

January 1975

Who's Watching the Watchman? The Regulation, or Non-Regulation, of America's Largest Law Enforcement Institution, the Private Police

Gloria G. Dralla

Follow this and additional works at: <http://digitalcommons.law.ggu.edu/ggulrev>



Part of the [Criminal Law Commons](#)

Recommended Citation

Gloria G. Dralla, *Who's Watching the Watchman? The Regulation, or Non-Regulation, of America's Largest Law Enforcement Institution, the Private Police*, 5 Golden Gate U. L. Rev. (1975).
<http://digitalcommons.law.ggu.edu/ggulrev/vol5/iss2/7>

This Article is brought to you for free and open access by the Academic Journals at GGU Law Digital Commons. It has been accepted for inclusion in Golden Gate University Law Review by an authorized administrator of GGU Law Digital Commons. For more information, please contact jfischer@ggu.edu.

WHO'S WATCHING THE WATCHMAN? THE REGULATION, OR NON-REGULA- TION, OF AMERICA'S LARGEST LAW ENFORCEMENT INSTITUTION, THE PRIVATE POLICE*

Gloria G. Dralla
Deborah B. Honig
Deborah Penny Port
Shaunee H. Power
Sara Ann Simmons

Police have always been the object of an ambivalent public attitude. From the founding of the first public police force in 1829 police have been regarded by some segments of society as an institution essential for the preservation of public order and the protection of persons and property. However, the development of police forces has been paralleled by consistent concern that the power they exercise infringes on the freedom of individuals. The resolution of these conflicting views of the police has never be adequately examined. Nevertheless, it is clear that the police have survived and grown as an institution in Anglo-American society, despite such conflicting views, in part because of the evolution of various mechanisms intended to limit, control and regulate the exercise of police power.¹ The acceptance of the police institution has been paralleled by the development of departmental discipline, legal controls, review boards and personnel incentives.

In the past several decades private police have appeared on the law enforcement scene in unprecedented numbers. Although private

* The authors wish to thank Professor Bernard L. Segal for his patience, encouragement and assistance, all of which were invaluable.

1. Many police control mechanisms have been the subject of detailed criticism, and the effectiveness of such mechanisms has been strongly challenged. But, the fact that society has felt impelled to establish such a system supports the conclusion that police cannot be permitted to exist in a democratic society without a system of restrictions.

GOLDEN GATE LAW REVIEW

police have long existed and, in fact, antedate public police forces, only recently has the private police industry in the United States rivaled the public police in size and scope. If present trends continue there may be twice as many private as public police within a decade.²

The private police phenomenon is more than just a matter of the industry's growth. Of at least equal importance is the extent of these services and their consumers. Among the most recent and important consumers of private police services have been governmental agencies. For example, private police supply the greater portion of anti-hijacking security services at publicly-owned and operated airports. They are also used extensively to protect property and control crowds in government facilities.

The powers of public and private police are not identical, but for many purposes the differences are not as important as might initially be thought. There are at least two reasons for this. First, a substantial number of private police exercise the same powers as public police, except that the geographical area within which these powers may be exercised is limited for private police.³ Second, so-called "security guards" comprise a large segment of the private police industry. Such guards, generally, utilize many of the same indicia of power that public police use, including uniforms, badges, and other insignia. Many carry weapons including guns, batons and chemical sprays, as well as handcuffs. The limits on the scope of their power to arrest and detain suspects is often murky. This is a result of the absence of legislation on the subject and because arrests by private police have not been subjected to judicial scrutiny to the same extent as have arrests by public police.

Consequently, persons who have contact with private police are often faced by persons whose appearance, equipment and actions are virtually indistinguishable from those of public police. It is unlikely that either a citizen or private policeman can make a fair and frank evaluation of the limits of the private police officer's powers during such a confrontation. And, the courts have seldom dealt with these issues after-the-fact.

2. J. KUKALIK & S. WILDHORN, *PRIVATE POLICE IN THE UNITED STATES*, 5 vols. (1972) (prepared by the Rand Corp. for the U.S. Dep't of Justice) [hereinafter cited as *RAND*]. For a critical examination of the Rand Study see M. LIPSON, *ON GUARD: THE BUSINESS OF PRIVATE SECURITY* (1975).

3. Industrial police (*e.g.*, iron and steel, railroad guards) and natural resources police (*e.g.*, lumber, fish, animal protection guards) are among the clearest examples of private police whose powers often appear identical to those of public police.

WHO'S WATCHING THE WATCHMAN?

Two basic questions arise from the existence of private police with their present authority:

First, if the institution of a public police force is tolerated because the power it wields is circumscribed by the system of controls imposed, what controls should society impose upon private police?

Second, would not consistent public policy require that police power in private hands, however limited, be subject to greater control and regulation than such power in the hands of public agencies?

Questions about the current state of private police regulation readily follow: Is there meaningful regulation of the private police industry? How effective is supervision where it exists? How much regulation should there be? It is the object of this study to provide some answers to these questions.

Private police in the United States had not been subjected to systematic analysis prior to 1970. In that year, the Rand Corporation began a study of the private police industry for the U.S. Department of Justice, the results of which were published in 1972.⁴ The Rand study assembled data on the regulation of the private police by state and local governments. In addition, it made recommendations relevant to future governmental policy in regulating private police. But, it did not propose standards by which the adequacy of the regulation and control of the private police industry was to be measured. Because the functions of private police parallel those of their public counterparts, the nature of controls over public police must provide the "yardstick" by which the control and regulation of private police should be measured.

The first two sections of this article deal with the historical development of controls over public police in England and the United States. It is the thesis of the first section that a centralized police system was adopted in England with considerable reluctance, despite an obvious need for the replacement of the existing methods for dealing with crime and disorder. This reluctance was overcome only by an agreement to impose strict controls and limitations on police power. Our discussion of public police in the United States concludes that

4. RAND. *supra* note 2.

GOLDEN GATE LAW REVIEW

Americans, who were perhaps even more hostile than the English to the establishment of police forces, also turned to police when traditional institutions proved inadequate to deal with urban unrest in the mid-nineteenth century. Unlike the centralized English police forces, American police forces were kept under local jurisdiction. A consequence of such fragmentation has been the institution of a wide variety of controls which have been tried sporadically in the United States during the past hundred years. However, the recognition of the need for and the imposition of controls has paralleled the growth in the size and importance of public police forces in the United States.

The last sections of this article examine the controls private police in the United States are subjected to, and show that there has been, in fact, very little control exercised. The few controls that have been imposed have seldom dealt with the significant issues. They have not reflected the same areas of concern that have been aroused over the public police. This disparity reflects attitudes that may have once been appropriate when the numbers and scope of employment of private police were limited but such conditions no longer prevail. These last sections also show that the controls which currently exist vary widely from jurisdiction to jurisdiction. On the whole, they are inadequate to provide the public with protection against abuses of power by private police.

The most universal device adopted by states in dealing with private police has been the imposition of requirements for bonding. A special survey was conducted of state agencies responsible for the handling of these bonds. The results showed that in many instances these agencies had no information as to how often aggrieved members of the public resorted to suits on these bonds. And, where information was available, it indicated that such suits, or even complaints, were rarely brought.

Another survey was made of the attorneys general of all states. Their views were sought as the principal state government official concerned with all aspects of law enforcement. The bulk of them candidly admitted that present regulation of private police was unsatisfactory. They also concluded that significant improvement in the pattern of regulation was not an immediate prospect. The results of the bonding survey and the survey of state attorneys general present empirical data to support the validity of the conclusion of the Rand study, and of this study, that more comprehensive and meaningful controls over private police are desirable and necessary in light of their importance in contemporary society.

WHO'S WATCHING THE WATCHMAN?

I. CREATION OF THE FIRST MODERN POLICE FORCE IN ENGLAND

During the period from the death of Elizabeth I in 1603 to the establishment of the London Metropolitan Police in 1829, England was transformed from a rural nation into a modern industrial one. Although comprehensive statistics on crime were not compiled until after 1800, there are many indications that a growth in crimes against property paralleled the industrialization and urbanization of England.⁵

Even before 1800, the demonstrable inadequacy of England's crime prevention institutions had received attention. In 1785 the government attempted to create a police organization independent of the magistracy. The London and Westminster Police Bill, introduced in Parliament in that year, disregarded the traditional rights and privileges of the chartered City of London by treating it and the Metropolis as a single unit for police purposes.⁶ In addition, the proposed legislation expanded the powers of the constables in the areas of search and seizure and arrest of suspected criminals.⁷ The constables were to be subordinate to three commissioners appointed by the Crown and given justice of the peace status. The commissioner-justice positions were to be stipendiary, the salaries paid by the government.⁸

So strong was the opposition to the creation of a centralized police independent of the magistracy that the bill was withdrawn without a vote being taken.⁹ Part of the opposition to the bill came from individuals and groups on whose power the police would have encroached. The inclusion of the City of London threatened the zealously guarded powers of the City's mayor and alderman, whose resistance remained so strong that the City was not included under the 1829 police bill.¹⁰

Most important, the bill's sweeping grant of power in the administration of justice to an independent magistracy and constabulary which derived its power from the national government rather than local governmental units alienated large segments of population. Many feared that a centralized police force would subject Englishmen to a system of police surveillance like that of France, and that English

5. 1 L. RADZINOWICZ, *A HISTORY OF ENGLISH CRIMINAL LAW AND ITS ADMINISTRATION FROM 1750* 143 (1948) [hereinafter cited as RADZINOWICZ]; J. TOBIAS, *NINETEENTH CENTURY CRIME IN ENGLAND* 81-82 (1972).

6. 3 RADZINOWICZ, *supra* note 5, at 110.

7. *Id.* at 114-15.

8. *Id.* at 111-12.

9. *Id.* at 121.

10. 4 RADZINOWICZ, *supra* note 5, at 171.

GOLDEN GATE LAW REVIEW

liberties would be endangered thereby.¹¹ In 1829, although crime was widespread, the likelihood that a police force would be created in London or anywhere else in England appeared remote. Yet in that year Parliament adopted Robert Peel's plan to establish a police force for the Metropolis of London. The question that immediately arises is, why did Peel's bill succeed?

Undoubtedly Peel's political astuteness played a significant part in the bill's passage. For example, he purposely limited the scope of his bill to the Metropolis of London, so that it did not face the formidable opposition of the City's officials. But the answer to this question also lies in the changes that had taken place in England by 1829, for England had experienced widespread economic and social unrest, largely the result of industrialization. When domestic uprisings, occurred, the threat to national security served as a justification for using the army against the rebels.¹² The army was the government's primary means of dealing with the sporadic riots of hosiery knitters, weavers and other workers in the cloth industry which began in 1811-1813 and continued until 1818.¹³

After Napoleon's defeat in 1815, the government found it more difficult to use the military to quell civil disturbances. Popular fear and dislike of the army was reflected in opposition to billeting in private lodgings and later in barracks throughout the country.¹⁴ Consequently, other means of maintaining public order were sought. The civil institutions traditionally charged with keeping the peace fared badly when used in civil disorders. By 1800, local militia, paid out of land taxes, were composed of members of the lower ranks of society. Occasionally they sided with the rioters, but even when they did not, discipline was so poor that they were considered undependable protectors of property and keepers of the peace.¹⁵

In the late eighteenth and early nineteenth centuries, attempts were made to revive the *posse comitatus*, which was changed from its original form of a group of citizens assembled at a moment's notice

11. For an example of the popular resistance to a centralized police force on the French model see 1 E. HALÉVY, A HISTORY OF THE ENGLISH PEOPLE 39 (1924), citing Letters to Ivy, December 27, 1811, where one Englishman wrote:

They have an admirable police at Paris but they pay dear enough. I had rather half-a-dozen people's throats should be cut in Ratcliff Highway every three or four years than be subject to domiciliary visits, spies, and all the rest of Fouche's contrivances.

12. C. REITH, BRITISH POLICE AND THE DEMOCRATIC IDEAL 27 (1943).

13. 4 RADZINOWICZ, *supra* note 5, at 122-23.

14. E. HALÉVY, *supra* note 11, at 63 ff.

15. 4 RADZINOWICZ, *supra* note 5, at 110.

WHO'S WATCHING THE WATCHMAN?

to pursue felons into a group of men instructed in the use of weapons and military techniques to be used when summoned by a magistrate to control an uprising.¹⁶ In the final analysis, however, only the army was considered trustworthy and effective in the event of rebellion. Beginning with the Luddite riots in 1811 the army was employed regularly as the "police force of industrial England."¹⁷

Opposition to the use of the army in civil disturbances was not confined to a single class. The size of the army, its unsettled relation to civil authority, the danger of mutiny, and the threat to liberty posed by maintaining a large standing army in peacetime and quartering troops in the countryside were issues in Parliament in the late 1820s.¹⁸ Even the conservative Duke of Wellington, while reiterating his faith in the loyalty and effectiveness of the army, wrote in 1823 that an alternative had to be found.¹⁹

The prospect of social upheaval and the failure of traditional means of keeping the peace brought home to British leaders what even the most alarming criminal statistics had apparently failed to demonstrate—that a police force was necessary. But they saw its function not so much as fighting crime as in filling the void in the preservation of public order created by the failure of the militia and yeomanry and general dissatisfaction with the army as a means of achieving this end. As a result, the primary purpose of police work in the nineteenth century was the maintenance of order; the prevention and detection of crime remained secondary until much later.²⁰

Robert Peel, the Prime Minister credited with the founding of the Metropolitan Police of London, regarded it as an experiment which, if successful, would be the model for a national police system.²¹ But it was by no means certain that the police would be allowed to continue even long enough to demonstrate that they merited imitation. Peel's Tory government fell late in 1830, and successive Whig governments, though unwilling to abolish the police outright, adopted various tactics designed to curb their effectiveness. The effect of public hostility toward and distrust of the police acted as a rigorous control on the exercise of police authority. Moreover, controls were built into the very structure of the police force. Although intended to

16. *Id.* at 107-10.

