STATE REGULATION OF PRIVATE POLICE AND SECURITY AGENTS

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A Thesis

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ABSTRACT

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This study investigated the nature and degree of state level statutory regulation for private police and security guards with a specific intent to analyze arrest powers for these agents. Previous literature has examined statutory regulation, but has ignored any discussion of arrest powers for private law enforcement and security agents. A content analysis on applicable state laws explores the type, nature, and degree of statutory regulation. Results indicate some measure of similarity among regulation between states. Only one state, Ohio, allows private police full arrest powers.
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<table>
<thead>
<tr>
<th>CHAPTER</th>
<th>CONTENT</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>CHAPTER I</td>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Limits of Public Police</td>
<td>3</td>
</tr>
<tr>
<td></td>
<td>Limits of Private Police</td>
<td>4</td>
</tr>
<tr>
<td>CHAPTER II</td>
<td>PRIOR RESEARCH</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Police in Anglo-American History</td>
<td>7</td>
</tr>
<tr>
<td></td>
<td>Modern Private Police</td>
<td>11</td>
</tr>
<tr>
<td></td>
<td>Private Police Regulation</td>
<td>12</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>17</td>
</tr>
<tr>
<td>CHAPTER III</td>
<td>METHODS</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Sample</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Data</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td>Factors</td>
<td>19</td>
</tr>
<tr>
<td></td>
<td>Limitations</td>
<td>20</td>
</tr>
<tr>
<td></td>
<td>Conclusion</td>
<td>21</td>
</tr>
<tr>
<td>CHAPTER IV</td>
<td>CONTENT ANALYSIS</td>
<td>22</td>
</tr>
<tr>
<td></td>
<td>Pre-Employment</td>
<td>22</td>
</tr>
<tr>
<td>Section</td>
<td>Page</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td>------</td>
<td></td>
</tr>
<tr>
<td>Licensing</td>
<td>29</td>
<td></td>
</tr>
<tr>
<td>During Employment</td>
<td>32</td>
<td></td>
</tr>
<tr>
<td>Disciplinary</td>
<td>36</td>
<td></td>
</tr>
<tr>
<td>Conclusion</td>
<td>37</td>
<td></td>
</tr>
<tr>
<td>CHAPTER V. DISCUSSION &amp; CONCLUSION</td>
<td>39</td>
<td></td>
</tr>
<tr>
<td>Discussion</td>
<td>39</td>
<td></td>
</tr>
<tr>
<td>Conclusion</td>
<td>42</td>
<td></td>
</tr>
<tr>
<td>REFERENCES</td>
<td>43</td>
<td></td>
</tr>
</tbody>
</table>
# LIST OF FIGURES/Tables

<table>
<thead>
<tr>
<th>Figure/Table</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1    Most Common Minimum Employment Requirements</td>
<td>28</td>
</tr>
<tr>
<td>2    Common Licensure and Training Waivers</td>
<td>31</td>
</tr>
<tr>
<td>3    Common Private Police Peace Officer Types with Fill Arrest Powers</td>
<td>34</td>
</tr>
</tbody>
</table>
CHAPTER I
INTRODUCTION

The common mental image of police brings to mind the officers who work at various levels of government service, but a vast network of private police and security agencies exist in the United States as well. These organizations range from the much-maligned “rent-a-cop” to a full service alternative to publicly provided police (Pastor, 2003; Becker, 1995; Ostrom et al., 1978; Germann et al., 1988). While most citizens assume that private police represent only a small portion of the total number of police in this country, private police have outnumbered public agents since the 1980s, and continue to grow at an exponential rate (Gallati, 1983; Nalla & Heraux, 2003; Cunningham & Stauchs, 1992; Reaves & Hickman, 2002). Up to date quantitative data to accurately describe the enormity of the private policing industry is difficult to collect (Bureau of Justice Statistics, 2005; Bayley, 1994). Enumerating police officers in general is a difficult task, and given numbers for both public and private agents are only estimates (Maguire, 1998; Reaves & Hickman, 2002). Given the proprietary nature of the private policing field, accurately measuring the number of active duty agents is nearly impossible (Bureau of Justice Statistics, 2005; Pastor 2003).

Over the past 30 years, police researchers have developed a complex picture of the public police officer. This profile includes information on officer duties, the police work environment, and the difficult decision-making processes required to effectively complete various policing goals. By comparison, academic understanding of the private police agents and private policing agencies is severely limited (Furst, 2008; Pastor, 2003). While this topic received a substantial amount of research during the late 70s and early 80s, little substantive research has been completed since.
Previous research on private policing and security is largely descriptive or conceptual in nature, and focuses on providing a basic overview of the industry at large. Reliable, up to date, quantitative data on private police is virtually non-existent, making statistical analysis impossible. Little noteworthy research has been conducted on this topic in the past decade. Therefore, an updated profile of the private policing and security industries is needed to effectively inform future research and policy.

The term “private police” is often taken as a synonym for private security forces. The phrase encompasses a broad range of private non-governmental organizations and agents. These agencies provide a combination of law enforcement, order maintenance, social control, and safety functions, similar to public police. Such organizations provide a wide variation of services, and may call themselves “police,” “security,” or other names. Generally, private security are not synonymous with private police; they are a subset of private police that focuses specifically on order maintenance functions, although all criminal justice researchers do not endorse this viewpoint (Furst, 2008).

As the landscape of policing and criminal justice continues to change in the twenty-first century, the role of both public and private police is uncertain. The functional differences between public and private police rapidly diminished during the past 30 years (Bayley & Shearing, 2001; Furst, 2008). The nature and scope of their activities is shifting, and their numbers will continue to do so with new public and governmental demands (Reichman, 1987). Historically hostile to collaboration, both public and private agencies need to determine whether they will work together or separately to meet the security needs of the American populace. Similarly, even the strategies designed to meet these needs differ dramatically between police forces, and academic opinion on effective police techniques is mixed at best (Bayley & Shearing,
Limits of Public Police

Social scientists have long known that social factors influence crime rates. A number of prominent researchers suggest that demographic factors, such as age, gender, and income, to name a few, alone explain differences in crime rates across locations (Bayley, 1994). Bayley (1994) suggests that police should not be expected to prevent crime, as they are statistically unable to significantly affect so many potential crime-related factors. Additionally, police are ill equipped to influence these social factors, such as unemployment or educational shortcomings (Bayley, 1994). Finally, even if police were able to significantly affect crime rates, they may be unwilling to do so out of employment self-preservation (Cory Haberman, personal communication, March, 2009).

