranteed anonymity. Those that participated include a major bank; a major research organization; a retail chain; a manufacturing firm; a major central station alarm company; a small contract patrol organization; two major, two medium-sized, and two small contract investigative firms; and one major guard union. Within each force we made every effort to obtain a random sample of employees. Each employee participating was given the questionnaire and told to complete it at his own pace without consulting anyone else. The employees were guaranteed anonymity and were not asked any questions that would identify them personally. The questionnaires were mailed directly to Rand, so their supervisors never saw the answers. The overall response rate was approximately 50 percent.

#### Abuse of Authority

When asked whether they had seen any private security employee overstepping his authority, 21 percent of the respondents answered affirmatively. Of these, fully two-thirds answered "a few times," 20 percent answered "many times," and the remainder answered "only once." When asked to describe one such incident, fully 40 percent of the respondents described a case of use of excessive force, some of which involved a gun, and 20 percent described improper arrest, detention, or search procedures—i.e., situations in which major lawsuits and/or criminal charges might have resulted. Three observations are in order here: (1) These figures may *underesti-*

<sup>1</sup> An average of \$2,770 for each defamation claim; \$2,000 for each false-arrest claim; \$425 for each unlawful detection claim; and \$1,210 for each assault claim.

*mate* the true incidence, since an employee may be reluctant to admit that his coworkers have overstepped their authority, and the security employee's notion of what constitutes abuse of authority is quite faulty (i.e., as we indicate below, he would not include certain situations in this category that in fact should be included); (2) on the other hand, these figures may be *overestimates* because of hypersensitivity of recollection of these matters and because the security employee's faulty notion of what constitutes abuse may include situations that in fact should not be included; and (3) the absence of some other problems associated with investigators, such as trespass, invasion of privacy, false statements, libel, defamation, etc., is explainable by the very few investigators (only 1 percent) included in the sample.

There is a striking consistency in the relative frequency of problems involving alleged assault or unnecessary use of force and improper detention when complaint and insurance statistics are compared with security employee responses.

In addition, about 12 percent of the respondents indicated that someone had complained about some action but had not threatened to sue. About 3 percent indicated that they or their employers had been threatened with a lawsuit as a result of some action taken on the job, and in about 25 percent of these cases the threat actually resulted in a lawsuit.

#### Potential Abuse of Authority

In response to a series of questions testing the security employee's knowledge of his legal powers and his judgment in several hypothetical situations, the average respondent was wrong 25 percent of the time (i.e., errors per respondent averaged almost 11 out of a possible 44). Moreover, out of a potential of 20 gross errors (a gross error is one which could lead to a lawsuit or serious criminal charges), the average respondent was wrong 18 percent of the time (i.e., there was an average of 3.6 gross errors per respondent). More significantly, *over 97 percent of all respondents made at least one gross error.* These responses alone suggest that very serious *potential* problems exist with regard to abuse of authority. These types of questions, of course, only probe potential problem areas, since there is no guarantee that respondents would *act* as they suggest or, indeed, would find themselves in identical real situations. But a detailed inspection of the types of errors made by the respondents showed consistency with the types of abuses actually reported.

Our survey results indicate that private security personnel may encounter and have to deal with incidents involving criminal activity as often as once each 1.5 weeks, on the average. Of the 275 security personnel we surveyed, 120 men reported specific frequencies with which they encountered incidents involving criminal activity in the past year. Such incidents (4,546 in all) were reported to occur at an average *annual rate of 16 per man surveyed, or 38 per man reporting.* However, the number of criminal incidents encountered depended strongly on the type of work performed by the security officer. The incident rate of retail-store security officers averaged 133 per officer surveyed, or 193 per officer reporting incident frequencies. The annual rates for nonretail security personnel were considerably lower: 11 per man surveyed, and 25 per man reporting incident frequencies.

The response made by private security employees to certain questions are particularly revealing. When asked how well they thought they knew their legal powers to detain, arrest, search, and use force, 18 percent stated they did not know their legal powers, and an additional 23 percent were unsure of them—41 percent in all. In fact, less than half knew that their arrest powers were the same as any private citizen's, and only 22 percent knew under what conditions an arrest was legal. Few knew the difference between a felony and a misdemeanor, and some did not even know whether some actions were crimes or not. For example, 31 percent believe that it is a crime if someone calls them a "pig," and 41 percent believe that it is a crime for someone to drink on the job if it is contrary to company rules.

Although few knew which actions constitute a felony crime, fully 17 percent stated they would use deadly force or force likely to cause serious injury if necessary to arrest *any* felony-crime suspect. A few would do the same regarding misdemeanor suspects. Six percent would use deadly force or force likely to cause serious injury to prevent any damage to property, but 20 percent would use such force to prevent *extensive* damage to property. And 19 percent thought that as long as any arrest by a private security officer is made in good faith, and nobody is physically injured, the security officer is not subject to criminal or civil action. Only one-third knew that a person may legally resist an unlawful arrest made by a private security guard.

Finally, when asked how often they felt unsure of their actions when handling actual crime-related incidents, 10 percent responded that they were usually unsure, and 19 percent were sometimes unsure.

### Nonreporting of Crime

Almost half of the respondents stated that there are some criminal activities that are handled by the employer and not reported to the police. Of these, employee theft accounts for almost 60 percent, 8 percent involve shiplifting (recall that few respondents worked in retail security), 15 percent involve minor misdemeanors, and 17 percent are cases of fighting, often involving drinking.

### NATURE AND DISPOSITION OF COMPLAINTS TO REGULATORY AGENCIES

Thirty-one states and many U.S. cities and counties have public agencies responsible for regulation of the private security industry. These agencies typically establish administrative rules and regulations to implement the statutes, receive and screen applications for licenses, handle complaints, and take punitive action when necessary by suspending or revoking licenses or by seeking criminal prosecution.

To tap this source of information and experience, we surveyed those agencies in each of the 31 states, in 3 counties, and in 46 cities that regulate private security. Cities selected were either in states having no regulation at the state level or were

in those that reportedly had exemplary regulatory programs. The response rate was a gratifying 52 percent, and many of the respondees elaborated on their answers, further indicating their high level of interest in regulatory improvements. Unfortunately, and perhaps significantly, several agencies indicated they could not respond because of lack of available personnel to complete the questionnaire. But the 52 percent positive-response rate provides a fairly accurate picture of the information possessed by these agencies, and of their viewpoints on regulation of the private security industry.<sup>2</sup>

Four main inferences can be drawn from the survey responses. First, the regulatory agencies' effectiveness is limited because they typically do not have extensive data on the security industry's problems. With the exception of reviewing license applications, the typical regulatory agency has very limited and, in some cases, no contact with the industry. Second, the agencies' effectiveness is limited because they very rarely invoke the postlicensing powers they possess to correct problems in the industry. Suspensions, revocations, and fines are rare. We do not mean to say that the regulatory agencies fail to take action in specific situations that come to their attention. Rather, the agencies have such limited resources and such ineffective channels for learning of problems that many specific problem situations do not come to their attention. Hence, controls are very rarely exercised. Third, there are wide variations in the toughness with which regulations are enforced among regulatory agencies. Finally, nearly every regulatory agency responding to our survey recommended that some aspect of the regulation of the industry be made *stronger* than it presently is in their jurisdiction.

### Complaints

Responses from state and local agencies that currently regulate the private security industry revealed a wide variety of complaints and problems relating to violations of the statutes and administrative rules and to criminal and tortious conduct. But only rank-ordering of problems is possible; absolute frequency could not be accurately assessed because the agencies' informal and formal information-gathering systems are inadequate. In fact, the 17 responding state agencies reported a total of only 369 incidents or complaints over a 1-year period. Five of the 17 states responding to the survey reported that they did not have data available on the number and nature of complaints against licensees; another 3 states reported that they had not received any complaints against licensees in 1970. (We find it difficult to believe that, in fact, no abuses occurred for an entire year in those states.) The 24 responding local agencies reported 841 incidents or complaints; but this total is misleading because one city alone accounted for 644 of the incidents. Furthermore, of the total incidents, about one-third involved improper uniform or equipment, and one-third involved other relatively minor regulatory-rule violations.<sup>3</sup> However, there is still a sample of several hundred incidents of more serious nature.

<sup>2</sup> A detailed discussion of agency responses is presented in R-871-DOJ.

<sup>3</sup> Most of these occurred in 2 cities.

The percentage of licensees against whom complaints were made ranges from zero (in the 3 states with no complaints) to 18 percent (in Michigan). The average rate was 6 percent in the reporting states. This should not be interpreted to mean that over 94 percent of the licensees are perfect, but rather that the number of complaints *reaching the state regulatory agency* averages 6 per 100 licensees per year in the reporting states. Complaints to local regulatory agencies involved an average of 4.3 percent of the number of licensees in 1970. We suspect that there are many more actual situations where a complaint would be justifiably registered than is indicated by the reported complaints. Poor information channels may be only one of several reasons for this, including the lack of public knowledge about the limitations of the authority of private security personnel and the fact that some complaints are handled via the normal channels of the local police, rather than by regulatory personnel.

Each regulatory agency was asked to list the five most prevalent types of complaints received against licensees. The two types cited more often were (1) impersonating a public law-enforcement officer, and (2) failure to perform services as agreed. Other frequently cited types of complaints were improper uniform or identification, improper conduct, use of excessive force, operating an unlicensed business, misrepresentation of fees, and "violation of regulations."

Only 17 of the 42 responding agencies were able to present a detailed breakdown of the types of complaints received; such data are simply not widely collected and used by those agencies. However, the most common complaints reported by the agencies that did supply such data were the following:

- Violation of regulations (413)
- Improper uniform or identification (369)
- Shootings (55)
- Impersonating a police officer (34)
- Theft (29)
- Failure to serve as agreed (29)
- Misrepresentation of service or fees (28)
- Violation of gun regulation (22)
- Illegal access to police records (18)
- Assault or use of excessive force (13)
- Negligence (13)
- Operating an unlicensed business (13)
- Drunkenness (12)
- Conviction of a crime (9)
- Offensive language (8)
- Killings (8)

A few cases each of false arrest, improper detention, invasion of privacy, improper search, improper interrogation, bugging, wiretapping, and extortion were also reported. However, since some of these actions, particularly invasion of privacy, bugging, and wiretapping, are difficult to detect, it is reasonable to assume that a large

proportion are unreported or undiscovered. One state regulatory agency,<sup>4</sup> which had recently had the regulatory authority transferred to it from another state agency, believes that about *half* of the licensed detective agencies in the state are violating bugging and wiretapping laws; these firms are currently under investigation.

Interestingly enough, incidents involving deaths or shootings caused by security personnel are reported relatively frequently, compared to incidents involving assault without the use of a gun. This is understandable, since it is more likely that the regulatory agency would obtain knowledge of the more serious cases, whereas less serious cases of assault are more likely to be settled or dismissed without notice to the agency. Mandatory requirements to report most types of incidents to regulatory agencies simply do not exist, and agencies typically do not devote investigative resources to discovering violations. Clearly, the number of complaints reported by the regulatory agencies is far less than the number of incidents that occur. However, the *types* of complaints registered are probably indicative of the major types of abuses occurring.

### License Denials

Statistics of license-denial rate and major reasons for these denials are of interest, too. In 1970, 15 percent and 6 percent of the license applications were denied in reporting states and localities, respectively. The primary reason for denial was the criminal record of the applicant. Other frequent reasons for denial were "poor character," insufficient experience, falsifying the license application, inability or failure to obtain the required bond or insurance, and failure to pass examinations (when required). Apparently, the licensing process does screen out at least some of the unqualified. On the other hand, some local or state jurisdictions apparently place no restrictions whatsoever on who may engage in the business of private security. In those jurisdictions, it is safe to assume that there will be some unqualified persons offering such services. Also, no states and few cities require mandatory registration or licensing of *in-house* security employees, so that segment of the industry is not responsible to any regulatory agency.

### Insurance Claims and Actions on Bonds

Since many of the licensing statutes require that licensees obtain insurance or a bond, we inquired about the number of times claims are paid. Only 3 of the 42 responding regulatory agencies were able to supply any such information. North Dakota reported no such claims paid; California reported receiving one or two inquiries per week for the name of the bonding agent; and Michigan reported one known payment of \$460,000 for an assault. In short, the regulatory agencies are totally uninformed as to how well this method of redress works in practice. Such information would not only be useful, it costs very little to obtain.

<sup>4</sup> That agency asked that it not be identified.

## License Suspensions, Revocations, and Other Sanctions

We also obtained data on license suspensions, revocations, fines, and prison sentences imposed on licensees in 1970. Only 13 of the 42 responding agencies had data available on each of these four major types of sanctions; thus the actual number imposed may be considerably higher than the number reported here. It should also be noted that when sanctions are compared to complaints, the results may be misleading, since some regulatory agencies keep records only of complaints that result in imposition of major sanctions.

Table 3 summarizes the reported data on the imposition of sanctions. The data, presented separately for states and localities, are shown in terms of sanctions per 100 licenses and sanctions per 100 complaints.

In proportion to the number of licenses outstanding, major sanctions are rarely invoked; less than 1 percent of licensees had any major sanction imposed on them in 1970. In terms of complaints, the rate was higher; sanctions imposed ranged from a low of 0.7 percent to a high of almost 17 percent. But averages can be misleading. There is considerable variation in "toughness" among regulatory agencies. For example, Michigan has the "toughest" agency, with 4.7 major sanctions per 100 licenses, and 26.1 major sanctions per 100 complaints. We would not conclude from this that the private security business in Michigan is more problem-prone than it is in other states, but rather that the Michigan agency is more vigilant than most others.

License suspensions were typically imposed because of the arrest of the licensee, termination of bond or insurance, or violation of regulations, e.g., impersonating public law-enforcement officers. Reasons for license revocations included breaking and entering, false reporting, extortion, felony conviction, falsification of application, wiretapping, interfering with or impersonating the police, unethical conduct, use of excessive force, fraud, drunkenness, improper conduct, bond revocation, assault, arrest for a major crime, and repeated rule violations. Seventeen of the 42

Table 3

IMPOSITION OF MAJOR SANCTIONS BY REGULATORY AGENCIES  
IN 1970

Type of Sanction	Number per 100 Licensees		Number per 100 Complaints	
	States	Cities & Counties	States	Cities & Counties
All major sanctions	0.7	0.6	12.2	16.7
License suspensions	0.3	0.12	5.2	3.4
License revocations	0.3	0.9	4.0	14.0
Fines	0.3	0.05	3.9	0.7

responding agencies said that information on fines or imprisonment of licensees was not available in their offices. Since these sanctions are imposed by the courts rather than by the regulatory agencies, such lack of information is understandable. Fines were most often imposed for conducting an unlicensed business or for violation of a regulation such as the prohibition against impersonating the public police, or use of unapproved uniforms. Only 3 agencies reported any imposition of sentences on licensees or their employees. The sentences ranged from 2 years probation to 12 months imprisonment.

## PROBLEMS INFERRED FROM COURT CASES AND NEWS MEDIA

Court cases and news-media accounts serve to define and illustrate some of the problems as well as the legal powers and limitations of private police. But the frequency of court cases and news-media accounts involving a particular problem cannot be considered as the primary or even as corroborative evidence of that problem's extent. Usually, an incident is resolved in other ways. For example, it may not be reported; or it may be reported, but no further action is taken by the complainant; or it may be settled out of court.<sup>5</sup>

## AN ASSESSMENT

On the basis of all the evidence and the legal analysis, it is abundantly clear that a variety of potential and actual problems do exist. Some are more serious than others, but all have certain social costs or social disbenefits. It is also clear that the available evidence is insufficient for making judgments about the precise extent or prevalence of these problems. A sufficient basis for making such judgments requires a costly effort to collect and evaluate information which is now either unavailable or difficult to unearth. Most importantly, such an effort requires complete cooperation from private security organizations and personnel—the very sources that would be most reluctant to cooperate.

In assessing the problems in private security, we compared and evaluated information from diverse sources, testing for consistency. We merely summarize our conclusions below. A more detailed discussion, which includes descriptions of current practices in private security, news-media accounts, and court cases that illustrate typical incidents and problems, along with an analysis of the legal issues, is found in companion report R-872-DOJ.