17. *Id.* at 123.

18. *Id.* at 153-55.

19. *Id.* at 157.

20. J. MARTIN & G. WILSON, *THE POLICE: A STUDY IN MANPOWER* 7 (1969).

21. 4 RADZINOWICZ, *supra* note 5, at 159-60.

GOLDEN GATE LAW REVIEW

be non-military in organization, composition and appearance,²² they turned to military organization as a means of maintaining internal discipline in the force. A chain of command was established, running from the commissioners through superintendents, inspectors and sergeants, to the constables who walked the beat in the seventeen police districts into which the Metropolis was divided.²³ The activities of every member of the force were supervised. Superintendents, who were responsible for all activities of the men in their divisions, submitted detailed reports to the commissioners, especially when police conduct was called into question. These reports were subject to scrutiny by the commissioners and served as the basis of their reports to the Home Office.²⁴

Another control was the imposition of high standards of personal behavior on constables, with dismissal for failure to maintain these standards. The commissioners established stringent, objective criteria for judging recruits and refused to allow police positions to be filled through the patronage system, by then a national scandal. Prospective constables had to supply character references as well as meet physical and mental requirements, among them literacy.²⁵ Although there were more applications than positions available, dismissals and resignations produced a high turnover of police personnel in the early 1830s. Drunkenness led to a significantly large number of dismissals.²⁶

Dismissal from the force could also result from an investigation of individual police conduct on the basis of a complaint from a private citizen. In the early years of the Metropolitan Police, its commissioners required that every citizen's complaint be investigated internally and established procedures for investigation.²⁷ Constables were also subject to trial in the magistrates' courts for excesses committed in the line of duty. Since these courts were generally hostile to the police, and since individual constables had to pay the costs of legal defense, civil liability operated as a rigorous and sometimes patently unjust form of control.²⁸

Conscious of the public fear of and hostility toward the military, London took the final step in "civilianizing" the Metropolitan Police: constables, even those who patrolled outlying districts, were not to

22. C. REITH, *supra* note 12, at 35.

23. *Id.* at 36-37.

24. *Id.* at 92-94. Reith quotes several examples of these reports.

25. T. CRITCHLEY, *A HISTORY OF POLICE IN ENGLAND AND WALES* 52 (1967).

26. 4 RADZINOWICZ, *supra* note 5, at 166.

27. C. REITH, *supra* note 12, at 63.

28. 4 RADZINOWICZ, *supra* note 5, at 63; C. REITH, *supra* note 22, at 47.

WHO'S WATCHING THE WATCHMAN?

carry firearms.²⁹ The only visible symbol of the constable's authority was a wooden baton or truncheon, and directives issued by the commissioners warned that even this was to be used with restraint.

The *General Instructions*³⁰ distributed to every man on the force inculcated the constables with a sense of the precariousness of their position and the necessity of taking no action that could be interpreted as overstepping their authority. The object of the police, the instructions began, was to prevent crime. The commissioners would base their judgment of the effectiveness of the police not on the number of criminals apprehended, but on the absence of crime in the area under their control.³¹ But restraint was of primary importance in achieving this highly desirable goal. "In the novelty of the present establishment," the Commissioners of Police warned, "particular care is to be taken that the constables . . . do not form false notions of their duties and powers." The *General Instructions* elaborated on the constable's duty to be "civil and obliging to all people of every rank and class" and admonished him to "remember that there is no qualification so indispensable to a police-officer as a perfect command of his temper, never suffering himself to be moved . . . by any language or threats that may be used. . . ."³² Metropolitan Police were used to restore order when civil disturbances occurred in and around London. In May, 1833, they were ordered to disperse a meeting of workers at Cold Bath Fields, near London. Although there are conflicting reports as to the amount of force used by both sides, it is certain that one constable was fatally wounded during the disturbance.³³ After receiving reports on the incident, the commissioners prepared a memorandum for distribution among the constables. In it they warned that if subsequent investigation revealed the constables had exceeded their duty or "committed themselves by a wanton or violent exercise of their power," they would be punished severely by the commissioners, in addition to suffering "the penal consequences to which they are liable by law." The commissioners concluded by taking

the opportunity of impressing strongly on the mind of every individual that his first duty as a constable is to learn self command, that he must not allow himself to be provoked by offensive or

29. 4 RADZINOWICZ, *supra* note 5, at 163. With permission, constables carried sabers on dangerous missions. Inspectors carried pocket pistols.

30. C. REITH, *supra* note 12, at 47, quoting GENERAL INSTRUCTIONS (1829).

31. *Id.*

32. *Id.*

33. *Id.*

GOLDEN GATE LAW REVIEW

insulting language.³⁴

The commissioners' memorandum reflects the pressures of the British attitude toward the police. From the outset the Metropolitan police were forced to perform the function of maintaining public order in addition to their crime prevention and detection functions. As a result, they were in the public eye at a time when Englishmen of all classes distrusted public authority. The controls imposed on the police were the logical consequence of their ambivalent position in British society. If societal attitudes toward police have mellowed over time, constables have nevertheless continued to be saddled with the limitations imposed when they were still an experiment.

III. POLICE IN AMERICA

It is not surprising that early American police systems resembled their English counterparts—the sheriff, constable and watch.³⁵ Generally, the sheriff served in unincorporated areas, the constable in towns and villages. The constable's position was difficult to fill. The office had been appointive in England, but became elective in the United States until the early part of the nineteenth century.³⁶ A man elected constable could usually escape serving by paying a fine, and many did so.³⁷ The constable's duties were many and varied, the pay was poor, the hours long and the prestige associated with the office low.³⁸ However, the constable was an essential office of local government since, in addition to his peacekeeping duties, he also served administrative functions for the courts.³⁹ Constables wore neither uniforms nor identifying badges.⁴⁰ Unlike a private citizen, a constable could arrest without a warrant, and he alone could execute a warrant issued by a magistrate. So long as he acted reasonably, he was immune from liability for false arrest.⁴¹ Supervision was exercised by the town authorities or the magistrates.⁴² With the beginning of the annual appointments of constables and the abolition of the elective office, the constables became professional law enforcement officers

34. C. REITH, *supra* note 12, at 150, quoting Police Order, May 27, 1833.

35. B. FOSDICK, AMERICAN POLICE SYSTEMS 58 (1969).

36. B. SMITH, POLICE SYSTEMS IN THE UNITED STATES 71 (1960).

37. For a description of the fee system in use in Boston in the mid-nineteenth century for payment of constables see R. LANE, POLICING THE CITY: BOSTON, 1822-1885, at 9 (1971).

38. J. RICHARDSON, THE NEW YORK POLICE 7 (1970).

39. S. BACON, THE EARLY DEVELOPMENT OF AMERICAN MUNICIPAL POLICE 7 (1939) (unpublished thesis in Yale University Library).

40. J. RICHARDSON, *supra* note 38, at 19.

41. *Id.* at 17-18.

42. R. LANE, *supra* note 37, at 9.

WHO'S WATCHING THE WATCHMAN?

during the 1800s.⁴³

The first night watch was formed in Boston in 1634.⁴⁴ Thereafter, every major city established its own night watch. Serving as a watchman, like serving as a constable, was an obligation owed by every male citizen over the age of eighteen unless he fell into an exempt category or paid a substitute.⁴⁵ Attracting men of high caliber to serve on the watch was difficult. Since any citizen with enough money to do so hired a substitute, the positions were filled by people willing to take the low pay. Most watchmen assumed the position in addition to their regular occupations by day.⁴⁶ Consequently, the history of the watch is punctuated by complaints that they slept while on duty. In 1757 the New York City Gazette described the watch as a

parcel of idle, drinking, vigilant Snorers, who never quell'd any nocturnal Tumult in their Lives; (nor as we can learn, were ever the discoverers of a Fire breaking out,) but would, perhaps, be as ready to join in a Burglary as any Thief in Christendom. A happy Set indeed, to defend the right and populous City against the Terrors of the night.⁴⁷

Watchmen were also objects of ridicule by the citizenry. They were called "Leatherheads," a derisive term which referred to the leather helmets worn by some.⁴⁸

The powers of the night watch were more limited than those of the constables. They did not have police powers and could arrest only if a crime was committed in their presence, or if they were acting under the direction of a police officer.⁴⁹ They had authority to question any person suspected of a wrongdoing and to arrest and take him before a justice of the peace.⁵⁰

As the urban population grew, the night watch became inadequate to deal with the problems of the cities. Civil authorities tried increasing the numbers of watchmen, and when that failed, they cre-

43. *Id.*

44. S. BACON, *supra* note 39, at 9.

45. R. LANE, *supra* note 37, at 10.

46. S. BACON, *supra* note 39, at 115.

47. J. RICHARDSON, *supra* note 38, at 10, *quoting* New York City Gazette, Feb. 21, 1757.

48. B. FOSDICK, *supra* note 35, at 61.

49. J. RICHARDSON, *supra* note 38, at 18.

50. R. LANE, *supra* note 37, at 10.

GOLDEN GATE LAW REVIEW

ated a day force separate from the night watch. Boston adopted the plan in 1838, New York in 1844.⁵¹ The two forces, however, proved no more effective than the single one.

From the beginning there were many weaknesses in the constable and watch system. The watch, whether composed of ordinary citizens or appointees, operated with a high degree of inefficiency. The constables, and sometimes watchmen, were also hampered by the fact that they were compensated by fees rather than a salary.⁵² In fact, the fee system led to serious problems throughout the system. Cooperation among officers was infrequent since it might result in their having to split a fee. They pursued those duties which would allow them to reap the greatest benefits. They searched for individuals for money even if there were no warrants out for them. When stolen property was involved, officers were less concerned with the offenders than with recovering the property—a more lucrative employment of their time. In some cases officer and thief cooperated to stage a crime and then split the reward money.⁵³

Other internal problems arose from the very nature of the watch system. Since the personnel operated on a rotation basis, officers could learn little about the people or areas they watched.⁵⁴ They received no training in handling emergencies and gained little experience on the job. Because watchmen received their jobs from politicians, “they made no attempt to interfere with the saloonkeepers and gangs of ‘shoulder hitters’ who provided the bulk of the politicians’ support.”⁵⁵ Since the appointments were controlled by the town authorities, the watchman might find himself out of a job after a change of parties. All these conditions produced low morale and lack of unity among the watch.

Constables fared little better than the watchmen because they were usually appointed on an annual basis and also had to spend a great deal of time seeking reappointment by currying favor with their sponsors.⁵⁶ Even when constables began to be treated as professionals, their ranks were peopled with many incompetent and inefficient individuals.

The basic deficiencies of the watch and constable systems ren-

-
51. B. FOSDICK, *supra* note 35, at 62.
 52. S. BACON, *supra* note 39, at 1.
 53. J. RICHARDSON, *supra* note 38, at 30-31.
 54. S. BACON, *supra* note 39, at 426.
 55. J. RICHARDSON, *supra* note 38, at 36.
 56. *Id.*

WHO'S WATCHING THE WATCHMAN?

dered them ill-prepared to deal with the unrest that occurred in many American cities during the first half of the nineteenth century. Numerous factors contributed to urban unrest. Among them were the continuous influx of immigrants into American cities and the tensions which arose between them and the native-born. In addition, riots occurred over labor and wage conditions, rivalry among fire companies, and abolitionist activities.⁵⁷ In most cases, city governments had to call for the aid of the state militia to quell the riots.⁵⁸

The riots of the 1840s provided an impetus for finding a more effective means of dealing with urban unrest. As a result, the first day and night police force in the United States was established in New York City in 1845. Other major cities soon followed suit. The establishment of the police force was not without opposition from many quarters, however.

The Search for Effective Controls

Like the English, Americans were faced with a conflict between the need for effective law enforcement and the fear of a standing army. They too sought to resolve this conflict by developing controls on the police. In England, the Metropolitan Police were directly under the jurisdiction of Parliament. In the United States, however, local involvement in and control of the police was maintained.⁵⁹ As a result, American police forces developed close ties to local political processes. In the first decades following the organization of the new forces, administrative controls were lodged in the hands of the mayor and city council.⁶⁰ This method of selection heavily favored political appointments. The positions were used to satisfy patronage demands and tenure was short.⁶¹ Generally, the chief of police was a figure-head. The real control was exercised by each ward captain. Discipline among the wards varied "according to the attention or skill and tact" shown by the captain.⁶²

Political involvement in partisan politics and a lack of internal discipline were not the only problems. From the outset, tenure was limited both to avoid the possible establishment of a standing army

57. *Id.* at 474, 538; R. LANE, *supra* note 37, at 22; J. RICHARDSON, *supra* note 38, at 28.

