The Privacy Report

Issued by Project on Privacy and Data Collection / American Civil Liberties Union Foundation
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Volume IV, No. 1, August 1976

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PRIVATE POLICE IN AMERICA: THE PRIVATE SECURITY INDUSTRY

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Judging from the number of pulp detective novels published each year and the endless stream of television detective serials, the private eye has become an archetypal American folk hero. He works on his own, is either engagingly handsome or has winning eccentricities, and overcomes enormous obstacles to unravel a murder or bust a drug ring. Since our hero's goal is legitimate and he champions innocent victims, an occasional assault, illegal entry, theft of private papers, use of deception to gain information, even extortion, are viewed with little trepidation.

The media delude the public on two counts. The first is that many of the illegal practices of private detectives are justified, even commendable. They are not, but

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our legal system has developed insufficient controls to curb them. The second is that everyone's favorite detective is somehow typical. Not only does the solo private eye account for a tiny proportion of the total number of private investigators in the country, but investigators as a whole constitute only 10 percent of the huge private security industry.

The development of police forces is a universal feature of advanced industrial societies. In the United States this has occurred to a large extent in the private sector. The functions and practices of private police or private security forces are similar to those of public police forces, but they are not subject to the same measure of public control, nor to the same constitutional restraints.

WHO'S WHO IN THE INDUSTRY

Estimates of the number of private security personnel vary from 300,000 to 1 million. About 90 percent are guards, watchmen, or patrolmen. Investigators, detectives, and undercover agents make up the rest. A recent article in the New York Times claimed that there are 100,000 private guards in New York City alone. A study conducted by the Rand Corporation for the Law Enforcement Assistance Administration (LEAA) estimated that in 1967 there were 4280 detective agencies and protective service establishments nationwide. The biggest firms dominate the industry and have more employees than most large metropolitan police forces.

"In-house" personnel, employed directly by a single business, manufacturer, institution, or individual, make up the greater portion of private security forces. The remainder are "rent-a-cops" employed by contract security agencies.

The dollar volume of private security business has been estimated at $5-$10 billion a year. Equipment expenditures for items such as armored cars, alarms, and closed-circuit television are over $800 million a year. Over the past decade the private security industry has grown at an annual rate in excess of 10 percent, a rate not appreciably affected by the 1973-75 recession. With approximately 475,000 public police nationwide, the number of private police personnel and total expenditures for private police are comparable to, if not greater than, the figures for public police forces.

What was probably the world's first private detective agency was started in Paris in 1832 by Francois Vidocq, after two decades of working for the Paris police force. Private police in the United States had a sordid beginning. In response to the abolitionist movement, a network of private investigators came into being in the North, paid by slaveowners to track down escaped slaves and inform on those who harbored them.

Allan Pinkerton opened a private detective agency in Chicago in 1850. In the early years his agency worked on criminal cases not handled by local police departments, which were hampered by jurisdictional limits, incompetence, or corruption. Until the advent of the FBI, Pinkerton's functioned virtually as a national police force. It was Pinkerton who developed the rogue's gallery, the model for what has become the FBI's National Crime Information Center.

Railroad, mining, and industrial police forces were also established in the nineteenth century. The latter two were notorious for fighting labor organizers and, after World War I, suspected radicals. Informers, undercover agents, and agents provocateurs were freely used. After a series of exposes and congressional hearings, labor spying was prohibited in 1936 by the Wagner Act. That did not end the practice, however.

The explosive growth of the private security industry occurred after World War II, partly in reaction to increasing commercial and industrial theft. Today, private security forces can be found in such diverse settings as retail, financial, and industrial establishments, hospitals, hotels and apartment houses, educational, recreational, and transportation facilities, and even some public agencies.

The largest and oldest security firm in the country is Pinkerton's, Inc. In 1974 Pinkerton's had a work force of over 38,000 and revenues of $193 million. This compares with revenues of $64 million in 1964 and only $4 million in 1944. Its annual report lists over a dozen types of security and investigative services, among which are surveillance, applicant and fraudulent claims investigation, developing evidence for civil litigation, and solving inventory shortages. The term "private eye" derives from Pinkerton's old trademark, "The eye that never sleeps."

William J. Burns International Detective Agency, Inc., had a work force of 39,000 and revenues of $153 million in 1973. It was founded in 1909 by William Burns, a former Secret Service investigator, when he was awarded a contract for security operations by the American Bankers Association. Burns provides criminal investigative service for the defense of accused persons -- a service Pinkerton's no longer offers -- as well as "management control services": inventory loss, pilferage, theft, fraud, falsification of records, poor employee morale, neglect of machinery, waste of manhours and materials, working conditions, safety hazards, etc.