<sup>5</sup> Representative types of court cases as well as accounts of incidents in the news media are covered in detail in R-872-DOJ.

## Abuse of Authority

There is a constellation of problems involving abuse of authority which impact on society at large. These range from very serious instances in which a private security officer unjustifiably shoots someone or otherwise inflicts great bodily harm, to minor instances of use of offensive language. These actions often occur in the context of an attempted arrest, detention, interrogation, or search by a guard or a retail security officer. There is such striking consistency among private security executives' views, personal-injury-claims statistics, responses of security personnel to our survey questionnaires, complaints recorded by regulatory agencies, court cases, and press accounts that one is led to the inescapable conclusion that serious abuses occur—even if their true frequency is unknown. Abuse of authority takes the following forms, in order of decreasing relative frequency: assault or unnecessary use of force (with and without a gun), false arrest, false imprisonment or improper detention, and improper search and interrogation. In our judgment, low-cost measures aimed at alleviating such problems should be implemented immediately; and higher-cost measures, of presumably greater effectiveness, should be considered seriously.

The fact that many private guards and patrolmen are armed and largely untrained deserves special emphasis as an indicator of potential abuse of authority. National statistics do not exist. But our survey of security workers (drawn largely from Southern California) revealed that about 40 percent were armed full-time and 10 percent were armed part-time. A very recent statewide survey taken by the California State agency that regulates private security<sup>6</sup> showed striking consistency with these figures: Overall, 49 percent of almost 16,000 guard-company employees in 241 companies were armed. The fraction armed in smaller companies was much higher than that in larger companies. The Michigan regulatory agency reported a percentage of armed guards similar to the above figures.<sup>7</sup> Executives of larger firms indicated that they avoid liability for shootings by not arming their men. For example, only 33 percent of the guards were armed in companies with over 500 employees; 53 percent were armed in companies with 100 to 500 employees; and 77 percent were armed in companies with less than 100 employees. We do not know whether these figures are high or low compared to the national average, but most security executives of larger firms assert that in the Southeast and Southwest, at least, armed security guards are much more common than in other areas.

In any event, these figures are very revealing, and society should be concerned, especially in view of the fact that firearms training is woefully inadequate. For example, responses to our security-employee survey indicated that only 19 percent received *any* firearms training on their present job, and only 10 percent receive periodic retraining, yet nearly 50 percent of those surveyed were armed.

There is another constellation of problems, more frequently associated with

<sup>6</sup> The Bureau of Collection and Investigative Services of the Department of Consumer Affairs, State of California.

<sup>7</sup> Letter from Col. John R. Plants, Director, Michigan State Police, October 21, 1971.

actions or practices of private investigators, which also impact on society at large. These include impersonating a public police officer, trespass, invasion of privacy, breaking and entering, gaining entry by deception, inaccurate or false reporting, improper surveillance, and bugging and wiretapping. We have presented a good deal of data indicating that impersonation of public officers is a very prevalent problem. The hard evidence on the other problem areas in the above list is not abundant because these problems are difficult to detect, but, in our judgment, the evidence is sufficiently consistent and persuasive to warrant serious consideration of implementing low-cost remedies. For example, we believe it is clearly significant when a state regulatory agency reports that about half of the licensed detective agencies in the state agencies are believed to be violating the bugging and wiretapping laws and that these agencies are currently under investigation.

## Dishonesty and Poor Business Practices

On the basis of regulatory-agency reports of the number of complaints filed and the reasons for licenses being suspended and revoked, and on the basis of impressions gleaned from security executives, we conclude that substantial dishonesty and poor business practices exist. The former entails common crimes by some security employees and employers, including burglary, robbery, theft, and extortion. The latter include franchising licenses, operating without a license, failure to perform services paid for, misrepresenting price or service to be performed, and negligence in performing security duties.

## Access to Confidential Police Records and Gathering Information from Third Parties

It is common knowledge, and is freely admitted by security executives, that private security firms have easy access to confidential arrest records of local police agencies, even in jurisdictions in which such access is prohibited by law or by public policy. Further, security agencies frequently have access to FBI records through accommodating local police agencies. There is a legitimate need for the in-house or contract security employer to determine the trustworthiness, character, and criminal record of potential employees, especially those entrusted with sensitive positions and those who guard valuable property.<sup>8</sup> There is also a legitimate need for private investigators to check the criminal record and character of their clients' insurance applicants, credit applicants, and potential employees. But these legitimate needs must be balanced by adequate safeguards and sanctions against the many potential social disbenefits flowing from such activities as inaccurate, incomplete, and false reporting of information and invasion of citizens' privacy.

Proscribing access to public police records by private security organizations has not worked in the past. Even occasional convictions for bribery, for giving unlawful

<sup>8</sup> For example, New Jersey's regulatory agency reports that 20 percent of private security employees were found, through a fingerprint check, to have arrest records.

gratuities to a public servant, or for rewarding official misconduct seem to be inadequate deterrents. In Chapter XI we offer several suggested measures which, if implemented, may help protect individual rights while still meeting the legitimate needs of employers and firms which grant insurance or credit.

The recent Fair Credit Reporting Act is one step in the proper direction, although it does not directly regulate the gathering of information from third persons. It regulates the reporting of such information; it requires that notice be given to the individual being investigated; and it is concerned with the *accuracy* of information. The Act applies to agencies which furnish "investigative consumer reports" to third persons concerning characteristics of an individual if the report is to be considered in granting credit, if it is to be used for employment purposes, or if it is to be used by someone with a "legitimate" need for information in connection with a business transaction with the subject of the report. But, in our judgment, mere regulation of accuracy does not erase all of the social disbenefits involved in credit, insurance, and employee background investigations. There are additional measures that could be taken to reduce such social disbenefits as invasions of privacy, which would still meet the legitimate information needs of employers, insurance companies, and credit granters. These are also summarized in Chapter XI.

#### **Nonreporting of Crime and the "Private" System of Justice**

It is clear that some criminal activities, particularly pilferage and shoplifting, are often handled by the employer and never reported to police. Many security executives and half of the security employees we surveyed admitted it. If the suspected perpetrator is an employee, he may be fired and the crime never reported to the police. If the suspected perpetrator is a customer, the store policy often is to seek resititution and warn the suspect. Thus there are several private systems of justice operating in which crimes are not reported, nor are suspects confronted with society's official system of justice. Whether these private systems create net social benefits or disbenefits, they will continue to coexist with the formal public system of justice. And often there are real and perceived disincentives for reporting: the high costs of prosecution, the low probability of a conviction, and the perceived adverse effects of prosecution on a company's image.

#### **High False-Alarm Rates**

The alarm industry provides valuable social benefits by preventing and detecting crime, and by assisting the public police in the apprehension of criminals. However, as discussed earlier, high false-alarm rates (typically 95 percent or more) create a significant drain on public police resources. The net social benefits of the private alarm industry would be even greater than they are now if the false-alarm problem could be alleviated.

#### **Personnel Quality, Training, and Supervision**

In a real sense, many of the problems associated with the private security industry are the result of using low-paid, low-quality, under-educated, and untrained employees. This may be particularly true of problems involving abuse of authority, and to some extent, poor business practices. Although no one has yet shown conclusively that higher-quality, better-trained personnel cause fewer of these problems, it is probably a reasonable assumption from which to proceed.

Private security executives admit that good supervision is needed precisely because of intense competition within the poor and limited labor market they operate in. And many executives in the larger firms allege that it is precisely the *lack* of good supervision that distinguishes the poorer from the better firms.

In Chapter XI we offer a variety of suggestions for upgrading personnel quality and training, and for alleviating other problems cited above.

## X. THE LAW AND PRIVATE POLICE <sup>1</sup>

### INTRODUCTION

This chapter presents a discussion of the legal environment in which private police operate. First, we shall outline the general legal problems inherent in any of the activities of private police; then we shall consider special, but significant groups of problems.

#### General Sources of Legal Powers and Limitations

**State Tort Law.** A primary source of both the restrictions and the powers of private police is the general tort law of the various states.<sup>2</sup> However, while tort law is somewhat effective in remedying improper conduct by private security personnel, litigation is expensive and slow, and it requires a lawyer. Thus, tort law is often an indirect means of deterring improper conduct; only the fear of a subsequent damage suit or an injunction prevents abuses. Finally, as a guide to defining permissible conduct by private security personnel and by citizens dealing with private police, tort law is somewhat unclear and confusing.

**General State and Federal Criminal Laws.** Many activities of private security personnel are also regulated by the general criminal law sanctions for such conduct as murder, assault, battery, negligent homicide, manslaughter, and trespass to land. Generally, the criminal laws are an effective deterrent of truly egregious conduct by private security forces, but not of petty crimes.

**General Contract Law.** Many aspects of private security activity are controlled by general contract law. For example, the contract between a contract guard agency and the hiring company will in large part govern the respective liabilities of the two businesses for actions of the guards. Moreover, the basic legality of the actions which guards take will often turn on contract law.

<sup>1</sup> This chapter was drafted by members of the Los Angeles law firm of Munger, Tolles, Hills, and Rickershauser. It presents a partial summary of the material in R-872-DOJ.

<sup>2</sup> Tort law is the law that defines the general duties of citizens to each other and allows lawsuits to recover damages for the injury caused by one citizen's breach of such a duty.

**State and Local Statutes Regulating the Private Police Business.** There are a variety of state and local laws regulating the private police industry. Most of these statutes are licensing regulations, with varying degrees of qualifications necessary to obtain and retain a license. These laws usually provide for revocation or suspension of a license for various activities and require a surety bond or insurance for the licensee. As currently implemented, however, these licensing laws may not have a very significant effect upon private police activities, for a variety of reasons. For example, the threat of license revocation or suspension has not operated in the past as an effective deterrent, since the regulatory agencies have seldom been capable or willing to take such drastic action.<sup>3</sup>

**Deputization.** Deputization is a vague term that is generally used to refer to some or all of the varied methods by which private citizens are vested with certain police powers in specific, limited instances. The constitutional restrictions applicable to public police probably also apply to the deputized private security officer (however, the application of such restrictions to the normal private security officer is much more doubtful).

**State and Federal Laws Regulating Private Security Activities:** Specific statutes circumscribing particular private security activities have been enacted at both state and federal levels. Thus, for example, there are federal and state laws regulating wiretapping, bugging, surveillance, gathering of information on individuals from third persons, impersonating public police officials, and the possession or purchase of firearms. In general, these laws may be more effective than tort law as deterrents to and remedies for improper conduct. The regulatory laws usually have more specific definitions of improper conduct and more preconduct controls, such as licensing. Moreover, these laws often provide procedural advantages for lawsuits by damaged parties. However, such laws often have weaknesses: Many are based upon poorly conceived or confusing statutes; other have inadequate enforcement mechanisms; and still others are simply too weak or too loosely drawn to deal with the conduct being regulated.

**Federal Constitution.** It is well recognized that the U.S. Constitution serves as a major legal limitation upon the powers of the public police to perform various functions. Generally such constitutional restrictions are not applied to *private* activities, but only to *state* activities; however, the distinction between government and private activity is not always clear or easy to make. Thus, certain private police activities could be held to be "state action" and subject to some kind of constitutional limitation. For example, some constitutional restrictions probably apply to private security personnel hired on a contractual basis by a public authority, who work in conjunction with state officials or who are deputized. When private security personnel act on their own or for private employers and are not deputized, the application of constitutional restrictions becomes much less likely. There are two possible theories for inferring "state action" in such instances. First, in those states that license private security personnel, such regulation could be interpreted to constitute state

<sup>3</sup> This is not to say that more effective regulatory schemes cannot be devised, implemented, and enforced. In Chapter XI we offer several suggestions along this line.

action. A second theory would be based on the various Supreme Court cases that have held private activity in the nature of "public" functions subject to some of the same constitutional restrictions imposed on the comparable state activity.

### **The Relative Legal Powers of Private Citizens, and Private and Public Policemen**

**Private Police vis-a-vis Other Citizens.** Unless deputized or commissioned, private security personnel generally do not possess any powers greater than those of other private citizens. As a practical matter, however, they are likely to be able to exercise those powers more easily, especially by gaining tacit consent from the public. On the other hand, private police are subject to more legal restrictions than the ordinary citizen, and there is some likelihood that private security personnel will be subjected to some constitutional restrictions.

**Private Police vis-a-vis Public Police.** Unless the private officer is deputized, the powers of the public police under state laws are much greater than those of the private police. Furthermore, the uniform and status of the public policeman allow him to obtain much greater cooperation. On the other hand, the public police are also accountable in some fashion to governmental bodies and the citizenry. And while there may be doubts about whether constitutional restrictions apply to private security personnel, there is no doubt that such restrictions apply to the public police.

### **Conclusion**

Except for the spotty, inconsistent licensing laws regulating private police, there is no specific body of law governing the activities of private police. That is, there are almost no statutes specifically outlining the powers and limitations of private police. Rather, the law governing private police is largely derivative. It is drawn from the law which governs other citizens performing similar acts—tort law, specific legislation, criminal law, and the constitutional restrictions developed for public police.

## **INVESTIGATORY FUNCTIONS**

### **Searching Private Property**

One of the primary functions of private security personnel is investigation. Many private detectives earn their living conducting preemployment, insurance, and credit checks, and gathering evidence for attorneys and insurance companies, and for use in divorce matters. The job of many in-house guards is to watch employees to spot theft and other antiproduative activities. An investigator may follow

an individual to monitor his activities, or he might attempt to obtain documents or files from a particular individual or business. Such investigation might serve either the legitimate purpose of gaining information for a civil suit, or the entirely illegitimate purpose of stealing secret information.

Investigation has traditionally been carried on by private individuals in this country and has never been the sole province of the public police. Existence of such a private profession without effective controls by society over its actions, however, creates a danger of abuse to which little attention has been given. The public police have great resources for investigation, including electronic devices and a network of information. The potential for abuse of this power is largely controlled by our political machinery, federal and state laws limiting the powers of police, constitutional restrictions on their activities, and a general ethic that distrusts police power. Many private policemen possess the same information-gathering resources as public policemen. They are adept at searches and traditional surveillance, and they possess the equipment for electronic surveillance (and they also possess a network of information, often including access to governmental agency records). Yet, it is not clear that all the above controls apply effectively to them. They are not subject to the same administrative controls as a public policeman, and the method of their compensation may create different incentives. If their job is to gather information or evidence, compensation is ultimately determined by how effective they are at that job. It may reasonably be argued, from the capabilities that private security personnel possess and their attitudes toward their activities, that abuses in the course of private investigations are a real threat. Our data suggest the strong possibility that abuses do exist, although it is not possible to estimate precisely their extent.

At present, there are many traditional penalties and remedies, both criminal and civil, for illegal physical searches of property by private individuals. However, these laws stem from a time when there was no large private security industry. It may be that these tort remedies and criminal sanctions are not sufficient today. In addition, for reasons discussed below, those aggrieved by the abuses of private security personnel may never report them.

### **Wiretapping, Bugging, and Other Forms of Surveillance**

Recently it has become apparent that investigative activities occasionally involve electronic surveillance, that is, the use of electronic devices to wiretap telephones or overhear private conversations. But in contrast to searches by traditional means, which have elicited little legislative response, the dangers of electronic surveillance have impressed both federal and state legislatures. Such surveillance by private individuals, including private policemen, has been uniformly condemned, and strong penalties have been provided. In addition, simple and straightforward civil remedies have been provided. The legislative response to the dangers of electronic surveillance seems surprisingly complete. However, the deterrent effectiveness of such legislation is not as clear. Because it is difficult to detect electronic eavesdropping, and because those whose conversations are bugged or tapped often

may be reluctant to report that fact, it may be safely assumed that many violations go unpunished.