58. J. RICHARDSON, *supra* note 38, at 28.

59. G. CARTE, *AUGUST VOLLNER AND THE ORIGINS OF POLICE PROFESSIONALISM* 28 (1972) (unpublished thesis in University of California at Berkeley Library).

60. B. SMITH, *supra* note 36, at 184.

61. B. FOSDICK, *supra* note 35, at 68.

62. *Id.*

GOLDEN GATE LAW REVIEW

and to control the police officers more effectively. Eventually the inappropriateness of short tenure became apparent and in 1853 the New York legislature approved tenure for good behavior.⁶³ Residency requirements were also used to control the new forces. To ensure a feeling of responsibility to the community, policemen had to be residents of the city as well as the ward in which they were appointed and in which they served.⁶⁴ This requirement also encouraged a greater involvement in local politics.

In the first years, the police were undisciplined and unregulated because of their high degree of involvement in local politics, their short term of office and the lack of internal administration. One of the best illustrations of this undisciplined attitude was in the conflict over the issue of uniforms. Uniformed police were first urged to make the police more visible to citizens seeking help. It was also thought that uniforms would improve internal administration by making policemen more visible to their superiors. Members of the forces bitterly opposed the move because it "conflicted with their notions of independence and self-respect." In New York policemen dismissed for their refusal to wear a uniform even took their case to the courts, which ruled in favor of the commissioners.⁶⁵ Boston police were finally outfitted by 1859, New York police by 1860.⁶⁶

Each year the involvement in partisan politics increased, bringing new changes in personnel and policies.⁶⁷ Moreover, conditions in the cities and country as a whole were growing progressively worse in the years preceding the Civil War. The police, ill-disciplined and usually disorganized, found it difficult to deal with these conditions. Therefore, control of the forces was gradually taken over by independent administrative boards, beginning in the middle decades of the nineteenth century. The first board was created in Philadelphia in 1850.⁶⁸ The boards consisted of judges, mayors, city councilmen and private citizens. Most had only minimal experience with police forces; frequently their efforts to deal with the police were inexpert and meddling.⁶⁹ Police management continued to be uncertain and ineffective in the face of political involvement. Toward the end of the nineteenth century, control of local police forces was passed to the

63. J. RICHARDSON, *supra* note 38.

64. *Id.* at 49.

65. *Id.* at 65.

66. R. LANE, *supra* note 37, at 105.

67. B. SMITH, *supra* note 36, at 184.

68. B. FOSDICK, *supra* note 35, at 77.

69. B. SMITH, *supra* note 36, at 185.

WHO'S WATCHING THE WATCHMAN?

state legislatures.⁷⁰

The scheme was doomed from the beginning. The laws sought to be enforced were state laws, for it was believed that control by the state would assure equal enforcement. However, laws were not applied uniformly because the legislatures were controlled by the rural areas at the expense of larger cities. Also, political involvement remained at the heart of all problems. In 1857, a New York newspaper raged:

We all know that . . . the police seem powerless for good; that bold and dangerous criminals were never so bold and dangerous, that life and property were never so insecure; that gambling and prostitution and illegal trade were never so open and shameless; that the public sentiment of danger from violence was never so acute, nor with so much reason. And why is it? Because the policemen are politicians, getting the places as the reward of political service; because they dare not or will not offend the fellows who have fought shoulder to shoulder with them at the polls.⁷¹

Gradually, most cities realized the shortcomings of the plan and abandoned it. They looked for better ways to control the police forces in order to ensure a more organized, responsive system.

The desire for local control provided the impetus for another solution. In the first decade of the twentieth century commission government charters were adopted by many cities. The system combined executive and legislative powers in a commission elected by popular vote. The various departments of city government were then distributed among the members of the commission. Because supervision of department activities was combined with other city services, control was rendered fragmentary and weak. Thus, the concerted attention critical to a well organized and efficient policy system was absent. Most cities have abandoned the system, and its readoption does not appear likely.⁷² Police administrators are now appointed by most city governments, rather than being elected.⁷³ Some of the political problems are thereby avoided, but police supervision still remains an issue.

70. *Id.* at 186.

71. B. FOSDICK, *supra* note 35, at 81, quoting New York Tribune, Feb. 5, 1857.

72. *Id.* at 187.

73. *Id.* at 188.

GOLDEN GATE LAW REVIEW

A number of other controls were not developed until later in the twentieth century. The majority were attempts to improve the quality of the personnel selected for police work, through education, training and inducements to be a "good" police officer, such as compensation and promotions. External controls—police review boards, judicial processes and ombudsmen—have also been developed to regulate the behavior of police. Currently, the public is still attempting to develop effective controls that will limit the powers they have given the police.

There are several types of internal controls that regulate police. One of the first to appear in the twentieth century was formal training.⁷⁴ Police training schools remained rare and negligible in effect, however, until well into the 1920s.⁷⁵ The greatest spur to the development of an effective police selection process was the publication of the Wickersham Commission report in 1931. In that study, it was reported that: "1) police corruption was widespread and training was almost non-existent; 2) inefficiency was the rule rather than the exception; 3) communication systems were ineffective; 4) political interference in police operations hampered honest enforcement efforts; and 5) police executives were often ill-suited to handle their jobs."⁷⁶ Police departments moved to correct some of these problems by improving working conditions with the establishment of a merit promotion system and with attempts to lessen the effects of external politics. Police training and education as methods of professionalizing the forces also gained wide acceptance at this time.

Other methods of improving the personnel have included the development of background checks, medical examinations, tests of physical agility and prowess, oral examinations and written civil service tests. In the past twenty years, the use of psychiatric screening and psychological testing has become an important factor in screening out undesirable individuals.⁷⁷

Employee participation, job mobility (vertical and horizontal) and standardization of positions have improved the quality of personnel and made the position of police officer a more desirable one.⁷⁸ Inducements to stay a "good" policeman have also increased since the beginning of the century. A rise in status, compensation (salaries

74. The first training schools were opened in the 1890's. W. BOPP & D. SCHULTZ, *A SHORT HISTORY OF AMERICAN LAW ENFORCEMENT* 84 (1972).

75. B. SMITH, *supra* note 36, at 131.

76. W. BOPP & D. SCHULTZ, *supra* note 74, at 107.

77. J. SNIBBE & M. HOMA, *THE URBAN POLICEMAN IN TRANSITION* 5 (1973).

78. G. BERKELEY, *THE DEMOCRATIC POLICEMAN* 29 (1969).

WHO'S WATCHING THE WATCHMAN?

have risen slowly but steadily since 1910) and promotion on the basis of criteria related as closely as possible to the police function and goals have been some of the improvements.⁷⁹

Internal controls are perhaps the most important method of regulating police conduct. Officers almost always act individually. Only in recent years have police departments attempted to improve their administrative effectiveness. Since the formation of urban police forces in the United States, the chain of command has paralleled that of the military. This practice continues today although it is now less emphasized.

The major types of external controls are judicial action, police review boards and ombudsmen. The most significant of these, of course, is judicial action. There are now six judicial remedies open to individuals to punish improper police behavior. They include either civil or criminal suits against individual policemen, actions against the department or municipality, injunctions against certain specified activities of a department and actions under the federal civil rights acts. It is possible also to allege a defense to a criminal charge by showing discriminatory enforcement of the law. Further restraints on police actions might be made through the use of the exclusionary rule.

The independent police review board was originally established to hear public grievances against individual officers. Although the ideas originated in the 1930s, the first board was not established until 1958 in Philadelphia.⁸⁰ Impetus for the creation of boards in other cities in the 1960s came primarily from minority groups who felt they had little opportunity to have their complaints heard. The police have been greatly opposed to the formation of such boards. Although the newness of these boards has precluded the availability of substantial data on their effectiveness, the subject has generated much exploration. Generally, though, the boards have many inadequacies and their overall success is in doubt.⁸¹

III. THE PRIVATE POLICE INDUSTRY

The preceding sections make it clear that the growth of public police has been characterized by a concomitant growth in controls over the exercise of police power. What has been the pattern of regula-

79. ABA, *STANDARDS RELATING TO THE URBAN POLICE FUNCTION* 147 (1972).

80. W. BOPP & D. SCHULTZ, *supra* note 74, at 145.

81. See Berger, *Law Enforcement Control: Checks and Balances*, 4 *CONN. L. REV.* 467 (1971).

GOLDEN GATE LAW REVIEW

tion and control over private police activity? The following sections, which represent an update and expansion of the Rand study, set forth a detailed analysis of developments in the past five years. The Rand study, for instance, left unanswered the question of how to evaluate the various systems of private police regulation which do exist, for the study failed to provide any standard by which the controls imposed on private police by the respective states could be measured for adequacy or inadequacy. It merely assumed that some controls were in order and advocated state action on a series of recommendations.

The standard adopted by the authors grows out of the recognition that the American tradition has been characterized by rather extensive control over the public police power. That condition has convinced the authors that the controls over public police are the standard by which controls over private police are to be measured. This is not to suggest that every control or regulation of public police should be applied identically to private police. But, what is recommended is that the pattern of regulation over private police activity needs to be substantially parallel to that of public police. The data that have been assembled in the following sections provide a basis for contrasting present private police regulation with English and American regulation of public police described above.

Security and Patrol Guards

The various statutory enactments utilize the following terms in specifying who are security guards: contract guards, patrol guards, watchmen, armed guards, private guards, patrolmen, special officers, armored car personnel and alarm service personnel. Though the nomenclature differs, the fundamental services rendered by these individuals remain the same. Guards "protect or attempt to protect persons or property from damage, injury, loss or other criminal act." Patrolmen perform identical functions as guards "but do so at a number of different physical locations; they usually travel (on foot or in a vehicle) on public property between these locations."⁸² The contract guard or patrol agencies referred to in the statutes encompass the individuals, partnerships and corporations which provide privately employed guards or patrolmen for a fee.

Thus, the security and patrol guards provide one consistent function for society—protection of property and persons. Yet, an in-

82. 3 RAND, *supra* note 2, at 2.

WHO'S WATCHING THE WATCHMAN?

finite variety of situations arise wherein many different services of such individuals are required. The diversity of circumstances demands ever-shifting degrees of reaction and responsiveness in order to furnish adequate protection. It is this activity which is under scrutiny, because the absence of uniform and orderly controls can and has permitted widespread abuse.⁸³

The abuse or misuse of authority conferred upon security and patrol guards in part comes from the lack of any type of regulation in sixteen states.⁸⁴ Of the thirty-five states which do mention security and patrol guards, five states have adopted provisions which are totally devoid of regulatory features.⁸⁵ Two of these latter states merely acknowledge the right of cities and counties to have security and patrol guards and to adopt whatever measures they deem necessary for control or guidance.⁸⁶

When laws do exist, the statutory language is often misleading as to specific coverage. For example, twenty-two out of the thirty-five statutes embrace other spheres of the private police industry, *e.g.*, detective agencies and contract investigation.⁸⁷ This broadened mantle has resulted in confusion in applying the statutes and inefficiency in interpreting them.

The lack of uniform nationwide coverage has also resulted in a diversity of state regulatory agencies the function of which is to carry out the letter of their respective state statutes. The Department of State Police is named as the regulatory agency in five states.⁸⁸ Four other states leave the task to the Secretary of State,⁸⁹ and five others turn the job over to the State Board of Private Detectives.⁹⁰ The rest of the security and patrol guard agencies and employees are under the

83. For a discussion of control of private police in California in greater depth see *Private Police in California: A Legislative Proposal*, 5 *GOLDEN GATE L. REV.* 115 (1975).

84. Alabama, Alaska, Arizona, Colorado, the District of Columbia, Idaho, Kansas, Kentucky, Mississippi, Montana, Oregon, Rhode Island, South Dakota, Utah, Washington and Wyoming. Note: space limitations preclude citation of all the state statutes surveyed. A full list of the relevant statutes can be obtained by writing to: Administrative Assistant, *Golden Gate Law Review*, 536 Mission Street., San Francisco, California.

85. Louisiana, Missouri, Oklahoma, Tennessee and Virginia.

86. Missouri and Virginia. Virginia requires that the city or county have a population of over 150,000.

87. Arkansas, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, South Carolina, Texas, Vermont, Virginia, West Virginia and Wisconsin.

88. Connecticut, Delaware, Indiana, Maryland and Michigan (wherein local public officials must approve the granting of the state license if the business has an office in that locality).

89. Florida, Nebraska, New York and West Virginia.

90. Hawaii, Nevada, North Carolina, Texas and Vermont.

GOLDEN GATE LAW REVIEW

authority of some other bureaucratic agency in state government.⁹¹

Most state agencies require security and patrol guard agencies, corporations and other business enterprises to be licensed. The licensing requirement, however, is basically for registration rather than for regulatory purposes, and often does not include employees of licensees at all.

This means that approximately one-third of the nation neither recognizes nor accounts for security and patrol guard agencies and personnel. The rest of the nation, having established some degree of regulatory policy, is oddly divided as to who should oversee it. In short, no comprehensive, uniform plan exists relative to licensing and/or registering one of the most crucial segments of private police. The nonexistence of this primary control inevitably leads to the absence or inadequacy of other essential means by which society should watch its watchmen. This includes both external and internal measures. To illustrate, it is necessary to return to those states which do have licensing provisions.

First, the requisites for obtaining a license are cursory. In only eight states are written examinations required prior to securing a license.⁹² In two other states, examinations are required only at the discretion of the director of the appropriate regulatory agency.⁹³ And, these examinations are generally limited to applicants for a license, notably excluding employees of such persons—the individuals who have the contact with society.

