

January 1974

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Recommended Citation

Mark L. Webb, James F. Harrigan, and Mary Holbrook Sundance, *Private Police in California: A Legislative Proposal*, 5 Golden Gate U. L. Rev. (1974).

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PRIVATE POLICE IN CALIFORNIA: A LEGISLATIVE PROPOSAL

Mark L. Webb, editor
James F. Harrigan
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Public police have been scrutinized, analyzed and surveyed by numerous legal and sociological studies. As a result, a voluminous amount of data is available on police, their hiring, training, administration, conduct, psychology, and effectiveness. This attention has, in turn, supported the creation of specific remedies such as civilian review boards, and police-community relations units. In contrast, very little is known of private police. Only two comprehensive investigations of the industry exist whereas the number of private police has increased dramatically over the past years. Over forty-five thousand are registered in California today.

As an armed force, private police share common ground with public police; however, there are fundamental differences regarding their authority and the mechanisms which exist as controls on their conduct. An elaborate government structure to supervise public police exists which theoretically bars or eliminates the unqualified, disciplines misconduct, and insulates society from abuse of authority. Conversely, private police function with little or no controls to protect society from their misconduct; they are unqualified, poorly trained, inadequately supervised, and ineffectively regulated. As such, private police exist as a dangerous, expanding armed force within our society.

Private police ranks have swelled at an incredible pace, primarily in response to retail and industrial crime.¹ This process of growth has not been accompanied by construction of mechanisms to train, supervise, or otherwise regulate or define the conduct and authority of private police. The California legislature and judiciary

1. 1 J. KAKALIK & S. WILDHORN, PRIVATE POLICE IN THE UNITED STATES: FINDINGS AND RECOMMENDATIONS 15 (1971) (prepared by the Rand Corporation for the U.S. Dep't of Justice) [hereinafter cited as 1 RAND].

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have failed to address themselves to this expanding private army, thus ignoring the dangers inherent in such an unrestrained force. Their position appears to be that any actual or potential dangers will be resolved by application of existing remedies. Such a position is untenable, as the existing remedies are inadequate, and are applied inconsistently.

Private police have become America's answer to crime, chaos, and the crumbling social order. They are "the expendables—the human cannon fodder who catch the flak and shrapnel until the real police arrive."² This article illustrates the growth, activities, regulations, and dangers of the private security guard industry in California. Possible remedial devices are suggested. Nothing less than comprehensive legislation will, however, remove the spectre of assault, unlawful arrest, illegal search, and death from the army of hired guns.

THE GROWTH OF PRIVATE POLICE

The security guard industry employs individuals in many capacities; the vast majority of employees are those commonly referred to as "security guards" or "rent-a-cops." These individuals are primarily employed as contract guards or in-house personnel. Contract guards are employees of the 687 security guard companies licensed by the State of California.³ In-house guards are employed directly by private concerns such as banks, hospitals, and recreational parks. Any private employer may choose to employ guards as regular company employees or to obtain guards from agencies by contracting for their services.

The private security industry has experienced rapid growth in California since 1960. The greatest increase has been in the contract security field, that is, within agencies offering guard and investigative services.⁴ It is generally conceded that the rise in crime, especially on the retail level, has been the major factor contributing to the growth of private security services. The simplest way for a small business to protect itself against crimes is to install security devices or to hire security guards from an agency such as Burns International Security Services or Pinkerton's, Inc.⁵

2. Mallowe, *Willie Lee Weston Is Armed and Dangerous*, PHILADELPHIA MAGAZINE, Aug., 1973, Vol. 64, No. 8, at 100.

3. INSTITUTE FOR LOCAL SELF-GOVERNMENT, PRIVATE SECURITY AND THE PUBLIC INTEREST 67 (1974) (the Institute is located in Berkeley, California) [hereinafter cited as INSTITUTE].

4. 1 RAND, *supra* note 1, at 13.

5. INSTITUTE, *supra* note 3, at 23. The total employment figure, reported by the

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Statistics on the growth of reported crime provide documentation of the need for business to respond through security programs. The number of burglaries, for example, rose from 140,000 in 1960 to 400,000 in 1972.⁶ Burglary, vandalism, shoplifting and employee theft accounted for losses of \$151 million in California in 1972.⁷ This parallels the growth of illegal use of narcotics and its attendant rise in crimes against property.⁸

Implementation of security services through contract agencies appears to be an especially desirable method of theft prevention. Nearly one of every four retail corporations in the United States subscribes to some protective service.⁹ The security guard agencies allow a small business to hire equipped guards for specified time periods more inexpensively than it could employ them directly, with no administrative burden and with little involvement in the security industry. Analysis of the growth of private security has not, however, indicated that such services provide the desired results.¹⁰

In an effort to obtain some information pertinent to the above, we sent questionnaires to leading security guard companies and large corporations. The following responses were typical and suggest a defensive stand toward public inquiry.

The information requested in your questionnaire is, in our opinion proprietary. We do not discuss our guard force or the other security functions with anyone outside our organization unless they have a "need to know." Even these discussions are general rather than specific.

Jack Woodside
Security Officer
Wells Fargo Bank

Regarding your letter of July 21, 1974, seeking information on our security force, I regret that, frankly for security reasons I am un-

Institute, for local and state jurisdictions increased 129% from 1957 to 1972 to over 58,000 employees.

6. *Id.* at 16.

7. *Id.* at 17.

8. CALIFORNIA COUNCIL ON CRIMINAL JUSTICE, SYNOPSIS OF THE 1972 CALIFORNIA COMPREHENSIVE PLAN FOR CRIMINAL JUSTICE 13 (1972).

9. 2 RAND, *supra* note 1, at 18.

10. *Id.* at 25.

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able to complete your questionnaire or provide any pertinent information.

T. J. Leonard
Director
Controls & Mgmt. Svcs.
Pan Am World Airways

PRIVATE AND PUBLIC POLICE FUNCTIONS

The responsibilities of private police do not greatly differ from those of public police. Contract guards are sent to a location that may be either a retail store, wholesale outlet, factory, recreational facility, or other property. They, as contract employees or in-house guards, are expected to protect such private property from loss due to crime. They are charged with maintaining order on private property by preventing and detecting crime, and by apprehending suspected criminals.