A question pervading this entire area is whether information obtained by an illegal search, either physical or electronic, should be admissible as evidence in either civil or criminal judicial or administrative proceedings. The Exclusionary Rule<sup>4</sup> was originally fashioned by the United States Supreme Court and applied only to federal criminal trials. It was later applied to state criminal trials, but as yet it has not been applied in civil proceedings. Moreover, it is still the law of the courts that the Exclusionary Rule applies only to evidence obtained by public officials, not private individuals acting independent of public officials. Contrasted with this is the legislative response to electronic surveillance. Virtually all statutes declare that evidence obtained by virtue of illegal electronic surveillance is inadmissible in any judicial, administrative, or official proceeding, regardless of whether it was obtained by a public official or a private individual. Thus, the courts and legislatures are still looking for a stable remedy that will adequately balance the desires of our decision-making bodies to have all the facts before them, our basic demand for fairness in all government proceedings, and the desire to control such illegal searches by making the information so gathered unusable.

#### **Access of Private Security Forces to Public Police Information**

The records of public law-enforcement agencies, including records of arrests and convictions, generally are readily accessible to private security personnel, even in jurisdictions in which policy or statutes prohibit such access. Such records most commonly are obtained in connection with preemployment, insurance, and credit investigations.

State regulation of public access to such records is either nonexistent or not adequately enforced. First, while state "freedom of information" acts have been interpreted not to require general public access to arrest records, they do permit the disclosure of such records to certain persons upon the discretion of the local administering agency. Second, state expungement statutes are inadequate to prevent the preexpungement dissemination of criminal records outside of state and local law-enforcement agencies. Third, internal regulations of local law-enforcement agencies that prohibit the disclosure of criminal records are often not enforced. Finally, even though prohibitions upon the dissemination of criminal records may be enforced, an individual's records may nevertheless be obtained upon his written waiver in many jurisdictions. Such waivers are procured as a routine matter by employers and others.

Judicial decisions reflect a trend toward prohibiting the dissemination of records of public law-enforcement agencies to other public agencies and to private

<sup>4</sup> This rule prevents illegally obtained evidence from being introduced into evidence in a criminal prosecution.

individuals and corporations. These decisions have generally been based on statutory grounds, though the courts have been influenced in their statutory interpretation by consideration of the constitutional rights of due process and privacy. Tort theories of recovery based on defamation or right of privacy either are not well developed or are restricted in their application.

The Federal Fair Credit Reporting Act imposes standards of accuracy upon private firms that regularly investigate and prepare preemployment, credit, and insurance reports. The Act is not likely to limit access to or reporting of criminal records, except insofar as it prohibits the reporting (except for specified purposes) of information more than 7 years old.

#### **Gathering Information on Private Citizens From Third Parties**

Third-party questioning by private security firms is most widely used in investigations for insurance companies, credit bureaus, and employers. Little hard information is available concerning the techniques of third-party questioning, except that the results often are inaccurate because of time pressures and quotas imposed by the security firms. Such inaccuracies have a vast potential for harm to the reputation and pocketbook of the person under investigation.

There is little state regulation of the information-gathering activities of private investigators. While several states, including New York and Massachusetts, have recently enacted statutes that regulate the reporting of credit and employment investigations, these statutes provide only for limited recovery for the failure to correct inaccuracies in a report after it has been prepared. Nor do the statutes permit an individual, in advance of investigation, to forego the benefits sought, and hence the investigation.

Common-law tort doctrines of defamation and invasion of privacy place few restrictions upon third-party questioning. Credit and similar reports are protected to the extent that to be actionable, any inaccuracies they contain must be the product of actual ill will or malice on the part of the investigator, and the report must be without a legitimate business purpose. The tort of invasion of privacy requires "publication," i.e., dissemination of private facts beyond a limited group of people, and hence is inapplicable to most, if not all, private investigations. The tort of intentional infliction of emotional distress requires a deliberate or malicious campaign of harassment or intimidation. The courts have not been sympathetic to any extension of the common-law doctrines to cover third-party questioning by public law-enforcement officers or private investigators, even when such questioning has been conducted under false pretenses.

The Federal Fair Credit Reporting Act regulates "investigative consumer reports" by requiring the correction of inaccuracies contained in such reports. The Act provides sanctions for willful and negligent noncompliance but does not require that prior notice of an investigation be given to the subject thereof.

## **LAW-ENFORCEMENT AND PROTECTION FUNCTIONS: ARREST, DETENTION, SEARCH, INTERROGATION, AND USE OF FORCE**

Private security forces perform various law-enforcement and protection activities, such as arresting or detaining suspected shoplifters, ejecting persons from private property, and breaking up disturbances. Although the exact frequency of improper or illegal uses of force, detention, searches, and questioning is impossible to determine, it is evident from litigated cases and reported incidents, and from our surveys of regulatory agencies and security employees, that illegal activities in this area are among the most important problems raised by private security functions. One of the prime areas in which these problems seem to arise is that of retail security.

The basic source of restrictions for these enforcement and protection activities is tort law, which imposes damages for such tortious activity as false imprisonment, assault, battery, malicious prosecution, intentional infliction of emotional harm, invasion of privacy, and negligence. However, the guard or detective may be relieved of liability if there was consent to the conduct or if he acted reasonably under a number of recognized legal "privileges" authorizing such interference with the rights of others.

### **Arrest of Criminal Suspects**

The undeputized private security guard has the same power of arrest as a private citizen, and this power is derived mainly from tort law. Under tort law, a citizen has the "privilege" to arrest, under various circumstances, someone who has committed or is committing a crime. The details of the power of citizens' arrest are complex and turn on such distinctions as the place, time, and nature of the crime committed by the arrestee. The practical value of the arrest power is diminished somewhat by the many complexities and restrictions surrounding the privilege. (Readers desiring a full discussion of the various restrictions on private security actions are referred to companion report R-872-DOJ.)

### **Detention of Persons Suspected of Taking Property or Shoplifting**

The courts and legislators of many states have developed a privilege to allow merchants or other property owners to detain persons suspected of shoplifting or injuring their property. However, the privilege is exercisable only if there is probable cause to believe the suspect has taken the property, and the detention must be reasonable. Any undue detention, harassment, physical abuse, or other unreasonable conduct will render the detention illegal.

## **Miscellaneous Powers to Control the Activities of Others**

The security guard must often resort to actions short of arrest or detention. For example, he may want to simply scare off intruders, eject annoying patrons from a sporting event, or prohibit entry by undesired persons. The primary legal authority used in many instances is probably consent. Where consent is absent, there are various privileges that may be available in the circumstances: the right of a real property owner to control the access and conduct of other persons on his premises, and to prohibit or eject trespassers; the right of a person to defend himself and to defend others; and the right of a citizen to prevent a crime.

### **Use of Force**

All of the various privileges outlined above carry with them the right to use whatever force is reasonably necessary to accomplish the legitimate purpose of the privilege. However, the right is lost when unreasonable and excessive force is used.

There are not many clear rules as to what force is allowable in a given situation. Some guidelines have been developed for the use of deadly force, but usually "reasonableness" controls, and what is reasonable turns on the nature of the interest being protected, the nature of the act being resisted, and the particular facts of a given situation. To add to the confusion, the amount of force allowed differs depending upon which privilege is being invoked. Only a few certain generalizations can be made.

### **Questioning and Interrogation of Suspects**

As long as a suspect is legally detained, there is no absolute ban on simply asking questions, and interrogation is specifically authorized by many statutes concerning temporary detention for shoplifting. However, a person is under no legal compulsion to answer, and thus there are limits to the methods, amount, and kind of interrogation that may be performed. For example, questioning a suspect in public may be slanderous, and a general reasonableness standard controls whenever the questioning is done under the auspices of a temporary-detention statute.

### **Search of Suspects**

Assuming a suspect is legally under detention or arrest, a search of the suspect's person may be valid under various theories. Often consent will render the search valid. Without consent, the law on the right to search suspects is unclear. However, it is clear that wherever a search is legally privileged, it must be effected in a reasonable manner and with the least possible force or embarrassment.

## Public and Private Police Compared

Generally, a public policeman has significantly more power than a nondeputized private policeman. However, the public policeman is also subject to various constitutional restrictions which, so far, have not been generally imposed upon private detectives and guards. The arrest powers of public police are limited by the Fourth Amendment to instances of probable cause. The scope of police searches incident to arrest has been severely narrowed by Supreme Court decisions under the Fourth Amendment. And these restrictions may well be greater than the tort law would apply to private searches incident to arrests. Finally, the Supreme Court has placed very severe restrictions on the interrogation of suspects by public police. These decisions culminated in *Miranda v. Arizona*, where the Supreme Court required police to warn a suspect of his rights before custodial interrogation. While many courts have ruled that coerced or involuntary confessions obtained by private security officers will not be admitted in any criminal prosecution of the suspect, few courts have required private security personnel to give the *Miranda* warnings.

### Critique

The primary problem with tort law governing the arrest, detention, search, interrogation, and use-of-force powers of private police is its general vagueness and complexity. The law is controlled by such general concepts as "reasonableness," "probable cause," or "necessary under the circumstances." Uncertainty is compounded by the fact that a particular factual situation might be covered by various different privileges, each of which might allow different conduct. Further, the law in a given situation depends upon the nature and legality of the conduct of the person being detained, stopped, or ejected. And the law often takes into account the subjective state of mind of the person making the arrest or using force. Such uncertainty creates special problems for the employer of private security personnel in instructing his personnel on what they should or should not do in every instance. And the individual guard, whose intelligence and educational level may be somewhat low, is probably incapable of setting any guidelines for himself. There is a need, therefore, for greater certainty in the areas of arrest, search, interrogation, and use of force.

## OTHER PROBLEM AREAS

### Impersonation of and Confusion with Public Police—Uniforms and Badges

Private citizens may easily be confused about the powers of private police, particularly when private police are in uniform or possess badges. Moreover, a

survey of regulatory agencies indicates that actual impersonation of public police officers is not infrequent.

There are, however, certain restrictions that have been enacted to prevent such problems. All citizens are generally prohibited from impersonating public police officers and from wearing badges or uniforms that might be confused with those worn by public police. Impersonating a public police officer may also lead to the imposition of liability, under various possible tort theories, for damages caused to other persons.

However, private security officers often are given explicit legislative authority to wear certain uniforms and badges. While these are usually restricted to uniforms and badges distinct from those of the public police, it is doubtful that this prevents confusion.

There appears to be ample legislation proscribing impersonation of federal, state, and local law-enforcement officers. To the extent that confusion still exists, more effective legislation may still be needed.

In some situations the costs of confusion are sufficiently great that it would be well to prohibit the wearing of uniforms. But when a uniform is an aid to obtaining voluntary compliance with legitimate requests, as it is for a plant guard, it serves a very useful security purpose and should be permitted.

### Firearms

Our own survey, as well as those of the regulatory agencies in California and Michigan, indicates that roughly half of the private security personnel carry firearms full-time. This widespread use of firearms has caused deep concern, not merely because of the reported incidents of intentional use of excessive force in security activities, but also because of the number of incidents of accidental or mistaken handling of firearms. At the heart of the concern over arming security guards is the widespread lack of adequate training or certification programs.

Current regulation of firearms possession is a complex web of federal, state, and local controls. Some controls require registration at time of purchase; others, after purchase. Regulations on whether or not guns can be concealed also vary, but most of them prohibit certain classes of persons from buying or possessing certain firearms.

While most of these regulations apply equally to private security personnel and other citizens, private security personnel are sometimes given special privileges, and, as a practical matter, it is easier for private security officers to obtain permits.

Regardless of the right of a security officer to possess a firearm, he is subject to the same tort liability for its misuse. While persons directly attacked by security officers can recover damages under assault and battery theories, any person injured by a guard's misuse of weapons could sue under a negligence theory. Moreover, the standard of care applied in such a negligence suit is usually quite high.

### Directing and Controlling Traffic

Private police typically perform such traffic functions as the checking of credentials at entry points to plants and the regulation of traffic in private parking lots. Guard firms generally instruct their employees *not* to undertake traffic control on public streets, since traffic-control functions, including the power to issue citations, are typically entrusted solely to public police. In some jurisdictions, however, private police can be deputized and granted the power to direct traffic in and around their employer's property. Undeputized guards are empowered to direct traffic on private property pursuant to the landowner's right to control entry onto his property. Indeed, there is a positive duty to undertake some form of traffic control on private property in order to protect the safety of others using the property.

There is no evidence that any problems exist as a result of unauthorized traffic control on public highways, or as a result of improper control on private grounds. In any event, such problems would seem to be adequately covered by current tort laws and by the laws governing public traffic control.

### The Legal Relationships Between the Users and Providers of Private Security Services

The relationship between the individual guard and his employer is characterized by the legal doctrine of *respondeat superior*.<sup>5</sup> That concept provides a legal obligation on the part of an employer to compensate those who are injured by the acts of his employee. The employer's liability is only secondary; the employee is primarily liable to the injured party and has a legal obligation to compensate the employer for any amount the employer must pay to the injured third party. However, as a practical matter, employees are rarely sued, or, if sued, they are rarely able to pay the damages. Nevertheless, the doctrine of *respondeat superior* has some limits and requires an employer to compensate injured parties only for those acts of his employees which occur in the "course of employment." Thus, the employer generally would not be responsible for the malicious or unpredictable acts of an in-house guard, nor would he generally be responsible for the guard's conduct off duty, or outside the employer's facilities.

The doctrine of *respondeat superior* also controls in situations involving contract guards. If the guard provided by the contracting agency is controlled in any real sense by the hiring firm, he is deemed to be an "employee" of the hiring company, and the hiring company is responsible for his acts. However, if the individual causing injury is deemed not an employee, but is an "independent contractor" and beyond the control of the hiring company, then the hiring company may not be liable for injuries caused by such persons to third parties. Nevertheless, some duties—such as providing a safe place for people to work or shop—cannot be delegated, and thus a hiring firm might be liable even if it exercised little control. Under present law, it is likely that in most situations liability will be imposed on all three

<sup>5</sup> Literally translated, the doctrine of *respondeat superior* means "let the master respond."

parties: the guard, the contracting agency, and the hiring firm. However, some courts have exonerated either the agency or the hiring firm.

The ability of the contract security agency and the hiring company to determine between themselves the extent to which each will be liable to the other or to third persons is more complex. Generally the agency and the company can set in advance a maximum amount that will be paid by the agency to the company in the event that the company suffers loss through the fault of the agency.

When the question of allocation of loss is raised in a setting in which third persons have been injured, the answers may be significantly different. It is clear, of course, that the agency and the company cannot, by agreement between themselves, place any limitation upon the recovery of third persons. However, the hiring company and the agency may be able, in many instances, to determine the extent to which one of them will be able to recover from the other any amounts paid to third persons. That question is no more than the question of whether the agency can insure the company against loss, or vice versa. In most jurisdictions, there is no public policy against the parties making such an agreement, though a contrary result is reached by some states.

In brief, the current law of *respondeat superior*, although providing effectively for compensation of victims, lessens the financial threat against the acting party—the guard on the job. If the guard knows that in most cases the employer is also responsible and would have to pay, he may not act with great caution. And the rules of *respondeat superior* deter active control by the firm that hires contract guards or investigators, for the more active the control the more likely the guard or investigators will be held to be the firm's own employee.

## XI. SUGGESTED POLICY AND STATUTORY GUIDELINES

It is clear that private security performs a variety of legitimate roles in our society, that it fills a perceived need, and that it provides clear social benefits to its consumers and to society at large. But, as we have demonstrated, serious potential and actual problems do exist. Also, while the *degree* of effectiveness of private security is largely unknown, its users apparently perceive the benefits as being worth the costs, since such services are increasingly in demand. In short, the real status of private security is somewhere between the two polar propositions stated at the outset of this report. That is, the private security industry generally does complement the public police by providing a certain degree of security in areas and situations where the public police do not. But, at the same time, the industry generally uses ill-trained, low-quality personnel whose activities sometimes lead to potential and actual problems of abuse of authority, individual dishonesty, and dishonest business practices. And finally, the current legal restrictions placed on private security activities and personnel have, to varying degrees, and for various reasons, been limited in their effectiveness.