Of greater import, however, is the prerequisite of some relevant experience prior to making an application for a license. The length and type of such experience is greatly varied, indicating an absence of understanding as to the knowledge and skills necessary for a rational functioning of the security and patrol industry. Previous employment in one of the following occupations is mentioned most often as providing the requisite experience: full-time licensed investigator; public police officer;⁹⁴ sheriff or deputy; police officer engaged in investiga-

91. Iowa, Massachusetts, Minnesota (Commissioner of Public Safety); North Dakota (Attorney General); Ohio, Wisconsin (Dep't of Commerce, Licensing Division); California (Bureau of Collection and Investigative Services); New Mexico (State Bureau of Private Investigation); Arkansas (Investigator Licensing Board); North Carolina (Private Protective Services Board); Hawaii (Board of Private Detectives and Guards); Nevada (Detective Licensing Board); Georgia, Texas, Vermont (State Board of Private Detectives); Louisiana, Illinois (Dep't of Registration and Education); and Maine (Governor).

92. Hawaii, Illinois, Iowa, Nevada, New York, North Dakota, Ohio and Texas.

93. California and North Carolina.

94. Illinois and Vermont require that the individual have held a rank higher than patrolman.

WHO'S WATCHING THE WATCHMAN?

tive or detective service; private security employee; F.B.I. or state bureau investigator; supervision in industrial security guard or patrol service; and insurance adjuster.

The length of prior experience required is as diverse as the type called for. The breakdown is as follows: three states require only one year of experience;⁹⁵ seven states ask for two years of experience;⁹⁶ four states call for three years of experience;⁹⁷ five states demand four to five years of experience;⁹⁸ and three other states have some combination,⁹⁹ depending upon the type of experience and whether the applicant has a college or university education. Nebraska asks for only some experience consonant with the public interest. New Jersey alone has established that employees of licensees must also have five years of experience or training in order to qualify in their field.

The age requirement for securing a license is relatively low when compared to the length of experience required. For individuals applying as licensees of security and patrol businesses, six states have established a minimum age of eighteen;¹⁰⁰ one state defines twenty years of age as the minimum;¹⁰¹ twelve states call for the applicant to be twenty-one years of age;¹⁰² nine states make twenty-five years of age the minimum.¹⁰³ Only four statutes mention any age requirement for employees,¹⁰⁴ with Hawaii requiring the individual to be twenty-one years of age, Georgia and Wisconsin allowing an employee to be only eighteen, and Michigan calling for the employee to be twenty-one years old unless the regulatory agency gives permission to persons between eighteen and twenty-one. Interestingly, the eighteen-year-old age minimum for licensees now established in six states have evolved since the 1970 Rand survey was made, although the experience requirements have remained constant.

No educational level whatsoever is demanded, except in the Hawaii and Michigan statutes wherein licensees must be high school graduates (or the equivalent) and employees need only have completed the eighth grade. All other statutes are silent on this subject.

95. California, Maine and New Mexico.

96. Georgia, Indiana, Nevada, New York, Ohio, South Carolina and Vermont.

97. Florida, Illinois, Pennsylvania and Texas.

98. Connecticut, Delaware, Hawaii, Maryland and New Jersey.

99. Michigan, North Carolina and West Virginia.

100. California, Georgia, Iowa, North Carolina, North Dakota and South Carolina.

101. Maine.

102. Arkansas, Florida, Illinois, Indiana, Nebraska, Nevada, New Hampshire, New Mexico, Ohio, Pennsylvania, Texas and Vermont.

103. Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Michigan, New Jersey, New York and Wisconsin.

104. Georgia, Hawaii, Michigan and Wisconsin.

GOLDEN GATE LAW REVIEW

In twenty-four states the applicant must also be a United States citizen.¹⁰⁵ Five states require that the license applicant be a resident of the state for one year prior to making an application,¹⁰⁶ while Connecticut, Georgia and Minnesota simply ask the applicant where his or her residence has been for the past five years. Except in Georgia and New Jersey, where both licensees and employees must be United States citizens, employees are not mentioned.

For completion of the licensing procedure, twenty-five states demand one to three photographs and/or sets of fingerprints from the license applicant.¹⁰⁷ But only five states call for prospective employees of the licensee to submit these items to the licensing regulatory agency.¹⁰⁸ The photographs and fingerprints are used by the regulatory agency, or some other designated body, to assist in running a criminal records check on the applicant. The above, along with three to five reference letters (again, required only for license applicants) attesting to "character," apparently provide the regulatory agencies with sufficient information to pass judgment for either granting or denying the license.

Denial of a license may result from nonfulfillment of some or all of the aforementioned requirements, depending on the statutory language. In addition, some states refuse to issue licenses on other grounds. "In many states grounds are characterized by phraseology such as 'not of good moral character, integrity, competency, reputation or honesty.'"¹⁰⁹ Other bases frequently applied to deny licenses include prior felony convictions, falsified application information, a prior conviction of a crime involving moral turpitude, having been adjudged mentally defective, receipt of a dishonorable discharge from military service, illegal use or possession of a dangerous weapon, and conviction of certain other crimes constituting misdemeanors. Five states are absolutely silent regarding any basis for denying a license.¹¹⁰ Another ten states specify that only a felony conviction or a

105. Arkansas, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Texas and Wisconsin.

106. Hawaii, Indiana, Michigan, Texas (Texas actually requires state citizenship), and Wisconsin. Nevada requires the license applicant to have resided in the state for only six months.

107. Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania, South Carolina, Texas and West Virginia.

108. Georgia, Michigan, New Mexico, North Carolina and Ohio.

109. 3 RAND, *supra* note 2, at 9.

110. Delaware, Louisiana, Missouri, Tennessee and Virginia.

WHO'S WATCHING THE WATCHMAN?

lack of honesty, truthfulness and the like would serve as grounds for withholding a license.¹¹¹ The rest of the statutes have varying combinations of the above, with approximately only one-third of the states setting forth fully comprehensive and meaningful standards which must be adhered to.

Generally, the grounds for suspension or revocation of a license are very similar for denial of a license, although of five states the bases for suspension or revocation are much broader and more detailed than those for denial.¹¹² Failure to comply with and violation of the respective licensing provisions (*e.g.*, falsification on applications, not maintaining a proper bond) are the most frequently cited causes for suspension or revocation. Most states provide for a public hearing on the alleged offense as established by administrative procedure. From available data, the extent to which this avenue is utilized for rectification or punishment appears unclear.¹¹³ However, when provided for, this method of control could and should be employed to maintain a watchful eye on private security guard and patrol agencies and their employees.

Two other methods of control which exist in varying degrees encompass the amount of a license fee and the amount of a bond which must be posted upon securing a license. Individuals who obtain a license must pay an initial fee ranging from \$10 to \$750, with a renewal rate running about half of the original fee. The fee depends, too, upon whether an individual or a corporation is seeking licensing. The average fee per individual licensee appears to be in the \$100-to-\$200 bracket. Employees are required (though infrequently) to pay a nominal \$2-to-\$10 registration fee. Louisiana's license fee runs from \$150 to \$200, depending on the amount of gross receipts of the business. Three states do not mention fees at all.¹¹⁴

Twenty-eight states will issue the license only after a surety bond has been posted with the regulatory agency. As with fees, the amount of the bond or insurance depends upon whether an individual or a corporation is applying for a license. For an individual, the amount required usually ranges from \$2,000 to \$3,000. Agencies or corporations have a higher rate: eight states require from \$2,000 to \$5,-

111. Hawaii, Iowa, Maine, Nebraska, New Hampshire, North Dakota, Oklahoma, Pennsylvania, Vermont, and Wisconsin.

112. Florida, Illinois, Indiana, Nevada and Texas.

113. Penalties now provide for a fine of anywhere from \$100 to \$1,000 and/or six months to two years imprisonment.

114. Missouri, Oklahoma and Virginia.

GOLDEN GATE LAW REVIEW

000;¹¹⁵ another eight require \$5,000;¹¹⁶ and eleven more states demand a \$10,000 bond.¹¹⁷ Vermont requires a \$25,000 bond,¹¹⁸ and Ohio offers a choice—a \$400,000 bond, or insurance of \$100,000 per person and \$300,000 per occurrence for personal injury, plus \$100,000 property damage coverage.¹¹⁹ It appears that the high bonding and insurance requirement is designed to cover abuse of authority by licensees and their agents if complaints are lodged against them. The rationale is that the more money it takes to safeguard or control licensing standards, the less likely it is that the personnel will misuse their authority.

Bonding is not, however, a substitute for proper training programs and curricula, which could provide an infinitely greater amount of regulatory control over the actions of security personnel and their employees. As of July, 1974, only four states mention any kind of training as a prerequisite. Michigan simply prescribes training for licensed in-house security forces through the department of state police.¹²⁰ In Ohio training is obligatory only if the locality requires the security personnel to obtain a private police commission.¹²¹ California merely says firearms training will become mandatory under new regulations. Georgia, however, requires each licensee to have a competent training officer and an adequate training program.¹²²

As is apparent, though, the internal controls are nebulous, sporadic, diverse, and wholly inadequate for the type of service and protection which security and guard agencies hold themselves out as providing. This is indeed crucial because only three states expressly deny security personnel legal authority above that of an ordinary citizen.¹²³ Delaware and Hawaii grant their guard or patrol personnel the power to make arrests, while most other statutes extend this type of police authority to guards only when they are on the property of the place where employed.

Twelve states do permit guards to carry concealed or dangerous

115. California, Delaware, Iowa, Maryland, New Jersey, New Mexico, North Dakota and West Virginia.

116. Florida, Hawaii, Illinois, Indiana, Maine, Massachusetts, Minnesota and North Carolina.

117. Connecticut, Georgia, Michigan, Nebraska, Nevada, New Hampshire, New York, Pennsylvania, South Carolina, Texas and Wisconsin.

118. V. STAT. ANN. § 35-9502.

119. OHIO REV. CODE ANN. § 4749.03(A)(4) (1973).

120. MICH. STAT. ANN. § 18.185(31) (1967).

121. OHIO REV. CODE ANN. §§ 109.71, 109.78 (Additional Supp. 1973). This commission is unconnected with any state licensing or registration requirements for private police except for armed personnel at educational institutions.

122. GA. STATS. ANN. § 84-6505(b)(6) (1974).

123. Arkansas, California and Ohio.

WHO'S WATCHING THE WATCHMAN?

weapons if an additional license is obtained.¹²⁴ The other states are silent on this subject. Eleven states permit security and patrol guards to have special identification cards, badges, and uniforms;¹²⁵ four permit identification cards and badges;¹²⁶ and six permit special identification cards.¹²⁷ Due to all these privileges, private security and patrol guards assume the guise of public law enforcement officers, but are not subject to the regulations which have been established to control the public police.

Private Detectives and Investigation Agencies

Private detectives and investigation agencies are a familiar part of the growing numbers of individuals and businesses engaged in the private police industry. On a contract fee basis, investigative services that utilize the techniques available to public investigative agencies such as the F.B.I., state, and municipal police forces are available to the private sector. While the scope of the public police investigator's role is limited both to those areas serving the public need and by the amount of tax dollars allocated, and is subject to restraints such as the protection of constitutional rights, similar limitations are not placed on the private investigator. This absence of restraints is illustrated by the lack of uniformity in regulation by the individual states.

Traditionally, private detective services have been used to obtain information on individuals not readily or routinely available through public sources. Currently, and most frequently, this information is solicited for either business or litigation purposes. While the need for private investigative services is real, the sophistication and range of modern investigation devices demands the establishment of standards equally applied and adhered to by both public and private police. Otherwise, abuses, particularly in the area of invasion of privacy, are bound to occur. This need for uniformity becomes greater when viewed in light of state statutes that permit only ex-police officers the privilege of applying for private detective status.

Where every public police force regardless of its nature is subject to state regulation, private detectives and investigative agencies are

124. California, Delaware, Florida, Georgia, Illinois, Maryland, Massachusetts, New Jersey, New Mexico, North Dakota, South Carolina and Wisconsin.

125. California, Connecticut, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, New Mexico, New York and Ohio. The uniforms must be "dissimilar" to those worn by public police, and the badges are supposed to state the company or agency for which the private security personnel works.

126. Arkansas, Delaware, Iowa and Pennsylvania.

127. Florida, Illinois, Indiana, Nevada, North Dakota and Texas.

GOLDEN GATE LAW REVIEW

regulated at the state level in only thirty-five states.¹²⁸ Whereas the local or state police commissioner is always responsible for the regulation and administration of the local and state public police, regulation of the private detective industry is delegated to a variety of state agencies. Consequently, a variety of purposes are sought by the regulatory statutes, few of which tend to establish and maintain standards on an equal par with those required of their public counterparts. The types of agencies responsible for regulating licensing of this industry are as follows:

<u>Type of Agency</u>	<u>Number of States</u>
Public law enforcement agencies ¹²⁹	12
Revenue collecting agencies ¹³⁰	8
Private detective boards ¹³¹	6
Secretary of State ¹³²	5
Attorney General ¹³³	2
Governor ¹³⁴	1
Miscellaneous agencies ¹³⁵	3
None at state level ¹³⁶	4

One-third of the states regulate these services primarily as a revenue raising device by requiring a license to do business. An equal proportion utilize law enforcement agencies for regulation. While statutes may be comparatively comprehensive in scope, choice of the regulating agency greatly affects the manner, sphere and direction of such regulation. The probability that a revenue collecting agency will have the expertise, interest and facilities to enforce the statute with respect to effectively regulating standards is minimal. Use of government agencies whose primary purpose is other than regulation of law

128. Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, New Mexico, New York, North Carolina, North Dakota, Ohio, South Carolina. Ten states have no regulatory laws at all: Idaho, Kentucky, Mississippi, Missouri, Montana, Oklahoma, Oregon, South Dakota, Utah and Washington. Four states regulate, but leave the licensing to cities or non-state level agencies: Pennsylvania, Rhode Island, Virginia and Wyoming. Two states, Alabama and Alaska, regulate at the state level, but solely for the purpose of requiring a license and fee.