Thus, the quality of public police services becomes questionable, depending on the metric used. If police are tasked mainly with fighting crime, their performance is quite poor. A growing body of research suggests that the public at large is aware of the inability of the police to combat crime (Fielding, 1991; Miyazawa, 1991; Cunningham et al., 1990; Cunningham & Strauchs, 1992; Bayley, 1994). While private police historically pre-date the modern public police agency (Reynolds, 1998), the relatively recent resurgence of private police and security to the forefront of American law enforcement may represent a renewed citizen response to the perceived shortcomings of governmentally provided law enforcement (Becker, 1995; Hou & Sheu, 1994; Pastor, 2003; Bayley, 1994). Instead of calling for police reform, the public is simply turning to a more convenient, and now ubiquitous, solution (Moore, 1987; Shearing & Stenning, 1983; Stenning, 1989).
Limits of Private Police

However, the quality of service provided by private agencies is called under question as well (Becker, 1995; Hou & Sheu, 1994). Attempts to utilize completely private police services in a municipal context have been little more than short-lived experiments, although private police have enjoyed significant success in more restricted jurisdictions, such as Special Business Districts (Cunningham & Taylor, 1985; Cunningham et al., 1990; National Advisory Committee, 1976; Clarke, 1987; Chaiken & Chaken, 1987, Germann et al., 1988; Greene et al., 1995). Philadelphia police collaborated with private security agencies to enhance law enforcement in certain sections of the city (Greene et al., 1995). Reminderville, Ohio, completely replaced their public police with a private force after allegations of misconduct and inefficiency. An evaluation of the Reminderville private force found relatively high levels of citizen abuse and inefficiency as well, and after these findings surfaced, the private force was replaced with a new municipal agency under increased supervision (Pastor, 2003).

If commercially or otherwise provided private police forces do not affect crime, citizens appear willing to develop their own private or communal security solutions (Grabosky, 1992; Bayley, 1994). The rise in block watch organizations, citizen patrols, and similar programs may be independent of the larger community oriented policing initiative, and represent a perceived need by the general populace to complement or even replace publicly provided police services (Grabosky, 1992). Citizen involvement programs are often encouraged by police, who may rely on these services to provide supplemental information of criminal wrongdoing (Bayley, 1994).

Regardless of the method of organization or means of delivery, police services are deeply rooted in Western society, and are particularly prominent in America. For the near future, both public and private police will continue to exist, and will likely continue to grow in numbers.
However, police possess a characteristic that makes them unique: the ability to arrest (Klockars, 1985). While body armor can provide direct physical security and club bouncers may deter crime, police are legally sanctioned to apply non-negotiable coercive force under particular circumstances (Klockars, 1985). Because police can arrest and use force against citizens, and thus potentially deprive them of certain rights, law enforcement agents deserve serious scholarly attention in order to evaluate their effectiveness and use of arrest. A large amount of research has been conducted on the arrest powers of public police, but almost nothing is known about the arrest powers of private police agents (Furst, 2008). This paper seeks to expand the knowledge about private police in general, and uncover regulations regarding arrest powers for these agents specifically.

The impact of criminal law enforcement activities on American civil rights has significantly shaped law enforcement and criminal justice policy in the last century (Shapiro, 1987; Stenning, 2000). Miranda warnings, use of force restrictions, and laws regulating arrest and search and seizure powers represent an effort to protect citizenry from potential police abuse. By expanding scholarly understanding of private police regulation and arrest powers, potential abuse of citizens by private police may be avoided. This manuscript assesses the nature and degree of regulation for private police and security agents. The existence of arrest powers for private police and security agents will be indentified, along with various types of state level statutory regulation affecting individual agent behavior. Statutory data is gathered from a purposive sample of 15 US states, representing five regions of the country: Northeast/New England, Midwest/North Central, Southeast, Southwest, and West.

The following work largely mirrors the 1998 efforts of Maahs and Hemmens, who described the existence and extent of state-level statutory regulation of security guards in all 50
states (Maahs & Hemmens, 1998a; Maahs & Hemmens, 1998b). Though the sample in this study is more limited, the type of regulation assessed is more detailed. A discussion of police and security powers was not included in the previous works, and these powers, mainly in the form of arrest, is a central focus of this study. While the external generalizability of findings is limited, this study serves as an updated reference to Maahs and Hemmens’ work, as well as a springboard for further exploration and research into the growing field of private policing in America. This effort does not seek to replicate Maahs and Hemmens’ previous works, but rather use these articles as a conceptual basis for considering pertinent issues.

Specifically, these findings serve a foundation for further research on arrest powers for private police. This study’s analysis will identify states in which private police are granted arrest powers. Because effective enforcement powers on the ground may differ in action from the prescribed conceptual legal powers, further research will be necessary to differentiate the actual powers of private police from those laid out in the law. While such study is beyond the scope of this work, these findings will provide a solid comparative measure for future analysis of arrest powers.

Chapter two details the historical rise of private police and examines significant previous research. The role, functions, and organization of modern private police is discussed. Chapter three discusses the methodology used to collect and analyze the statutory data that comprises this study. Chapter four describes the results of the statutory analysis and presents all findings. Finally, chapter five presents the implications of these findings, the limitations of this study, and potential goals for future research.
CHAPTER II
PRIOR RESEARCH

Private Police in Anglo-American History

State-sanctioned public police are a relatively recent evolution in the history of law enforcement and social control. Until the emergence of the public police force in England and America in the nineteenth century, police functions were dominated by private groups and individuals (Bittner, 1980; Monkkonen, 1981; South, 1987, Klockars, 1985). Prior to the Anglo-Saxon settlement of England circa 400 A.D., practically all social control functions were relegated to private persons. If any norm enforcement or punishment were to occur, it would be at the hands of the victim. The tradition of *lex talionis*, inherited from years of Roman occupation, dictated punishment (Reith, 1938; Critchley, 1972; Tobias, 1975).

Following the introduction of Anglo-Saxon culture to England, families in isolated communities were organized into groups for communal protection. Groups of ten families were called a *tithing*, and the head of each household, a tithing-man, was responsible for maintaining order and apprehending offenders. Each tithing was obligated to enforce the king’s laws, or was subject to fines or worse punishments (Klockars, 1985). Several tithings were organized into a group known as a shire, under the responsibility of an official known as a *reeve*. The reeve was nominally responsible to the king, but not in direct royal employ. The shire reeve, the precedent term for *sheriff*, was responsible for norm enforcement and offender apprehension for the entire shire (Tobias, 1975; Reith, 1938).

After the Battle of Hastings in 1066, William I imposed the Norman system of feudal law on the newly conquered English territory. In order to maintain control over his conquered subjects, William strengthened imposition of the Saxon tithing-man system and brought the
office of sheriff directly under rule of the Crown (Critchley, 1972; Walker & Richards, 1995; Buerger, 2007). Over time, this tithing-man system deteriorated with population expansion and weakening central governments, heralding the creation of the office of parish constable. The Statute of Winchester, passed in 1285, is the widely accepted start date of the constable system. The statute required able-bodied men to serve a one-year rotating unpaid term as constable. The constable was responsible for organizing a group of men, called the watch, who would guard the city at night. In times of serious need, the constable could press the entire community into service utilizing the hue and cry system (Klockars, 1985; Tobias, 1975; Tobias 1979).

As cities in England continued to grow and expand, private organizations sprung up to capitalize on the constabulary system’s inability to fully handle growing crime problems. The Bow Street Runners, a fee-based private detective agency that focused primarily on criminal apprehension, is an early example of private policing. In England, obligatory avocational systems of policing were replaced with governmentally controlled paid police agencies in the nineteenth century (South, 1987; Klockars 1985; Reynolds, 1998). While reluctant to trust these new agents as first, the English populace eventually supported Robert Peel’s Metropolitan Police Force in London. Peel’s system is widely heralded as the basis for modern public police in England and America (Critchley, 1972; Klockars, 1985; South, 1987; Pastor 2003; Bittner, 1980).