In view of these considerations, one may ask, Are there preferred policy and statutory guidelines that have the potential of improving the effectiveness and reducing the social costs of private security? We believe there are. In this chapter we therefore suggest some guidelines aimed at (1) broadening, strengthening, and applying uniformly restrictions such as the licensing and regulation of private security businesses and personnel and the laws regulating private security functions or activities; (2) improving the state of knowledge and making available the information that legislators and regulatory agencies need to carry out their functions; and (3) providing positive incentives, rather than negative sanctions, for improving private security.

In developing these guidelines, we have proceeded from two major premises:

- *If government regulation is necessary, it is desirable that it be applied as uniformly as possible.*
- *Any measures aimed at upgrading the quality of private security, or at alleviating certain problems, should impose the minimum possible interfer-*

*ence or impairment of an individual's ability to conduct business or to work in private security.*

The range of alternative types of policy measures and their relevance to a variety of problems is displayed in Table 4, which presents these relationships in matrix form. Each entry shows a measure's estimated degree of relevance to a problem ("none," "slight," "moderate," or "high"). This matrix is intended to permit rapid assessment of which measures are relevant for any specific problem and which are not, and identification of the problems to which any particular measure is relevant. However, we must caution that such a display is highly oversimplified and condensed, and somewhat ambiguous. It should be viewed merely as an illustrative device which sets the broad context for the subsequent detailed discussion of preferred policy and statutory guidelines.

For a number of reasons, the current regulations and laws applicable to private police have only limited value in treating the variety of problems discussed above. No single remedy—broad or narrow—is designed to prevent or alleviate *all* problems; generally, each remedy is directed to the prevention or alleviation of one or several problems. And each class of remedy has its own strengths and weaknesses.

The licensing statutes and ordinances, as they are presently administered, have created practical and paperwork burdens, yet they have been enforced very spottily and applied only to certain portions of the private security industry. Because of limited access to information about the industry and because of skimpy budgets, the regulatory agencies have had only limited success in improving the conduct of private police. General criminal laws are likely to have an impact only on egregious misconduct and thus are of limited value. Tort law governing some private security activities has often been inadequate to protect the public interest. In some instances, this inadequacy arises from the courts' unwillingness to prohibit certain conduct by imposing tort liability. In other cases, tort law is simply too vague and indirect to act as an effective deterrent to primary conduct. The specific statutes aimed at deterring and correcting particular conduct have not always been adequate or effectively enforced. General contract law has not always responded to the particular needs of the private security industry. Finally, constitutional restrictions and remedies have not generally been applied to private security activities, so that the private police have sometimes been allowed to do what the public police could not. In sum, there are no easy, sweeping solutions. Each legal control governing private police is in need of improvement, substantively and procedurally. One productive improvement would be to provide more effective training and preconduct controls (e.g., licensing, registration, and testing) for private police. With better training and better control of access into the profession, many problems of improper conduct could be avoided before they occur, and the need for stricter tort and criminal-law controls could be partly eliminated. Such regulatory controls are outlined in detail in the first part of this chapter. However, licensing can not eliminate all problems, and implementation of regulatory programs may be slow in many jurisdictions. As a result, certain problems of improper activities will remain. Some recommendations

Table 4

RELEVANCE OF VARIOUS MEASURES AND REMEDIES TO PROBLEMS

Problems	Measures and Remedies																		
	Licensing Security Organizations	Registering Security Employees	Bonding and Insurance	Background and Criminal Records Check	Licensing Requirements				Measures and Remedies				Criminal Sanctions (Fines or Imprisonment)	Civil Sanctions	Increased Regulatory Agency Resources	Monitoring and Information Systems			
					Minimum Education	Minimum Experience (Organization Director Only)	Minimum Training	Minimum Firearms Regulation and Training	Dental Suspension or Revocation	Advertising	Information Systems	Complaint Channels				Spot Checks			
<b>ABUSE OF AUTHORITY</b>																			
Shootings & killings	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	High	None	High	High	Moderate	High	High	None	None	None
Violation of gun law (CCW)	Moderate	Moderate	High	Moderate	Moderate	None	Slight	High	High	High	None	High	High	Moderate	High	High	None	None	None
Assault; use of excess force (no gun)	Moderate	Moderate	High	Moderate	Moderate	Moderate	High	High	High	High	None	High	High	Moderate	High	High	None	None	None
False arrest, improper detention	Moderate	Moderate	High	Moderate	Moderate	Moderate	High	Slight	High	High	None	High	High	Moderate	High	High	None	None	None
Improper search	Moderate	Moderate	High	Moderate	Moderate	Moderate	High	None	High	High	None	High	High	Moderate	High	High	None	None	None
Improper interrogation	Moderate	Moderate	High	Moderate	Moderate	Moderate	High	None	High	High	None	High	High	Moderate	High	High	None	None	None
Impersonating public police/improper uniform	Moderate	Moderate	Slight	Moderate	Moderate	None	High	None	High	Moderate	High	Moderate	High	High	High	High	High	High	High
Bugging, wiretapping	Moderate	Moderate	High	Moderate	Moderate	None	High	None	High	None	High	High	High	Moderate	High	High	High	High	Slight
Improper surveillance & trespass	Moderate	Moderate	High	Moderate	Moderate	Slight	High	None	High	None	High	High	High	Moderate	High	High	High	High	None
Gaining entry by deception	Moderate	Moderate	Slight	Moderate	Moderate	None	High	None	High	None	High	High	Slight	Moderate	High	High	High	High	None
Breaking & entering	Moderate	Moderate	High	Moderate	Moderate	None	High	None	High	None	High	High	High	Moderate	High	High	High	High	None
Illegal access to public police records	Moderate	Moderate	None	Moderate	Moderate	None	High	None	High	None	High	High	Slight	Moderate	High	High	High	High	Moderate
Inaccurate or false reporting	Moderate	Moderate	High	Moderate	Moderate	Moderate	High	None	High	None	High	High	High	Moderate	High	High	High	High	None
Defamation	Moderate	Moderate	High	Moderate	Moderate	Moderate	High	None	High	None	High	High	High	Moderate	High	High	High	High	None
<b>DISHONESTY &amp; POOR BUSINESS PRACTICES</b>																			
Theft, burglary, robbery, extortion	High	High	High	High	None	None	Slight	None	High	None	High	Moderate	Slight	High	High	High	None	None	None
Failure to perform service	High	Moderate	High	Moderate	None	None	None	None	High	High	High	High	High	Moderate	High	High	High	High	None
Misrepresenting service or price	High	Moderate	High	Moderate	Moderate	Slight	Moderate	None	High	High	High	High	Moderate	High	High	High	High	High	None
Operating without license	None	None	None	Moderate	None	None	None	None	High	High	High	High	High	None	High	High	High	High	High
Franchising license	None	None	Slight	Moderate	None	None	None	None	High	High	High	High	High	None	High	High	High	High	High
<b>PERSONNEL</b>																			
Low-quality personnel	Moderate	Moderate	Moderate	Moderate	High	High	High	High	Moderate	None	Slight	Slight	Slight	Slight	Slight	Slight	Slight	Slight	Slight
Poor supervision	Moderate	Slight	Moderate	Moderate	Moderate	High	High	High	High	None	Slight	Slight	Slight	Slight	Slight	Slight	Slight	Slight	Slight
Convicted felons working in security	High	High	None	High	None	None	None	None	High	None	High	None	High	High	High	High	High	High	High
Repeated abuses by identified personnel	High	High	High	High	None	None	Moderate	Moderate	High	None	High	High	High	High	High	High	High	High	None
<b>ALARMS</b>																			
High false alarm rate	Moderate	None	None	None	None	Moderate	High	None	High	None	None	None	None	Moderate	High	High	High	High	None
<b>LACK OF INFORMATION</b>																			
Frequency & nature of problems	Slight	Slight	High	Moderate	None	None	None	None	None	None	None	None	None	High	High	High	High	High	High
Effectiveness of private police	None	None	None	None	None	None	None	None	None	None	None	None	None	Slight	High	High	None	None	Moderate
Resources devoted to private police	Moderate	Moderate	Slight	None	None	None	None	None	None	None	None	None	None	High	High	High	High	High	None
<b>QUALITY OF SECURITY SERVICES PROVIDED</b>	High	High	High	High	Moderate	High	High	High	High	High	Slight	High	High	High	High	High	High	High	High

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CONTINUED

Table 4

RELEVANCE OF VARIOUS MEASURES AND REMEDIES TO PROBLEMS

Problems	Measures and Remedies										Monitoring and Information Systems					
	Licensing Security Organizations	Registering Security Employees	Bonding and Insurance	Background and Criminal Records Check	Minimum Education	Experience (Organization Director Only)	Minimum Training	Firearm Regulation and Training	Denial Suspension or Revocation	Advertising	Criminal Sanctions (Fines or Imprisonment)	Civil Sanctions	Increased Regulatory Agency Resources	Information System	Complaint Channels	Spot Checks
ABUSE OF AUTHORITY	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	None
SHOOTING & KILLINGS	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	None
Violation of gun law (CCW)	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	None
Assault; use of excess force (no gun)	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	None
False arrest, improper detention	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	None
Improper search	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	None
Improper interrogation	Moderate	Moderate	Slight	Moderate	Moderate	Slight	Moderate	High	High	Moderate	High	High	Moderate	High	High	High
Impersonating public police/improper uniforms	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	High
Bugging, wiretapping	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	Slight
Improper use of force & trespass	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	Slight
Gain entry by deception	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	None
Breaking & entering	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	None
Illegal access to public police records	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	Moderate
Inaccurate or false reporting	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	None
Defamation	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	None
DISHONESTY & POOR BUSINESS PRACTICES	High	High	High	High	High	Slight	High	High	High	None	High	High	Slight	High	High	None
Theft, burglary, robbery, extortion	High	High	High	High	High	Slight	High	High	High	None	High	High	Slight	High	High	None
Failure to perform service	High	High	High	High	High	Slight	High	High	High	None	High	High	Slight	High	High	None
Misrepresenting service or price	None	None	None	Moderate	Moderate	Slight	Moderate	High	High	None	Moderate	Moderate	High	High	High	None
Operating without license	None	None	Slight	Moderate	Moderate	Slight	Moderate	High	High	None	Moderate	Moderate	High	High	High	High
Franchising license	None	None	Slight	Moderate	Moderate	Slight	Moderate	High	High	None	Moderate	Moderate	High	High	High	High
PERSONNEL	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Slight	Slight	Slight	Slight
Low-quality personnel	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Slight	Slight	Slight	Slight
Poor supervision working in security	High	High	High	High	High	Slight	High	High	High	None	High	High	Slight	Slight	Slight	Slight
Convicted felons working in security	High	High	High	High	High	Slight	High	High	High	None	High	High	Slight	Slight	Slight	Slight
Repeated abuses by identified personnel	High	High	High	High	High	Slight	High	High	High	None	High	High	Slight	Slight	Slight	Slight
ALARMS	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	None
High false alarm rate	Moderate	Moderate	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	None
LACK OF INFORMATION	Slight	Slight	High	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Moderate	High	High	High
Frequency & nature of problems	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None	None
Efficiency of state police	Moderate	Moderate	Slight	Moderate	Moderate	Slight	Moderate	High	High	None	High	High	Slight	Slight	Slight	Moderate
Resources devoted to private police	High	High	High	High	High	Slight	High	High	High	None	High	High	High	High	High	High
QUALITY OF SECURITY SERVICES PROVIDED	High	High	High	High	High	Slight	High	High	High	None	High	High	High	High	High	High

for improving the control of private security activities in such problem areas are presented in the second part of this chapter.

Many of the guidelines proposed in this chapter are generally consistent with the recommendations of a majority of the 39 regulatory agencies that responded to our survey.<sup>1</sup>

## LICENSING AND REGULATION

### Which Level of Government Should Regulate?

Many of the guidelines we propose below recommend implementation at a specific level of government, i.e., local, state, or federal. Our basic rationale for such recommendations and our principal suggestions are described below.

We suggest that regulations for private security forces be established primarily at the state level. However, certain aspects of the state regulations should be administered at the local level, and localities should be permitted the option of establishing additional regulations over and above those set by the state. The federal role in this area should be tertiary.

The principal rationale for this suggestion is that private security agencies generally operate in geographic areas too small to make federal regulation practical and too large for control by local jurisdictions (with local control, excessive duplication and nonuniformity of regulation would be inevitable, since a single contract agency usually operates in many neighboring localities). However, local jurisdictions are more capable than are states of efficiently implementing certain aspects of state regulations—for example, conducting personnel background checks, monitoring the industry's activities locally, and performing initial processing of complaints. Regulations that depend on local situations—those concerning which private security uniforms are permitted, for example—should also be implemented locally. Since local problems may warrant additional controls beyond the basic state regulations, localities should be free to impose such additional controls.

Although we suggest that primary regulation be carried out at the state level, certain regulatory and other roles may be performed more effectively at the federal level, these include statutory regulation of interstate use of mails and communications devices, prosecution of crimes involving interstate commerce, and the funding of basic studies of ways to effectively utilize and control private security forces.

In the subsequent discussion, when no level of regulation is specified, regulation at the state level is assumed.

Not surprisingly, the 15 state regulatory agencies that responded to our survey unanimously agreed that the private security industry should be regulated at the state level. However, their opinion was divided on whether local or federal regula-

<sup>1</sup> A detailed presentation of the views of each such agency is given in Chapter V of R-871-DOJ.

tions should also exist. Seven would allow additional local regulation, while 4 felt that some federal regulation would be appropriate. The 20 local regulatory agencies surveyed were unanimously in favor of local regulation, but none favored federal regulation. However, 11 favored state regulation, while only 2 opposed it. On the division of regulatory responsibility, local agencies generally expressed a desire for state-level regulation to avoid duplication and encourage uniformity, but they also expressed a desire for tailoring and implementation of certain aspects of regulation at the local level, on the grounds that local agencies have closer contact with the industry.

In light of the foregoing, then, what guidelines can be established for government regulation? *Our general conclusion is that current regulation at all levels is clearly inadequate.* It should be broadened to include categories of security organizations and personnel not now included; it should be extended to include standards, qualifications, and requirements not now included; and above all, the regulatory agencies should be given the resources—the personnel, money, information, and administrative machinery—for adequate enforcement. We recognize that current licensing provisions often are not vigorously enforced and that other remedies are available under constitutional, criminal, and tort law, and under specific laws regulating certain private security functions such as wiretapping. Our hope is that adequate resources and information would nurture the *will* to enforce.

#### Who Should Be Regulated?

*In general, we suggest that directors or managers of in-house private security forces as well as owner, corporate officers, and branch managers of contract security agencies be licensed by the state. All security employees of such organizations, both in-house and contract, should be registered by the state. Each person who is licensed or registered should meet certain minimum standards or qualifications; these standards may vary among types of licensees and registrants. Renewals should be required periodically, say every 2 or 3 years.*

In this regard, let us reiterate the distinction between licensing and registration. *Licensing* implies that a person or business must show that certain minimum qualifications and standards are met *before* lawfully engaging in an activity. *Registration* implies that certain minimum standards can be met within some specified time *after* engaging in an activity. Thus, in a system of employee registration, reliance is placed upon striking the unworthy from the rolls when their unworthiness becomes demonstrable. But registration does not prohibit a person from working while extensive investigations are being made into his fitness. This feature of permitting work while the registration is being processed is especially relevant to contract guard work, where a sudden demand for guards may arise and must be filled quickly and where annual turnover rates are high. We make no distinction between full-time and part-time private security employees; both should be registered, since both do the same work.

The underlying rationale for licensing any organization or business, of course,

is that it is a means of screening out the least qualified managers, and of preventing particularly problem-prone organizations from continuing to operate. However, the licensing of organizations is a very indirect and ineffective means of regulating their employees. Registration of employees would serve to eliminate those least qualified and those involved in serious or repeated abuses. Thus, licensing and registration together should improve both the quality of new security services and personnel and the quality of those already in the industry.

Under present rules in most states, only one officer in a security organization is required to be licensed. We suggest that all branch office managers as well as owners and directors of security organizations be required to be licensed, because some firms use a "front man" on the license application.