129. Arizona, Arkansas, Connecticut, Delaware, Indiana, Iowa, Massachusetts, Minnesota, New Hampshire, New Jersey, North Carolina and South Carolina.

130. Alabama, Alaska, California, Louisiana, New York, Ohio, Tennessee and Wisconsin.

131. Georgia, Hawaii, Nevada, New Mexico, Texas and Vermont.

132. Colorado, Florida, Michigan, Nebraska and West Virginia.

133. Kansas and North Dakota.

134. Maine.

135. Illinois, Maryland and the District of Columbia.

136. Pennsylvania, Rhode Island, Virginia and Wyoming.

WHO'S WATCHING THE WATCHMAN?

enforcement personnel further indicates an absence of proper concern for the quality of statutorily established regulatory efforts.

Six states¹³⁷ use private detective boards comprised of individuals usually chosen from within the field to regulate the industry. Since the effectiveness of the statute is dependent upon the individuals chosen to enforce it, the use of such individuals tends to promote the status quo rather than create an impetus for the upgrading of standards and qualifications within the industry. On the other hand, the use of law enforcement agencies as the regulatory body gives the breadth of experience necessary to create and maintain parallel standards for public and private investigators, and at the same time, to utilize its expertise to provide a thorough evaluation of licensees according to statutory requirements.

Finally, regulation through such disparate state agencies prohibits any meaningful and effective compilation of data on the nature and character of the private detective and investigative field, both within the individual states and on a national basis. National statistics are consequently inaccurate and incomplete since data can be obtained only through cumulatively studying each of the states that does regulate this field and hypothesizing about the twelve states¹³⁸ that do not.

Further inaccuracies arise because the majority of statutes are ambiguous as to precisely who must obtain a license. In four states,¹³⁹ a licensee may employ unlicensed detectives without registering those individuals. South Carolina alone expressly provides that the licensee is the only member of the business to perform investigations.¹⁴⁰

The Degree of Detective or Investigator Regulation

An examination of the relevant state laws reveals that regulatory provisions exist in the general areas of individual qualifications, industrial standards, and revenue collecting requirements. Analysis of the degree of regulation in each of these areas by priority of concern was determined by the frequency with which a specific qualification was regulated. The priority of concern is indicative of the overall purpose and effectiveness of the statutes.

At the outset, it should be noted that although thirty-five states technically regulate this field in some manner on the state level, regu-

137. Georgia, Hawaii, Nevada, New Mexico, Texas and Vermont.

138. See note 128 *supra*.

139. Arizona, North Dakota, Virginia and West Virginia.

140. S.C. CODE ANN. § 56-646.1-17 (1974).

GOLDEN GATE LAW REVIEW

lation in two other states is limited solely to the extent that a fee be paid in exchange for a license.¹⁴¹ The method of regulation varies according to whether an investigative agency or individual private detective business is involved. Investigative agencies must be licensed in twenty-four states;¹⁴² in twelve states employees of these agencies must be registered or licensed, or must meet specific qualifications.¹⁴³ Private detective businesses are licensed in sixteen states,¹⁴⁴ and employees must be either registered or licensed, or must meet specific qualifications in fifteen states.¹⁴⁵

The most frequently cited requirement of the thirty-seven states is the payment of a license fee.¹⁴⁶ Fees range from \$10 up to \$750, and depend on the nature of the license, agency or individual. Although the processing of the license and the fee payment do not seem monetarily or financially prohibitive, the range of fees paid is inadequate to cover the cost of effectively regulating the field. Basic costs like record keeping and minimal evaluation of prospective licensees are barely covered by license fees. In general, license fees appear to be regulatory, but in fact are not. This contention is further supported by the fact that in sixteen states¹⁴⁷ additional minimal fees are charged for license renewal, registering employees, examination and application fees.

The license period is of next greatest importance. Licenses are valid for one year in twenty-two states¹⁴⁸ and two years in ten states,¹⁴⁹ with three states not specifying the time period involved.¹⁵⁰

141. See note 128 *supra*.

142. Alabama, Arizona, Arkansas, California, Colorado, the District of Columbia, Florida, Illinois, Iowa, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, New Hampshire, New York, North Dakota, South Carolina, Tennessee, Vermont, Virginia and Wisconsin.

143. Arkansas, California, Illinois, Iowa, Maine, Michigan, Minnesota, New Hampshire, New York, South Carolina, Vermont, and Wisconsin.

144. Connecticut, Delaware, Georgia, Hawaii, Indiana, Maine, Maryland, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Pennsylvania, Texas and West Virginia.

145. Connecticut, Delaware, Georgia, Hawaii, Indiana, Maine, Maryland, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Ohio, Pennsylvania and Texas.

146. All states but Idaho, Kentucky, Mississippi, Missouri, Montana, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Virginia, Washington and Wyoming.

147. Arizona, Arkansas, Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Nevada, New Jersey, New Mexico, North Dakota, Ohio, Texas, West Virginia and Wisconsin.

148. Arizona, Arkansas, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Nevada, New Hampshire, North Dakota, Ohio, South Carolina, Tennessee, Texas, Vermont, West Virginia and Wisconsin.

149. California, Colorado, Delaware, Indiana, Michigan, Minnesota, New Jersey, New Mexico, New York and Pennsylvania.

150. Nebraska, North Carolina and Rhode Island.

WHO'S WATCHING THE WATCHMAN?

Duration of registration periods of employees and registration fees for employees are seldom stated in the codes.

Revocation of a license is of equal importance, and thirty-five states prescribe conditions under which a license may be revoked.¹⁵¹ Grounds for revocation most often cited are: (1) misrepresentation on the license application; (2) "just cause"; and (3) conviction of a felony. In nine states revocation provisions apply equally to employee registrants and licensees.¹⁵² However, in the remaining states, the statutory provisions are generally unclear as to whether requirements are applicable to the licensed agency or the registered employee or both. Judicial interpretation is lacking in this area, and presumably revocation statutes would apply only to licensees unless clearly stated otherwise. Nevertheless, revocation standards do establish clear ways and means to promote and develop expertise in the field. Eight states provide a mechanism, usually an administrative hearing, to formalize the revocation and provide a right to appeal in a state court of law.¹⁵³ The extent to which revocation is used and of its practicality as a viable regulatory tool cannot be determined from the statutes; but the provision decidedly exists, no doubt with the expectation that its threat may be as effective as its use.

Statutory provisions in thirty-four states establish penalties for violation of the statutes.¹⁵⁴ The penalty usually stipulates a fine and/or imprisonment. Fines range from not less than \$500 to not more than \$5,000, and imprisonment from six months to a maximum of one year. Unless the statute is silent, violation is usually classified as a misdemeanor. Penalties are generally imposed for violating the code provisions, but are also imposed for falsifying application material, impersonating a law enforcement officer, disobeying court orders, carrying dangerous weapons illegally, misleading the public, using illegal means to collect debts, manufacturing evidence, failing to maintain bond coverage, and using unnecessary force or violence.

151. Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, West Virginia, Wisconsin.

152. Indiana, Maine, Nebraska, Nevada, New Jersey, Pennsylvania, South Carolina, Texas and Wisconsin.

153. Georgia, Indiana, New York, Texas, Vermont, West Virginia, Wisconsin and the District of Columbia.

154. Arizona, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont and Wisconsin.

GOLDEN GATE LAW REVIEW

The posting of a bond or the purchase of a minimum amount of insurance is the fourth most regulated area, provided for by thirty-three states.¹⁵⁵ Insurance and bond amounts vary from \$1,000 to \$2,000 in the majority of states. However, the statutes dealing with this requirement seldom specify whether the bond or insurance amount need be maintained per year or per incident. Fourteen states require that a minimum bond or insurance coverage of \$10,000 or more be posted with the appropriate state authority.¹⁵⁶ In light of the extensive injury that can be anticipated from the nature of private investigative work, these minimal bonding provisions are clearly intended as part of the cost of doing business rather than as a protective measure for the public that may be seriously harmed. States that have utilized the bond statutes to effectuate an adequate and responsible protection mechanism for the public are discussed in the last section of this article.¹⁵⁷

The fifth most regulated area is the requirement of a criminal record check of the licensee. Where the licensee is an investigation agency, the criminal record check is required of the officers of the company only. No individual convicted of a felony is eligible for a license under the statutes. Although the licensee in thirty-one states must meet this requirement,¹⁵⁸ twelve states additionally require that employees of the licensee have no record of a felony conviction.¹⁵⁹ In fifteen states where employees are registered or licensed, a separate criminal record check must be made prior to receiving registration of licensing.¹⁶⁰ Recognizing that, as of 1969, an estimated 32,000 private detectives were licensed and that the licensing requirements are enforced by diverse state agencies whose sole function is seldom regu-

155. Arizona, California, Colorado, Connecticut, Delaware, the District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont and Wisconsin.

156. Colorado, Connecticut, the District of Columbia, Georgia, Maine (non-residents only), Michigan (corporations only), Nebraska, Nevada, New York, Ohio, Pennsylvania, Texas, Vermont and Wisconsin (agencies only).

157. See text accompanying notes 247-52 *infra*. In addition, New Mexico requires all claims against bonds or insurers to be reported.

158. Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Texas, Vermont and West Virginia.

159. Delaware, Georgia, Hawaii, Illinois, Maine, Nebraska, New Jersey, New York, Pennsylvania, South Carolina, Texas and Wisconsin.

160. Arkansas, Connecticut, Georgia, Illinois, Indiana, Maine, Maryland, Nebraska, Nevada, New Jersey, New Mexico, Ohio, South Carolina, Texas and Wisconsin.

WHO'S WATCHING THE WATCHMAN?

lation of the private detective industry, it is unlikely that accurate and criminal records checks are regularly conducted.¹⁶¹

Because statutory requirements for licensing such as fees, length of license, grounds for revocation, penalties for violation of the statutes, and criminal records checks are those most often enacted, their frequency indicates a concern for administrative procedures. And although these requirements regulate the field in a bureaucratic manner, actual controls through statutes are seldom achieved without additional provisions regarding the personal qualifications of the licensee.

In this area of personal qualifications, age of the licensee is most notable. Twenty-seven states have minimum age limits. Eighteen is the minimum age in six states,¹⁶² twenty-one in eleven states,¹⁶³ and twenty-five in nine states.¹⁶⁴ One state requires that the applicant have reached the age of majority.¹⁶⁵ Several states provide that if the licensee is an agency, twenty-five is the minimum age, whereas employees or registrants may be younger.¹⁶⁶

The requirement of prior experience in twenty-seven states would appear to raise the minimum age de facto.¹⁶⁷ Generally, the prior experience requirement entails three years' experience as a peace officer on a police force. Two states require that the rank of detective be achieved.¹⁶⁸ That many ex-public policemen enter this field either as private detectives or members of an investigative agency no doubt adds to the quality and expertise of the industry because of the rigorous training required of public peace officers. The prior experience requirement is therefore probably the most substantial control the states exert over the quality of their licensed private detectives and investigative agencies, considering that three states¹⁶⁹ require specialized training and only three other states¹⁷⁰ establish minimal educational standards as prerequisites.

161. 1 RAND, *supra* note 2, at 11, Table 1. It should be emphasized that the figures used by the Rand study included data only through 1969.

162. California, Georgia, Iowa, North Carolina, North Dakota and South Carolina.

163. Arkansas, Florida, Illinois, Indiana, Kansas, Nebraska, Nevada, New Hampshire, Ohio, Texas and Vermont.

164. Connecticut, Hawaii, Maryland, Massachusetts, Michigan, New Jersey, New York, Pennsylvania and Wisconsin.

165. N.M. STAT. ANN. § 67-33-13 (1974).

166. Connecticut, Hawaii, Texas and Wisconsin.

167. Arizona, California, Connecticut, the District of Columbia, Florida, Hawaii, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Texas, Vermont, West Virginia and Wisconsin.