The Wackenhut Corporation was founded only in 1954. By 1974 it had a work force of over 18,000 and revenues of $94 million. In 1969, 14 percent of its business was through direct government contract with agencies such as the AEC and NASA. (Wackenhut is only one of several private contract agencies to do business with the federal government, despite the Pinkerton Law prohibiting the employment of detective agencies by the government.*) Wackenhut also provides security for airports and for the Trans-Alaska Pipeline System.

Other giants of the industry are Walter Kidde and Co. (Globe Security Systems), specializing in the provision of uniformed guard services and airport security, and the Wells Fargo Security Guard Group of Baker Industries, Inc. Baker, besides providing guard services, is the nation's second-largest supplier of central station alarm and armored car services. Brink's, Loomis, and Purolator are the other major armored car firms. The four account for over 75 percent of this business in the country. American District Telegraph Co., which began as an offshot of Western Union in 1854, is by far the largest provider of central station alarm services, with 1969 revenues of over $97 million.

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* The Pinkerton Law, 5 U.S.C.§3108, was enacted in 1893 after congressional hearings held partly in response to the behavior of Pinkerton agents during the Homestead Strike. But a 1946 ruling by the U.S. Comptroller General declared that (1) a subcontract for private guard services by an independent contractor of the government, and (2) procurement of services from "protective" as distinguished from "detective" agencies, are permitted. Because of this narrow interpretation, the law is generally ignored.

Some of the larger companies have offices worldwide, making possible worldwide private police organizations. It is these giants, and their numerous smaller imitators, rather than TV's rash if ingratiating heroes, who typify the private security industry.

RETAIL SECURITY

The purpose of retail security is to prevent or minimize losses from theft, burglary, pilferage, credit card fraud, and forgery, and similar problems common to mercantile establishments. It is aimed at both customers and employees. A security department, whether in-house or contract, is expected to cut down on losses and at the same time avoid incurring liability for wrongful actions. There is further economic incentive to install retail security systems because discounts on crime insurance are often given to establishments which use them.

Surveillance in stores is commonplace. Television cameras and well-placed convex mirrors abound. Some stores have uniformed guards, although the more effective practice is to use plainclothes floor detectives trained to spot shoplifters. Pillars and two-way mirrors conceal guards. Hidden catwalks and observation posts may be constructed in ceilings, as in the casinos in Las Vegas. Spotters and honesty shoppers are used to check on employees. Undercover agents may be employed as clerks or cashiers. As in regular police work, the use of undercover agents presents the potential for entrapment.

Surveillance, which may not be objectionable in the open areas of a store, becomes obnoxious when employed in the two areas most likely to be used to conceal stolen goods -- fitting rooms and restrooms. Even though they are public facilities, these are places where one ought to have an expectation of privacy. And the possibility of observation by members of the opposite sex while changing clothes or going to the bathroom is an obvious intrusion on traditional and deeply held notions of privacy. The most-used surveillance devices in these areas are two-way mirrors, mirrors on ceilings, louvered doors, grated air vents, and observation posts in ceilings.

Surveillance practices have recently come under increasing criticism and some limitation. California made it a misdemeanor to use two-way mirrors in restrooms, toilets, locker rooms, fitting rooms, and hotel and motel rooms. Cal. Penal Code §653(n). In People v. Metcalf, 98 Cal.Rptr. (Ct. of Appeals, 1971), the court declared that this statute expressed a public policy against such clandestine surveillance, and suppressed a police officer's testimony as to matters seen through a louvered door. In a lower court decision in New York City, it was held that individuals have a "reasonable expectation of privacy" in closed fitting rooms, and the court suppressed evidence gained from the observation of the defendant in a fitting room in Gimbels department store. In that case the security person was a "special patrolman" licensed by the city and appointed by the police commissioner. The category of special patrolman was created by local ordinance and granted powers greater than those of the ordinary private security officer or the average citizen. Hence, the Fourth Amendment was held to apply. But had the security person not been specially deputized, the evidence, although obtained through the same means would have been admissible. People v. Diaz, Crim.Ct. of N.Y.C., Docket No. N/534102/75, December 4, 1975.

As clandestine surveillance practices come under attack, many stores are substituting more open methods, such as the use of checkers at the entrance to fitting room areas or the placing of special sensory tags on clothing. But the use of surreptitious surveillance in fitting rooms is not a dead practice.