The evolution of policing in America largely follows the English tradition. Prior to the Revolutionary War, and during the growth and westward expansion of the nation afterwards, justice was a private matter. In cities and towns, men could be appointed to the office of constable, elected as sheriff, or serve a term as marshal, depending on local custom and law. Each office was responsible for law enforcement and order maintenance. However, the official
was often unable or unwilling to deal with every crime problem, making the imposition of justice dependant upon private individual action (Monkonnen, 1981). In the southern part of the country, private slave patrols would enforce slavery laws (Johnson, 1988). Rural areas frequently utilized a group of vigilante volunteers known as a posse to apprehend offenders (Klockars, 1985). Similarly, so-called “vigilance committees,” comprised of mostly volunteers, were created in the western territories to provide order maintenance and norm enforcement. Vigilance committees were formed at the behest of local settlers and businessmen as a method of supplementing the often weak and ineffective forms of official justice (Brown, 1991). Private bodyguards were employed by the wealthy to an extent as well (Maahs & Hemmens, 1998a).

American industrial expansion during the nineteenth and twentieth centuries rapidly increased the need for effective policing. Not only were they unable to handle the growing crime problem, but municipal police agencies were organized around a local jurisdiction, and had limited powers across American’s expansive geography. The rise of large-scale business and transportation created a need for police with full jurisdiction across a wide range of areas, not just within a single county or city. Private agencies such as Pinkerton’s Detective Agency and the Wells Fargo Company emerged to meet this new demand (Morn 1995). Because private agencies are bound to contractually defined jurisdictions rather than geographical boundaries or municipal limits, they were well suited to provide service across America.

Pinkerton’s was the first national railroad police, organized at the insistence of President Lincoln, who desired an effective detective force for the burgeoning railways (Morn, 1995). Transportation systems pose unique challenges that municipal agencies are not well equipped to face, partially due to jurisdictional limitations (Cunningham & Taylor, 1985). The New York Transit Police, in cooperation with the Port Authority of New York and New Jersey (PANY/NJ),
is an example of such an agency (Bard, 1942). Brink’s, Inc., perhaps now most widely known for their security alarm monitoring service, originally provided secure transportation for valuable goods.

The ability to maintain enforcement powers across jurisdictions made private police agencies ideal for this function. Historically, the source of the private industry’s enforcement powers has evolved across time, becoming increasingly formalized with age. Currently, statutory law and other legal agreements nominally control the enforcement power in many jurisdictions. However, the actual enforcement powers of agents in the field may differ significantly from the legal mandates depending on many factors.

Federal police agencies, while certainly not private in nature, represent a jurisdictional unique hybrid between traditional municipal police and private forces. For example, the FBI has national jurisdiction, but generally only for federal crimes. The U.S. Marshals also have national jurisdiction, and provide functions similar to private agencies, including fugitive apprehension, prisoner transportation, and protective services. The Marshals, like the FBI, DEA and BATFE, are restricted in the scope of their enforcement powers, if not the area (Johnson, 1988; Calhoun, 1990; Reaves & Bauer, 2003; Torres, 1987; Torres 1995).

As American industry continued to grow throughout the twentieth century, the use of private police continued (Morn, 1995; Moore, 1987; Maahs & Hemmens, 1998a). Private police also expanded their service roles to meet emerging needs. Pinkerton’s, for example, was widely employed as “strike breakers” in labor union actions during the Industrial Revolution (Morn, 1995). Following the rapid increase in crime in the 1970s, the use of private police and security rapidly expanded further. This trend continues today. By all estimates, private police continue to vastly outnumber public police (Bayley & Shearing, 1996; Cunningham & Taylor, 1985;
The demand for private police is partially driven by the belief that public police services are ineffective in certain situations (Becker, 1995; Hou & Sheu, 1994). Because of this perception, private police and private security forces in modern America are virtually ubiquitous (Germann et al., 1988).

Modern Private Police

Private police agents and agencies are found in virtually every segment of American society (Shearing & Stenning, 1983). Examples of large national corporations range from Wackenhut, who provide traditional security and investigation services, to agencies such as Triple Canopy and Xe/Blackwater, who provide paramilitary security, training, and protective services to large business and national governments. Private police and security firms can also include small to medium-sized business and individual contractors (Germann et al., 1988; Becker, 1995; Cunningham & Taylor, 1985; Cunningham et al., 1990). Examples of modern private police and security agents include Wal-Mart guards, college campus police, gated community security officers, and armored car drivers (Germann et al., 1988; Reaves & Goldberg, 1996).

Private police and private security fulfill many of the same occupational roles. The title chosen to represent the agent or agency is at times a matter of choice, determined by law, or simply semantic (Furst, 2008; Bayley & Shearing, 2001; Nalla & Heraux, 2003). Fundamentally, private police and security provide three different functions: physical security, information security, and personnel security. Physical security entails the protection of both people and property. A mall security officer and an armored car service both provide physical security. Information security generally entails counterespionage activities, protection of
sensitive information by limiting access, either through environmental or electronic means. Information technology generalists commonly handle information security in small to medium companies, while large corporations and governments have dedicated personnel for this task. Finally, personnel security involves the protection of persons, either through direct means, such as bodyguard, or through information and regulation, such as security screenings, and health and safety inspections (Cunningham & Taylor, 1985). Increasingly these functions overlap, coinciding with the enhanced role of technology in modern life (Cunningham, et al., 1990; Cunningham & Strauchs, 1992).

Law or contractual agreement generally determines the scope and nature of a private police agency’s jurisdiction. For instance, amusement parks of certain size may be allowed to employ a private police force, but their jurisdiction would only extend to the boundaries of the park. Other agencies, such as the railroad police or transit authority, may have transjurisdictional authority for a variety of offenses (Moore, 1995; ORC §4973.17; Lori Wachtel, personal communication, February 20, 2009; Bard, 1942; Morn, 1995).

Private agencies, depending on arrangement, may arrest or detain for any type and level of offense, potentially including federal offenses, within their jurisdiction. Private security agencies may also have relatively wide jurisdictions, but more limited enforcement powers when compared to private police.

Private security enforcement is generally limited to property offenses, although significant variation of enforcement powers exists across the country. Several private agencies continue to have national jurisdiction, making their area of enforcement effectively much broader, if not geographically more widespread, than federal police organizations, such as the DEA, due to the wider enforcement mandates of private agencies. (Morn, 1995; Moore, 1995).
Private Police Regulation

Due to their rapid growth in the 1970s, it was apparent that the private policing and security industries deserved scholarly attention. Organizations originally designed to supplement traditional public police were now fully complementing, and in many ways, replacing governmentally provided law enforcement and security services (Moore, 1987). During 1970-71, the National Advisory Committee on Criminal Justice Standards and Goals commissioned the RAND Corporation to develop a profile of the private security industry and those working in it. Using the RAND results and a variety of other sources, the Advisory Committee published their own supplemental report in 1976.