168. Maryland and Massachusetts.

169. Hawaii, Ohio and South Carolina.

170. Hawaii, Michigan and West Virginia.

GOLDEN GATE LAW REVIEW

In addition, thirty states control the quality of the licensees by specifying grounds for denying the application.¹⁷¹ Grounds for denial often include a felony conviction or the lack of good moral character. Interestingly enough, no state lists personal incompetence or lack of expertise in the field as a basis for denial, although eleven states require that a qualifying examination be taken.¹⁷² Sixteen states require references from three to five individuals who reside in the area where the licensee intends to work.¹⁷³ Other means of control by the regulatory agencies exist in the form of a statutory requirement that applicants be state residents or United States citizens. Private detectives and officers of investigative agencies must possess United States citizenship in twenty-six states.¹⁷⁴ However, only eight states require that licensees be state residents.¹⁷⁵

Finally, twenty-eight states have enacted fingerprinting requirements for private detectives and licensees of investigative agencies.¹⁷⁶ This requirement apparently is the method used to prevent persons with felony convictions from being licensed. However, registrants or employees who perform detective or investigative functions appear exempt from supplying fingerprints in twelve of the states which require fingerprints from licensees.¹⁷⁷ An additional method of identification in twenty-five states is the requirement that photographs be submitted with the application.¹⁷⁸ Again, however, employees and registrants operating under a licensee are not subject to this qualification. The use of photographs and fingerprints also enables a state to

171. Arizona, Arkansas, California, Connecticut, the District of Columbia, Florida, Hawaii, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Texas, Vermont, West Virginia and Wisconsin.

172. California, Hawaii, Illinois, Iowa, Nevada, North Carolina, New York, North Dakota, Ohio, Texas and Vermont.

173. Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Texas, Vermont, West Virginia and Wisconsin.

174. Arizona, Arkansas, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, New Mexico, New York, Hawaii, Iowa, Kansas, Minnesota, Nevada, Pennsylvania, South Carolina, Texas and Wisconsin.

175. Arizona, Connecticut, Hawaii, Indiana, Michigan, Nevada, Texas and Wisconsin.

176. Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Texas and West Virginia.

177. Arizona, California, Florida, Hawaii, Iowa, Kansas, Minnesota, Nevada, New Hampshire, North Dakota, South Carolina and West Virginia.

178. Arizona, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Maryland, Minnesota, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Carolina, Texas and West Virginia.

WHO'S WATCHING THE WATCHMAN?

prevent the transfer of a license obtained by a qualified person or agency to one which would not meet the statutory requirements.

The statutory controls affecting personnel quality do place restrictions on entry and practice in this field. Nevertheless, these requirements are minimal in terms of guaranteeing the public and the purchaser of the services private detectives or investigative agents comparable in quality to those provided by the F.B.I., state police or local police forces. The mere absence of a felony conviction seems to be the most common criterion used to determine eligibility to enter this field.

The majority of public investigation officers are used to obtain information relating to criminal activities which could result in the possible loss or curtailment of an individual's civil liberties. On the other hand, the private detective's work is limited only to those subjects which the purchaser pays to have investigated. The use of this information is thus not confined to the legal and judicial community, but can pervade every level of human activity and interaction. Therefore, the minimal controls found in this statutory survey, even where most comprehensive, as in Texas or Arizona, are inadequate to maintain quality in this field on a par with that prevailing in the public realm.

A major area of potential regulation governs the interaction between the licensee and the public. Whether or not statutory requirements for weapons licenses, identification cards, uniforms and badges constitute effective controls over the public police, they do alert the public to their existence against which protective measures may be privately taken. However, although the phrase "private detective" implies that investigative services are being supplied for private purposes, four states have granted statutory powers exceeding those of private citizens to the licensees.¹⁷⁹ The measure of this extraordinary citizen power ranges from full police authority to simply the power to stop and arrest. Only three states have enacted statutes designed to emphasize that private detectives and detective agencies possess on greater police powers than the private citizen.¹⁸⁰

The lack of appropriate and adequate controls becomes more significant in view of the fact that only fifteen states require that an

179. Delaware, Georgia, Hawaii and South Carolina.

180. Arkansas, Indiana and Kansas.

GOLDEN GATE LAW REVIEW

additional license be obtained for the use of a weapon.¹⁸¹ Three have restrictions on the use of weapons,¹⁸² and three others require a proficiency test prior to licensing.¹⁸³ Although the nature of investigative work may sometimes create a need for weapons, their use is not always essential. This lack of control and concern by the regulatory agencies indicates the potential danger presented by unskilled, armed private detectives in our midst.

Twenty-two states require that the private detective carry an identification card which is issued with the license;¹⁸⁴ thirteen states provide for the issuing of a badge;¹⁸⁵ and nine permit uniforms to be worn.¹⁸⁶ Since the nature of investigative work frequently entails an element of secrecy, it seems inevitable that only the carrying of identification cards or badges would be utilized by the licensee, and these need not be worn in clear view. Thus, the degree of protection provided the public by these statutory provisions is easily defeated by their unsuitability and inappropriateness to the function being regulated.

Finally, regulating the quality of the services offered in the field of private investigation must reflect the training offered its personnel. And significantly, it must be noted that only three states have enacted any statutes in this area.¹⁸⁷ The training that is provided exists because of the needs perceived by the individual licensees. Consequently, the scope and substance of these training programs vary from the simplistic to the comprehensive, depending upon the profit to be realized from a minimum level of performance. However, no statutes require training to be on a par with training required of public officials engaged in parallel activities. Thus, the most influential means of regulating by the states has never been fully instituted. Licensees are approved on a perfunctory application of bureaucratic procedures rather than on a critical evaluation of qualifications necessary to the field.

181. California, Connecticut, Delaware, Florida, Georgia, Illinois, Kansas, Maryland, Massachusetts, Michigan, New Jersey, North Carolina, North Dakota, South Carolina and Wisconsin.

182. Georgia, New Mexico and South Carolina.

183. Georgia, Maryland and South Carolina.

184. Arizona, Arkansas, Connecticut, Delaware, Florida, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Pennsylvania and Texas.

185. Arkansas, Delaware, Iowa, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Jersey, Ohio, Pennsylvania, and Wisconsin. New York specifically forbids badges to be issued or used.

186. Arizona, Connecticut, Maryland, Michigan, Minnesota, New Hampshire, New Mexico, New York and Ohio.

187. Georgia, Ohio and South Carolina.

WHO'S WATCHING THE WATCHMAN?

Insurance Adjusters

Insurance adjusters are regulated by twenty-eight states,¹⁸⁸ and in twenty-five states the regulation is by an agency at the state level.¹⁸⁹ In twenty-three states the agency responsible is the insurance commission or commissioner.¹⁹⁰

The need for the regulation of insurance adjusters derives from the services that they perform. In general, insurance adjusters are employed by either insurance companies or by private individuals to investigate claims made against a policy. Since the essence of the work entails investigation, which are the same skills and techniques associated with detectives and investigators, insurance adjusters are within the scope of this article.

In contrast to the licensing of the private detective and investigative agency field, nineteen states grant licenses to insurance adjusters only after the applicant has passed a written examination.¹⁹¹ Since study materials for the examination topics are provided with the examination fee, this requirement establishes some minimum and uniform qualification for all adjusters within a state. Although this regulatory requirement does not presume to require specific educational training or experience, four states require specific educational backgrounds and training.¹⁹² Seventeen states require prior experience as a qualification for the license, which indicates a partial degree of control over the quality and ability of the licensees through the licensing requirements.¹⁹³

The states further control the quality of the licensees by establishing grounds for denial and revocation. In twenty states, misrepresentation, "just cause," and dishonesty are among the most frequently

188. Alabama, Alaska, Arizona, Arkansas, California, Florida, Hawaii, Idaho, Maine, Mississippi, Montana, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington and Wyoming.

189. Alabama, Arkansas, California, Florida, Hawaii, Idaho, Maine, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington and Wyoming.

190. Alabama, Arkansas, Florida, Hawaii, Idaho, Maine, Mississippi, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington and Wyoming.

191. Alaska, California, Florida, Hawaii, Idaho, Maine, Mississippi, Nevada, New Hampshire, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, Texas, Utah, Vermont and Washington.

192. Arizona, Arkansas, Oklahoma and Wyoming.

193. Alabama, Alaska, Arkansas, California, Florida, Hawaii, Idaho, Maine, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Vermont, Washington and Wyoming.

GOLDEN GATE LAW REVIEW

cited reasons for revocation.¹⁹⁴ Grounds for denial are established in nineteen states and include conviction for a felony or crime involving moral turpitude, and failure to pass the written examination.¹⁹⁵ Fifteen states have established statutory penalties for infractions of these and other statutory requirements.¹⁹⁶ It is interesting to note that fourteen states require a personal character check prior to licensing,¹⁹⁷ whereas only two states require a criminal record check as a means of controlling the quality of individuals in the field.¹⁹⁸

In addition, with respect to personal qualifications, eighteen states require that the applicant have reached a specific age: seven states require twenty-one years,¹⁹⁹ eight states eighteen years,²⁰⁰ one state sets twenty as the minimum age,²⁰¹ and two states establish the age of majority as the requisite age.²⁰² Nine states require that the applicant be a resident of the licensing state,²⁰³ and one state requires that the applicant be a United States citizen.²⁰⁴ Finally, only one state requires that an applicant submit a photograph and fingerprints as a requirement for the license.²⁰⁵

The period for which a license is issued varies from one to two years, but is statutorily specified in nineteen states.²⁰⁶ In these nineteen states, a license fee is also required, but this requirement is minimal in that none of the fees exceeded \$10. These two requirements reflect the bureaucratic nature of the licensing provisions. In twelve states there is a statutory requirement for bonding or liability insurance up to an amount of \$5,000²⁰⁷ whereas three states require \$10,-

194. Alabama, Arizona, Arkansas, California, Florida, Idaho, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont and Washington.

195. Alabama, Alaska, Arkansas, California, Florida, Idaho, Mississippi, Nevada, New Hampshire, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont and Washington.

196. Alaska, Arizona, California, Florida, Mississippi, Montana, Nevada, New Hampshire, North Carolina, Ohio, Rhode Island, South Carolina, Texas, Utah and Washington.

197. Arkansas, Maine, New Hampshire, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington and Wyoming.

198. California and New Mexico.

199. Alabama, Alaska, Arkansas, Florida, Nevada, Utah and Vermont.

200. California, Maine, Montana, North Carolina, Oklahoma, Oregon, Virginia and Washington.

201. HAWAII REV. STAT. § 431-467.

202. New Mexico and Wyoming.

203. Alabama, Arkansas, Florida, Hawaii, North Carolina, Utah, Vermont, Washington and Wyoming.

204. FLA. STAT. ANN. § 626.865(b) (1974).

205. CAL. BUS. & PROF. CODE § 7525(f) (West 1974).

206. Arizona, Arkansas, California, Florida, Hawaii, Idaho, Montana, Nevada, New Mexico, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, Vermont, Washington and Wyoming.

207. California, Florida, Hawaii, Maine, Nevada, New Mexico, North Carolina, Ohio, Oklahoma, Pennsylvania, Vermont and Washington.

WHO'S WATCHING THE WATCHMAN?

000 as a minimum amount of insurance.²⁰⁸ The public is thus provided some assurance that the licensee is a reputable business person; whether it protects the public from incompetent insurance adjusters is unknown.

In two states an identification card is issued,²⁰⁹ and one state requires that a pocket card be carried by the licensee and displayed upon request.²¹⁰ In addition, one state describes the limits of the legal authority of an insurance adjuster.²¹¹ Only one state exempts both licensees and employees from obtaining a license to own or carry weapons and requires no training in their use.²¹² Again, the rest of the states are silent.

In conclusion, the most effective controls exerted by the states exist at the state level through the insurance commission or commissioner. The most effective means of attempting genuine control would seem to be through the requirement that an applicant for a license pass a written examination. Since the quality of the examinations themselves could not be evaluated from the statutory survey, the effectiveness of this requirement cannot be precisely ascertained. Moreover, the connection between a certain level of achievement on a written examination and the quality of the work to be performed by an insurance adjuster is not conclusive as to the examination's effectiveness as a method of regulation. Nevertheless, the written examination provides an objective means of evaluating the qualifications of individuals employed to investigate insurance claims.

Polygraph Examiners

It is becoming increasingly important to recognize that polygraph examiners perform police-like functions and are vested with police-like powers. This law-enforcement classification derives from the fact that a polygraph examination generally consists of an investigation which might be regarded both as an invasion of one's right to privacy and an abrogation of one's right against self-incrimination.

Nevertheless, lie detector tests, commonly administered by private polygraph examiners, are thought to be of great practical utility in the areas of internal and criminal investigations and personnel se-

208. Maine, Oklahoma (public adjusters only) and Vermont.

209. California and Washington.

210. CAL. BUS. & PROF. CODE § 7533 (West 1974).

211. CAL. BUS. & PROF. CODE § 7538 (West 1974).

212. CAL. PENAL CODE §§ 12031(b), 12031.5 (West Supp. 1975).

GOLDEN GATE LAW REVIEW

lection and screening.²¹³ Despite their utility in these areas, the negative consequences of these tests have been such that seventeen states have adopted statutes forbidding an individual or business to require submission to a polygraph examination as a condition of employment.²¹⁴

The belief that a polygraph examination might constitute an unwarranted invasion of an individual's privacy was the basis of section 432.2 of the California Labor Code. That section forbids an employer to demand or require any applicant for employment or any present employee to submit to a polygraph examination. However, it has been held that an employer may "request" or "permit" an employee to submit to a lie detector test. While the lie detector test may not, in California, be used as a condition of employment, it is frequently used as a means of facilitating examinations that might have been conducted in another manner.²¹⁵ The majority of states do not forbid the administration of polygraph examinations as a condition of employment, although organized labor has openly opposed this practice as a violation of individual rights.