DETENTION AND ARREST

Private police, with just a few exceptions, do not have the legal status of peace officers. Neither do they have any greater power of arrest or search than the ordinary citizen. One exception is that category of private security personnel who are deputized or commissioned by a public agency, often a city police department. These "special police" work in department stores and other establishments in New York, St. Louis, Miami, and some other cities. They have the same power of arrest as a public police officer, but generally only while on duty and on the premises on which they are employed. Some state courts, as in the Gimbels case, have placed these special police under constitutional restrictions similar to those which govern the conduct of public police, and such officers, like the public police, may be subject to lawsuits for the violation of individuals' civil rights under color of law. 42 U.S.C. §1983. Another exception to the limited legal powers of private police occurs when a public police officer moonlights in the private security business. He carries his power of arrest with him at all times.

The ordinary citizen's power of arrest varies somewhat from state to state. Generally, a person can make a citizen's arrest when a felony is committed in his presence, or when he knows a felony has been committed outside of his presence and he has reasonable grounds to believe that the person he arrests committed the crime. A citizen can make an arrest for a misdemeanor only if it is committed in his presence. Thus, in most shoplifting cases, the store detective must see the articles taken in order to make an arrest. As to misdemeanors, no mistake is allowed, and an error can lead to a lawsuit against the store for false arrest. Judgments in such cases may run into thousands of dollars. Recently, a jury in New York City awarded $1.1 million in a "wrongful detention" lawsuit in which a suspected shoplifter was detained by store security guards, turned over to the police, tried, and acquitted after ten minutes of jury deliberation.

Because the private police power of arrest is so limited, most states have created a special statutory privilege of detention as a means of dealing with suspected shoplifters. Detention is allowed upon "probable cause" for a "reasonable time" and in a "reasonable manner." Some form of interrogation and search is generally permitted. State courts have attempted to define what is meant by "probable cause" in this context, but it remains a vague term. Standards for search and interrogation are essentially undeveloped. The constitutional safeguards concerning arrest, search and seizure, and interrogation do not apply except where special police are involved. Evidence which private police obtain by methods prohibited to the public police may be turned over to the public authorities and used in criminal prosecutions.

Detaining a suspect without probable cause, holding beyond a reasonable time, or trying to coerce a confession can lead to a civil action for false imprisonment or wrongful detention. A defamation action may be brought if a suspect is questioned in public and false accusations are made. Although defamation actions are difficult to litigate, false imprisonment and wrongful detention suits are fairly common, and often successful.

If a guard does not have grounds for an arrest or detention, he can still use "reasonable force" to regain possession of the article. The usual practice is to allow the shoplifter to leave the store, and then forcibly retrieve the goods and let the person go free. Most stores would just as soon avoid a criminal prosecution, and this mode of action at least prevents the loss. Obviously, such practices set up a situation in which confrontation and violence are possible. Assault complaints against security forces are common. In some circumstances, security personnel can be criminally prosecuted.

INTERROGATION

The lack of standards for interrogation by private security officers leaves this procedure particularly open to abuse. Although there is some judicial precedent for excluding coerced confessions obtained by private police in criminal prosecutions, People v. Frank, 275 N.Y.S.2d 570 (Sup.Ct., 1966), Miranda warnings are not required.* It is common for a suspected shoplifter to be told that the police will be called unless he signs both a confession and a release waiving all grounds for suit against the store. The suspect is often denied the opportunity to telephone a friend, relative, or lawyer. Minors are often threatened that their parents will be informed. The suspect may be held for a considerable period of time until a confession is signed, and then let go without prosecution. Many innocent people are sufficiently terrified or concerned about avoiding further trouble with police or family that they sign a confession in hopes that the incident will be closed.

The private police officer, through his own distinctive privilege of detention, in effect enforces an alternative system of private justice, virtually unrestricted by the constitutional safeguards of the Fourth and Fifth Amendments which are guaranteed to individuals in the enforcement of public justice. But a strong argument can be made that constitutional guarantees should apply, for the private police officer ultimately derives his special privileges from the state. And on purely practical grounds, as we shall see, the effects on future employment for the individual who is detained and questioned by a private officer may not be very different from the effects of a similar experience at the hands of the public police. At present, individuals have only private remedies, in the form of civil suits, to try to obtain redress after the fact, an expensive, often embarrassing, and difficult method of rotecting one's rights.