Now, why license and register *in-house* as well as contract security organizations and personnel? Since both do the same type of work, and since the actions of either may lead to the same potential problems and result in the same actual consequences, we see no basis for excluding in-house security directors and security personnel. Why should a retail-store detective employed by the store not be registered if a store detective supplied by a detective agency must be registered? Currently, very few in-house organizations or personnel are licensed or registered at either the state or local level. Generally, the rationale offered for this exclusion has been that the in-house employer's self-interests cause him to exercise care in selecting trustworthy and competent employees and in supervising their work. But contract employers have similar self-interests, and they are presently regulated. There is ample precedent for licensing or registering the in-house employee. In Chapter III of R-871-DOJ, several jurisdictions that currently license or register in-house security employees are noted. One purpose of a licensing or registration scheme is to ensure that *all* practitioners meet certain minimum standards.

Finally, which *categories* of security organizations and employees should be licensed and regulated? In our view, all guard, investigative, patrol, central station alarm, and armored-transport organizations should be included. Although not all categories are now regulated by all states and local jurisdictions, the responses to our questionnaire from regulatory agencies generally support this view. When asked for recommendations as to which organizations should be regulated, almost all 23 cities and counties that responded suggested that contract firms selling *any* of the services listed above be regulated; almost all of the 16 responding states indicated the same for guard, investigative, and patrol firms, and about 60 percent would include alarm and armored-car firms. Over 40 percent of the cities would include in-house guard and investigative organizations; about 30 percent of the states would include in-house guard organizations; and 20 percent would include in-house investigative organizations.

We emphasize that the terms "investigative organization" and "investigator" include those in-house and contract organizations and personnel that specialize in insurance and credit investigations and work for attorneys as well as those that handle general investigative work. Current laws often specifically exempt credit or insurance firms or employees, but in one sense, the system and incentives under

which such investigators work are more conducive to improper practices, such as inaccurate or false reporting, than are those of general investigative organizations.<sup>2</sup>

In our view, in-house and contract security employees who work as guards, investigators (insurance, credit, and general), patrolmen (on foot and mobile), alarm respondents, armored-transport guards, polygraph examiners, and "special police" should be registered. Again, survey responses by regulatory agencies generally support this view. Over half of the states and 60 to 70 percent of the cities suggested that contract guards, investigators, patrolmen, alarm respondents, armored-transport personnel, and polygraph examiners be regulated. A somewhat smaller proportion suggested regulation of in-house personnel. The exact figures varied, depending on the type of job and whether the responding agencies were at the state or local level, but the figures ranged between 20 and 50 percent. Over 70 percent of the regulatory agencies felt that *all* armed security personnel should be licensed or registered. Some also suggested regulating process servers and repossessioners. Since the latter activities were not considered in any detail in this study, we have not taken a position on their regulation.

The reasons given by the regulatory agencies for recommending licensing and regulation had three broad themes: (1) to keep undesirables and unqualified persons out of security services; (2) to protect innocent persons from security-personnel abuses; and (3) to maintain some degree of public control over all types of police-related forces.

A very rough estimate<sup>3</sup> of current resources (funds and personnel) allocated annually to licensing and regulation of private security at the state level is \$1.5 million and 115 people. Similarly, a rough estimate<sup>4</sup> of the resources currently devoted annually at the local level (i.e., cities having over 25,000 population) is about \$6 million and 450 people.

We suggest that licenses and registrations be renewed periodically (say, every 2 or 3 years) because it is desirable for the regulatory agency to periodically review and evaluate the files on a licensee or registrant with particular emphasis on their performance and any complaints, arrests, or convictions. A convenient time to do this review on a routine basis would be at the time renewal is required.

Although it is beyond the scope of this study to provide the detailed resource implications of nationwide implementation of the suggested regulatory guidelines, we can present a very rough estimate of this cost. If ½ to 1 man-day is required for a background check of every newly registered security employee during the first

<sup>2</sup> The more reputable general investigative organizations often bill by the hour. Credit and insurance investigations are more often done on a flat-rate-per-report basis. Moreover, there are subtle and not-so-subtle incentives to meet report quotas and to meet derogatory information quotas. These practices, documented in several Congressional Hearings, were contributing factors to the recent enactment of the Fair Credit Reporting Act.

<sup>3</sup> Based on regulatory-agency data presented in Chapter V of R-871-DOJ.

<sup>4</sup> These figures are based on the average budget per agency employee computed from data presented in Chapter V of R-871-DOJ and modified as follows. From a recent survey (Richard S. Post, "Relations with Private Police Services," *The Police Chief*, March 1971), it appears that 54 percent of the 337 cities having over 25,000 population regulate private security. Assuming that the average number of personnel is only 2.5 for this group of cities, as opposed to 3 or 4 for the few agencies noted in Table 30 of R-871-DOJ, we arrive at the figures given above.

year of employment, the cost would be about \$30 to \$60 each for that year, at the current regulatory budget levels. Licensing of new applicants should consume more effort—perhaps ½ to 1 man-week per licensee during the first year, or \$150 to \$300 each. License or registration renewal costs should be somewhat lower because the background check need only be updated. We assume that most of the cost of regulation would be paid by the private security industry through fees which would be tied closely to costs.

The fee-level recommendations of the regulatory agencies surveyed ranged from \$10 to \$500 for organizations, and from \$5 to \$50 for private security employees. The average recommended state license or registration fees were \$179 for each business and \$14 for each employee. Average local fees suggested were \$57 and \$19 for businesses and employees, respectively. It was frequently recommended that fees be set to cover the costs of processing and checking the backgrounds of the applicants.

### Background Screening

As discussed in Chapter VIII, most jurisdictions that now license or register private security personnel check local police files, and sometimes FBI files, for prior criminal history. Some require a more extensive, deeper background and character check. Previous convictions, and often arrests for felonies, morals charges, and certain misdemeanors, may lead to the rejection of an applicant. Moral turpitude or "bad character" are often additional criteria for rejection. In areas where licensing statutes are not explicit or do not exist at all, in-house and contract security employers often use similar criteria in accepting or rejecting security employee applicants, since the employers commonly have access to police files.

There is a legitimate need for private security employers to determine the background, character, trustworthiness, and criminal record of a potential employee. The major questions in this area are, Who should determine what constitutes reasonable grounds for refusing employment or a license in private security? Which sources should be checked in a background screening? Later in this chapter we shall suggest a scheme for regulating access to criminal records that strikes a balance between the legitimate needs of a private employer for employee evaluation and the need to protect job applicants in general from inaccurate or misleading reports about their criminal record and from invasion of privacy.

Nearly all responding state and local regulatory agencies indicated that local, state, and federal police files should be checked. Almost all of these agencies cited *conviction* rather than *arrest* (for a particular offense) as a reasonable ground for refusing employment or a license in private security. In spite of this, the common practice of private security employers (as related to us in interviews) is to use an arrest as grounds for refusal, even though no conviction was obtained. In addition, of the 39 responding regulatory agencies, 27 suggested checking personal references, 26 suggested checking an applicant's neighbors, and 33 suggested checking past employers.

As to criminal-history characteristics that should be considered reasonable grounds for refusing employment or a license, we offer no specific guidelines. Each state should make such requirements explicit in its licensing and registration statute. However, our suggested approach to controlling access by any employer or private investigator to criminal records of applicants for "sensitive" jobs<sup>5</sup> does make distinctions among records of convictions, arrests made without probable cause, and arrests made with probable cause where the charges are later dropped or where acquittal follows (see p. 96). For each "sensitive" job there would be a list of the kinds of arrests and convictions that would be disclosed if the job applicant waived confidentiality in applying for that job.

With regard to background checks of other than criminal records, we suggest that following:

- The state regulatory agency should conduct a background investigation of each applicant for license and/or registration.<sup>6</sup> In addition to a criminal-records check, previous employers should be contacted. If the applicant has prior experience in private security, the regulatory agency presiding over the jurisdiction where such experience was obtained should be contacted for information. These checks should be made in every place in which the applicant has resided or worked over some recent time period, say, 7 years.
- Background checks should be updated prior to renewal of any license or registration.

Our rationale for applicant background investigations is premised on the belief that licensing and registration is virtually meaningless (except as a revenue-producing device) if it is not used as a means of controlling entry into the private security industry. Without sufficient background data, the regulatory agency cannot screen applicants adequately.

## Education

Few licensing laws currently have explicit minimum educational requirements. In a few jurisdictions, mere literacy satisfies the requirement for security jobs or, for the private-investigator license, four years of college may substitute for prior public or private investigative experience requirements. A requirement for prior experience as a public policeman or investigator at local, state, or federal levels often implies an educational requirement, since most public law-enforcement positions require a high-school education, and some even require some college education.

As we shall discuss later, certain mandatory training requirements should be part of the state licensing statute, and examinations which should be satisfactorily passed upon completion of training could be administered through the state agency or through state-accredited schools employing licensed instructors. *However, for*

<sup>5</sup> "Sensitive" jobs include those in private security.

<sup>6</sup> That is, every private security employee and organization.

*those states that choose not to implement mandatory training requirements or examinations testing security-related knowledge, we suggest that:*

- *All new applicants* for licensing and registration be required either to have completed high school (or its equivalent) or to satisfactorily pass a special literacy test.

The literacy test should be a state requirement. However, it could be administered locally through regional offices of the state regulatory agency or at public agencies such as schools and/or police departments. The applicant would pay a fee for the application, part of which would be used to reimburse the police department or school that administers the test. We also feel that a "grandfather clause" probably should be included to exempt those presently employed in the industry from this requirement, to avoid imposing undue hardship, particularly on older security workers. For those states that choose to implement mandatory training and testing requirements, the registrant who successfully completes training will have adequately demonstrated his literacy as well as the ability to understand the training material.

The rationale for these suggestions is as follows: All private security personnel need to be literate in order to write reports, to read post orders, and so on. Yet, the completion of 6, 8, or even 10 years of schooling is not a reliable indicator of, or a proxy for, literacy. Still, older applicants with only an eighth-grade education who are literate should not be denied the right to work. So, for those with less than a high-school education, we would recommend a test. We assume that the preponderance of high-school graduates are literate.

In response to our survey questionnaire, over two-thirds of the state and local regulatory agencies indicated that minimum educational requirements should be mandatory for private security employees. One-third of those state agencies thought all security employees should be high-school graduates, and half thought investigators should be high-school graduates. Two recommended college education for investigators. Only a few would set the requirement as low as literacy or an eighth-grade education, but about one-third of all responding agencies would not impose any minimum educational requirements. We have compromised on literacy, since this is clearly necessary for adequate job performance.

Although it is not possible to make precise cost estimates at this point, the institution of a mandatory literacy test for those without a high-school education implies low marginal costs over and above the basic costs of setting up and enforcing the license and registration scheme suggested herein. If a security-related examination is instituted (as we suggest below), the literacy test should be neither necessary nor required.

## Experience

Two-thirds of the states that regulate private security require that applicants have minimum levels and types of prior experience in order to qualify for a license.

Often, 1 to 5 years of prior experience as a federal investigator, state or local public policeman over the rank of patrolman, private investigator, or security guard supervisor are required. In a few cases a security-related college education may substitute for part or all of the experience requirement, e.g., a college education in police science.

Nearly all of the state agencies and about one-third of the local agencies that responded to our questionnaire indicated that minimum standards of prior security experience should be established. However, their suggestions closely paralleled current licensing requirements. No agency recommended that any type of security employee be required to have prior security experience.

In our view, mandatory minimum prior security experience for registrants, i.e., employees of in-house and contract security organizations, is clearly undesirable, since such requirements would inhibit the flow of new and inexperienced people into private security work. An exception is the case of polygraph examiners, whose experience should be gained during an "internship" (see the section on training recommendations below). However, mandatory and minimum security-experience standards should be established for licensees. While it is not at all clear what these standards ought to be, it does seem reasonable to require a few years of *private investigative* experience for the operator of a private detective agency or branch and for the director of an in-house investigative force. It also seems reasonable to require several years of experience as a medium-level *supervisor* in appropriate private security work before a person can be licensed to operate a guard agency, armored-transport agency, or central station alarm agency, or to serve as an in-house director of private security. However, the degree of relevance of prior *public* law-enforcement experience to private security is unclear. The problems and techniques of private investigators, guards, etc., are sometimes similar to those of public police but often quite different. For instance, what does a former FBI or IRS agent know of the problems and techniques of shortage control in retail establishments? In light of this uncertainty, we would suggest that:

- A few years of appropriate prior experience in *private* security be one condition for obtaining a license to operate a security force.
- At the discretion of the regulatory agency, prior *public* law-enforcement experience should substitute for *part* or *all* of the minimum requirements. For example, an ex-patrol sergeant with 5 or 10 years of experience in the municipal police certainly has relevant experience for operating a guard agency. But a public policeman with 2 years of experience directing traffic may not have the experience to operate an investigative agency specializing in retail security.
- Appropriate higher education, such as a Bachelor's degree in police science and administration, should also be a substitute for *part* of the minimum experience requirements.

We suggest, further, that the precise determination of minimum experience standards and discretionary guidelines be considered by a national study group (see

the section on training below) which would also develop and recommend training programs, materials, and techniques.

Imposition of such experience requirements should improve the quality of services, reduce the potential for abuses, and enable a check to be made of the job performance of a person applying for a license to manage a security organization.

### Bonding and Insurance

Currently, 80 percent of the states regulating private security require a minimum surety bond varying from \$500 to \$400,000 (the average is about \$6,000) to be posted as a prior condition to licensing. The bonds are normally conditioned upon the "faithful and proper" conduct of business by the applicant, and an action on the bond may be brought by any person to recover damages suffered through the willful, malicious, or wrongful act of the licensee or his employees. In some states, an action on the bond may be brought for mere negligence. In effect, then, adequate bonding requirements are one means of discouraging gross abuses of authority and dishonest business practices and of compensating victims of abuse. But the amount of bonding currently required is inadequate, especially when the bond is not supplemented by sufficient personal-liability and property-damage insurance. Few licensing laws currently have special insurance requirements.

Every state regulatory agency responding to our questionnaire recommended that bonding be mandatory. They recommended bond levels of \$2,000 to \$300,000 for all licensees. Fifteen localities favored mandatory bonding, while 7 opposed it. The average bond levels recommended by states and localities were \$28,000 and \$15,000, respectively. Only 3 regulatory agencies recommended mandatory insurance, at levels ranging from \$50,000 to \$500,000. One agency indicated that bonds conditions on "faithful and honest conduct" of business are unnecessarily vague and may deter successful legal action on the bond. Another agency indicated that if not bonded or insured, only a few of the major private security companies would be able to defend the rights of their employees or customers.

Surety bonds and insurance each have particular advantages and disadvantages in the context of licensing private police. Bonds may provide greater protection for injured parties, substantively and procedurally, and a surety bond may be broader in coverage than a liability insurance policy. A bond may cover any wrongful act, even willful acts, while public policy usually prohibits people from insuring against their own willful acts (although they may be able to insure against intentional torts of their agents or employees). Procedurally, recovery under a bond is probably simpler. To recover insurance proceeds, the injured party must look primarily to the wrongdoer. In contrast, a bond allows direct, independent suit against the surety company. On the other hand, in a suit against the surety, the injured party still has to show that the bonded private policeman, for example, acted improperly (the wording of many bonds is unnecessarily ambiguous), and he may have to include the private policeman in the lawsuit. Moreover, recent developments in insurance law have increased the rights of injured parties against a wrongdoer's

insurance company. For example, some courts have held that a person injured by the *willful* misconduct of an insured party can recover directly against the insurance company even though the insured could not be indemnified for his losses.

Bond premiums are often less expensive than insurance premiums, because the surety company, theoretically, does not expect to lose any money on surety bonds. A surety bond (unlike a fidelity or indemnity bond) allows the surety to look to the bonded private policeman or security agency for reimbursement of any claims. In contrast, the insurance company does not expect the insured to repay any claims. However, extensive claims would undoubtedly increase future insurance premiums.

The primary disadvantage to surety bonds is that a requirement for large amounts of bonding might be a barrier to smaller, less affluent companies. Because the surety company expects to be repaid for any claims, it will naturally look to the financial responsibility of the bonded company. In contrast, the insurance company is primarily interested in the risk of any recovery and thus will look to likelihood of injury claims rather than financial responsibility. In short, large companies may find it easier to obtain a large bond than to obtain a large insurance policy; smaller companies may find it difficult to obtain large bonds, although their claims record would justify comparable insurance.