While the results of lie detector tests are generally inadmissible as evidence at trial (unless the parties stipulate otherwise)²¹⁶ lie detector examinations are used extensively as a part of pre-trial investigatory procedure. The proponents of polygraph examinations urge that innocent persons may be eliminated as suspects and thus be spared any further fear, embarrassment or inconvenience. At the same time, polygraph examination expedites the search for the guilty person. Advocates of the use of the polygraph maintain that "[t]he use and availability of lie detector examinations will reduce the extent of third degree practices, especially among innocent suspects."²¹⁷

Insofar as lie detectors play a significant role in criminal investigation and polygraph examination techniques are rapidly becoming more sophisticated, it is essential that this profession be controlled and regulated on a statewide basis, especially since it is generally agreed that extensive supervised training is indispensable for proper administration and accurate interpretation of the lie detector test.²¹⁸

213. F. INBAU & J. REID, *LIE DETECTION AND CRIMINAL INTERROGATION* 110 (3d ed. 1953).

214. Alaska, California, Connecticut, Delaware, Idaho, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Jersey, Oregon, Pennsylvania, Rhode Island, Virginia and Washington.

215. 43 *ATTY. GEN. OP.* 25 (1964).

216. *United States v. De Betham*, 348 F. Supp. 1377 (S.D. Cal. 1972).

217. F. INBAU & J. REID, *supra* note 213, at 110.

218. *Id.* at 115.

WHO'S WATCHING THE WATCHMAN?

Nevertheless, only sixteen states have adopted legislation requiring the licensing and regulation of polygraph examiners.²¹⁹ It is astonishing that a profession which requires a high degree of skill and which has such potentially far-reaching consequences is virtually unregulated in over two-thirds of the states. In thirty-four states, a person with no training, experience, or other qualifications can lawfully administer polygraph examinations which have a significant impact on criminal proceedings. This is especially noteworthy in light of the fact that experts in the area of polygraph examination maintain that the qualifications and training of an examiner are the critical factors in assessing the accuracy and reliability of lie detector tests.²²⁰

The sixteen states that do regulate polygraph examiners have quite similar licensing procedures and qualification requirements. In seven of those states, the industry is controlled by a polygraph examiner's board.²²¹ In the other nine states, the profession is regulated by a larger agency, such as the secretary of state, the attorney general or the department of public safety. Although all of the statutes are similar in other respects, the agency can have a profound affect on the enforcement of the regulation. A smaller, more specialized agency is a more effective means of enforcing regulations than a larger agency which oversees the licensing of many professions and which of necessity can do little more than collect license fees. Although no comparative data are currently available on enforcement in different states, it appears desirable that licensing be controlled by a specialized board of polygraph examiners who are familiar with and qualified in the administration of lie detector tests.

All states which license polygraph examiners require the licensee to be a resident of the United States. All have a minimum age limit, ranging from eighteen to twenty-five years. It seems doubtful that an eighteen-year-old would be qualified to administer an examination which requires a rudimentary knowledge of psychology and physiology, and preferably a college education and some investigative experience.

Five states require that an applicant submit a photograph prior to the issuance of a license,²²² and eight states require that the appli-

219. Alabama, Arkansas, Florida, Georgia, Illinois, Kentucky, Michigan, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, Texas, Utah and Virginia.

220. F. INBAU & J. REM, *supra* note 213, at 114.

221. Alabama, Georgia, Michigan, Mississippi, New Mexico, Oklahoma and Texas.

222. Florida, Georgia, Mississippi, North Carolina and Utah.

GOLDEN GATE LAW REVIEW

cant be fingerprinted²²³ to insure that the license is not transferred to an unqualified examiner. Six states have absolutely no provisions for the identification of licensees.²²⁴ The period for which a license is issued is one year in all states. License fees range from \$10 for an intern licensee to \$250 for a private polygraph examiner, depending on the state in which the license is issued.

Although the requirements differ slightly from state to state, all sixteen states which license polygraph examiners have some minimum requirement as to training, education or prior investigative experience. Eleven of the states require that the polygraph examiner have a B.A. degree or five years of prior investigatory experience.²²⁵ In those states which require only a high school diploma, some training at a polygraph examiner's school or participation in an internship program is necessary. The duration of these programs ranges from six weeks to six months. Twelve of the sixteen states require that the applicant pass a written examination.²²⁶

In every state that licenses polygraph examiners, there are specific grounds for denial, suspension and revocation of licenses. The grounds given in Alabama Revised Statutes Section 297(22fff) are typical:

The board may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

- (1) For failing to inform a subject to be examined that his participation in the examination is voluntary; or
- (2) For failing to inform a subject to be examined as to the nature of the examination; or
- (3) Failing to inform the subject of the results of the examination requested; or
- (4) Willful disregard or violation of this chapter or of any regulation or rule issued pursuant thereto, including, but not limited to, willfully making a false report concerning an examination for polygraph examination purposes; or

223. Florida, Georgia, Kentucky, Michigan, Mississippi, North Carolina, Virginia and Utah.

224. Alabama, Arkansas, Illinois, New Mexico, Oklahoma and South Carolina.

225. Alabama, Arkansas, Florida, Georgia, Illinois, Michigan, Mississippi, Oklahoma, South Carolina, Texas and Utah.

226. Alabama, Arkansas, Georgia, Illinois, Michigan, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina and Texas.

WHO'S WATCHING THE WATCHMAN?

- (5) Willfully aiding or abetting another in the violation of this chapter or any regulation or rule issued pursuant thereto; or
- (6) Having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this chapter; or
- (7) Making any willful misrepresentation or false promises or causing to be permitted any false or misleading advertisement for the purpose of directly obtaining business or trainees; or
- (8) Allowing one's license under this chapter to be used by any unlicensed person in violation of the provisions of this chapter; or
- (9) If the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude; or
- (10) Where the license holder has been adjudged an habitual drunkard or mentally incompetent as provided in the probate code; or
- (11) Material misstatement in the application for the original license or in the application of any renewal license under this chapter; or
- (12) Failing, within a reasonable time, to provide information requested by the secretary as the result of a formal complaint to the board which indicates a violation of this chapter.

In all sixteen states, there is a penalty for failure to comply with the provisions of the act. The penalties vary from a misdemeanor to a \$1,000 fine and/or twelve months maximum imprisonment.

Statutory regulation of polygraph examiners is markedly different from regulation of other private police professions. While most professions are regulated, albeit inefficiently in most states, polygraph examiners are regulated in only one-third of the states.²²⁷ Although sparse, the regulation is consistent and comparatively thorough in all of the sixteen states. Most of the regulations are relatively recent, and several of the states that regulate polygraph examiners by statute have done so within the past four years.

227. Alabama, Arkansas, Florida, Georgia, Illinois, Kentucky, Michigan, Mississippi, New Mexico, North Carolina, North Dakota, Oklahoma, South Carolina, Texas, Utah and Virginia.

GOLDEN GATE LAW REVIEW

Railroad Police

Forty-one states in the United States have enacted statutes which authorize railroad companies to hire private citizens or to designate their own employees as private railroad police.²²⁸ In these states, railroad conductors, brakemen and ticket agents, who have no police training, are vested with police powers.

Although private police and railway police share many common powers above those of the ordinary citizen, private railroad police were historically intended to serve a different purpose than most other private police. While most of the areas of private police protection are relatively new, and while the statutes that describe the limits of their powers have been enacted within the past twenty years, the statutes that provide for private police protection of railroads are much older. Many of these statutes were enacted in the late nineteenth century and vest steamship and express companies with the same powers as railroads to appoint private police. The original purpose of the statutes which authorized police for transportation companies was twofold. First, railway police were supposed to protect cargo being shipped over long distances. Second, railway police were a helpful solution to the jurisdictional problems that arose when crimes were committed on railroads operating in several states.

Although times have changed, the broad powers of railroad police and conductors have not. In all forty-one states authorizing railway police, the power of these private employees greatly exceeds that of ordinary citizens. In none of the forty-one states is there a regulatory agency which deals exclusively with railroad police. In fact, railroads have received a virtually unrestricted grant of police power. The typical statute authorizes a railroad company to apply to the governor of the state to have any number of its employees appointed as railroad police. The police are paid by the railroad company, and the company is liable for the acts of the employee. The railroad policeman on railroad property typically possesses all the arrest and detention powers of a public policeman.

In only two of the forty-one states is there a state residency requirement for railroad police.²²⁹ Three require that a railroad policeman be a citizen of the United States.²³⁰ The only state which has an

228. All states except Alaska, Hawaii, Iowa, Maine, Maryland, Mississippi, Missouri, Nebraska and New York.

229. Michigan and Montana.

230. Massachusetts, Montana and Wisconsin.

WHO'S WATCHING THE WATCHMAN?

age requirement for railroad police is Michigan, where the minimum age is eighteen years.²³¹ Since the training required to be a railroad conductor is drastically different from that which would be necessary for one who performs police functions, it is possible for an unqualified eighteen-year-old citizen of any state to be designated a railroad policeman. There are no requirements that photographs or fingerprints be submitted at the time of registration. Considering the broad powers that these officers have and the potential abuse of power that could be avoided, requiring them to submit photographs and fingerprints at the time of registration would appear reasonable.

Other than Arizona, which requires railroad police to meet the same minimum qualifications as public police,²³² no state requires any prior experience or minimum educational level. Only two states, Ohio and Indiana, require training for railroad policemen. Ohio requires twenty years of investigatory experience or participation in a special training program.²³³

Michigan and New Jersey are the only states that require a railroad policeman to undergo a criminal records check before being allowed to act as a policeman.²³⁴ Presumably, an ex-felon might be designated as a railroad policeman with peace officer's powers in any of the other thirty-eight states which authorize railway police but do not require crime checks.

In none of the forty-one states are there criteria for the denial of status as a railroad policeman. Presumably, the railroad has total discretion. Indiana and West Virginia are the only states which provide for the revocation of one's designation as a railroad policeman. The grounds for revocation include misconduct, incompetence, drunkenness, neglect of duty, or gross immorality.²³⁵ Assuming that railroad police will continue to exist, similar grounds for revocation must be established in all states, especially those which authorize a virtually unrestricted grant of police power.

Ohio alone requires payment of a fine for train conductors who have abused their police power. The amount of the fine ranges from \$5 to \$25.²³⁶ Considering the abuses that are possible when a private citizen is authorized to carry a gun and to make arrests, as railroad

231. MICH. COMP. LAWS § 470.51 (1967).

232. ARIZ. STAT. § 40-856 (1974).

233. OHIO REV. CODE ANN. § 109.78 (1973).

234. Michigan and New Jersey.

235. Indiana and West Virginia.

236. OHIO REV. CODE ANN. § 4973.99(B) (1973).

GOLDEN GATE LAW REVIEW

police are, this penalty schedule is hardly adequate to deter abuses of law.

Kentucky, Ohio and New Jersey require a \$5 license fee. In Michigan the fee is \$2. These are the only states that issue licenses. Since the cost of licenses is supposed to cover the cost incurred in the enforcement of regulations, such an insignificant fee can hardly be classified as regulatory.

Nine states require that a bond be posted to cover any civil liability that might be incurred by the employee while acting within the scope of employment.²³⁷ This could be an important regulatory feature, because bonding is often the only means of assuring sufficient assets to cover civil judgments arising from abuses of power.

The biggest problem in the area of railroad police is that a citizen might easily confuse them with public police. It is essential that they be distinguishable, since the controls and regulations that apply to public law enforcement officers do not apply to private railroad police. Nineteen states require that railway police wear badges that are distinguishable from those of public police and that identify them as railroad police.²³⁸ While such means of distinction seem crucial, the other twenty states provide no means by which an ordinary citizen might avoid confusing railway police with public police. In fact, railway police derive a good deal of their authority from the fact that they are often mistaken for public police. While railroad police have been given broad powers in their respective jurisdictions, their jurisdiction is generally limited to property owned by the railroad company which employs them. One means of limiting their exercise of power to the legal jurisdiction is to take all practical measures to insure that they are not confused with public police.

Railroad police are presumably allowed to use weapons in the states which grant them the power of peace officers in their respective jurisdictions. Four states—Arizona, Arkansas, Ohio and West Virginia—expressly authorize railroad companies to require that an additional bond be posted if a railroad policeman carries a gun; however, there are no requirements regarding the use of weapons or training in the use of firearms.

237. Alabama, Arkansas, Indiana, Louisiana, Michigan, New Mexico, New York, Oklahoma and Tennessee.

238. Alabama, Arkansas, Idaho, Indiana, Kentucky, Massachusetts, Michigan, Nevada, New Hampshire, New Jersey, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington and Wisconsin.

WHO'S WATCHING THE WATCHMAN?

Fair Police

Eighteen jurisdictions have adopted statutes that provide authority for private citizens to serve as police at fairs, meetings and exhibitions.²³⁹ The majority of these statutes deal with police who patrol state fairs, which are often sponsored by private corporations. Generally, these private police have full police powers while on duty at the event during which they were hired to serve.