Public police or "peace officers" are currently given responsibility by design or default for:

- (1) identification of criminal offenders and, where appropriate, to apprehend offenders and participate in subsequent court proceedings;
- (2) reduction of opportunities for the commission of some crimes through preventive patrol;
- (3) aid to individuals who are in physical danger;
- (4) protection of constitutional guarantees;
- (5) facilitation of the movement of people and vehicles;
- (6) resolution of conflicts;
- (7) creation of a feeling of security in the community;
- (8) promotion and preservation of civil order;
- (9) provision of other services on an emergency basis.¹¹

These generalities concerning the roles of private and public police in society indicate that public police do concern themselves with a greater range of responsibilities. While peace officers are charged with the protection and safety of people and public property they also have duties to carry out on private property. Private police are charged with the protection of private property. In many instances, however, the security guard must deal with a large popu-

11. AMERICAN BAR ASSOCIATION, THE URBAN POLICE FUNCTION 3-4 (1973).

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lace in a potentially explosive situation and must assume an authoritative position on the public street or adjacent private property. The guard is frequently required to assist peace officers in emergency situations.¹²

The respective tasks assigned to private and public police indicate an overlap of responsibilities. Has society delegated peace officer authority to the private security guard, or is this overlap a regrettable price we pay in an effort to reduce crime? It should be noted that the public already pays the full cost of (1) maintaining public police departments, (2) theft reflected in retail prices, and (3) security services added to the retail price. What benefit does anyone derive from the utilization of private police? What are the social costs of these "rent-a-cops?" These are some of the issues examined in this article.

COMPARATIVE PROFILE OF PUBLIC AND PRIVATE POLICE

There are functional similarities between public and private police which suggest that these groups perform overlapping services. Whether the use of private police in such overlapping activities is appropriate or not may be partly resolved by an examination of who these individuals are. A composite profile of private versus public police bears witness to significant dissimilarities in their backgrounds.

In an attempt to answer the question, "Who is the peace officer?", an extensive survey of an urban California police department by Jerome Skolnick developed this profile:

The police officer maintains an active interest in national politics; 70% of respondents stated they were 'very interested'. 72% have been in the department more than nine years. Asked to rate themselves, 66% picked "middle class" and 32% "working class." Religious preferences nearly mirrored published figures of the national population. 45% had some college; 8% were college graduates, 90% were married, 61% liked police work 'very much' as an occupation.¹³

The survey concluded by stating that to understand any individ-

12. INSTITUTE, *supra* note 3, at 87.

13. J. SKOLNICK, JUSTICE WITHOUT TRIAL 265 (1966).

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ual peace officer, he must be viewed in light of his (1) rank, and (2) nature of work assignment.¹⁴

To obtain a profile of the private policeman, the authors interviewed Mr. James Ellis of Ellis Associates in Oakland, California. In addition to owning a full-service security company, Mr. Ellis is currently president of the Private Police Association of California. He stated that the private security guards are generally drawn from the bottom of the labor pool primarily because the wages are only twenty percent above the federal minimum wage. Approximately 35 percent of guards are part-time workers, and the annual turnover rate is as high as three hundred percent. A significant number of security guards are men who failed to obtain positions with public police forces and find the private security industry a desirable alternative.¹⁵

Results of a study¹⁶ conducted by the Rand Corporation were consistent with the picture formulated by Mr. Ellis:

The typical private guard is an aging white male, who is poorly educated and poorly paid. His average age is between 40-55, he had little education beyond the ninth grade; he has had a few years experience in the industry. He earns a marginal wage of between \$1.60 and \$2.25 per hour and often works 48-56 hours per week to make ends meet. Fringe benefits are few, at best they may amount to ten percent of wages. There is a trend toward more youthful guards and women in certain areas, e.g., hospital and retail place facilities.¹⁷

Yet another researcher describes private police as men who are undereducated, untrained and poorly supervised. In an industry that is 80% young or middle-aged black men and many of the rest are elderly white pensioners

[t]hey pay that guard anywhere from \$1.70 to \$1.90 an hour. Men who are working for less than \$2 an hour are not generally the cream of the labor crop. In fact, they could do as well or better on welfare. The labor pool from which

14. *Id.* at 270.

15. Interview with James Ellis, partner in Ellis Associates, in Oakland, Calif., October 16, 1973.

16. 2 RAND, *supra* note 1.

17. *Id.*

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they are usually drawn is the inner city swarm of hard-core unemployable or undertrained black males who are mesmerized by the uniform, the lure of carrying a weapon and the aura of authority.¹⁸

There are conflicts between the Rand Study and Mallowe's article concerning the racial composition of private police forces; however the apparent contradiction probably reflects the different geographical areas covered by the two studies.

The Institute for Local Self-Government has recently completed an exhaustive study of private police in California (hereinafter the Institute's study) pursuant to a grant from the Office of Criminal Justice Planning, State of California. Its report includes fresh empirical data on private police personnel.¹⁹ The characteristics of private police vary according to their work assignment:

[A]larm and carrier personnel are better educated, have had more previous experience in security related tasks, are better paid, work less hours, and have annual turnover rates significantly lower than guards, watchmen and patrolmen.²⁰

The Institute's data indicates that lateral mobility from the public police to private security guard, watchman, or patrolman ranks is generally uncommon. Consistent with the findings of Rand, the Institute's investigation indicates that there is a direct correlation between the salary and qualitative ability of security guards. The generalization that private police are low-paid, poorly educated, unskilled, middle aged males seems at present a valid composite of private police in California.²¹

Results of surveys compiled in conjunction with the preparation of the Institute's study yield the following characterization:

Residence	90% of private security workers reside in urban areas;
Sex	94.2% of private security personnel are male;
Age	the median age is 49 years;

18. Mallowe, *supra* note 2.

19. INSTITUTE, *supra* note 3, at 106.

20. *Id.*

21. *Id.* at 105.