- *We would recommend, therefore, that minimum levels of bond or insurance be mandatory and that licensees be given an option between bonds and insurance.* This requirement should apply to each principal office and branch of every contract security firm and every employer of in-house security forces. The primary thrust should be in the direction of increasing substantially the amounts of both bond and insurance limits, and licensees should be given maximum flexibility in meeting such higher limits. The added protection to injured parties of bonds is not significant enough to prohibit licensees from using insurance as a method of satisfying such higher limits.

Although we do not suggest specific levels of minimum bonding and insurance requirements, it seems reasonable that current minimums should be *raised substantially* and that they should increase with the size of the business organizations.

### Training

Although current private security training programs vary considerably in quality, training is, by and large, either nonexistent or clearly inadequate (see Chapter VII). Only 3 states and a few cities and counties require any training for guards or investigators; where required, the training course ranges from 3 to 120 hours. In addition, 10 states that license polygraph examiners require graduation from an approved training school and/or 6 to 12 months internship. A basic assumption underlying our training suggestions is that adequate initial training and in-service training will upgrade the quality of all personnel and thereby reduce the frequency

and seriousness of problems involving abuse of authority. Higher personnel quality should also mean greater effectiveness.

Our suggested training guidelines are the following:

- State regulatory agencies should require *minimum* training programs—in terms of quality, curriculum, and hours of instruction—for all types of private security personnel. Part-time personnel should receive the same training as full-time personnel.
- Separate training programs should be *tailored* to each major private security *job category*—guard, investigator, polygraph examiner, central station alarm respondent, supervisory personnel, etc. All trainees should be required to pass an *examination*.
- Federal funds—perhaps through the Law Enforcement Assistance Administration (LEAA) of the U.S. Department of Justice—might well be made available to develop appropriate training programs, including curricula, materials, and methodology. It might be desirable for the LEAA to sponsor a commission or study group to develop such training programs. The commission could also recommend preferred ways of operating and financing training programs. That committee should be composed of representatives of the security industry (in-house and contract), law enforcement (federal, state, and local), the International Association of Chiefs of Police, state regulatory agencies, the academic world (law schools, police science and administration schools, and so on), and the public.
- Our preliminary recommendation is that *all* types of private security workers receive a minimum initial training program of at least *120 hours* (some types, such as polygraph examiners,<sup>7</sup> may require more). Eighty hours of the program might be waived for private investigators with previous experience in local, state, or federal investigation.
- Initial evaluation suggests that it be mandatory for each security worker and supervisor to receive at least 2 days of retraining per year. The state regulatory agencies should supply bulletins on current industry problems or information of special importance, as a supplement to the retraining program.
- The minimum training curriculum should include at least the following topics,<sup>8</sup> with specified times devoted to each:
  - For guards and patrolmen:** legal powers and limitations regarding arrest, search, interrogation, surveillance, and use of force; fire-fighting, first-aid; crimes and relations with public police.
  - For alarm respondents:** same as for guards, plus operation of alarm systems, procedures for notifying and assisting public police.
  - For investigators:** legal powers and limitations; investigation techniques; crimes and relations with public police.

<sup>7</sup> Because the polygraph interpretation is very subjective, the Florida requirement of 1-year internship should be considered for adoption in other states.

<sup>8</sup> Firearms training is discussed below.

**For supervisors:** review of all material taught to subordinates; procedures for training, monitoring, and controlling subordinates.

- The essential points covered in the training program should be provided to each employee in pocket-size manual form.
- Because *consumers* of security services, i.e., in-house employers and clients of contract security firms, generally lack knowledge concerning the legal powers and limitations of private police, written material describing these matters should be provided to these consumers by state regulatory agencies. These written materials might also be developed and disseminated by a federal agency such as the LEAA.
- Instructor's schools and training curricula should be accredited by the state regulatory agency.
- Untrained private security personnel should not be allowed to work more than a brief, specified period of time (our preliminary suggestion is 2 months) before certification of satisfactory completion of the training program; during this period the employee should be under constant supervision.
- Regional training schools (one or more per state) could be operated or financed by the state or by the private security industry. Direct financing by the private security industry might be based on a formula that would assess each firm in proportion to the number of personnel trained each year. Indirect financing could take the form of a training fee for each person trained, to be paid to the private or governmental agency that operates the school.
- A "grandfather clause" should be included stating that all personnel currently employed in private security work should meet the training standards within, say, 1 year after training requirements are established.

**Costs.** The total cost of our suggested training programs is not excessive when viewed over the employee's term of employment. In contract security arrangements, the cost would probably be passed on to the client as an increased fee per hour per employee. We estimate the approximate cost of the recommended 3-week guard training program at 23 cents *per hour worked*, given the following assumptions: guard and instructor wages are \$2.00 per hour and \$4.00 per hour, respectively; overhead rate is 50 percent of wages; average length of employment is 1 year; training classes have 10 students per instructor; and the trainee's full wages are paid to him during his period of training. With larger class sizes, or with employee turnover rates of less than 100 percent per year, the cost would be less. For example, if turnover were only 50 percent or 25 percent per year, the cost would be only 11 cents or 5½ cents per hour worked, respectively. Since current existing training programs are inadequate but not free, the incremental cost over and above current training costs would be somewhat less than the estimates given above.

The cost of a 3-week training program for investigators is estimated to be 10½ cents per working hour, under the following assumptions: average employee and trainer wages are \$3.00 per hour and \$5.00 per hour, respectively; the employee/

trainer ratio is 3/1; and the average length of investigator employment is 4 years. Our estimates of training costs for other types of personnel fall within the ranges of costs indicated for guards and investigators.

The total cost of a 2-day-per-year retraining program would be approximately 3 cents per hour worked, assuming that employee and trainer wages are \$2.00 per hour and \$4.00 per hour, respectively, the employee/trainer ratio is 10/1, and the overhead rate is 50 percent.

Thus, our estimates of our suggested training and retraining program total costs *per hour of productive employee work* range from 9 cents to 26 cents, depending on the type of private security personnel and the turnover rate. The actual cost may be somewhat lower, since our estimates of class size may be conservative. With these relatively small training costs, it is not clear to what degree, if any, purchasers of contract security or in-house users of security would choose to reduce or withdraw investment in security rather than pay the added costs. But, in our judgment, mandatory training is sorely needed and worth the small price.

**Regulatory Agency Views.** Twenty-six regulatory agencies responding to our survey advocated mandatory training for certain types of private security personnel, while only 2 opposed it. A smaller majority, 18 regulatory agencies, favored mandatory retraining, while only 5 opposed it. Those recommending retraining typically favored firearms retraining one to four times each year, and other types of retraining once or twice each year. The length of recommended training programs ranged from 12 to 150 hours, and averaged 58 hours. The length of retraining recommended ranged from 3 to 24 hours, and averaged 12 hours.

Detailed recommendations on training and retraining are presented, by recommending agency, in companion report R-871-DOJ. Initial training topics most frequently mentioned by the regulatory agencies were the use of firearms, the law, and the legal authority of private security personnel.

**Security Employees' Views.** About 40 percent of the respondents to our security-employee questionnaire felt that their initial and on-the-job training were inadequate, and almost half would like to receive additional in-service training.

**Rationale.** Throughout this study, we contacted a wide variety of people having various roles in private security. These included workers, employers, and regulatory agency officials. There was never any doubt raised about the necessity for training security employees. Nor was the existence of significant variations in quality among guard training programs ever questioned. Thus, the issues are *how much* training is needed, and whether such training should be made *mandatory*. We have presented evidence of the inadequacies of current training and of the lack of knowledge by security employees in Chapter VII. Since the private security industry has not voluntarily provided the necessary training, we feel it should be made mandatory by the regulatory agencies. We see no viable alternatives to mandatory regulation that will rectify the present situation in which large numbers of security employees receive little or no training. Positive benefits such as increased security effectiveness and an alleviation of abuses should result. Because they perform the same functions, both contract and in-house personnel should be subject to the same

mandatory training regulations. Part-time personnel not under constant supervision should be trained because they perform the same functions as full-time personnel.

As to the issue of how much training should be required, the United Plant Guard Workers of America (the largest guard union) recommends a minimum of 4 weeks of training. The state of Ohio has studied the problem in detail and now specifies 3 weeks of training in its present law. The responsible official who directs the federal guard forces for the General Services Administration, and who has had extensive private guard management experience, recommends a 4-week training program for private guards. We conclude, therefore, that a minimum of 3 weeks is a tentative, but reasonable suggestion for initial private guard training. The precise period should be set after an in-depth study of training needs for each type of security employee. The basic premise with respect to investigators is that their job is at least as complex as that of guards, and that the potential for improper action by an investigator is probably greater. Therefore, they need *at least* as much training as a guard needs. Alarm respondents certainly need at least as much training as regular guards, and perhaps more, because of their higher exposure to crime-related incidents. Each supervisor should also receive at least 3 weeks of initial training. Given the complexities of the situations that supervisors must handle, and given their role in training other security employees, this period of training appears minimal.

Security personnel need retraining for several reasons: Personnel become lax in following proper procedures and need to be reminded of the reasons for those procedures and of the potential difficulties that may arise from faulty job performance; since very serious types of incidents occur infrequently, personnel are apt to forget or to be unsure about what actions should or should not be taken (in many cases, there may not be time to contact the supervisor for advice, and the consequences of improper action may be serious); and special security procedures or new legal developments may need to be conveyed to employees. Given these reasons, we assert that if initial training is justified, then a modest amount of retaining is also justified. We suggest that perhaps 2 days a year would be adequate. We note too that the United Plant Guard Workers of America recommends 16 hours of retraining twice each year.

To facilitate the scheduling of new employees into the training programs, new personnel could be allowed to work for a brief period of time, say 2 months, before certification of completion of training is required for continued employment. During the 2-month grace period, new personnel would be permitted to work as guards only when under the direct constant personal supervision of a fully trained supervisor.

Close supervision is suggested primarily to lessen the probability that the new employee will take improper actions or abuse his authority during the grace period. These procedures would also increase the chances that undesirable employees would be detected and screened out before creating problems.

If a training program is to be required, the regulatory agency must have some means of controlling the quality of that program; we suggest certification of instructors, schools, and specification of curriculum as the method of control.

We recommend that the federal government develop training curricula materials and methodology for private security for two reasons: First, the availability of such training materials could greatly improve the quality of training, especially in the many smaller jurisdictions and security organizations. These smaller agencies have neither the funds nor the expertise to develop effective training materials. And second, it would seem very inefficient for thousands of security forces or scores of regulatory agencies to develop their own training material, when many of the training topics will be common to most.

Regional training schools (conducted perhaps by private schools, by larger security firms, or by the public police) would enhance the quality of instruction and achieve economies of scale, in comparison to the current system which often finds one instructor teaching one or a few students.

Purchasers of private security services, like most private citizens, are not sure of the legal rights and powers private security personnel enjoy. Thus, the client may ask the security employee to make an illegal search or to physically detain someone when there is no legal right for such actions. On the other hand, the private security consumer may not allow the security officer to use his full legal powers, simply because he has doubts as to the limits of those powers or he fears that an insurance claim or lawsuit may result.

Two alternative approaches to consumer education are available: First, the security employee can educate the consumer at the time an incident occurs. This is satisfactory if the employee is well versed and articulate, is trusted by his client or employer, and has time to instruct his client before taking action during the incident. Such a set of circumstances may not always exist. A second, and preferred, approach is to partially educate the consumer of security services *before* incidents occur.

### Firearms—Regulation and Training

Because (1) a large fraction of private guards and patrolmen are armed (many in situations where there is no apparent need for a deadly weapon), (2) a very small fraction of these people receive firearms training, and (3) a relatively large fraction of cases of serious abuse of authority involve firearms, we suggest that several policy measures be considered:

- *All* armed private security personnel should be carefully screened and be required to complete a mandatory accredited firearms course as part of their initial training. The course should include safety measures, situations in which the gun may or may not be used, range qualification, and testing. Thereafter, periodic retraining and range qualification should also be mandatory.
- Uniformed private security personnel should not be allowed to carry a *concealed* firearm while on duty. Concealed weapons do not serve a crime-deterrent function, and persons interacting with the security employee may be less apt to provoke him if they are aware he is armed.

- Company-furnished guns should remain on company property during the security employee's off-duty hours. (Many shooting incidents involving security employees occur during off-duty hours, and this provision should reduce the number of such incidents.)
- Contract security executives should discourage their clients from requesting that security personnel be armed. In-house security directors should similarly discourage their management.
- Investigators and most guards or patrolmen need not be armed except in cases where arms are essential for their safety or where extremely valuable property is at risk.
- Since the gun should be viewed as a defensive weapon only, standards for the type of weapon, grains of gunpowder, length of barrel, etc., should be stated explicitly.
- If a reliable psychological test, or other instrument, exists for screening out those individuals who obviously should not be allowed to carry a gun, it should be implemented as part of the licensing and registration process. If there is no such reliable instrument, but if there seems to be a reasonable possibility of developing one, federal funds might well be used to support such an effort. But the instrument should be practical—that is, it should not imply high administrative costs and it should be able to be applied mechanically, rather than requiring a highly trained individual to interpret the results.
- Legislators should give greater consideration to imposing explicit *statutory* liability on private security businesses for the weapons abuses of their employees against private citizens. This and/or other legal threats of criminal and economic sanctions could be expected to result in stricter control by the industry, with a resulting diminution in the number of abuses.

By and large, responses from regulatory agencies agree with most of these suggestions. Several jurisdictions already have mandatory firearms training programs for certain types of personnel. Most favor range qualification one or more times per year; most would prohibit certain types of personnel from carrying concealed weapons while on duty; and most would prohibit certain types of personnel in certain situations from carrying firearms. The regulatory agencies were split equally on the question of whether weapons other than firearms should be prohibited. The president of the United Plant Guard Workers of America also strongly favors mandatory firearms training programs for those guards who need to be armed.

More radical, but less feasible, alternatives are available, too. One alternative is to prohibit private security personnel from carrying firearms altogether, except in extreme cases. Some argue that other weapons such as the baton and/or aerosol agents would serve as well. Our security-employee survey data indicate that one-third of the employees thought a gun was unnecessary. Moreover, only 35 percent of the employees felt they would need a police baton if they were not allowed to carry a firearm on duty; 28 percent felt they would need a chemical spray; 12 percent

would want a sap or blackjack; and 35 percent felt they would not need any weapon. A program aimed at disarming guards, however, would undoubtedly meet determined resistance from certain quarters of the security industry. Such a program would forego the benefits to be derived from trained armed security personnel in those situations in which arms are necessary.

If the problem of armed security personnel is viewed as part of the larger issue of the proliferation of firearms among private citizens in general, another alternative would be to push for more stringent gun-control legislation at both the state and national level. Such legislation could seek to nationalize the strict gun-control laws found in New Jersey and New York and to control firearms at the crucial point of purchase. If such an approach were coupled with a strong public policy against the proliferation of firearms, as well as mandatory demonstration of competency in the use of firearms and knowledge of firearm safety before a license could be issued to any citizen, this might also resolve the private security firearms problem. But clearly, such legislation applicable to *all* citizens would meet strong opposition from many quarters and would run counter to strongly entrenched American traditions.

#### Testing of Licensees

In the previous discussions of training and firearms qualification, we suggested that tests be administered at the conclusion of training. If it is not possible for a jurisdiction to implement such training programs rapidly, an alternate, stopgap means of screening unqualified and potentially dangerous personnel would be desirable. Mandatory examinations were favored for this purpose by two-thirds of the regulatory agencies surveyed.

We suggest, therefore, that:

- All licensees and registrants should be required to pass a comprehensive examination, administered by the regulatory agency, covering topics relevant to each applicant's particular security occupation. Questions concerning legal authority and reactions in a variety of situations should be included in the examination.
- All armed personnel should be required to pass an examination covering firearms safety, proficiency, and usage (i.e., when and when not to use the gun).