The RAND study is to this day one of the most comprehensive pictures of the private security and policing industry. RAND conducted research on the private security and private policing fields, as well as providing the first widely accepted definition of the industry. Kakalik and Wildhorn (1971) declared the terms “private security” and “private police” to be synonymous, and for convenience and clarity, used “private security” to describe the focus of their work. The study used a combined methodology consisting of survey research, interviews, and review of available scholarly publications. The results of the study did not paint an encouraging picture of private security. RAND described an industry that at least equaled public policing in number of employees. While the private industry provided many of the same services as its public cousin, the security field did so with many fewer procedural safeguards, much less regulation in general, and poorer quality employees (Kakalik & Wildhorn, 1971).

The RAND study found that regulation of security agencies and agents was sparse and infrequently enforced. When regulation existed, the quality and quantity of the regulation differed drastically across jurisdictions. This lack of constraints was especially troubling given
the allegations of abuse and corruption in the public policing sector at that time. Instances of widespread bribery, extortion, police brutality, and other forms of misconduct were uncovered during the Knapp Commission and similar hearings during this era (Kakalik & Wildhorn, 1971; National Advisory Committee, 1976).

Kakalik & Wildhorn (1971) found equal, if not greater, levels of abuse in the private sector. At this time, the private industry had little to no external oversight. Physical abuse of citizens, bribery, and falsified evidence were common among private agents. Similarly, the study found that private security agents were older, less educated, much lower paid, and subject to higher rates of turnover than their public counterparts. Additionally, while public police received relatively intense levels of training, private security agents were subject to little or no initial job training or education (Kakalik & Wildhorn, 1971). This combination of poorly qualified applicants and lack of external control became a breeding ground for misconduct and low levels of quality service. While not all agents were corrupt or incompetent, little prevented private companies from hiring such officers. Likewise, a dearth of oversight while on duty did little to maintain or improve quality of service (Kakalik & Wildhorn, 1971; National Advisory Committee, 1976).

The National Advisory Committee on Criminal Justice Standards and Goals published their own supplemental report on the private security industry in 1976. This report, meant to build on the initial RAND analysis, was comprised of RAND data and independent research conducted by the committee, mostly anecdotal and informal sources. The report added relatively little new information regarding regulation of private security, but did underscore the need for more effective regulation of private police and security in order to maintain a high level of service and prevent potential abuse. The Advisory Committee report affirmed a contention of
One of the major criticisms of the RAND study was its lack of external validity. This critique, not surprisingly, came most often from members of the private policing and security industries itself. The industry alleged that the RAND and National Advisory Committee studies painted an inaccurate picture of their trade, and over exaggerated accounts of misconduct. In order to silence this criticism and assess the effectiveness of the recommendations of the National Advisory Committee on the security industry, Hallcrest Systems published the famous Hallcrest Report in 1985 (Cunningham & Taylor, 1985). Aware of the difficulties involved in accurately creating a representative sample of a largely unexplained industry, Hallcrest requested assistance from industry representatives in order to provide the most generalizable findings possible at the time. Cunningham and Taylor (1985) developed a panel of security officials, researchers, and others to oversee the study.

To this date, the first Hallcrest Report is regarded by scholars as the only accurate and valid profile of the private policing and security industry. Even given a sample widely accepted as externally valid, the Hallcrest Report did not find much difference in the industry compared to the RAND study. Security agents were characterized as old, out of shape, poorly paid, and given little or no training and education. Colloquially, this depiction was referred to as “an overweight, older, Caucasian male,” a stereotype of private security that exists today (Cunningham & Taylor, 1985; Cunningham, et al., 1990; Cunningham & Strauchs, 1992).

The Hallcrest researchers found that regulation had improved little from the 1971 standards. This continued to be a major concern of security researchers given the increasing
perception of the private industry as capable of providing service functions identical to municipal police agencies (Cunningham & Taylor, 1985). These findings were especially alarming given that the report found that the size of the security industry had actually eclipsed the private sector prior to completion of the RAND analysis. Presently, the Hallcrest Report remains of the most recent and accepted measures of the size of the industry (Cunningham, et al., 1990; Cunningham & Strauchs, 1992). Hallcrest Systems planned to create a periodic series of systematic and empirical assessments of the industry, but was unable to publish little more than anecdotal supplements due to funding limitations (Cunningham, et al., 1990; Cunningham & Strauchs, 1992).

Given the dour findings of the RAND and Hallcrest studies, an effort to improve regulation of private agencies at the state level emerged (Moore, 1987). The latest attempt to assess the degree and nature of private police and security regulation is the research conducted by Maahs and Hemmens in 1998. In this study, the authors examined state legal codes for each of the 50 states in the U.S. This statutory analysis provided several important findings: 1) the level of regulation has expanded from the time of the Hallcrest report to encompass 43 states, 2) while relatively widespread, regulatory strength remains relatively weak, 3) regulation is very inconsistent across states, representing a wide range of regulated areas, and requirements for regulation.

For instance, Maahs and Hemmens (1998a) found that only two thirds of states require criminal background and fingerprint checks, the most common form of pre-employment regulation. Minimum education requirements were present in only Hawaii and Michigan, and the level of job training ranged greatly. Most states provided little formal job training, while some states, such as California, had formal classroom instruction and proficiency exams as a
condition of employment (Maahs & Hemmens, 1998a; Maahs & Hemmens, 1998b). Overall, the authors found some improvement in the condition of state-level regulation of security agents. However, these levels still lag drastically behind the regulation found for public police agents and peace officers in general (Maahs & Hemmens, 1998a; Maahs & Hemmens, 1998b).

Conclusion

This section has described the private policing and security fields, to some extent. Relevant literature, designed to describe the nature and scope of previous research in the private policing and security industries was discussed. As this review indicates, relatively little is known about the private sector despite a long history of utilization of such services and an identifiable level of public concern about the quality of those services. In general, this study will seek to increase the understanding of regulation of public police and security agents. In the following section, the specific methodology for conducting this research is examined.
CHAPTER III

METHODS

Sample

This study utilizes a purposive sample of 15 states. The United States was divided into five regions, diverging from the standard four-region division utilized by the U.S. Census Bureau. Three states were chosen from each region for inclusion in the sample. The regions are as follows: 1) New England/Northeast, 2) Southeast, 3) Southwest, 4) Midwest/North Central, and 5) West. The included states are as follows, listed respectively by region: 1) Massachusetts, New York, Maryland, 2) Florida, Virginia, Tennessee, 3) Texas, Oklahoma, Arizona, 4) Ohio, Minnesota, Illinois, and 5) California, Washington, Wyoming.

Each state was chosen based upon its perceived importance as a large population center. Tennessee, Arizona, Ohio, and Florida were chosen due to their reputation as “bellwether” states, indicative of national opinion on major political matters (Tufte & Sun, 1975, Fiorina, 1981). The remaining states were chosen based upon their importance in national elections as “swing states” or for other reasons. These states have either a long tradition of stable political culture, or possess a large proportion of the population, and thus influence elections through the Electoral College (Fiorina, 1981). Bellwether status and influence in national elections may cause regulatory legislation in these states to serve as a model for similar legislation in other parts of the Union.

Data

The data for this study is descriptive in nature and derived from content analysis of statutory law. The existence, nature, and scope of regulatory legislation is determined by examining applicable laws in each sample state. State legal code databases were accessed via the
Applicable state laws were determined subjectively by the researcher using the search terms “private police,” “private security,” “private detective,” “private,” “police,” “security,” and “arrest.” Arrest powers were determined subjectively, using statutory language that specified the ability to arrest independent of traditional peace officer classification. Preliminary research determined that peace officer status was universally bestowed upon public employees.