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Education	79% graduated from high school; 48% had some college education;
Earnings	mean annual earnings for private security personnel was \$6,258 in 1970 vs. \$11,067 for public police in 1970;
Turnover	approximately 80% per annum;
Work Ex- perience	69% had prior security work exceeding one year; 65% served in the military;
Training	40% of guards stated that their initial pre- work training was insufficient: although 55% of respondents indicated they carried a firearm, only 7% had received pre-work firearm instruction. ²²

This data indicates that security guards are neither initially qualified nor adequately prepared to perform activities that often parallel the armed, public police function in our society, for there is a total absence of mandatory or volitional training programs. In California there is no statutory requirement for minimum training of private police. Public police on the other hand are required by Penal Code § 832 to possess a Police Officers Standards and Training (POST) Course certification. The guidelines and curricula of the POST course require a peace officer to complete two hundred hours of instruction in criminal law, evidence, first aid, and firearms. Training of private police, however, is ignored by state and local regulatory jurisdictions. Nor does the private security industry voluntarily adhere to a policy of training or instruction, as evidenced by a former contract guard supervisor:

Everyone wants trained guards. Untrained employees are too often a pain in the ass, a cause for wasted money and lost business and a danger to themselves and others. But, the demand for manpower is so great, the wages and bids so low, that training standards have to be altered, with a little misrepresentation to salt it.²³

Significant differences between public and private police are also found in the selection, supervision, and internal review operations. The selection process is the first stage to be met by prospective peace

22. *Id.* at 111-136.

23. *Id.* at 148.

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officers. In order to qualify for appointment to a modern, urban police force, the candidate must successfully thread his way through a series of vigorous requirements. The end result of the process of elimination is to accentuate the average and mediocre at the expense of the independent and exceptional.²⁴ In San Francisco, the selection process typically includes a written, competitive examination, a criminal background investigation, an oral interview, and rigid physical criteria (height, weight, vision, hearing, medical history).²⁵ An applicant who passes these preliminary tests then enters the San Francisco Police Academy where he is required to successfully complete twenty weeks of instruction. Pursuant to California Penal Code § 832, the academy curricula include classroom discussions of legal powers of arrest, detention, and use of force. The aim of these courses is to thoroughly sensitize the officer to the bounds of his authority and the inviolability of the public.²⁶

The academy instruction includes one full week of target practice to familiarize the officer with the accuracy, performance, and power of weapons. This practice firing is complemented by instruction on when to draw and fire a gun. On firearms training and testing, twenty-five percent of recruits fail to qualify for the San Francisco Police Department.²⁷

Subsequent to graduation and commencing work as a patrolman, the officer is required to attend three hours of firearms training every four months. He is exposed to one week of general educational instruction every three years.²⁸ Moreover, many officers attend criminology, law, and police science classes at colleges and universities to further their individual educations during off hours. The training program is designed to instruct the officer as to what activities and responses are allowed and those that are beyond his authority. The preventive value is further augmented by direct street supervision. Street supervision is an essential element of control and prevention of misconduct in San Francisco. Sergeants in the department have responsibility to furnish assistance, experienced leadership, and supervision to those patrolmen assigned to their sector. Sergeants are, for the most part, "on the street" in patrol capacity to effectuate this supervision.

24. A. NEIDERHOFFER, *BEHIND THE SHIELD* 33-38 (1967).

25. Interview with Police Lieutenant, Personnel Dep't, San Francisco, Calif., Dec. 12, 1973 [hereinafter cited as Interview].

26. *Id.*

27. U.S. DEP'T OF JUSTICE, *POLICE TRAINING AND PERFORMANCE STUDY* 199 (1970).

28. Interview, *supra* note 25.

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Distribution of Personnel²⁹
San Francisco Police Department (1973).

<u>RANK</u>	<u>NUMBER</u>	<u>RESPONSIBILITIES</u>
Patrolmen	1335	street assignments, patrol
Sergeants	233	patrol, street super- vision
Lieutenants	69	watch commanders in precincts
Captains	19	administration executives
Above Captain	11	department heads, e.g., Chief of Police
Asst. Inspector Det.		under Sergeants' and Lieutenants' control
Detective 1st. Grade		plain clothes, e.g., vice, narcotics

A patrolman must furnish complete written reports concerning his daily activities to the precinct lieutenant. After processing such reports, the lieutenant may institute measures to correct specific errors through the officer's sergeant. This structure insures a regular review and accounting of a patrolman's conduct at least within the department's precincts.

In San Francisco the Police Department maintains an internal affairs unit which investigates each and every civilian complaint. This unit, headed by a captain, is composed of three lieutenants and eight sergeants. The high proportion of advanced rank personnel is an intentional grant of authority as this is the main disciplinary mechanism in the department. Initially, these officers determine the validity and seriousness of the charge against an officer. Non-serious complaints such as abusive language are made part of the officer's record and his precinct lieutenant is directed to mete out appropriate punishment.

In the event investigation of a complaint yields evidence of a serious act of misconduct, the internal affairs unit will make a recommendation to the Chief of Police and police commission, the latter being a three member civilian authority granted powers of final

29. *Id.*

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adjudication in police personnel matters. The Chief of Police may suspend the officer for up to ten days and must notify the police commission accordingly. Alternatively, he may elect to pass on the issue, at which time the commission has four options: (1) to discharge the officer; (2) to suspend the officer for up to three months for each violation; (3) to fine the officer one month's pay for each violation; or (4) to formally reprimand the officer. A second reprimand usually results in his discharge.³⁰

The District Attorney's office additionally investigates any charge that involves possible criminal liability on the part of an officer. Police have been held to answer and convicted for conduct exceeding their powers. Police must obey the law while enforcing the law.³¹

The San Francisco Police Department maintains another mechanism to examine the propriety of an officer's conduct. The weapons discharge review board investigates each and every firing of a weapon. This unit requires that each discharge whether accidental or intentional be accounted for. Ammunition is issued and recorded with scrutiny to insure that all expended rounds are accounted for.

