CIVIL LIABILITY OF PRIVATE SECURITY: ENFORCER OF MORAL OBLIGATIONS TO RIGHT LEGAL WRONGS

BY

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The private security industry in the United States now has approximately twice as many personnel as does the public police. Private Security personnel have authority over the liberty, and sometimes the lives, of customers and employees. Often they exercise this awesome responsibility with little if any background and training.

In most instances private security personnel are not considered law officers or peace officers and are, therefore, not bound by the same rules and regulations that apply to public police.

More and more frequently, untrained or minimally trained, and basically unqualified security officers are taking actions against customers and employees which are excessive and unreasonable. Without the Constitutional protections which would be available if the act were committed by a public police officer, the only recourse for a private individual against reckless and wanton conduct on the part of private security personnel is a civil action, seeking compensation for the inconvenience caused or injuries received.

The courts have found that companies and their security personnel have an obligation to be reasonable in their investigations of suspected criminal violations by employees and customers. Failure to conduct a proper and reasonable investigation will open the individual directing the investigation, and the company authorizing it, to liability for the injury their improper actions have caused. Civil liability suits have become the moral enforcer for improper and excessive conduct by private security personnel.

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Introduction

The private security industry in the United States now has approximately twice as many personnel as does the public police. (Cunningham, 1985: 105-116) Most business establishments of any size have either their own security force or contract for security services. The individuals providing these services have authority over the liberty, and sometimes the lives, of both customers and employees. Often persons exercise this awesome responsibility without any background and training in the law and with no concept of individual rights. (Cunningham, 1985: 87-104)

Only 41 states and the District of Columbia have any sort of regulation of private security agencies or personnel; of these, four deal exclusively with private detectives (Appendix A). Of these 42 jurisdictions only 22 have any requirements for training of private security personnel (Appendix B). In six states, the statutes clearly declare training is required only if the security person is to be armed (Appendix C). Even those states that do require training require only a bare minimum, usually four hours. Most of the state statutes and regulations do not indicate whether the training must be pre-employment or pre-posting. They imply that training may take place while the individual is on the job, but must be completed within a specified time after he or she has been hired (Appendix B, C). Only one state, by statute, requires as much as forty hours of training, and that within 45 days after employment (Appendix C). However, several states, by regulation, do require 40 hours of training. One state, Georgia, requires as much as 68 hours for a private detective carrying a concealed weapon (Appendix C). There are at least two states in which the training requirement for private security personnel is included in the firearms licensing statutes, not the private security statutes (Appendix D).

Most security companies pay a bare minimum wage, with few if any benefits; consequently, the quality of personnel is limited. (Cunningham; 1985: 87-104) When asked about the quality of their personnel and their company's training requirements, an executive in one fairly sizeable regional security company told the author: "This is a highly competitive business and we have to keep our personnel cost as low as possible to survive and make a profit."

In most instances, private security personnel are not considered law officers or peace officers and are, therefore, not bound by the same rules and regulations that apply to public police. (Ziff, 1967: 608) This means the private security officer is not bound by the constitutional restrictions of the Fourth and Fifth Amendments. (Braun, 1971: 555)