In several of the eighteen jurisdictions, the power to appoint, regulate and control these private police rests in the private corporation or society which sponsors the event.²⁴⁰ In others, the private police who guard state fairs are appointed by the state department of agriculture.²⁴¹ In four states an agency of the government, such as the sheriff (South Carolina) or a justice of the peace (Ohio), has the power to deputize private persons to serve as police for the duration of the event for which they have been appointed to patrol.²⁴²

Probably because these police are appointed to serve for short periods of time, controls such as residence requirements, examinations, photographs, fingerprints, cause for denial and grounds for revocation are nonexistent. Ohio is the only state that requires special training or past experience.²⁴³ New Jersey alone requires a character check.²⁴⁴ In no state is it necessary to run a check to determine whether the guard has any prior criminal convictions. No state provides a penalty for abuse of power or gross negligence, other than common law civil actions. Ohio and South Carolina are the only states that require the individual to post a bond to assure payment of any civil judgment that is rendered against him while acting within the scope of employment.²⁴⁵ Michigan and Minnesota are the only states that require state fair police to wear badges that identify them as such.²⁴⁶ In the other sixteen jurisdictions, the majority of citizens with whom they come into contact are probably under the popular misapprehension that the private citizens who patrol state fairs are public police. While no data are available as to the frequency with which weapons are car-

239. Connecticut, the District of Columbia, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, New Jersey, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Virginia, West Virginia and Wyoming.

240. *E.g.*, MICH. COMP. LAWS § 453.361 (1967).

241. For example, MINN. STAT. ANN. § 35.14 (1963).

242. For example, S.C. STAT. §§ 53-121 to 53-124 (1962).

243. OHIO REV. CODE ANN. § 109.78.

244. N.J. STAT. ANN. § 4:15-4 (1973).

245. OHIO REV. CODE ANN. § 2923.01 (1954); S.C. STAT. § 53-121 to 53-125 (1962).

246. MICH. COMP. LAWS § 453.371 (1967); MINN. STAT. ANN. § 38.01 (1963).

GOLDEN GATE LAW REVIEW

ried, the main problem in this area is the danger of potential abuse of power resulting from confusion of fair police with public police.

IV. THE USEFULNESS OF BONDING AS A MEANS OF REGULATING THE PRIVATE POLICE INDUSTRY

The preceding studies indicate two important conclusions regarding the developments that have occurred in the regulation of the private police industry from the time of the Rand study in 1970 to the present study in 1975. First, although the Rand study urged that statutes be enacted to regulate private police, there are still relatively few comprehensive statutes which regulate the industry. There are even fewer governmental agencies which devote substantial effort toward the realization of such regulations. Second, the majority of states that do regulate private police have chosen to do so through bonding or liability insurance requirements, rather than through the establishment of uniform regulatory agencies and controls suggested by the Rand study. Generally, the statutes only require that the licensee post a bond or obtain insurance to cover any civil liability incurred in the scope of employment. Employees of the licensees are largely ignored by the statutes.

The tendency of the states to rely on bonding rather than to establish administrative agencies as the principal means of control indicated that further study of the effects of bonding was necessary. One purpose of this study is to test the effectiveness of protective devices available directly to the public, for if such devices exist, public interest may not be severely affected by delays in the development of comprehensive statutory regulations and/or supervisory agencies.

Previously, no data were available as to the extent to which the public had resorted to the bonds to redress the alleged wrongs of private police. A survey was therefore undertaken of those state agencies with which bonds have been posted. The purpose of the survey was to ascertain the frequency of claims and related data.

Two assumptions were made concerning the bonds:

1. That the bonding requirement was premised on the belief that there was a need to assure the existence of a fund against which aggrieved members of the public could proceed.
2. That considering the large number of private police and the nature of their contacts

WHO'S WATCHING THE WATCHMAN?

with the public, private police activity would have given rise to a sufficient number of claims to be a partial but useful indicator of the utility of this regulatory mechanism.

The results of the survey follow. Questionnaires were sent to the secretaries of state of all fifty states; thirty-three replied. The replies received indicate that seven states have no bonding requirement.²⁴⁷ Nine others leave the decision of bonding to local authorities.²⁴⁸ Thus, in these states there are no requirements for filing notice of bonds posted with the secretary of state or any other state office which would maintain the desired statistics on bonding.

In November, 1974 Montana enacted new legislation relating to private police. The first licenses with bonding requirements under the new statutes will be issued early in 1975. Thus, Montana could not provide statistics relating to bonding and its effectiveness.

Of the other responses, eight secretaries of state indicate that an average of 189 licensed security guard and detective agencies per state have filed a bond with some state office.²⁴⁹ Florida has on record the largest number of bonds filed (746), while North Dakota has the smallest number (11). Only five of the above states also require licensed individual security guards and private detectives to post bonds and file a record of them with a state office.²⁵⁰ Again, Florida has on record the greatest number (138), while New Hampshire has the smallest, with only twenty-two on record.

Four states issue licenses which carry bonding requirements that are identical for both companies and individuals.²⁵¹ No statistical separation is maintained as to individuals or agencies. Further, no records are available as to the number or types of claims which may be, or which are, filed.

At the other end of the spectrum, Kansas and Wisconsin require only individual licensed detectives to be bonded and of record, while three other states merely demand that licensed detective agencies post bonds and file them with an appropriate office.²⁵²

247. Alabama, Delaware, Kentucky, Missouri, New Jersey, Oregon and Tennessee.

248. California, Nevada, Ohio, Oklahoma, Pennsylvania, Rhode Island, Utah, Virginia and Washington.

249. Connecticut, Florida, Iowa, Massachusetts, New Hampshire, North Carolina, North Dakota and Vermont.

250. Connecticut, Florida, Iowa, New Hampshire and North Dakota.

251. Colorado, Maine, Michigan and New York.

252. Arizona, Kansas and West Virginia.

GOLDEN GATE LAW REVIEW

Among the thirty-three responses received, there have been only six reported claims filed against security guard companies and detective agencies between January 1, 1972 and January 1, 1975. One of these claims was filed in Arizona in 1974 against a detective agency for illegal detention. The other four claims were filed in Massachusetts, also during 1974, for actions not specified on the response. The remaining claim was in New Hampshire in 1974 against an individual for fraud. There was no indication whether this claim was against a security guard or a private detective.

Although bonding and liability insurance requirements theoretically might provide an effective means of regulation of private police, it is apparent from the sparse data that they do not at the present time. The partial response that has been received indicates that bonding provides neither an adequate avenue for redress of alleged wrongs committed by private police officers nor any realistic means of regulation.

V. SURVEY OF THE ATTORNEYS GENERAL

The foregoing data indicate that the mechanisms for control of private police are inefficient and sparse. A fundamental thesis of this article is that the private police industry in America has been typified by the absence of controls. In an attempt to determine whether this situation is likely to change in the future, the authors have surveyed the attorneys general of all fifty states as to the current status of the private police industry in their respective states. In addition, the attorneys general were questioned as to prospective legislation affecting private police. To date, responses have been obtained from the attorneys general in twenty-nine states.

In thirteen of the twenty-nine states the existing regulations of the private police industry are currently under review by an agency in the executive or legislative branch of state government.²⁵³ The fact that the industry is being reviewed in almost one-half of the states responding to the survey indicates that there exists a moderate amount of concern about the lack of control over the largest and most rapidly increasing police force in our country today.

253. The states and the agencies are as follows: Colorado (Attorney General), Connecticut (State Police Dep't), Hawaii (Dep't of Regulatory Agencies), Indiana (State Police), Kentucky (Dep't of Justice), Massachusetts (Dep't of Public Safety), Nebraska (Commission of Criminal Justice), Nevada (Attorney General), New Jersey (State Legislature), Texas (Board of Investigators), Vermont (Board of Private Detective Licenses), Virginia (State Crime Commission), and Wisconsin (Dep't of Licenses).

WHO'S WATCHING THE WATCHMAN?

Of the twenty-nine states, only four have adopted legislative controls within the past year.²⁵⁴ Seven states have, within the past year, enacted administrative regulations which affect the private police industry.²⁵⁵ While most of these changes are merely means of facilitating the administration of existing legal requirements, such as identification and registration procedures, within the past year both Connecticut and Pennsylvania have adopted provisions restricting the use of weapons by private police. This is an area which is virtually unregulated in many states, and one in which revision of existing laws is highly desirable. At present only Colorado, Kansas, Nevada and North Dakota are considering actual proposed legislation for the regulation of any aspect of the private police industry.

The attorneys general were also questioned about the current effectiveness of regulation of the private police industry in their states. Thirteen indicated that the existing pattern of regulation adequately protects the interests of the public.²⁵⁶ Lack of regulation, difficulty of enforcement, lack of adequate supervision and inadequacy of administrative procedures were the reasons most frequently cited by those who consider present statutory controls inadequate.

Upon further questioning, however, twenty-one out of twenty-nine responses indicated specific inadequacies do in fact exist with regard to several critical aspects of private police regulation.²⁵⁷ Eleven responses indicated that the caliber of person recruited for employment by the private police industry might not be in the best interest of public protection.²⁵⁸ Presumably this situation arises from the fact that the private police officer is often underpaid, poorly educated and seldom trained.²⁵⁹ Thirteen responses indicated concern over the right of private police to carry weapons.²⁶⁰ Not surprisingly, the bulk of the criticism stems from the fact that the ordinary citizen is likely to confuse private police with public police. Seventeen attorneys general replied that their state permits private police to wear uniforms that are

254. Arkansas, Minnesota, North Carolina and Pennsylvania.

255. Arkansas, Colorado, Connecticut, Nevada, North Carolina, Vermont and Wisconsin.

256. Arkansas, Hawaii, Kansas, Massachusetts, Minnesota, Nevada, New Jersey, North Carolina, North Dakota, Pennsylvania, Texas, Vermont and Virginia.

257. Alabama, Colorado, Connecticut, Delaware, Indiana, Kansas, Maine, Massachusetts, Minnesota, Nebraska, Nevada, North Carolina, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Vermont, Washington and Wisconsin.

258. Alabama, Delaware, Indiana, Massachusetts, Nebraska, Oklahoma, Oregon, Tennessee, Texas, Washington and Wisconsin.

259. 1 RAND, *supra* note 2, at 29-35.

260. Alabama, Delaware, Maine, Massachusetts, Minnesota, Nebraska, North Carolina, Oklahoma, Oregon, Pennsylvania, Texas, Tennessee and Wisconsin.

GOLDEN GATE LAW REVIEW

often indistinguishable from those of public police.²⁶¹ Thirteen attorneys general recognized problems in the area of providing adequate procedure for investigation of public complaints about private police.²⁶² Absence of judicial or administrative procedures for the redress of abuses of private police power was also a major concern of many of the responses.

The final aspect of private police regulation about which the attorneys general were questioned was the existence and desirability of a single state official or agency to oversee the entire private police industry in each state. Of the twenty-four attorneys general that responded to this particular query, all except the Pennsylvania attorney general agreed that a single statewide regulatory agency for the entire private police industry would have a "positive effect." Ten replied that such an agency would be desirable²⁶³ and five states considered it "urgently needed."²⁶⁴ Although a single regulatory agency or official to supervise the private police industry in an entire state is essential for the effective regulation of private police, only sixteen of the attorneys general have replied that such an agency or official is currently serving this function.²⁶⁵

Thus, while there is substantial concern about the lack of regulation of private police, little is currently being done about it. The lack of prospective regulation is even more significant since the private police industry is growing rapidly while controls remain virtually static. It can only be expected that with the growth of this industry, there may be an increase in the abuse of the inherent power possessed by all policemen, be they public or private.

CONCLUSION

Modern industrial society has recognized the need for a public police force since the early nineteenth century. The existence of law enforcement power in the hands of police has been accepted in England, and then in the United States, only because that power has been

261. Alabama, Colorado, Indiana, Kansas, Maine, Massachusetts, Minnesota, Nebraska, North Carolina, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Vermont, Washington and Wisconsin.

262. Alabama, Colorado, Connecticut, Delaware, Indiana, Maine, Minnesota, Nebraska, Nevada, Oklahoma, Tennessee, Washington and Wisconsin.

263. Colorado, Delaware, Hawaii, Kansas, Maine, New Jersey, North Carolina, Texas, Vermont and Washington.

264. Alabama, Connecticut, Indiana, Virginia and Wisconsin.

265. Arkansas, Connecticut, Hawaii, Indiana, Iowa, Kansas, Massachusetts, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Texas, Vermont and Wisconsin.

WHO'S WATCHING THE WATCHMAN?

so regulated and circumscribed that the fear of its abuse has been somewhat assuaged. On the other hand, the need for private police is an issue still open for debate and discussion. The questions of the roles and functions of private police are significant because private police have operated without the regulation and controls that were deemed essential to the acceptance and growth of the public police.

Regulation of private police is still characterized by lack of effective and comprehensive treatment at the state level. Although a majority of the states attempt regulation through legislative enactments, these statutes have produced only a minimal degree of supervision. Indeed, the potentially most effective form of regulation authorized and required by the statutes, surety bonds, is seldom used. Thus, the bonding procedure, like other existing statutory requirements, is a totally inefficient instrument of control.

Although most inadequacies of current attempts at regulation were noted in the 1970 Rand study,²⁶⁶ no substantial or widespread improvement has occurred since its publication. The reasons for this may be attributed to several factors. Among them are lack of awareness of the historical development, failure to recognize the considerable overlap between the activities of public and private police, absence of data about the conduct of private police and lack of awareness that the private police industry is largely unregulated. The failure of government to impose regulation on the private police industry has created the undesirable dichotomy of two police forces existing side-by-side; the public one regulated, and the private one unregulated.

266. 1 RAND, *supra* note 2, at 46-61.