RETAIL PROTECTIVE ASSOCIATIONS

In many cities the suspected shoplifter is not forgotten by this private system of justice. A record of the incident and copies of any confession and release are filed with the local retail protective association. A prime example of such an organization

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* Upon detaining a suspect for questioning, a public police officer must warn him that he has the right to remain silent, that anything he does say may be used against him, that he has the right to a lawyer, and that if he cannot afford a lawyer, one will be obtained for him. These are called Miranda warnings, as established by the Supreme Court decision in Miranda v. Arizona, 384 U.S. 436 (1966).

is New York's Stores Mutual Protective Association (SMPA), founded in 1918 by Gimbels, Lord & Taylor, Abraham & Strauss, and Macy's. SMPA had over 500,000 files on individuals involved in shoplifting incidents by 1960. Files are also maintained on employees allegedly involved in thefts and frauds. If a person applies for a job at a member store of SMPA, and if SMPA has a file on him, he is essentially barred from local retail employment. It does not matter if the report is based on erroneous information, a coerced confession, or an incident which occurred when the person was a juvenile. These records are often made available to credit reporting agencies, which disseminate them widely to prospective employers.

Federal and state Fair Credit Reporting Acts are applicable to the activities of retail protective associations, but they have many loopholes. The New York Civil Liberties Union is attempting to amend that state's FCRA to close one loophole, with a prohibition on the collection and disclosure of information regarding conduct for which a person could have been treated as a youthful offender under the penal law. Thus, dissemination of information on juvenile shoplifting incidents would be forbidden.

Another improvement would be to require some variation of a Miranda warning when a shoplifting suspect is detained and interrogated. One element of the warning would be to apprise the suspect that a confession will be placed on file at the retail protective association, whether or not criminal charges are brought, and reported to prospective employers in the future.

The following case illustrates a common situation arising from the practices of retail protective associations, and suggests one possible kind of remedy. In early 1976 the Massachusetts Attorney General took action under that state's FCRA against a department store which was using Boston's Protective Services, Inc. (PSI). The store had violated the act by failing to notify a new employee that a pre-employment check would be made, and then firing her without telling her that the dismissal was based on a PSI report stating that she had been suspected five years earlier of attempting to shoplift three pantsuits. She had denied the charge, paid for the clothes, and was not prosecuted. The department store agreed to discontinue its use of PSI, and as a consequence PSI closed down after fifteen years of operation.

That arrest information is freely circulated by credit reporting agencies is well known, but it may not be so widely known that many "criminal background" reports are based on run-ins with a private law enforcement system which can detain people and obtain their confessions with virtual freedom from restriction. FCRA procedures for expunging erroneous information do not really help: reports of such detentions and confessions are not erroneous.

The procedures described here for the apprehension, detention, interrogation, and reporting of suspected shoplifters are used also for handling incidents of employee theft. It is common for an employee to be questioned and accused of theft by his employer's private security force, summarily dismissed but not prosecuted, and then barred from future employment because of a report of the incident maintained by a retail protective association or credit reporting agency.

PRIVATE INVESTIGATION

Information gathering is the primary function of private investigative agencies. Investigators engage in pre-employment checks, background checks of insurance and credit applicants, undercover work to detect employee theft, and investigation of insurance claims. They may also aid attorneys in criminal defense work and personal injury cases. Marital investigations, once an important aspect of the business, are declining as divorce laws are liberalized.

Where fraud, theft, or pilferage is involved, private and public police may work together. They may refer cases to each other or cooperate in the apprehension of a suspect. They may exchange information, sharing in the intelligence gained through their respective networks of informers. Private police may lend investigative and surveillance equipment to public police. Private police can also provide a means for public police to evade or subvert constitutional restrictions and rules of procedure.

Privacy problems involved in credit and insurance investigations and reports have been well covered in the literature. Less publicized is the fact that when private security firms such as Wackenhut and Burns engage in criminal investigative work as well as pre-employment checks, they maintain files on the people they investigate. Wackenhut was reported to have 3 million files on individuals in 1967 and to be adding 10,000 per week. When these files are made available by private security firms to their clients, the provisions of federal and state Fair Credit Reporting Acts are usually applicable. But the flimsiness of the protections and restrictions imposed by these laws is all the more evident when the files contain indications of suspected criminal activity based only on information gathered by the free-wheeling practices of private investigators.

ELECTRONIC SURVEILLANCE

Federal and state laws prohibit tapping and "bugging" by private individuals of wire and oral communications, except in certain circumstances where one party to the communication has given consent. Federal law prohibits the manufacture, distribution, possession, and advertising of devices "primarily useful" for "surreptitious interception of wire or oral communications." 18 U.S.C.§2512(1). Evidence obtained through illegal private eavesdropping is generally excluded by federal and state law from use in criminal or civil proceedings. In addition, illegal tapping or electronic eavesdropping constitutes the tort of invasion of privacy in virtually all states, and the placing of a bugging device on private property can also be grounds for a trespass action.