As outlined above, an elaborate structure exists within the department to select, train, supervise, and discipline the police officer. From sergeants to watch commanders to review boards, the patrolman is continually questioned and required to submit himself for examination. The department adheres to a preventive procedural policy to insulate the public from potential dangers arising from an officer's misconduct.

Unlike the public police academy, training programs for private police are woefully inadequate. Training prior to commencing work and initial on-the-job training is less than two days for the great majority of guards.³² It is also evident that the training is inadequate in terms of teaching private police their legal powers and authority. The Rand Survey of 275 private police in California found over 97% made serious errors that could lead to civil or criminal charges.³³ Fully 65% reported receiving no training prior to actually beginning work.³⁴ Mr. Ellis stated that training consists of one to three hours

30. *Id.*

31. *Jackson v. Denno*, 378 U.S. 368 (1964).

32. 2 RAND, *supra* note 1.

33. *Id.*

34. *Id.*

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of classroom lecture and one to two hours of firing range practice. On-the-job supervision and communication is given more emphasis by his company. Security bulletins are issued regularly and supervisors visit guards to determine if they have read and understood the bulletins. Mr. Ellis does require his guards to maintain contact via radio with the main office. These statistics indicate a very real potential for abuse of authority, especially since private police do not know what that authority is.

The Rand survey asked each respondent whether he had observed any guard overstepping his authority: 22% answered yes, and 70% of these observations were excessive force, improper detention, or unlawful searches. Other specific findings include: (1) although 50% of responding private police received and carried guns on the job, only 19% had received any firearms training; (2) asked if they knew their legal powers to detain, arrest, search, and use force, 18% did not know, and another 23% were unsure; (3) 31% thought it a crime if someone called them a "pig"; (4) although few knew what actions constituted a felony, 17% said they would use deadly force or force likely to cause serious injury, if necessary, to arrest any felony-crime suspect; and (5) only 33% knew that a person may legally resist an unlawful arrest made by them.³⁵

A comment from a former private guard who was beaten while trying to stop a robbery provides additional insight:

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 per hour I wouldn't stick my neck out again. Anybody who does is crazy. I 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 had known what the hell was going on.³⁶

From the preceding data it is clear that private police do, in fact, abuse their authority. The abuse is inevitable since they do not know the bounds of their authority. The Rand report indicates that they are seriously wrong 97% of the time, and do not know the difference between a felony and misdemeanor. While we may

35. *Id.*

36. Norell and Acqualino, *Scarecrows in Blue*, THE WASHINGTONIAN, Aug., 1971.

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speak in terms of potential abuse of authority, we must acknowledge that actual abuse is prevalent.

Data relating to intra-company review is simply not available in published form. It is likely that a serious act of misconduct would result in the security guard's discharge. However, each guard need only register once with the state to remain employable for between two and four years; and therefore he may obtain employment elsewhere within the private police industry. Private police are simply not required to account to their superiors with the same degree or frequency as public police must. The above data establishes that the private security guard is deficient in necessary knowledge and skills, before and after securing employment. As such he represents a danger to society and a liability to his employer. What can or should be done?

The security guard should be required to complete a minimum course of training. This will not necessarily provide him with skill to act but will rather educate him as to those activities from which he is prohibited. To this end the following is preliminarily suggested:

(1) Training:

Before any person may be allowed to register with the state as a private police officer, he must complete a course of training approved by the Commission on Police Officer Standards and Training (POST). Such course shall, in no event, be less than forty hours of instruction, and shall include instruction on laws of arrest, search, seizure, and use of firearms as they pertain to private police. Any person presently registered as a private policeman shall, before renewal of his certificate of registration, complete the course of training described herein for newly registered private police.

The training required by this provision would equip the private police officer with necessary minimal knowledge for the performance of his duties. It would include, at a minimum, instruction in discretionary decision making; arrest, search and seizure; use of firearms; and general ethical standards. It will be necessary for the existing POST course to be modified to suit the particular requirements of private police. Such revision could be conducted with input from

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the POST Advisory Committee, the Bureau of Collections and Investigative Services, the A.C.L.U., the California Private Police Association, and similar organizations. The requirement of minimum mandatory training is intended to establish an internal mechanism for protection of the general public from abuses resulting from inadequate knowledge of moral and legal perimeters.

Similarly, the private policeman should be visually distinguishable from a public policeman. The security guard should not bear any mark of authority he does not possess. It is in the public's interest as well as his own that the guard be easily identifiable as a private policeman, for only then will the chances for abuse of authority be diminished. Once the citizen knows whom he confronts, he becomes aware of the powers that attach to the particular uniform.

(2) Uniforms:

All uniformed private police personnel must wear clothing unlike that of any and all police officers within the county of their employment. Any uniform worn by such individual shall provide sufficient notice that the wearer is not a peace officer.

This provision does not require all private police to wear uniforms; however, uniformed personnel will be sufficiently unlike peace officers in appearance as to eliminate misidentification. Neither does this requirement abrogate the right of licensed employers to design and adopt uniforms beneficial to their interests, provided the prohibition against similarity with peace officers' uniforms is observed. Adoption of this provision should remedy the existing situation wherein neither state nor local government provides safeguards against misidentification. The suggested regulation would proscribe the wearing of uniforms that include chevrons or other insignia of rank; the Seal of the State of California; "special police" tags and any other indicia of police authority likely to confuse the general public.³⁷

The legal authority vested in and authorizing conduct of private and public police is quite different. Public police as representatives of our government have the authority to arrest and search upon probable cause or upon a valid warrant. They are characterized by law

37. This section is intended to preclude, as well, the use of patrol vehicles by private police which resemble those used by public police in the county of employment.

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as “peace officers” and possess all the attendant power of that status. Private police conversely possess no more legal authority than any other citizen. Should they come to understand this, we would all benefit.

LEGAL AUTHORITY

The statutes³⁸ summarized below define the power and status of public and private police:

Penal Code § 149 imposes severe penalties on officers who assault a citizen.

Penal Code § 830 et seq. defines persons to be given peace officer status; no private police are so classified unless deputized for a specific purpose; *e.g.*, in an emergency situation.