Factors

State-level regulation uncovered during analysis is divided into four main categories: pre-employment, licensing, during employment, and disciplinary. Factors of interest are then described in each category. All factors describe regulation specific to the individual agent, not the agency level. Because of the language variance between state statutes, synonymous factors are collapsed in meaningful ways. For example, “background checks” and “criminal record checks” are combined if there is no substantive difference in the requirement. The use and categorization of these factors follows the structure laid out in Maahs & Hemmens’ previous studies (Maahs & Hemmens, 1998a; Maahs & Hemmens, 1998b; Craig Hemmens, personal communication, December 9, 2009).

Pre-Employment: The pre-employment factors characterize types of regulation related to the direct employment and hiring of private police and security agents. Generally, these variables represent a minimum threshold for employment consideration. Other types of regulation include employment disqualification provisions. Pre-employment factors of interest include: 1) felony disqualifications, 2) non-felony disqualifications, 3) mental health disqualifications, 4) other applicable disqualifications, and 5) training requirements.
**Licensing:** Licensing factors characterize types of regulation related to the existence and type of regulation surrounding licensure provisioning. Factors of interest include: 1) existence of licensure requirements, 2) licensure exceptions, and 3) the nature of the regulatory agency.

**During Employment:** Factors in this category describe statutes that regulate agent behavior while they are employed. Factors of interest include: 1) arrest powers allowed, and 2) actions required to maintain employment, such as continuing education or periodic training requirements.

**Disciplinary:** This category describes regulation involving disciplinary procedures for agents accused of wrongdoing. Factors of interest include: 1) nature of disciplinary agency, 2) potential consequences for wrongdoing, 3) complaint submission procedure, and 4) behaviors warranting discipline.

**Limitations**

This methodology seeks to answer the research question: “how does regulation of private police and security agents vary by state.” Being subjective in nature, the categorization of the data gathered in open to competing interpretations. However, because this methodology largely follows the peer-reviewed framework of Maahs and Hemmens (1998a; 1998b), other researchers in the criminal justice field have previously accepted this method as accurate and valid. Legal analysis is always vulnerable to an element of subjectivity given the nature of legal codes themselves. Due to their inherent lack of specificity, laws are meant to be interpreted by the user.

Furthermore, the sample used in this study is not representative. A larger sample of 50 states, the method previously by Maahs & Hemmens (1998a; 1998b), would be ideal. Such a sampling frame would be the only sure method of ensuring maximum external validity.
However, the purposive nature of the selected sample is meant to allow a small measure of
generalizability. A purely random sample would not generalizable even to a small degree, but
the use of bellwether states and historically important election districts allows the findings to be
discussed in an intelligent manner. External validity, if not assured, can be inferred to a degree
due to this arrangement.

Conclusion

This section has outlined the methodological considerations regarding this study.
Because this examination is descriptive in nature, factors of interest are examined rather than
traditional variables. Furthermore, this study is limited in sample size, but buttressed by the
addition of several additional factors compared to other previous efforts. Most notably, this
study seeks to uncover the existence of full arrest powers for private police and security agents, a
topic that is virtually absent from criminal justice literature. The following chapters will detail
the content analysis and discuss relevant findings.
CHAPTER IV

CONTENT ANALYSIS

Legal codes databases for each state were accessed via the Internet. A visual search of the indexes for each was conducted to identify potential chapters of interest. This search was supplemented by a string search using specific key words: 1) “private police,” 2) “private security,” 3) “private detective,” 4) “private,” 5) “police,” 6) “security,” and 7) “arrest”. All returned search results were examined for applicability and included only if they pertained to private police or private security. Differences in naming conventions did occur. Massachusetts, for example, collapses private security and private investigation together under the title “private detective”. Once determined to be applicable, each statute was examined for content and entered in the data set. The results of the data collection are analyzed below.

Pre-Employment

Pre-Employment factors represent minimum requirements that applicants must meet to be granted private police or security licensure. These factors broadly include 1) felony disqualifications, 2) non-felony disqualifications, 3) mental health disqualifications, 4) other disqualifications, and 5) training and other requirements. Of these requirements, disqualifications for previous criminal history were most similar, and training requirements were most varied.

Felony disqualifications, the barring of any convicted felon from employment as a private police or security officer, were nearly universal. The vast majority of states, including Arizona, California, Illinois, Virginia, Washington, and others, had blanket felony disqualifications. If an applicant has been convicted of a felony, regardless of crime type, they are disqualified from
licensure. While Arizona does have a blanket felony qualification, the state reserves the right to void this disqualification if an applicant’s rights have been restored after a previous felony conviction. Seemingly, this provision exists to allow to reintegration potential for applicants who have been pardoned or had their sentences commuted.

The majority of states with felony disqualifications did not place a time limit from conviction to application. In these states, any previous felony conviction was grounds for disqualification. In contrast, New York does not license applicants who have been convicted of felony within the past three years. With one exception, every state that disqualified felons required that a state agency perform the criminal history check. Massachusetts charges the employing agency, not the government organization, with conducting the requisite background check. The statute specifically forbids the hiring of “known” felons.

The statutory language of Maryland and Texas do not disqualify felons from licensure. However, Texas may unofficially disqualify felons due to stipulations attached to these other requirements. Texas state law requires previous employment experience in a similar field. Employers in these fields may, as a rule, not employ felons. Such an arrangement can have the same effect as a state level regulation if widely utilized. Wyoming does not have an applicable felony disqualification statute as of this writing. Because felons are not expressly disqualified, it is inferred that Wyoming does not disqualify felons from licensure, similar to Maryland and Texas.

Non-felony criminal exceptions exist as well. The most common exception are charges collectively known as “moral turpitude”. These crimes, which may include bribery, fraud, and similar offenses, reflect poorly on the character of the applicant. Moral turpitude alleges conduct that is dishonest, unjust, and contrary to the common law notions of good morals in America.
Some states, such as Arizona and Oklahoma, provide a lengthy list of disqualifications that include charges such as physical violence and sexual misconduct, as well as bribery, fraud, and minor theft, and more. In these instances, the state statutes qualify their use of the term as well as provide additional offenses that disqualify an applicant.

In general, the definition of moral turpitude is not strictly defined, and left open to interpretation. In these cases, the regulatory agency determines what conduct is applicable. The most common arrangement is disqualification of an applicant for any crime alleging moral turpitude, along with one or two other disqualifying crimes, such as weapons offenses. Sexual misconduct and drug offenses are also explicitly mentioned in addition to moral turpitude. A majority of state laws focus on criminal disqualifications of various types.

Given the stringent standards found on civil service exams for public employees, mental health disqualifications are surprisingly absent from the statutory language. Only three states in the sample have mental health disqualifications. Two states provide a disqualification for any judicial finding of mental incompetence. Oklahoma requires every applicant to take the Minnesota Multiphasic Personality Inventory (MMPI), the results of which are evaluated by a physician. If the psychologist classifies the applicant as “at risk,” they are disqualified from licensure. Only in this instance do the mental health standards for applicants approach those of civil employees.