#### Regulatory Sanctions and Effectiveness

Penalties for violations of the current licensing statutes and administrative regulations generally include license denial, suspension, and revocation; imprisonment; and fines.<sup>9</sup> Many states specify detailed controls on the conduct of private security business in the licensing statute and classify violations of the statute as misdemeanors. Some violations are classed as felonies (for example, one state

<sup>9</sup> See R-871-DOJ for a detailed summary.

considers the falsification of fingerprints required in the application a felony). Grounds for license revocation generally include commission of a felony, violation of the licensing-act provisions, unprofessional conduct or dishonest business practices, impersonating a public police officer, addiction to alcohol or drugs, and certain misdemeanors. Theoretically, then, in many jurisdictions sanctions are already available to cover problems involving dishonesty and poor business practices, as well as some of the problems involving criminal abuse of authority.

But, in practice, sanctions are rarely invoked, and the penalties imposed are minimal. When invoked, the license suspension and revocation procedure is typically cumbersome, slow, and costly. Regulatory agencies have few personnel and very limited financial resources, and as a result they rely largely on informal and completely inadequate means of detecting violations and abuse of authority. The average state regulatory agency has less than 4 people, of which half are investigators, and spends about \$50,000 annually. Local regulatory agencies have even more meager resources.

*Half of the state and local regulatory agencies responding to our survey indicated that they did not have sufficient personnel to adequately perform assigned functions.* On the average, the state agencies reporting a current staff level of inadequacy felt they needed a 126 percent increase in total employees and a 92 percent increase in investigators. Local agencies reported similarly inadequate levels of staff.

- We suggest, therefore, that the regulatory agencies be given sufficient resources to enable them to screen and monitor licensees and registrants and to investigate violations of the regulations.

We suggest broadening the applicability of regulatory sanctions to include private security employees (i.e., registrants as well as licensees) and to expand the grounds for suspension and revocation of a license or registration, as follows:

- The violation of any major provision of the licensing statute (such as failure to have registrants comply with the training requirements) should result in *immediate* suspension of the license. For some violations, a fine plus compliance with the statute would follow. For others, license revocation and/or criminal prosecution would follow. Temporary suspensions should be permitted, at the discretion of the regulatory agency, while allegations of serious violations are being investigated.
- Grounds for suspension and revocation of a license or registration, for levying fines, and for applying criminal sanctions should be explicated in the statute.
- Certain actions which constitute abuse of authority (such as false arrest, improper interrogation, improper search and seizure, improper surveillance, false or inaccurate reporting, trespass, gaining entry by deception, etc.) should be made grounds for suspension, fine, or revocation of license or registration, depending on whether the licensee or registrant was responsible for the abuse. Although civil sanctions are available to redress such abuse of authority, the addition of regulatory sanctions should help

deter and alleviate such problems.<sup>10</sup> We suggest, too, that the national commission referred to earlier formulate guidelines to determine which sanctions should be applied to which actions.

- Maximum fines and prison sentences should be severe enough to have a significant deterrent effect.

### Monitoring and Information Systems

We assert that no system of regulatory sanctions can succeed unless the agencies' resources are adequate and they have sufficient information systems and administrative machinery to detect and assess violations and improper conduct. Along these lines, we suggest that:

- Regulatory agencies should be given the investigatory authority and resources to conduct random field spot checks of private security records and operations.
- Complaint channels should be set up so that both aggrieved clients and members of the public can make their complaints known directly to the regulatory agencies. One approach might be to require that the name and telephone number of the regulatory agency be included in all private security advertising and publications and be posted at each fixed location served by the licensee. Another possibility might be a public education program via mass media, although this would probably be quite costly.
- The local public police agencies should be required to forward to the regulatory agency information about incidents (particularly those involving shooting), arrests, convictions, and complaints involving private police of which they become aware.
- Insurance and bonding companies should be required to forward data on all major complaints and dispositions involving private police.
- The regulatory agency might be given the power to adjust fees and/or to publicize those in-house and contract security organizations which have either extremely good or extremely poor records of founded complaints. The latter would act as an incentive to firms with good records by improving the firms' image and, in the case of contract agencies, the ability to attract business.

### Advertising

A common complaint made by licensed contract security agencies is that many unlicensed firms operate freely. In some jurisdictions, these firms advertise or are listed in the telephone directory. Listings often give only the firm's name and

<sup>10</sup> As indicated in Chapter X, tort, or civil, remedies are not a completely satisfactory sanction because (1) litigation is slow, expensive, and relatively inaccessible to some people, particularly the poor, since it requires a lawyer, and (2) tort law does not necessarily change with evolving concepts of personal rights, and therefore one is often left without adequate remedy for his injury.

telephone number. Often, these are marginal, one- or two-man businesses operating out of a home.

- Detection of unlicensed operators would be much improved if the statute required that the firm name, telephone number, *legal business address*, and *license number* be required in every advertisement and telephone directory listing.

This requirement should reduce the incidence of poor business practices and abuse of authority, since it would be easier to detect and apply sanctions to the unlicensed operator—the very operator who is most likely to engage in such practices.

Several regulatory agencies currently attempt to control fraudulent and misleading advertising by incorporating the following regulations into the licensing statute:

- Any licensee, on notice from the regulatory agency, shall discontinue any advertising, seal, or card which, in the opinion of the regulatory agency, may tend to mislead the public.
- Only the licensed address and business name may be used in any advertisement, letterhead, etc.
- No licensee shall publish, or cause to be published, any fraudulent or misleading notice or advertisement.

#### ACCESS OF PRIVATE SECURITY FORCES TO PUBLIC POLICE ARREST RECORDS

We indicated above that there is a legitimate need for private employers (including private security employers) to check on the background and criminal record of an applicant for, or an employee in, a sensitive job. Often the job of background screening is given to an in-house or contract private security force. But the question that our suggestions address is, How can these needs be balanced with safeguards and sanctions against the social costs of inaccurate, incomplete, misleading, or false information and of invasion of privacy? In more specific terms, Which types of records should not be disclosed, and which scheme of regulation will control access in a desirable manner? After discussing and evaluating three alternatives,<sup>11</sup> the preferred approach<sup>12</sup> regarding access to criminal records embodies the following:

- *Conviction records* should be used as grounds for denying registration or licensing (i.e., employment), but only convictions for offenses specified by statute as grounds for denying employment should be reported from public

<sup>11</sup> See Chapter III of R-872-DOJ.

<sup>12</sup> Preferred on the basis of feasibility and effectiveness.

law-enforcement files. The offenses specified should be related to potential areas of abuse in private security.

- *Records of arrests made without probable cause*, where probable cause is not subsequently developed, should be destroyed or returned to the individual arrestee.
- *For records of arrests made with probable cause where the charges are later dropped or where acquittal follows*, states, by statute, should create a state board with authority to determine what records can be reported for what jobs and for how long a period after date of arrest.<sup>13</sup> Restrictions on the dissemination of such records should be very stringent.
- Under the scheme outlined above, when an individual applies for a job or license classified as sensitive by the state board:

1. He would be shown a list of the kinds of arrests and convictions that would be disclosed if he waived confidentiality in applying for that job; thus, he would see, for example, that an arrest without probable cause or a juvenile arrest for a minor crime would not be reported.

2. He would be asked to sign a waiver of confidentiality.

3. If he signed the waiver and had an unreportable record, the employer would receive a notice from the state bureau to the effect that the applicant has no reportable record. The same notice would be sent out regardless of whether the applicant had no record or had an unreportable record.

4. All requests for reports would have to be processed through the state bureau; local police departments would be forbidden to release any records directly to the private security industry.

5. Private security firms or employers would be allowed access to the system only for record checks on their own prospective employees.<sup>14</sup>

- For such statutes to be effective, they should call for imposition of substantial *criminal* penalties on public employees who reveal confidential arrest and conviction records, and they should provide civil remedies for injunctive relief and damages to the aggrieved individual.

These features, in our view, would provide adequate safeguards. We do not know the cost of such a system. However, only a fraction of the system's cost would be attributable to the private security sector, since the list of sensitive jobs would surely embrace many other sectors (for example, the financial). Another unknown is the degree to which criminal and civil sanctions will succeed in closing off access of private security to local police files. Because the ties between the two are often cordial and close and because many ex-public policemen work in private security,

<sup>13</sup> This scheme applies broadly to all individuals applying for a job, license, or registration classified as sensitive by the state board.

<sup>14</sup> This means that private security firms who do preemployment, insurance, and credit investigations for clients would not have access to the police records of these investigation subjects. The client firms themselves would have to request a record check through the state bureau.

closing access may be difficult. Still other unknowns are the bureaucratic practicality and political acceptability of this proposal.

The rationale supporting these suggestions for controlling access to police records is rather lengthy;<sup>15</sup> but basically, the intent is to protect applicants from inaccurate or misleading reports and from invasion of privacy, and, by giving prior notice as to which criminal records are reportable, to permit the applicant to forego the potential benefits of the job or license if he does not want his criminal record revealed.

#### ARREST, SEARCH, INTERROGATION, AND USE OF FORCE

A detailed critique of tort controls over the powers of private police for arrest, detention, search, interrogation, and use of force is difficult because of the general vagueness and complexity of the law. The law is controlled by such general concepts as "reasonableness," "probable cause," or "necessary under the circumstances." Uncertainty is compounded by the fact that a particular factual situation might be covered by various privileges, each of which might allow different conduct. Further, the law in a given situation depends upon the nature and legality of the conduct of the person being detained, stopped, or ejected; and it often takes into account the subjective state of mind of the person making the arrest or using force. This uncertainty creates special problems for the employer of private security personnel in instructing his personnel intelligently on what they should or should not do in every situation they might encounter. And the individual guard, whose intelligence and educational level may be somewhat low, may be incapable of setting any guidelines for himself. This uncertainty also creates problems for the private citizen confronted by an accusing guard.

Therefore, greater certainty in the definition of permissible conduct in the areas of arrest, search, interrogation, and use of force would be of great benefit. The entire law of this area could not be codified, but an attempt should be made to isolate some particularly troublesome problem areas—such as detentions for shoplifting—and to promulgate standards to govern the conduct of security personnel as well as the conduct of citizens.

As for the current differences in public and private police powers that result from the imposition of constitutional restrictions upon the former and not the latter, there would be significant advantages in applying to private security work the same standards of conduct developed in constitutional decisions for arrest, detention, search, and interrogation by public police. However, two problems would arise: First, enforcement of such standards by use of the Exclusionary Rule could have undesirable effects on public prosecutions; thus, an attempt should be made to find tort-remedy methods of enforcing these standards. The second problem is that of defining to whom, when, and for what activities these standards would apply. We suggest that:

<sup>15</sup> See R-872-DOJ for details.

- A wholesale application of constitutional standards should await some greater clarity or uniformity in licensing laws or definitions of the profession of private policemen. Until then, the recognized line between deputized and nondeputized private security personnel could probably be used to determine the applicability of constitutional standards.

#### GATHERING INFORMATION ON PRIVATE CITIZENS FROM THIRD PARTIES

There are two broad approaches to designing regulations for the gathering of information on private citizens from third parties. The first is simply to prohibit by law the collecting and reporting of certain information. This approach is not preferred because it involves a great many difficult value judgments for which there is little empirical guidance and because direct prohibitions pose a substantial enforcement problem.<sup>16</sup> The second approach adopts a more *laissez-faire* attitude but provides incentives for private security firms to act in the way society wants them to and facilitates the ability of an individual to control the extent to which information concerning him is collected. This is our preferred approach.

Toward this end, we suggest that the Fair Credit Reporting Act be amended or that the following be enacted in a state statute:

- Before a background investigation (or, in the language of the Act, an "investigative consumer report") is commenced on an individual who has applied for some benefit (e.g., life insurance, credit, or employment), it should be required that the individual *be fully informed of the nature of the report and the scope of the investigation*. In this way, he will be enabled to make an informed choice on whether to forego the benefit and avoid the investigation. Clearly, such requirements cannot apply to certain types of investigations, such as those involving crimes, marital conflicts, business conflicts, or industrial espionage, because confidentiality is necessary to the success of the investigation. The requirements would apply to credit, insurance, and preemployment investigations—those activities which constitute the bulk of private investigative work.
- Whenever an "investigative consumer report" is reported to the requesting firm, it should be required that the individual being reported on be sent a copy and the name and address of the requestor. Thus, he would be immediately informed of, and could act to refute, any information he considered to be misleading or inaccurate. The incremental monetary costs of this suggestion should not be excessive, since all that is involved is duplicating the report and mailing one copy to the individual.
- To facilitate recovery for injuries resulting from inaccuracies in, or false, reporting, investigative agencies should be held *strictly liable*. Currently,

<sup>16</sup> This is discussed in R-872-DOJ.

the Act requires that willful or negligent violations be proven before recoveries can be effected. Under our suggestion, intent or negligence would be irrelevant; the reporting agency would be held liable if it made an erroneous report and if the mistake caused injury.<sup>17</sup> The rationale for holding manufacturers strictly liable for defects in their products applies as well to private security agencies and their investigators.

- To prevent invasions of privacy which result when information about an individual is obtained from his friends and acquaintances under false pretenses, investigators making an "investigative consumer report" should be required to *identify themselves, their firm, and the purpose of their inquiry*. Or, as an alternative, the investigator should have to produce a letter from the individual being investigated saying that he is aware of the investigation and authorizes it. Again, such requirements would not apply to certain types of investigations where confidentiality is required, such as criminal, marital, or industrial-espionage investigations.

The needs to alleviate injury resulting from misleading or incorrect reports are particularly urgent in view of the trend toward computerized storage and retrieval of the files maintained by credit bureaus and other reporting agencies. When "soft" data that are gathered from third-person interviews are forced into the rigid format required for computerized storage and access, the potential for inaccuracy is greatly increased. The potential for harm is also increased as it becomes possible to gain access to central computer files from anywhere, and as the diffusion of computer terminals to users makes control of unauthorized access more difficult.

### ELECTRONIC EAVESDROPPING

We have concluded from our analysis<sup>18</sup> that the legislative response to the dangers of illegal eavesdropping by a wiretap or electronic device seems rather complete. In fact, because the law in this area is comprehensive, no extension seems necessary to deal with electronic surveillance by private individuals. What are required, apparently, are better methods of detection. It remains to be seen how effective the statutory controls are in regulating and restraining bugging and wire-tapping.

### SEARCHING PRIVATE PROPERTY

A question pervading this entire area is whether information obtained by private individuals in an illegal search, either physical or electronic, should be admissi-

<sup>17</sup> A possible effect of a strict liability provision might be that reporting agencies and the users of such reports (insurance companies, credit granters, and employers in general) may determine that some types of information are so inherently unreliable and of such marginal value that it is not worth the risk of loss to collect them.

<sup>18</sup> See the discussion in R-872-DOJ.

ble as evidence in either civil or criminal judicial or administrative proceedings. In other words, does the Exclusionary Rule apply? Our analysis<sup>18</sup> leads us to the general conclusion that:

- In *civil* suits, perhaps the best resolution would be an equitable remedy allowing an individual aggrieved by an illegal search to move for exclusion of the evidence from such search. The judge, acting as a court of equity, would be empowered to take into account the flagrancy of the action involved, the relationship of the person who seeks the use of the evidence to the person who obtained it, and the value of the evidence to reaching a just result in the case at hand, and then to "balance the equities."
- The same remedy might be made available in *criminal* proceedings. That is, rather than the application of a mechanical Exclusionary Rule, looking for the participation of state agents or other "state action," a motion to suppress evidence might be decided in view of several factors. Thus, a judge might consider the extent to which the private security guard or investigator was serving as a public law-enforcement officer at the time the search or surveillance was made and to what extent suppression of such evidence might affect future activities of such persons (i.e., the deterrent effect). He might also consider the extent to which a private policeman is given additional authority by virtue of licensing, or is given more tangible power by being allowed to wear certain uniforms and badges and carry weapons.

The deterrent effect of the Exclusionary Rule on actions of the public police, however applied, has always been a rather dubious proposition. Nevertheless, there may be identifiable situations in which a significant deterrent effect is predictable. Such a situation may exist, for example, in relation to evidence gathered pursuant to the direction of an employer for the primary purpose of use against an employee in a civil proceeding.