Penal Code § 832 requires all peace officers to receive a training course in use of their powers to arrest and proper utilization of firearms; it also gives the Commission on Peace Officers Standards and Training (POST) power to set minimum standards for such courses.

Penal Code § 833 gives peace officers the right to search for dangerous weapons under reasonable circumstances.

Penal Code § 834 defines “arrest” as the taking of a person into custody where authorized by law.

Penal Code § 835 allows reasonable restraints to be used to effect a lawful arrest.

Penal Code § 836 describes the general arrest powers of a peace officer.

Penal Code § 837, commonly known as the Citizens’ Arrest Statute, allows a private citizen to make a lawful arrest on three occasions: (1) when a felony or misdemeanor has been committed or attempted in the citizen’s presence, (2) when the person arrested has committed a felony although not in the citizen’s presence, and (3) when a felony has been in fact commit-

38. CAL. PENAL CODE §§ 149, 830, 832-37, 841, 847 (West 1971).

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ted and the citizen has reasonable cause to believe the person arrested committed it. This section is the basis of all private police authority.

Penal Code § 841 requires anyone making an arrest to inform the person arrested of the intention to arrest him, the cause of arrest and the authority to make it, except when the arrest takes place during the commission of a crime.

Penal Code § 847 requires a private person who has arrested another for the commission of a public offense, without unnecessary delay to take the arrested person to a magistrate or peace officer. In addition, this statute precludes liability of peace officers in the event that they accept custody of a person who was the subject of an unlawful arrest.

In addition to state law, both the U.S. Constitution and federal statutes provide significant legal limitations on the conduct of public police. The limitations may be viewed as tripartite: (1) statutes that hold police criminally liable for depriving a citizen of a constitutional right;³⁹ (2) exclusionary rule prohibiting introduction of evidence gained in derogation of constitutional rights;⁴⁰ (3) creation of a civil cause of action against a police official who violates an individual's constitutional rights.⁴¹

Of the above enumerated state statutes, only one, § 837, grants any power whatsoever to a private security guard. Moreover, in § 837, the code fails to distinguish between private persons and security guards who are, as we have noted, excluded from peace officer status by § 830 *et seq.* Indeed the security guard/private persons' power of arrest under § 837 is limited to a temporary one by § 847, which requires that the arrested person be brought to a magistrate or peace officer without unnecessary delay. Although the Penal Code provides no direction or constraint on a private policeman's activities, he is subject to certain state "regulations."

The main statutory regulation is found in the Business and Professions Code § 7500 *et seq.*⁴² This code amounts to little more than a regulatory device to require registration by the licensing of

39. *Screws v. United States*, 325 U.S. 91 (1965).

40. *Burdeau v. McDowell*, 256 U.S. 465 (1921).

41. 42 U.S.C. § 1983 (1971).

42. CAL. BUS. & PROF. CODE §§ 7500 *et seq.* (West 1971).

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certain private police. It provides little guidance to the private guard with respect to his legal basis of authority.

The private policeman is not granted statutory powers different from those of any private citizen. Though the security guard often has many of the same duties as a peace officer, the code does not prescribe an appropriate mode for performing those duties. Aside from § 837, which pertains to *all* citizens' arrest powers, the legislature completely fails to specify the precise boundaries of power applicable to private police, though it makes clear the powers and limitations of the peace officer.

Neither have the courts been helpful in this regard. In the area of detaining suspected shoplifters, for example, case law has been markedly confusing, and courts seem unwilling to deal with the perplexing problems of:

- (1) under what circumstances a suspected thief may be detained and/or searched;
- (2) how long a suspect may lawfully be detained; and
- (3) when the fruits of a search, initiated by a private police officer, must be excluded as evidence in a criminal proceeding as required by the U.S. Constitution's fourth amendment proscriptions against unreasonable searches and seizures.⁴³

The "merchant's detention privilege," though referred to commonly as a source of authority whereby an in-house guard may detain a suspect, has been ill-defined since its inception in common law England. As Professor Prosser noted:

[A] private citizen has no legal authority to arrest upon the mere suspicion of a crime, and will be justified only if the crime has in fact been committed. Still less has he any authority to imprison another for a debt, or a civil claim for damages. It follows that a shopkeeper, who has good reason to believe that he has caught a customer in the act of stealing, of defrauding him of goods, or of sneaking out without paying for goods or services, is placed in a difficult position. He must either permit the suspected wrongdoer

43. *Dyas v. Superior Court*, 11 Cal. 3d 628, 522 P.2d 674, 114 Cal. Rptr. 114 (1974).

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to walk out, and very probably say goodbye to both goods and payment, or run the risk that he will be liable for heavy damages for any detention.⁴⁴

A leading California decision, *Collyer v. S.H. Kress & Co.*,⁴⁵ reveals that a 20-minute detention was found to be reasonable under the circumstances of that case. However, since 1936 false arrest suits have been brought against guards and stores under basically similar circumstances, with inconsistent results.⁴⁶ Even though most suits are unsuccessful, according to those store owners consulted by the authors, this fact provides little comfort to the security guard who is, to a certain extent, punished by the fact that a lawsuit is brought against him. The boundaries of the merchant's detention privilege are poorly outlined and, as such, do not provide necessary guidance.

The private policeman, then, gets little help in determining his legal authority from either statute or case law. The result is a force of some 45,000 private police without specifically codified standards. It is this absence of specific direction from the judiciary or legislative branches that raises the most serious problem in the area of private police, not only because private policemen themselves do not know the limits of their authority, but also because the citizens confronting them are unaware of the powers attaching to their uniform.⁴⁷

Courts have exhibited frustration when confronted with appeals stemming from convictions derived from actions of security guards,⁴⁸ but have not yet been able to establish a pragmatic solution due to the construct of the private/public police distinction. Where the legislature has not acted, the judiciary cannot properly construe the private policeman's limitations.

Thus, it is essential that the legal authority of private police be circumscribed by a specific statutory provision. The following are suggested as suitable guidelines:

(3) Legal Authority:

Detention: Private police may detain a suspect only where probable cause exists to be-

44. W. PROSSER, *THE LAW OF TORTS* 121 (4th ed. 1971).

45. *Collyer v. S.H. Kress & Co.*, 5 Cal. 2d 175, 54 P.2d 20 (1936).