Other non-criminal disqualifications include indications of poor moral character, as provided by interviews or reference statements. Massachusetts requires applicants to submit a list of three non-kin references, who are contacted by the state regulatory agency and interviewed regarding the applicant’s character. According to the legal language, charges lacking an indictment or even anecdotal accounts of wrongdoing may be grounds for disqualification. The
law does not specify to great detail, but it does imply that any accusations would have to be founded by the state regulatory agency.

The level of detail that these character investigations entail varies from state to state. New York requires applicants to submit their parents contact information, as well as character references. Tennessee simply requires that applicants be of “good moral character,” but does not specify how this is to be determined. Qualifications such as these are highly subjective, and state law is vague about how a disqualified applicant may appeal their application if they disagree with any investigatory findings. Any subjective requirements, such as a character evaluation, are subject to potential bias or abuse, and may prohibit citizens with even a minor criminal history from gaining licensure. This subjectivity may also allow politically connected criminals to gain licensure as well.

Other non-criminal disqualifications are few, but vary from state to state. Illinois and Florida do not allow dishonorably discharged veterans to apply. Tennessee mandates a minimum level of physical fitness, and disqualifies applicants who have any disabilities that may hamper the performance of their job duties. Tennessee also disqualifies applicants with habitual drug or alcohol use issues. Arizona stipulates that applicants not be on probation, community corrections, or parole, and may not have any outstanding warrants.

See Table 1 for an overview of the most common minimum requirements. The most frequent requirements were minimum age, fingerprint & photo, and a criminal record check. In states that require both the identification requirements and the record check, the fingerprints and photos are to aide in preventing fraud and identifying applicable criminal histories. These states do not accept fingerprints on file with another agency and require that applicants submit a recent photo, although the time that qualifies as “recent” varies. Ohio stipulates that the photo must be
from within 3 months prior to the application. Some states, such as Massachusetts, require the employing agency to conduct these checks, although the majority of states requiring checks conduct these investigations themselves. No law exists that prohibit employers from conducting checks in addition to those completed by state regulatory agencies.

Residency and minimum age requirements, near universal in public police employment, are not present in a majority of states. States that do require these conditions may combine these requirements with other stipulations. Florida applicants must submit employee statements that include proof of previous employment in a similar field as well as proof of residency. The statutes do not state how residency is determined during the application process, but voter registration cross-referencing and tax documentation are commonly used indicators in other forms of investigation.

Mandatory training and/or is common across this sample, but far from universal. Wide variations exist in the nature and the depth of training. California requires a rigorous educational regimen, and specifies the training requirements to a great degree. Other states, such as Ohio, only state that training is required, and do not go into detail regarding specifics. Texas requires on the job training as well as formal education. Newly licensed private security or police agents are subject to an apprenticeship period, in which their powers are restricted. Once an agent has served as an apprentice for a specified time, they may apply for “full” licensure, and form their own company. Apprentice agents are not allowed to hire or otherwise supervise other employees in the state of Texas.

While wide variation in training exists for agents in general, training for armed agents is notably lacking. Given the extensive regulation of public police use of deadly force, the absence
of similar regulation in several states is surprising. Five states required no training at all, and Ohio mandates training for armed security guards only. The remaining nine states require training or education in some form for both armed and unarmed guard and police.

Minimum education requirements are absent from this sample, and Maahs and Hemmens (1998a, 1998b) previous research found such requirements in only 2 out of 50 states, as of the date of their work. Given the historic lack of rigorous education requirements for law enforcement officers, this particular finding was not unexpected. Post application training requirements may serve as a proxy form of education, much as they do in the public policing sector.

Other minimum requirements not stated in the law may exist as well. Employing agencies are legally allowed to maintain higher employment standards than those required by statute. Similarly, several states delegate some or most of their regulatory authority to commissions or panels, which may enact other rules not listed in the legal code text. Despite this potential, pre-employment requirements are by far the most common type of regulation found during this analysis.
Table 1

Most Common Minimum Employment Requirements

<table>
<thead>
<tr>
<th></th>
<th>MA</th>
<th>NY</th>
<th>MD</th>
<th>FL</th>
<th>VA</th>
<th>TN</th>
<th>TX</th>
<th>OK</th>
<th>AZ</th>
<th>OH</th>
<th>MN</th>
<th>IL</th>
<th>CA</th>
<th>WA</th>
<th>WY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Citizen</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Resident</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Minimum Age*</td>
<td>no/18</td>
<td>X</td>
<td>18/21</td>
<td>18</td>
<td>18/21</td>
<td>18</td>
<td></td>
<td>18/21</td>
<td>18</td>
<td>18/21</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Fingerprint &amp; Photo</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Record Check†</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Employee Statement</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Training**</td>
<td>U/A</td>
<td>U/A</td>
<td>U/A</td>
<td>U/A</td>
<td>U/A</td>
<td>U/A</td>
<td>U/A</td>
<td>U/A</td>
<td>U/A</td>
<td></td>
<td>U/A</td>
<td>U/A</td>
<td>U/A</td>
<td>U/A</td>
<td>U/A</td>
</tr>
</tbody>
</table>

* The first age denotes unarmed agents; the second age denotes armed agents.

** “U” denoted unarmed agents, “A” denoted armed agents.

† “Record check,” used in this context, refers to a criminal history investigation. These checks do not include other forms of character or employment checks.
Licensing

Licensing requirements and regulation exist in some form in every state of this sample. Given the nature of the business, which potentially includes the use of violent and deadly force, some degree of regulation is to be expected. While the sample size precludes an analysis of the degree of overall regulation between states, a level of governmental oversight does occur in every state. Between states, the nature of this regulatory agency differs to some degree. Massachusetts charges the colonel of the state police with oversight of private police. However, the most frequent variation of regulatory agency is supervision by the state’s department of public safety or similar agency. Ohio regulates private police and security through their Department of Homeland Security, while Florida provides oversight through the Department of Agriculture. In many cases, this agency creates a commission to manage the specific regulatory duties, while the departmental agency retains nominal power. No states in this sample delegate authority to local commissions.

Exceptions to licensure exist as well, and are common across states. These exceptions were developed because other individuals engage in duties defined as security-related or investigatory in the course of their own employment. Examples include lawyers, currently employed public police officers, court officials, and persons conducting credit history or employment history investigations. Many of these occupations maintain rigorous licensing standards of their own that would be redundant compared to the private police and security requirements. Because significant functional overlap can exist between professions, requirements for multiple licensing would be a burden to applicants. Thus, the political lobbies for these interests would attempt to influence the legislation to enact less onerous standard.
Other qualifications, such as training requirements, are waived in particular situations. Former or retired peace officers are not totally exempt from licensure, but have many of the requirements waived. Similar standards exist for corrections officers, uniformed court agents, and even court clerks, in some states. The applicability of these waivers enhances the employment attractiveness of job applicants who have previously completed an eligible training course, especially in jurisdictions or for agencies with limited funding resources.