With this wide array of legal sanctions, one might expect that the use of electronic surveillance devices by private persons would be rare. Such is not the case. Last year the National Wiretap Commission conducted a random check of 115 private detective firms. It found that 42 of these either offered illegal wiretap services themselves or advised how such services could be obtained. Many firms were also willing to provide bugging systems. "Debugging" services -- clearing rooms of hidden microphones and other electronic surveillance devices -- were offered by 71 firms.

So numerous are the devices available for electronic eavesdropping, and so sophisticated the technology, that many forms of eavesdropping do not appear to fall afoul of

existing laws. Moreover, the statutory one-party-consent exception is extremely vague and has been ambiguously interpreted by the courts. The use of one-party-consent eavesdropping in private investigations is therefore commonly thought to be permissible. Most people assume they have the right to bug their own telephones to catch conversations by errant spouses or children. Long-range transmitters positioned in public places involve no breaking and entry to install, and therefore may appear to be legal. Closed-circuit TV and eavesdropping equipment intended as security devices may be used by employers to pick up conversations among employees. In fact, such systems are frequently installed as standard equipment in new buildings. It is a widespread practice for employers to check up on their employees by monitoring company phones to overhear employee-customer conversations, unknown to the customer and often to the employee as well. Eavesdropping devices -- miniature microphones, transmitters, recorders, and the like -- are freely available on the market for legitimate use, and so too are the components from which a do-it-yourself eavesdropper can construct his own equipment.

With the barrage of technology and propensity for snooping, effective measures designed to curb private surveillance practices are difficult to conceive. Stricter enforcement of existing criminal sanctions may have a deterrent effect. More effective regulation of private detective firms, and the mandatory and permanent revocation of licenses for engaging in illegal wiretapping and bugging (already provided for by some states) might also bring some improvement. Consideration should also be given to a total ban on all bugging and monitoring by private persons, and a ban on all eavesdropping by one-party consent.

PHYSICAL SURVEILLANCE AND SEARCHES

Physical surveillance -- "shadowing" -- and the use of cameras and radio-transmitted "beeper" signals on automobiles or in doorways are frequently employed in the investigation of insurance and negligence claims and divorce cases. A number of state courts have found that certain surveillance practices are an unreasonable invasion of privacy and have awarded damages to the victims. Overzealous shadowing, shadowing which is made obvious to neighbors, peeping in windows, and snooping around a house have all been held "unreasonable."

Related to the problem of surveillance is the search of private property. Private police have no power to conduct searches without consent. If an illegal search and seizure has been conducted, tort recovery might be based on a theory of trespass, conversion,* or invasion of privacy. In some states, such as Georgia, courts have held that an illegal search, even when the victim is not present, constitutes an invasion of privacy.

But tort recovery for illegal surveillance or search and seizure is a haphazard remedy. The victim may not know of the search or surveillance. If he does, he may be unaware that it is unlawful. If the information or material uncovered is sensitive, the victim

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* The tort of conversion is defined generally as the wrongful interference with the personal property of another. Wrongfully acquiring possession, unauthorized removal, wrongfully transferring possession, refusal to surrender possession, destruction, alteration, or wrongful use of personal property may all constitute conversion under specific circumstances.

may not want it further publicized in a legal action. Criminal prosecution for trespass or breaking and entry has been just as ineffective.

Evidence obtained through illegal surveillance or search and seizure by private police is admissible in civil actions and in criminal actions where there was no collusion with public police. The distinction between private persons and public police officials in the application of the exclusionary rule was made by the U.S. Supreme Court in Burdeau v. McDowell, 256 U.S. 465 (1921). The rationale for this distinction is doubtful in light of subsequent developments, and it would seem that the application of the exclusionary rule to evidence illegally obtained by private police, if not all private individuals, would create a significant deterrent to some of the more flamboyant illegal practices in which private investigators engage.

ACCESS TO INFORMATION

It is freely admitted by private security executives that private security firms have access to records of the public police even when local law or policy forbids it. In addition, private investigators make extensive use of police blotters and court records, and can often gain access to the records of credit card companies, hospitals, insurance companies, banks, schools, telephone companies, and many government agencies. Public police officers who moonlight in private security have even easier access to police records and other supposedly restricted information sources than do ordinary private investigators.

Where access is legitimate, private investigators have special know-how in the methods for obtaining records. Where access is prohibited, restrictions may be flouted by impersonation, by developing inside contacts through a "buddy system," or by bribery. A diligent and unscrupulous investigator can compile astonishingly complete dossiers on individuals.