46. See *King v. Andersen*, 242 Cal. App. 2d 606 51 Cal. Rptr. 561 (1966).

47. See *Dyas v. Superior Court*, 11 Cal. 3d 628, 522 P.2d 674, 114 Cal. Rptr. 114 (1974).

48. See *People v. Haydel*, 12 Cal. 3d 190, 524 P.2d 866, 115 Cal. Rptr. (1974).

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lieve a crime has been committed but must immediately thereafter summon a peace officer. Said detention shall terminate upon arrival of the peace officer, but in no event shall the detention exceed thirty minutes.

This section distinguishes a private policeman's power of detention, heretofore unclear, from the right to make a citizen's arrest. The latter remains unchanged; however, in giving the private police officer a strictly limited right to detain suspects until police arrive, the confusion as to the private guard's precise legal authority is resolved. Under this provision a private policeman may legally detain a person suspected of criminal activity where there is no power to arrest provided he has probable cause, as judicially defined, to believe a crime is committed. The private policeman will presumably become knowledgeable as to what constitutes probable cause after he has completed the proposed training program.

(4) Legal Authority:

Arrest: The private policeman's power to arrest is co-extensive with the power granted under penal code § 837, the citizen's arrest statute.

This provision does not enlarge or otherwise alter the existing authority. While the public policeman is specifically engaged to enforce law in the public interest, the private policeman has no such public duty and therefore requires no similar power of arrest. The detention power granted in the previously suggested section should allow a private policeman that authority necessary to perform his assigned responsibilities. The minimum training qualifications required are not intended or expected to endow the private policeman with the skills or status of a peace officer. Hence, his power to arrest is not enlarged upon.

(5) Legal Authority:

Search and seizure: Private police shall have no authority to search any person unless such person be taken into his custody pursuant to a lawful arrest. Search incident to such lawful arrest is limited to a search for "offensive weapons" as prescribed by § 846 of the Penal Code. In the event that said arrest and or search results in a criminal prosecution, the private po-

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liceman shall be deemed a "state agent" and his actions shall be limited by the prohibitions of the United States Constitution's fourth amendment.

The above section delineates a private policeman's authority to search by limiting it to a search for offensive weapons. Such a search may not be made of detained suspects but only of those individuals under lawful citizen's arrest. The extension of fourth amendment prohibitions to private police is intended to resolve the inconsistencies in the application of the exclusionary rule by the courts of this state. The classification of a private policeman as a "state agent" is not intended to burden the state with law suits; rather, it is limited to criminal prosecutions and the admissibility of evidence therein.

Research of San Francisco Bay Area municipalities discloses that the appearance of private police is not regulated in most cities. Thus, the private guard agency may choose what type of uniform and paraphernalia its employees will wear. Those persons in a position to decide the general appearance of their employees are in a highly competitive, profitmaking business. Their decisions are guided by profit motives rather than a concern for public welfare. The result has been a startling similarity in the dress of private security guards and peace officers. This decision-making power would be better placed in the hands of those who are answerable to the electorate and motivated by their concern for public health and safety as opposed to monetary gains.

LOCAL REGULATION AND THE USE OF PRIVATE POLICE AS TERRORISTS

The City of Oakland is atypical in that it has enacted an ordinance⁴⁹ which, on its face, purports to solve the dilemma:

Every operator of a private patrol system shall adopt a characteristic uniform, and all private patrol watchmen employed by such person shall wear such uniform at all times while engaged in the performance of the duties of his employment. The characteristic uniform proposed to be adopted by the holder of a private patrol system permit, and any uniform proposed to be

49. Oakland, Calif., City Ordinances, Art. 11, § 11.15. Oakland is unique in California in its adoption of a relatively stiff ordinance regarding conduct of private police.

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worn by a private watchman, must first be approved by the Chief of Police. It shall be unlawful for any person to wear, or cause to permit to be worn, any uniform while acting as a private watchman, or while acting as a private patrol watchman, that is similar in design to any uniform used by the Oakland Police or Fire Departments, and no uniform of any type shall be adopted or worn unless the same shall have been first approved by the Chief of Police. The provisions of this section shall not apply to the uniform now being worn by any individual watchman or private patrolman, but any replacement of such uniform must conform in every respect with the provisions of this section.⁵⁰

If enforced properly this enactment would serve as a model and would eliminate many of the problems discussed above.

Under present law in California, contract guards are subject to state registration regulations and Penal Code provisions. The registration statutes, however are not applicable to in-house guards.⁵¹ Thus, private employers may retain a force of security guards who are not subject to the state's registration power. There exists virtually no mechanism for public review and control of in-house guards' conduct save the possibility of criminal sanction. The use of in-house private guards by farm labor employers during the farm labor strike in California in 1973 provides a chilling illustration.

The Assembly Select Committee on Farm Labor Violence conducted an examination of violence in the farm labor dispute during October and November, 1973.⁵² The initial focus of the committee inquiry was to be limited specifically to the farm labor dispute. However, as a result of testimony developed at hearings in Bakersfield, California, the Committee agreed with the suggestion of Chairperson Richard Alatorre, to expand the final hearing to the problem of the licensing of security guards in California.

Testimony at the Palm Springs hearing of November 26, 1973, revealed that growers in the Coachella Valley hired their own security guards to protect farm property and oversee United Farm

50. *Id.*

51. CAL. BUS. & PROF. CODE §§ 7500 *et seq.* (West 1971).

52. *Hearings Before the Select Committee on Farm Labor Violence of the California Assembly*, Legislature of California, at 89 (1973) [hereinafter cited as *Hearings*].