When applicants meet these previous employment standards, training requirements are considerably shortened or waived entirely in many states. See Table 2 for common examples of licensure and other requirement waivers. New York provides an exhaustive list of situations where requirements may be waived. Florida only waives training for currently employed criminal justice officers, such as police or corrections agents. States that require training also provide separate instruction for training instructors. After becoming certified instructors, these individuals are universally exempt from officer training requirements.
Table 2

Common Licensure & Training Waivers

<table>
<thead>
<tr>
<th>Licensure &amp; Training Excepted</th>
<th>All Training Requirements Waived</th>
<th>Some Training Requirements Waived</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Police Officer</td>
<td>• Corrections Officer</td>
<td>• Non-Police Peace Officer</td>
</tr>
<tr>
<td>• Sheriff/Deputy Sheriff</td>
<td>• Court Officer</td>
<td>• Former Non-Police Peace Officer*</td>
</tr>
<tr>
<td>• Attorney</td>
<td>• Clerk of Court</td>
<td>• Former Police Officer*</td>
</tr>
<tr>
<td>• Credit History Investigator</td>
<td>• Transportation or Transit Authority Officer</td>
<td>• Former Sheriff/Deputy Sheriff*</td>
</tr>
<tr>
<td>• Employment History Investigator</td>
<td>• Probation/Parole Officer</td>
<td>• Former Corrections Officer*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Former Court Officer*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Former Clerk of Court*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Former Transportation or Transit Authority Officer*</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Former Probation/Parole Officer*</td>
</tr>
</tbody>
</table>

* Time limits from termination of previous employment to date of application for licensure can affect waiver eligibility
During Employment

Full arrest powers, similar to those traditionally held by peace officers, were not common among the sampled states. Most often, full arrest powers are granted only to an agent who qualifies as a peace officer. To become a peace officer, an agent must satisfy a certain set of requirements, including a mandatory training program. Once the agent completes training, they must gain employment with a legally recognized police agency. Employment is a stipulated term of peace officer status. Even if an individual was to complete training, they are not considered peace officers while unemployed or job hunting. Retired or off-duty may maintain their enforcement ability, although individual variation occurs across states and municipalities.

This broad flexibility allows for “moonlighting,” the employment of off-duty peace officers in a secondary law enforcement or security function. However, the treatment of moonlighting among governmental and private agencies differs drastically across jurisdictions. Some police agencies unofficially endorse such practices in order to gain a net benefit increase in crime reduction, as well as maintain control over the security sector. Other departments may have policies discouraging off-duty moonlighting, but allowing for employment in officially endorsed secondary functions for an overtime rate, such as traffic or crowd control during public gatherings.

All peace officers, regardless of their official duties, are subject to similar regulation in order to maintain their powers. This means that police officers, probation officers, animal control specialists, parking enforcement, and park rangers are all subject to the same set of rules regarding their powers and behavior, as long as they are all considered peace officers.
A goal of this study was to determine whether private police and security agents in each state were considered peace officers. If they were considered as such, full arrest powers would be inferred. No state explicitly defined private security as peace officers. However, several states allow certain types of private police full arrest powers. Officers on university campuses, commercial amusement parks, and health care facilities are common examples of this type of exception, and occur in states such as New York, Massachusetts, and Ohio. Many states qualified these conditions, however, stipulating that only parks with a certain number of visitors each year, or hospitals with a certain number of beds were applicable. See Table 3 for a brief overview of the most common types of arresting private police.
Table 3

Common Private Police Peace Officer Types with Full Arrest Powers

<table>
<thead>
<tr>
<th>Place of Employment</th>
<th>Description/Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>College or University</td>
<td>All states allow full peace officers at state universities, but several states’ statutes do not state that private university police are “peace officers”. Ohio allows private universities to employ peace officer security forces, but only if the department does not use any form of state government funding for police activities.</td>
</tr>
<tr>
<td>Hospital</td>
<td>Some variation occurs, but the majority of states allow hospitals to employ private peace officers as security guards. The majority of states allow all hospitals this privilege, although a few states require hospitals to be of a certain capacity.</td>
</tr>
<tr>
<td>Bank or Financial Institution</td>
<td>Banks or financial institution security forces are commonly granted peace officer status due to the high risk of robbery. No business limitations, such as number of employees, cash flow amounts, or building size, were found.</td>
</tr>
<tr>
<td>Non-Profit Corporate Police Department</td>
<td>Several states, including New York, Massachusetts, Florida, and Ohio, allow non-profit organizations to employ peace officer security forces.</td>
</tr>
<tr>
<td>Air Navigation/Transport Facility</td>
<td>Due to relatively high-risk environments, security forces at airports, railways, and similar facilities are generally granted peace officer status.</td>
</tr>
<tr>
<td>Transit Authority</td>
<td>This incarnation mainly occurs in states with subterranean or aquatic transportation networks. The most famous example of this arrangement is the Port Authority of New York and New Jersey (PANY/NJ).</td>
</tr>
<tr>
<td>Private Corporation</td>
<td>Private companies can employ in-house private police.</td>
</tr>
</tbody>
</table>
In some instances, this exception appeared to be explicitly crafted. New York, for example, maintains an incredibly detailed list of public agents that are granted peace officer status. This listing includes not only the job title for the agent, but their place of employment, and often their jurisdiction. Municipal animal control officers and parking enforcement agents were commonly listed, along with the geographical area in which their enforcement powers were effective. This level of gross specificity is unmatched among this project’s sample.

Other states are less clear when it comes to defining the arrest powers for private police or security officers. Ohio is unique in allowing arrest powers for certain forms of non-peace officer police agents. Most states use a blanket peace officer qualification for all police and law enforcement officers. However, in Ohio, not all police agents are peace officers. Although peace officers are granted full arrest powers, private police agents not explicitly listed as peace officers may be granted the use of arrest within limited jurisdictional boundaries under specific circumstances. Such police officers must complete the basic law enforcement training program at the Ohio Peace Officer Training Academy, and be employed by a private agency that is granted arrest powers by a specific municipality. This municipal agreement can be limited, allowing arrest for only certain offenses, or it can provide authority to private agents as nearly identical to that of traditional peace officers. Agents that fall under this exception are not regulated by the state of Ohio, and are subject to the regulations set forth in their employer’s agreement with their jurisdictional municipality.

In all other cases, private police and security agents are granted the same arrest powers as private citizens. This “citizen’s arrest” is generally limited to felonies witnessed by the arresting citizen. In such instances, private agents are legally allowed to detain a suspect while they notify
public police of the crime. However, citizens do not enjoy the same civil protections as public employees, and are subject to strict liability for cases of wrongful arrest or other infringements.

Disciplinary

In all cases, the disciplinary agency does not drastically differ from the larger regulatory agency. The only variation occurs in states that delegate authority to internal commissions within larger regulatory agencies. While the state agency is nominally the regulatory body, the agency specifically names the commission to be the disciplinary organization. The commission itself may hear grievances as small group, as an entire organization, or establish a separate office to handle disciplinary investigations. For example, a commission can delegate disciplinary authority to certain officers or the whole commission may be required to serve in this role. The commission may also employ civil servants to conduct these functions and simply serve in an oversight capacity.

Tennessee law names the Department of Commerce and Insurance as the regulatory body for all security guards in the state. Laws that are more recent have created a Board of Security Guards, which is charged with conducting all disciplinary hearings and investigations, as well as administering disciplinary action for agents found guilty of wrongdoing. Tennessee law explicitly defines this relationship, but does not specify beyond the general duties and powers of the Board. It is inferred that internal rules decide the makeup of the Board, hearing and investigatory procedure, and if a quorum is required to conduct business.