Tort remedies, such as defamation and invasion of privacy, and Fair Credit Reporting statutes generally do not act as a restraint on private investigators' access to sources of information. Legal sanctions -- where they exist -- against unauthorized access to confidential private or governmental records are so far little used, and in many instances not especially onerous.

A case which occurred in Denver in 1975 suggests a kind of remedy which could be highly effective if used vigorously. After Factual Services Bureau, Inc., had managed to obtain confidential hospital records, Colorado's Secretary of State revoked Factual's business license, and employees of Factual and the hospital were indicted for wrongfully obtaining the records.

CAMPUS SECURITY

In normal times, college and university campus security forces are engaged primarily in keeping intruders off campus, guarding dorms, issuing parking tickets, and detecting fires, theft, and vandalism. In times of political tension, such as the McCarthy and Vietnam War eras, they may move into the field of political surveillance and control of demonstrations. During these periods, public and private police engage in parallel activities, both independently and in close cooperation with each other.

The involvement of campus security personnel in drug investigations and searches is also a continuing problem.

In a study of campus security operations, Seymour Gelber found that 55 percent of private colleges and 76 percent of public colleges use undercover agents. Students are frequently used to report on their fellows; informers are also recruited from maids and resident advisers in dormitories.

When campus police engage in political surveillance and maintain files on students who participate in political activities, there are threats not only to privacy but also to the First Amendment freedoms of expression and association. There are essentially no legal standards as to what, if any, political surveillance on college campuses is acceptable, although at least one court, in California, has ruled that undercover campus surveillance, when carried into the classroom itself, is a violation of the First Amendment rights of both students and professors. White v. Davis, L.A. 30348, Super.Ct. No.C-32177 (March 24, 1975).

With the current campus calm, little attention is being paid to this problem. But the next time college campuses face political turmoil, the issue will again arise. The lessons of Kent State must not be lost. Extensive use of undercover agents at Kent State helped create the atmosphere in which the violent confrontations and killings of 1970 were possible.

TRAINING

The Rand study describes the typical private guard as an aging white male, 40 to 55 years of age, with little education beyond the ninth grade, usually untrained and very poorly paid. The typical private investigator or detective is a white male, 36 to 47 years of age, has completed high school, and has several years experience in private security. Retired police officers often find a second career in private security, usually as investigators or in security management.

Rand conducted a survey of private security personnel and found that less than half knew their arrest powers are no greater than those of an ordinary citizen, and only 22 percent knew under what conditions an arrest is legal. Ignorance of the criminal law was common. "For example, 31 percent believe that it is a crime if someone calls them a pig."

The great majority of private security workers receive less than two days of training. It is not unusual for a newly hired guard to be issued a gun without receiving any firearms training. Few jurisdictions have training requirements set by statute or administrative regulation. Notable exceptions are St. Louis, which requires a three-day course to obtain a watchman's license, and Ohio, which requires a 120-hour course in order to qualify for a private police commission. However, in Ohio the employees of private security firms whose owners are commissioned may perform the same functions but need not themselves be commissioned.

The meagerness of the training for a private police career contrasts sharply with public police training requirements, which ranged from 72 to 400 hours in thirty states in 1971. It is ironic that licensed occupations with much less impact on our lives require more training. Many states demand 1000 hours or more of course-work for a barber's or beautician's license.

The Rand researchers reported a consensus among security executives that more training is needed, but that cost and price competition prevent any voluntary expansion of training courses. The answer to these arguments is a statutorily mandated training program applicable to all private security personnel.

The Rand study recommended a minimum initial accredited training program of at least 120 hours for all private security workers, with credit granted for prior law enforcement experience. An additional mandatory retraining program of at least two days per year was also recommended. The report urged a separate program for each job category, and examinations for all trainees. The recommendations specified the subjects to be taught for each type of security work, ranging from legal principle and investigative techniques to such practical subjects as first aid and alarm systems. All personnel carrying firearms would be carefully screened and required to complete an accredited firearms training course.

The response to the Rand recommendations was outrageous. Following publication of the study, LEAA in 1972 created a Private Security Advisory Council with representation from public law enforcement, business, industry, state criminal justice planning agencies, local government, and all segments of the private security industry. The Council eventually produced a "Model Private Security Licensing and Regulatory Statute." It provides for the licensing of contract security companies, but not investigative agencies or in-house security forces, and the registration of armed private security officers. A licensee must have a certain amount of experience or pass an examination. The statute is silent on the scope of examination, and there are no training requirements. Registrants must pass an examination after an 8-hour general training course. The statute would also require a firearms course and an annual refresher course. There are no training requirements for unarmed guards or for investigators.