- In situations where a significant deterrent effect can be predicted, courts should not proceed by balancing the equities on an *ad hoc* basis. Rather they should enunciate *per se* rules, so that any possible deterrent effects can be realized.

### IMPERSONATION OF AND CONFUSION WITH PUBLIC POLICE— UNIFORMS AND BADGES

Private citizens may be easily confused about the powers and prerogatives of private police, particularly when such private police are in uniform or possess badges. And, as we indicated in Chapter IX, regulatory agencies report that actual impersonation of public police officers is not infrequent.

It appears, from our analysis, that there is ample legislation proscribing direct and indirect impersonation of federal, state, and local law-enforcement officers. State and local laws generally prescribe the color, style, and wearing of uniforms

and badges. To the extent that confusion still exists, more effective legislation might ban the use of the word "police" when referring to or identifying private security personnel and might require the use of even more distinctive uniforms or badges; such legislation might even require the wearing of a patch stating that the wearer is not a police officer. This would alleviate one of the problems created by confusion—namely, public police would not be blamed as often as they are at present for the illegal acts of private security personnel.

Another problem created by confusion is that many people impute special powers to private and public police who are wearing uniforms or badges. After all, the public has little knowledge concerning the respective powers of public and private police. The costs and benefits of confusion must be examined in attempting to suggest improvements. The *costs* are that a private policeman may command obedience to demands that people are not legally obligated to obey—for example, in questioning and obtaining information from individuals who have the right not to talk. The *benefits* of confusion derive from the psychological advantage of a uniform or badge in deterring illegal acts such as shoplifting or in obtaining obedience to commands much more readily in those situations where the officer is entitled to obedience, such as when expelling trespassers.

On balance, the benefits derived from wearing uniforms and badges appear to be sufficiently substantial that it would be a mistake to forbid them in *all* circumstances. But there are situations in which they should be prohibited, and certain sanctions should be available for any situation in which private security personnel use the uniform and badge as a basis for an assertion of authority that they do not possess.

The regulatory agencies responding to our survey unanimously recommended that regulations be established governing allowable types of private security uniforms, insignia, and badges, and that such regulations require the uniforms and badges to be distinctly different from those of the public police.

We suggest that:

- Private security personnel engaged in investigatory activities such as *questioning* should *not* be permitted to wear uniforms and badges. They should be allowed to show identification cards, but these cards should not be designed to give an appearance of official sanction or official power. For example, uniformed store guards should not be allowed to perform questioning because they connote official power which they do not possess.
- There may be a need for legislation facilitating private damages recovery for victims of false assertions of authority based upon the wearing of uniforms and badges. A provision for recovery of costs and attorney's fees would facilitate obtaining such private remedies.
- There may be a need for modification of common-law theories upon which recovery would be based, or special statutory provisions may be needed. For example, consent is a defense to torts such as assault and false imprisonment. Given public confusion over the power possessed by private policemen, "requests" by them are inherently coercive because of the authority

connoted by uniforms and badges. Thus, if a store guard asks a customer to submit to a search, the customer's submission should not be viewed as consent, unless the situation was free from coercion. And only if the store guard informs the customer that he is not required to submit to a search can the coercion inherent in the situation be negated.

- There should be statutory prescriptions of the color, style, and wearing of uniforms, and the use of public police titles by private security personnel should be controlled in jurisdictions not now having such laws.

## THE ALARM INDUSTRY AND FALSE-ALARM RATES

The problem of high false-alarm rates exhibited by all types of alarm systems has generated great concern in public police departments and in local governments. Local police are especially concerned about the public resources expended in responding to the (typically) 95 percent of the alarms that are false. The result has been the passage of several strict city ordinances regulating many aspects of the licensing, operations, and equipment standards of alarm systems.<sup>19</sup>

In addition to a variety of licensing or permit provisions, these restrictive municipal alarm ordinances include requirements such as the following:

1. No automatic protection device shall be keyed to a primary or secondary telephone trunk line to the public police department, i.e., such devices should be keyed to a special trunk line.
2. Intrusion-detection devices must meet minimum standards for installation and/or maintenance.
3. Special procedures shall be established for reporting alarms to the public police department.
4. Limitations shall be imposed on the number of times a recorded message may be delivered as a result of a single stimulus of the sensory mechanism, its transmission time, and the time gap between deliveries of the message.
5. The sensitivity adjustment of the sensory mechanism shall be specified so as to suppress false alarms as a result of short flashes of light, wind noises, vehicular noises, or other forces unrelated to genuine alarms.
6. Notice must be posted as to persons to be notified when alarms ring.
7. Service shall be provided to repair or correct malfunctions.
8. The consumer or purchaser of the alarm system or service shall be furnished with operating instructions and a maintenance manual.
9. A corporate surety bond shall be furnished prior to issuance of a permit or license.
10. A permit or license may be revoked or suspended where such devices activate *excessive* false alarms.

<sup>19</sup> See, for example, the Dallas, Los Angeles, Beverly Hills (California), and Oakland (California) ordinances, summarized in R-871-DOJ.

Given the dimensions of the false-alarm problem, such requirements and sanctions are not unreasonable statutory responses. Each requirement or sanction aims at different facets of the same problem. Taken as a group and strictly enforced, such measures should go far in reducing the false-alarm rates.

Provision 10 deserves elaboration. What are *excessive* false alarms and who is to make that determination? It seems reasonable that the local police department, in cooperation with the local legislative body, is best qualified to make that determination. Factors in that decision no doubt would include the desires of the purchasers of alarm services, average and maximum workload or demands for services per policeman on the street, the opportunity costs of police response to false alarms, and so on. However, care must be taken not to threaten the financial viability of those firms that make strenuous efforts to comply, since the alarm industry's benefits to society would be missed and should not be foregone.

Some cities have also considered the imposition of fines upon central station alarm companies for transmitting false alarms. In Los Angeles and Oakland, the lawyers for the city questioned the legality of the fines and the proposals remained dormant. In Denver, a central station operator inaugurated a fee for avoidable false alarms. Some customers pay and some do not; for the latter, some form of increased rates is ultimately substituted. However, the ultimate effect of fines is uncertain. On the one hand, the financial viability of central station firms may be threatened if, because of inelasticity of demand, the fine cannot be passed on to the purchaser. On the other hand, if the fine can be passed on to the consumer, it may in fact reduce the false-alarm rate. But central station companies may respond to such a sanction by refusing to call in the public police until they have determined to their satisfaction that the alarm was not an avoidable false one. In this way they would avoid the fine, but by then, sufficient time might have elapsed so that the responding public police would have little chance of intercepting a burglar or robber.

#### THE LEGAL RELATIONSHIPS BETWEEN USERS AND PROVIDERS OF PRIVATE SECURITY SERVICE

The current law of *respondeat superior*,<sup>20</sup> although providing effectively for compensation of victims, lessens the financial threat against the acting party—the guard on the job. If the guard knows that in most cases the employer also is responsible and would have to pay, he may not act with great caution. And the rules of *respondeat superior* deter active control by the firm that hires contract guards or investigators, for the more active the control the more likely the guards or investigators will be held to be the firm's own "employees." The existing incentive to avoid control could be eliminated by the recognition that failing to control security person-

<sup>20</sup> Literally translated, the doctrine of *respondeat superior* means "let the master respond." The concept provides a legal obligation on the part of an employer to compensate those who are injured by the acts of his employees.

nel is considerably more harmful than an unsuccessful attempt to control. Accordingly:

- A failure of control by the hiring firm should be considered negligence, and the firm should be held directly liable for such negligence.

As to limitations of liability, the present law is probably adequate in cases of losses caused by third parties—thefts, fires, and the like. However, any limitation of liability that restricts a contracting firm's responsibility to compensate the hiring firm for the intentional misconduct of the contract guard (for example, thefts of the hiring firm's property by the contracting guard) should not be condoned. There should be an incentive for contract agencies to exert their control and influence in selecting honest employees and in ensuring that the employees they make available will not take advantage of the trust that is placed in them.

#### EVALUATING COSTS AND BENEFITS

In the interests of aiding crime prevention by providing users of private security services with information as to which systems or services would be most effective, or most cost-effective, for the intended application, we suggest that:

- The federal government should consider funding a research center that would evaluate the effectiveness and costs of private security personnel and equipment.

The center's role would be to collect, analyze, and disseminate cost and effectiveness data from both operating and experimental security systems. (By *security systems* we mean devices, personnel, and mixtures of the two.) This center should be a continuing entity, since new systems are continually being developed. Perhaps it could be associated with some organization such as Underwriter's Laboratories, Inc. However, unlike the UL, its existence should not depend on fees collected for evaluation of systems that are *voluntarily* submitted. The center should be financially independent of the industry it is evaluating. The Small Business Administration Report on Crime Against Small Business goes one step further with respect to security equipment: It recommends that the federal government "sponsor a central point of contact for manufacturers to evaluate and encourage research and development, standards, and perhaps testing."<sup>21</sup>

Evaluation of the various security systems that are available would provide a reasonable basis for the widespread dissemination of protection standards. Minimum physical standards for protection against burglary have already been set for businesses by a 1964 Oakland, California, burglary ordinance and for banks and savings and loan associations by the recent National Bank Protection Act.

<sup>21</sup> Op. cit., U.S. Senate Document No. 91-14, April 3, 1969, p. 12.

The issue of crime insurance and the private security industry must also be considered.<sup>22</sup> It is particularly important to note the apparent lack of a statistical relationship between insurance premium discounts and experience or effectiveness in reducing crime and losses to crime. The SBA Report recommended that<sup>23</sup>

... the [insurance] industry undertake a fundamental overhaul of its statistical reporting and attempt to obtain more centralized, more reliable, and more comprehensive statistics. Discounts from standard premiums, because of installation by businessmen of protective device systems, should be applied on a rational basis consistent with experience data to be obtained from the overhauled reporting systems.

We concur with these recommendations, but, in addition, we suggest that:

- Reliable and comprehensive information on the effectiveness of private security *personnel* (guards, mobile patrols) should be included in the overhauled statistical reporting system.

Such information would also provide a basis for more rational decisions on insurability and deductible loss levels.

A related recommendation was made in a 1967 report on crime insurance prepared for the U.S. Senate Select Committee on Small Business.<sup>24</sup> This report noted that the effectiveness of security devices is difficult to establish due to lack of data and suggested the "building of a data bank of all pertinent information about insurable crimes." The report suggested that primary uses of the data would be in (1) the conduct of the insurance operation, (2) providing technical assistance to security-device purchasers (recommending special protective measures and issuing alerts on new criminal and security methods), (3) providing useful information to public police, (4) evaluation of existing protection systems, and (5) devising new crime-prevention techniques.

<sup>22</sup> This is discussed in R-870-DOJ.

<sup>23</sup> Op. cit., Senate Document 91-14, April 3, 1969, p. 17.

<sup>24</sup> *Contributions of Science and Technology to Federal Crime Insurance*, a report prepared for the Select Committee on Small Business of the U.S. Senate by the Science Policy Research Division of the Legislative Reference Service of the Library of Congress, August 10, 1967.

## XII. NEEDED WORK

In this chapter we summarize briefly the kind of work—studies, experiments, and evaluations—that is still needed to better define the nature, extent, and effectiveness of private security, to refine or modify our suggested policy and statutory guidelines, and to learn more about a host of related problems. It should be abundantly clear at this point that in all of these areas reliable information is lacking. The systematic collection and analysis of information is a basic ingredient of almost all the work suggested.

It is also appropriate to reiterate here two of the several policy and statutory guidelines suggested in the previous chapter, because they have clear implications for the LEAA.<sup>1</sup> These guidelines suggest that federal funds be made available to (1) initially develop appropriate training programs (curricula, materials, and methodology) for private security personnel, including suggestions for and evaluation of alternative ways of operating and financing the programs, and (2) set up a research center (financially independent of the private security industry) that would continually evaluate the effectiveness and costs of private security personnel and equipment.

### ANALYSIS OF SECURITY COSTS AND EFFECTIVENESS

As indicated in earlier chapters, *the basic relationships between private and special-purpose public security inputs (personnel, equipment, and so on) and their effectiveness are largely unknown.* The relative costs and effectiveness of alternative types of private security personnel, devices, and operating policies need to be determined for specific security situations. Instead of undertaking general cost-effectiveness studies, the studies should be focused on specific types of crime, on specific segments of the security industry, or on specific consumers of private security. A partial list of worthwhile cost-effectiveness studies might include:

<sup>1</sup> Most of the guidelines suggested in the preceding chapter have implications for statutory or administrative action at the state or local government level, rather than at the level of the LEAA.

- *Campus security* and campus police alternatives (see Chapter V of R-873-DOJ).
- Alternative *reserve police* programs for municipal and county police departments (see Chapter II of R-873-DOJ).
- Alternative approaches to reducing *business burglaries* for different types and locations of businesses.
- Alternative ways of reducing *shoplifting and pilferage* in different businesses.
- Ways of *coordinating* public and private security forces and enhancing cooperation between the two for specific security problems.
- Ways of reducing *false alarms* in the alarm industry—technical, operational, and policy alternatives.
- Ways of establishing statistical relationships between *crime insurance discounts* and various private security measures.
- A careful and systematic survey of various *users of private security* to probe their reasons for using particular security measures, their perceptions and attitudes (satisfactions, complaints) toward private security, and what they would be willing to pay for various increased benefits.
- A careful study of the *credit investigation* field—the relationships between cost and quality, procedures for improving quality of credit investigations, and perceptions of the credit grantor and the investigatee.

In addition to cost-effectiveness studies of specific areas of private security, certain fundamental theoretical work (i.e., theoretical in economic and legal terms) is badly needed. Especially needed are models of the appropriate division of labor between public and private police, the division of spending between public and private funds, the monetary cost relations for policing activities if they are done publicly or privately, the relative effectiveness of policing activities done publicly or privately, and the true and relative prevalence of problems (such as the abuse of power) in public and private police organizations.

#### TECHNOLOGY TRANSFER

There are several very useful activities that should be undertaken as a direct follow-on to the present study. All, in some sense, attempt to refine and transfer the fruits of the research to the appropriate people, business organizations, and public agencies. These activities are the following:

- Extensive *interaction* by the study team with regulatory agencies, in-house security employers, and contract security agencies should follow the dissemination of this series of reports. Through briefings and face-to-face discussions, the *policy and statutory suggestions* should be refined or modified.

- An appropriate committee, composed of lawyers, security industry leaders, and representatives from leading state and local regulatory agencies, state legislatures, and city councils should *draft two model licensing codes*—one at the state level and one at the municipal or county level.
- One or more of the suggested policy and statutory guidelines could be tested, refined, and evaluated by any state or local jurisdiction that decided to implement them.
- If a state decided to implement some or all of the suggested guidelines into licensing and other statutes, the LEAA should consider offering financial assistance to establish, operate, and evaluate a *model regulatory agency* in that state.

#### DESCRIPTIVE STUDIES

There are also a number of worthwhile descriptive studies and surveys that might be conducted. Three examples follow:

- A study could be undertaken to determine whether public police who moonlight as private security officers are a problem or an asset. Several cities and counties could be compared, with the following questions in mind: How many officers moonlight? What is the policy of the local police department toward moonlighting? What methods are used to solicit this work? How do potential purchasers of private security services view police moonlighters as compared to private police? Who controls them?
- A nationwide survey of the deputization and commissioning of private police would be of value. Questions addressed would include: How many are deputized or commissioned? What functions and powers do they have? Do the local public police view deputization as a way of supplementing their scarce services? Do deputized officers abuse their authority more or less than undeputized security officers? Do users of private police prefer to have their private security officers deputized?
- As described in the previous chapter, training curricula, written examinations, materials, and methods should be developed for each major category of private security employee. The committee or study team should specify the minimum training period for each major job category. It should also develop written materials on the legal powers and limitations of private police. The fruits of this study, developed hopefully at the national level, would be disseminated, as appropriate, to state and local regulatory agencies, to contract and in-house security employers, and to clients of contract security agencies.

**END**