In contrast, Massachusetts law names the colonel of the state police as the sole power in charge of both regulating and disciplining security and police forces within the state. It would be unrealistic to expect the actual officeholder to personally perform all of these functions in
addition to his primary duties. Thus, it is inferred that the colonel delegates authority to another agency or person. The statutory language itself is silent on this matter.

In both Tennessee and Massachusetts law, along with the remaining states, little information is available about the specific procedures regarding discipline beyond the arrangement of the oversight agency and prohibited acts that warrant discipline. The complaint submission procedure was notably absent from the statutory language. External verification will likely confirm that these procedures are directed by internal rules passed by the regulatory body.

Behaviors warranting discipline are wide in range. Failure to satisfy continuing licensure requirements, such as education credits or relicensing procedures are the most common form of misbehavior. Criminal conviction, for felonies especially, but also for specific misdemeanors is also widespread. Crimes involving moral turpitude, whether explicitly or implicitly considered, are universally grounds for disciplinary action.

Consequences for disciplinary action range from permanent license revocation to a small fine. Temporary suspension is also common, although state’s treatment of each penalty varies greatly. Some states place more emphasis on character, and thus punish more harshly for turpitude, while other states appear more lenient. New York, for example, clearly defines fine amounts and for what behaviors they are applicable. In contrast, Ohio vaguely describes potential fines in ranges of dollar amounts, or simply implies that “civil penalties” may result from any finding of wrongdoing.

Conclusion

This chapter has examined the analysis section of this study. These findings were limited in part to sampling size restrictions. Similarly, due to the nature of private industry and structure
of state laws, it is possible that regulations exist independent of those defined by statute. Several states in this sample delegate rulemaking authority to separate commissions, or allow further regulation “as deemed necessary,” to be determined by the oversight agency. Thus, actual restrictions and rules regarding private police may be more stringent than represented here. Similarly, vague or sparsely worded laws may allow for differences between statutorily defined behaviors and actual practice. These potential developments will be discussed in the following final chapter.
CHAPTER V
DISCUSSION & CONCLUSION

On an aggregate level, state regulation of private police and security agents is remarkably similar. Each sampled state required agents to be licensed, and to meet a set of minimum standards to be granted this license. The duties and powers of private police were, with one exception, clearly defined and largely identical. Ohio’s unique arrangement that grants arrest powers to private police who are not peace officers is likely the result of a legal loophole rather than a consciously crafted exception given the nature of the contextual statutory language. Each state established an organized body to oversee licensing, discipline, and other forms of regulation. No states except Ohio allowed private police who were not otherwise peace officers to arrest citizens.

No particular regional trends are evident, which is somewhat surprising given that regional variation in political opinion is relatively stable across the country. Midwestern and Southern states are no more politically conservative and Northeastern states are no more liberal in defining the roles and responsibilities of the private police. Individual differences between states are evident, although this is to be expected. However, to a great degree, these differences do not appear to conform to longstanding political trends among states. California, generally considered a politically liberal state, is no more progressive regarding training protocols than Texas, a long-time center of conservative political culture. The lack of a national police, or a national model for police legislation at the state or local level, serves as a balance against political tyranny as much as it does as an expression of political differences.

Compared to the large body of procedural law governing public law enforcement, relatively little regulation exists for private police. The reasoning for these differences can only
be guessed at, and are likely the result of variation in legislative temperament and public opinion over time as much as cultural variations among states. Still, the strong penchant for state level regulation reflects the national preference for local rule found in America, a heritage of English common law. While state statutes for private police may be similar in many respects, the differences that exist among the sample reiterate the local-rule tradition. In fact, even though some state laws are virtually identical, these similarities are likely independent of each other rather than the result of blatant copying of preceding law.

No matter how stringent the statutorily defined regulation, significant differences in the actual application of the law exist. For instance, the Wal-Mart loss prevention officer, while not a peace officer or police agent, can legally arrest a patron for a felony level theft. However, that same guard may be just as prone to detain a misdemeanant. Whether or not this occurs at every store or on every potential occasion is as much the result of corporate or local store policy as is the item that was stolen or the temperament of the officer.

The distinction between legally sanctioned citizen arrest and generally prohibited full arrest blurs in action on the ground, but it is beyond the scope of this study to ascertain these differences to any degree of precision. Likewise, police may unofficially endorse such “soft arrests” of suspects by private citizens on misdemeanor charges as an easy way to increase their arrest or clearance rates.

The unofficial expansion of private police powers may also stem from the common law notion of “shopkeeper privileges.” These laws allowed storeowners to detain a suspected shoplifter. These statutes generally follow the “reasonableness doctrine,” requiring reasonable suspicion, allow for detention in a reasonable fashion for a reasonable amount of time using
reasonable force. The privilege extends in action to the store employees as well as the legal owner of the store, as long as the theft or attempted theft occurs on the store premises.

Similarly, the tendency to delegate by state agencies to authority to other organizations, such as commissions, may indicate a widespread sort of laissez-faire attitude within the private policing industry. It is difficult to determine whether this laxity is due to legislative disdain towards private police, lack of public interest, or the result of effective political lobbying by concerned interests, but it is likely a combination of these factors. Even the Hallcrest Report, which most visibly publicized the poor state of the industry, had an only moderate effect on increasing professionalism among the private sector. In the public’s eye, as other political subjects eclipse private policing in importance, little progress will be made in increasing the level of service among agents or tightening troublesome regulation.

The lack of any widespread arrest powers for private police may suggest that the most common order maintenance and law enforcement functions can be effectively completed without the use of arrest. Arrest adds significant legal complexity to even a normative law enforcement situation, and increases the potential for misconduct or abuse. While legal precedent has established procedures and standards for public police arrests, the same cannot be said for the private sector. The lack of arrest powers may also be a check against the potential abuse highlighted in publications such as the Hallcrest Report.

However, the evidence is clear that the public does desire protection and law enforcement from some agency. Whether these services are provided by public or private organizations in the future remains to be seen. If current trends in service levels and citizen satisfaction of police performance continue, the general populace may well resort to security and norm enforcement on
a profoundly individual level. The rapid rise in concealed carry firearms permits may be a sign of this movement.

Political opinion will play a large role in determining the future of the policing industry, and of research in the field. With the rapid rise of private police in latter part of last century, public police face unprecedented levels of competition. Both fields may experience a measure of role confusion as they seek to carve out a niche for themselves among the many demands of the American populace. At the present, some restrictions exist that hamper the informal authority of security agents. They may be prohibited from wearing metal badges or from utilizing vehicles with lights and/or sirens. The public police officer thusly stands as the embodiment of governmental authority, and the use of public police for private functions may represent an attempt by the citizenry to increase accountability while utilizing agents with greater social control capabilities.

Conclusion

In order for police to continue to justify their existence to the taxpayers and commercial customers who provide their salaries, they will have to improve their reputation and quality of service. Clearly defined rules and effective oversight are just one part of this equation, but a vitally important one for the continued growth and success of policing in America. Further research is necessary to fully uncover how best to approach proper regulation and oversight for both the public and private sectors of the policing industry. In an increasingly security-conscious society, the need for effective policing services can only continue to grow.
REFERENCES