LICENSING AND REGULATION

After a survey of state and local laws, the Rand researchers concluded that "licensing and regulation of the private security industry at the state level is characterized by a lack of uniformity and comprehensiveness," and that no state has an adequate regulatory scheme.

As of 1975 nine states did not regulate the private security industry at all, although a few localities within those states had some regulation. Where there is licensing and regulation, it is aimed at businesses, not activities. Thus, no state has mandatory regulation of in-house guards or investigators, although some localities do. Surveillance consultants who provide services only to security firms escape licensing requirements. Grounds for denial or revocation of a license are vague or inadequate. Provisions for monitoring practices, investigating abuses, and handling complaints, bond claims, or court proceedings against licensees or their employers are generally inadequate. Employees of private security firms do not themselves need licenses or permits, and weapons regulation varies widely.

Rand made a number of serious proposals for improved licensing and regulation. It is enlightening to compare these with parallel provisions of the model statute prepared by the Private Security Advisory Council. What the chart makes obvious is the attempt by the private security industry to protect itself and severely limit regulation. Milton Lipson, in his book On Guard, has said of this model statute that "It is not an attempt to install basic regulations for the industry but rather one intended to foreclose further criticism."

Rand proposals	Model statute provisions
Owner, all corporate officers, and all branch managers of contract security agencies (including investigative agencies) should be licensed.	Owner or one corporate officer of contract security companies (not including investigative agencies) should be licensed.
Directors or managers of in-house security forces should be licensed.	No licensing of in-house security forces.
All security employees (including investigators) of in-house and contract agencies should be registered.	Only armed contract and in-house private security officers (not including investigators) should be registered.
Periodic renewal of licenses and registration.	Periodic renewal of licenses and registration.
All licensees and registrants should have high school education or equivalent or pass literacy test.	No education requirement.
Minimum experience requirements for licensing.	Minimum experience requirements for licensing may be waived by passing examination.
Regulatory agencies be given sufficient resources to enable them to screen and monitor licensees and registrants and to investigate violations and impose sanctions plainly explicated in a statute.	Creates Regulatory Board with investigatory and subpoena powers. Does not spell out grounds for revocation or suspension with clarity.

Many states are considering new legislation concerning the regulation of the private security industry. The opportunity to enact an effective regulatory mechanism must not be missed.

The enactment of uniform, rigorous licensing and regulatory statutes across the country would go far toward clearing up the confusion which exists regarding the powers and functions of private police. It would make it simpler to educate the public concerning its dealings with the private law enforcement system. And it would facilitate the development of constitutional standards -- the application of the exclusionary rule and Miranda warnings, and creation of standards for search and seizure and interrogation -- for the private system of justice./RMH

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For further reading: (1) The Rand Corporation study, financed by LEAA: J.S. Kakalik and S. Wildhorn, Private Police in the United States, 5 vols., R-869/DOJ to R-873/DOJ, U.S. Government Printing Office, $7.85. (2) Milton Lipson, On Guard: The Business of Private Security, Quadrangle/The New York Times Book Company, New York, 1975, $10. Among the leading trade journals are Security World, and Security Management (formerly Industrial Security), organ of the American Society for Industrial Security.

IN THE AGENCIES

STUDENT RECORDS

HEW's final regulations implementing the Buckley Amendment were published on June 17. Although in most respects similar to the preliminary regulations described in the February 1975 Privacy Report, and incorporating those final regulations described in the April 1976 Report, these regulations deal with several problems which have been of some concern to persons attempting to use the law. On the matter of copies, the regulations provide that institutions shall make copies available where the failure to do so would "effectively prevent" a parent or eligible student from exercising his or her right of access and review. A fee may be charged for such copies, but only if the fee does not "effectively prevent" the exercise of the right of access. Fees may not be charged for the search or retrieval of education records. Either parent may exercise the right of access unless there is a state law or court order regulating divorce, separation, or custody which provides otherwise.

Complaints of violations of the law and regulations should be sent to: Family Educational Rights and Privacy Act Office (FERPA), Department of Health, Education, and Welfare, 330 Independence Avenue, S.W., Washington, D.C. 20201.

HEW has announced that it will invite public comments in July 1977 so that experience with the law and regulations during this coming school year can be evaluated. The Department will be particularly interested in exploring suggestions for a means of enforcing the law more effective than the present ultimate sanction -- a cut-off of federal funds to noncomplying institutions.