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Workers AFL-CIO picketing their fields. The Delano growers also retained private police called the Delano Patrol to effect the same assignments. Byron Morton, District Attorney, Riverside County, testified that flashlights in the form of steel and aluminum batons, eighteen to twenty-six inches long, were used by security guards. The weapons, manufactured by Kel Lite, were subsequently classified as billy clubs and considered illegal.⁵³

Mr. Ben Clark, Sheriff of Riverside County, testified that some of his security officers believed the uniforms worn by the security guards were confusing to members of the public.⁵⁴ Other testimony depicted the atmosphere as highly volatile with violence generated and sustained by all sides to the dispute. The characterization of several witnesses of security guard conduct was that they were the growers' "goons" who meted out verbal and physical abuse, injury and punishment. The Hearings established that these "goons" needed no training or supervision to carry clubs, guns, rifles and other potentially lethal weapons to work for a private property owner as a security guard.⁵⁵

The use, legal but inappropriate, of private police by the farm growers illustrates the inadequacy of existing legal controls on the activities of private police. These individuals are armed and dangerous. They are not supervised, trained, or qualified to socially interact as police with other citizens. The potential for a return to vigilantes and law ruled by guns is waxing in California. The dangers inherent in the continued acceptance of private police as they are presently regulated must not be ignored.

The Select Committee has determined that the Institute's study will be a definitive investigation of private police and has accordingly deferred recommending legislation in this area pending examination of the Institute's proposals.⁵⁶ The Institute's study is not the answer, however, for it is not a proposal directed at the dangers of the private police industry. While it is an attempt at defining some of the issues, it buries meaningful analysis amidst some five hundred pages of statistics and graphs. It is a classic, noncontroversial committee report that defers, in turn, to other such reports.⁵⁷ The Select Com-

53. *Id.*

54. *Id.* at 76.

55. *Id.* at 17.

56. *Id.* at 2.

57. INSTITUTE, *supra* note 3, at 2-18.

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mittee's determination may be viewed as a silent surrender. But, to whom?

STATE REGULATION

As previously indicated the California Penal Code does not clearly delineate lawful private police conduct. Private Police are nonetheless subject to certain provisions of the California Business and Professions Code. Section 7500 et seq. provides for licensing of private patrol operators who are then authorized to employ uniformed private security police. Under § 7513 of the Code, the Bureau of Collections and Investigative Services, an arm of the Department of Consumer Affairs, is delegated the responsibility for the implementation of these statutes' provisions.⁵⁸ Other applicable sections⁵⁹ relating to private security guards are:

Bus. & Prof. Code § 7523 allows local authorities to construct their own regulations and requirements.

Bus. & Prof. Code § 7514(f) requires each uniformed employee of a licensee to be registered with Bureau. Application may be denied for lack of good moral character.

Bus. & Prof. Code § 7538 requires all insignia of licensees and guards to be approved by the chief of the Bureau.

Bus. & Prof. Code § 7538(g) prohibits licensee or guard from entering a private building without consent of owner.

Mr. Gordon Bishop, Chief of the Bureau of Collections and Investigative Services in Sacramento, supplied valuable information to the authors.⁶⁰ Nineteen people are employed by the Bureau and are primarily concerned with processing applications for registration pursuant to § 7514(f) above. The registration system went into effect on March 3, 1973 and required retroactive registration. According to his figures, approximately five people processed close to forty thousand applications in less than a year. If we divide the total number of applications by five, each person would process some

58. CAL. BUS. & PROF. CODE §§ 7523 (West 1971).

59. CAL. BUS. & PROF. CODE §§ 7523, 7514(f), 7523, 7538(g) (West 1971).

60. Interview with Gordon Bishop, Chief, Bureau of Collection and Investigative Services of California, in Sacramento, Calif., Dec. 10, 1973.

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8,000 in less than a year. Assuming that there are two hundred and forty work days in each year, each employee would process thirty-three per day, or four per hour. Each application is then given a maximum of fifteen minutes for investigation and processing. This allows time for little more than a criminal records check. Although this may appear to be patently superficial, the Bureau does not have the resources to do more. One hundred twenty-two applications were denied for prior felony convictions and one hundred sixty for "moral deficiency," primarily misdemeanor convictions.

Licensees are not required to maintain records of public complaints concerning their guards, nor are they required to report civil suits to the Bureau. The Bureau receives information relative to a private policeman only from law enforcement agencies. Receipt of such information becomes part of the registrant's record; however, no records retention program has been established. Moreover, Mr. Bishop stated that the administrative law process to revoke a registration consumes six to nine months.

Business & Professions Code § 7523 authorizes local authorities to set standards concerning private police⁶¹; however, they are not required to file such standards with the Bureau. There are no procedures for ascertaining local standards. Thus, the Bureau may be unaware of an applicant's failure to meet local standards.

There is considerable confusion as to the means by which guard companies may obtain criminal record checks on prospective employees. California Government Code, § 26616 requires county sheriffs to provide this information to licensed guard companies. Since the Bureau has assumed the registration of security guards, however, some sheriffs have presumed that they no longer are obligated to provide this service.⁶²

The Bureau itself refuses to acknowledge a need for more than minimum competency and familiarity with weapons. It has suggested that such training be conducted under the auspices of the National Rifle Association.⁶³ To support this view, the deputy Chief of the Bureau, Samuel Levin, states that they receive "not over six or seven" reports of firearm discharges per month and that the POST course or its equivalent would be logistically impractical.⁶⁴ In

61. CAL. BUS. & PROF. CODE § 7523 (West 1971).

62. Bureau of Collection and Investigative Services, Bureau Newsletter, No., 14, Aug., 1973.

63. *Hearings*, *supra* note 49, at 49.

64. *Id.* at 8.

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response to suggestions for more control and regulation, Mr. Levin states the position of the Bureau:

One should be convinced that a definite public need must be demonstrated before restrictions are made on these people which will force them upon the unemployed rolls.⁶⁵

Despite studies of the industry, like that of the Institute for Local Self Government, which continue to discover problems that should be resolved, actual resolution has not evolved. The Institute's examination of California's regulatory agencies contains little reliable data relative to the problems of private security; and the Bureau limits its own effectiveness because it seldom uses its power of sanction to correct problems as they arise. Finally, current requirements and provisions need strengthening.

Further, the Business and Professions Code excludes the licensing and registration of certain categories of private police services including local alarm agencies, armored transport companies, and canine protection services. In addition, there is no mandatory state regulation of in-house operations or personnel even though they frequently perform the same functions as contract security personnel and often have the same degree of public exposure.