PRIVACY COMMISSION

The Privacy Protection Study Commission released its first summary report, on federal tax return confidentiality, in June. The Commission recommends that disclosure of individually identifiable information by the Internal Revenue Service without the individual's prior written consent be forbidden except in circumstances expressly authorized by federal statute, and that IRS be prohibited from disclosing any individually identifiable information about a taxpayer to any federal agency for non-tax law enforcement purposes except by court order. The recommendations outline the kinds of disclosures by IRS to federal, state, and local agencies for tax law enforcement purposes which should be authorized by statute. The report can be obtained for $1.45 from the U.S. Government Printing Office, Washington, D.C. 20402.

The Commission held hearings in August on the practices of consumer reporting agencies.

IN THE COURTS

SUPREME COURT ON PRIVACY

In the last weeks of its 1975-76 term, the Supreme Court issued a number of decisions sharply restricting constitutional claims of privacy under the Fourth and Fifth Amendments.

In Andresen v. Maryland, No.74-1646, June 29, 1976, the Court ruled that the seizure of a person's business papers and their use in evidence against him in a criminal trial does not violate his Fifth Amendment protection against self-incrimination. The Court thus disavowed doctrine developed in an 1886 ruling stating that the use of private papers in evidence against a defendant is not "substantially different from compelling him to be a witness against himself."

The decisions in Stone v. Powell, No.74-1055, and Wolff v. Rice, No.74-1222, July 6, 1976, rule that a state prisoner is not entitled to federal habeas corpus consideration of his claim that evidence obtained in an unconstitutional search and seizure was introduced at his trial, so long as he had the opportunity for "full and fair litigation" of his Fourth Amendment claim in the state courts. The ruling both substantially weakens the Fourth Amendment's protections against unreasonable search and seizure, and restricts the power of the federal courts to set aside state court convictions based on unconstitutionally obtained evidence.

In a Border Patrol search case, U.S. v. Martinez-Fuerte, No.74-1560, July 6, 1976, the Court ruled that it is permissible for officers to stop vehicles and conduct interrogations at reasonably located fixed checkpoints without either a warrant or reasonable suspicion to believe that the vehicles contain illegal aliens.

The Court also denied ACLU's petition for rehearing in Paul v. Davis; see Privacy Report of May 1976.

CONFIDENTIALITY OF RESEARCH DATA

A U.S. district court in California ruled that there is a "public interest" in protecting a confidential relationship between academic researchers and their sources. Much research utilizes data made available only upon a pledge of confidentiality. Should disclosure be compelled, such research would not be possible. Richards of Rockford v. Pacific Gas & Electric, 44 U.S.L.W. 2579 (D.N.Cal., May 20, 1976). The opinion was issued in a civil action in which the plaintiff company sought a deposition from a professor who had conducted confidential interviews with the defendant company's employees concerning its environmental decisions. The court did not deal with the question of a constitutional privilege.

SECRET SERVICE FILES

Two news correspondents were refused passes to attend White House press conferences "for reasons of security," according to the Secret Service. In litigation brought on their behalf by the ACLU Foundation, the Secret Service produced information from its files relating to certain "incidents" and associations in their past, but did not explain why these factors should warrant the denial of press credentials.

A U.S. district court has now ordered that the Secret Service, within 180 days, "devise and publicize constitutionally narrow and specific standards for the issuance or denial of press pass applications," reconsider the plaintiffs' applications in light of those standards, render a written decision specifying the grounds and evidence for a denial -- if that should be the decision, and permit the applicants opportunity to rebut or explain

any such evidence. Forcade v. Knight, Civil Action No. 73-1258 (D.D.C., July 7, 1976). Thus, for the first time, a court has ordered a federal intelligence agency to justify the decisions it makes on the basis of personal information in its records, and to give people affected by those decisions the rights of access and rebuttal.

IN THE STATES

CRIMINAL JUSTICE COMPUTER RULES

The ACLU of Greater Philadelphia has been successful in convincing the Philadelphia regional planning council of LEAA to adopt binding confidentiality rules for operation of an LEAA-funded computerized criminal justice data bank for the city. Among the provisions: no intelligence or investigative information or personal history shall be entered; an arrest record shall be expunged upon acquittal; individuals shall have access to their files and may challenge erroneous information.

The Privacy Report is published monthly by the American Civil Liberties Union Foundation. For a subscription ($15 a year, $5 for students) write: Privacy Report, ACLU Foundation, 22 East 40th Street, New York, New York 10016. The Privacy Report monitors data collection by state, local, and federal governments, as well as by private institutions, and its impact on the individual's right to privacy. Contributions to aid the work of the Privacy Report are tax-deductible. Checks should be made payable to ACLU Foundation. Trudy Hayden, editor; John Shattuck, counsel.

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