The Rand report characterized California's statutory regulations as among the best in the country. However, the state regulations are little more than licensing and registration provisions which do not address themselves to the potential and existing dangers inherent in the private police industry. As such they represent a dismal attempt to control an armed industry that exposes some 45,000 guards to public interaction in a society which is fundamentally defensive and prone to violence.

It is the authors' contention that a regulatory scheme must incorporate mechanisms for preventive control, accountability, regular review of activities; and remedial sanctions. The state regulatory board is funded and could operate effectively if the power and scope of this agency were increased. It might then be capable of furnishing additional information on private police and their conduct.

The authors believe that certain changes in the regulatory scheme must be implemented if the problems are to be alleviated. At the very least, all in-house guards should be registered and sub-

65. *Id.* at 6.

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ject to control, for there is no distinction between them and contract guards. To this end the following proposals are suggested as minimum obligations:

(6) Registration:

All privately employed security personnel must register with the bureau of collection and investigative services (BCIS).

This requirement would not only provide additional revenue to improve the effectiveness of the state regulatory agency but would furnish information on in-house guards presently unregistered and unregulated.

(7) Licensing:

All persons or associations desiring to employ privately registered security personnel must obtain a license.

This requirement does not preclude the alternative of securing guard(s) from contract agencies. Therefore, not all individuals or associations desiring security personnel need be so licensed. Conversely, those persons or associations desiring their own security employees must be licensed with the state, and thereby become subject to state controls. Furthermore, the increased revenue generated by this requirement will provide additional funds for the state regulatory agency.

(8) License Fees:

The appropriateness of present license fees should be reviewed in light of the proposals for expansion of regulation and its attendant costs.

If a determination is made that additional funds are needed, these monies should be derived from licensed employers rather than either (1) individual security personnel or (2) the public. Implicit in this proposal is a realization that increasing registration fees for guards earning minimum wages would be inequitable.

ABUSES OF AUTHORITY

The Rand Study has observed that:

On the basis of evidence from several sources,

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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 wire-tapping, breaking and entering, gaining entry by deception, false reporting, and improper surveillance. 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.⁶⁶

A recent occurrence in San Francisco strikingly reinforces the conclusions of the Rand survey. Near an industrial plant in the Ingleside district, a security guard observed a teen-aged youth attempting to enter a parked car. Believing the youth was stealing the vehicle, the security guard fired six bullets at the boy. Fortunately the guard's poor aim resulted in six misses.⁶⁷ We cannot rely, however, on the lack of firearms proficiency to insure our health and lives.

Underlying the guard's lack of legal knowledge is the fact that there is an absence of any mechanisms for review and thus deterrence. There is apparently no internal review, no weapons discharge unit, and no accountability for expended ammunition.

The private guard has no report to file with a precinct commander, nor perhaps even an oral explanation to his immediate superior. The State Bureau may not ever hear about this incident, and the guard's record in Sacramento will remain unblemished.

66. 1 RAND, *supra* note 1.

67. Confidential interview with Patrol Sergeant, San Francisco Police Dep't in San Francisco, Calif., Aug., 1974.

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While public police training and review procedures have been referred to for purposes of contrast to those of private police, we do not intend to characterize public police practices as exemplary. To the extent, however, that there are documented incidents of abuse by public police, we may speculate that private police abuses are geometrically more numerous, and perhaps even more gross. Yet the actual figures are unavailable; there are no known procedures for even finding them. And with the numbers of private police approximating public police in California, the need to know these statistics and to regulate this armed and deadly force is great.

CONCLUSION

This article has attempted to illustrate some of the more dangerous and perplexing problems of the private police industry. The private policeman is often placed involuntarily in a crisis situation and is ill-equipped to deal with it. As such, he is a danger to himself and to the public at large.

The private police force continues to expand in numbers. The judiciary and legislative branches have shown no willingness or inclination to adopt remedial measures. While we recognize that the solution may not be easily developed, this fact is no excuse for the total abdication of responsibility to the public. Whatever expenditures in time and money will be required to rectify the present state of affairs are a small price to pay for the proper protection and safety of our citizenry.

Appendix—Legislative Proposals

(1) **TRAINING:** Before any person may be allowed to register with the state as a private police officer, he must complete a course of training approved by the Commission on Police Officer Standards and Training (POST). Such course shall, in no event, be less than forty hours of instruction, and shall include instruction on laws of arrest, search, seizure, and use of firearms as they pertain to private police. Any person presently registered as a private policeman shall, before renewal of his certificate of registration, complete the course of training described herein for newly registered private police.

(2) **UNIFORMS:** All uniformed private police personnel must wear clothing unlike that of any and all peace officers within the county of their employment. Any uniform worn by such individual shall

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provide sufficient notice that the wearer is not a peace officer.

(3) **LEGAL AUTHORITY - DETENTION:** Private police may detain a suspect only where probable cause exists to believe a crime has been committed but must immediately thereafter summon a peace officer. Said detention shall terminate upon arrival of the peace officer, but in no event shall the detention exceed thirty minutes.

(4) **LEGAL AUTHORITY - ARREST:** The private policeman's power to arrest is co-extensive with the power granted under Penal Code § 837, the citizen's arrest statute.

(5) **LEGAL AUTHORITY - SEARCH AND SEIZURE:** Private police shall have no authority to search any person unless such person be taken into his custody pursuant to a lawful arrest. Search incident to such lawful arrest is limited to a search for "offensive weapons" as prescribed by § 846 of the Penal Code. In the event that said arrest and/or search results in a criminal prosecution the private policeman shall be deemed a "state agent" and his actions shall be limited by the prohibitions of the United States Constitution's fourth amendment.

(6) **REGISTRATION:** All privately employed security personnel must register with the Bureau of Collection and Investigative Services.

(7) **LICENSING:** All persons or associations desiring to employ privately registered security personnel must obtain a license.

(8) **LICENSE FEES:** The appropriateness of present license fees should be reviewed in light of the proposals for expansion of regulation and its attendant costs.

