

December 15, 2004

Private Security Officer Employment Authorization Act

Landmark legislation grants security providers indirect access to FBI criminal database

Editors' note: The December 15, 2004, issue of *The Lipman Report* was printed moments after President George W. Bush signed the National Intelligence Reform Act—which includes the Private Security Officer Employment Authorization Act—into law on December 17, 2004.

The passage of intelligence reform legislation last week represents an important step in the ongoing drive to improve homeland security. While the media has focused on the unification of the nation's 15 intelligence-gathering agencies, a small, but critical element has gone almost entirely unnoticed: an amendment known as the Private Security Officer Employment Authorization Act. This portion of the legislation grants the security industry indirect access to the criminal histories of employees and applicants. In fact, the act does so while protecting individual privacy—with the cost borne by the requesting companies.

Advocates for access to the Federal Bureau of Investigation's criminal database lobbied in vain for more than 20 years. During those two decades, the United States of America lost millions of dollars in property and countless lives when convicted criminals landed positions of trust and authority—only to violate that confidence and victimize those they were hired to protect. Low margins and competitive pressures thwarted campaigns to protect the public through federal regulations aimed at upgrading the professionalism of the industry. Sadly, it took the tragic attacks of September 11, 2001, to convince federal lawmakers to act.

The editors of The Lipman Report applaud the passage of the new law. Unlike the intelligence overhaul, the newly acquired ability to check security employees against FBI criminal records can have an immediate, dramatic impact on the nation's safety.

Private security today

In the aftermath of the 9/11 attacks, the demands on U.S. law enforcement have grown dramatically. Their primary mission has expanded from protecting the American public from domestic crime to include preventing terrorist attacks from foreign enemies. Yet, the number of police officers has not increased accordingly. The U.S. Bureau of Labor Statistics (BLS) reports that U.S. police forces grew less than 10 percent between 1999 and 2003—from just over 600,000 to roughly 650,000.

Limited public funds and personnel, therefore, require private security companies to supplement the efforts of law enforcement—and they have. By some estimates, 85 percent of the nation's critical infrastructure relies upon the protection of the private security industry.

Unfortunately, the private sector has little interest in underwriting the nation's security costs. The BLS reported more than one million people working as security officers in 2003, including 55,000 men and women working as airport screeners. Approximately 53 percent worked for private security companies, with the remainder employed directly by the facilities under their protection. This total figure exceeds the number of public police officers by more than 57 percent, but it also demonstrates a decline from 1999 security-officer employment levels. Even though many organizations hardened security in the months following the 9/11 attacks, economic recession and budgetary concerns soon forced them to reduce discretionary spending, with security being one of the first line items to suffer.

In fact, the historic and widespread view of security as a budgetary drain has created a dangerous situation for the American people.

When a person walks into a building and sees a security officer, he or she often vests that individual with the same trust reserved for public police officers. Such trust is too often misplaced, however. Unlike public law enforcement, private security personnel generally do not have to meet rigorous screening and training standards. Instead, the industry is governed by an inconsistent patchwork quilt of state regulations—with 10 states having no regulations or guidelines at all.

In this environment, some security providers skip background checks altogether. Some firms' executives have good intentions but lack the experience to understand the importance of careful screening and the potential consequences of laxity; others simply take a passive attitude toward

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background checks and accept applicants at face value. Both scenarios can contribute to disaster.

One company in the Northeast hired individuals convicted of such charges as assault, theft and sexual assault. Although authorities learned about the problem before any incidents occurred, companies—and their employees and customers—do not always fare as well. An especially tragic example occurred in Houston in 1982, when a former security guard returned to his place of employment and strangled the managing director. The man had previously served time in New York for killing his toddler son.

Some industry leaders have fought for decades for stricter standards that would help raise the quality of the men and women employed to protect the American public, but many within the industry have opposed these efforts. Higher standards increase the costs of providing security personnel. In a low-bid, low-margin industry where multi-million-dollar contracts depend on savings of literally pennies on the dollar, many security companies have been loathe to support any measure that will raise expenses and anger customers already clamoring for budget cutbacks.

The long road to legislation

In February 1970, *Gentlemen's Quarterly* cited Guardsmark President Ira A. Lipman calling for a reduction in armed security officers. Since then, the company and its leader have actively encouraged the adoption of state regulations for the security industry across the nation. As states followed suit, however, the resulting inconsistencies prompted Guardsmark to advocate federal legislation. The firm and its founder lobbied relentlessly, introducing resolutions at meetings of the Committee of National Security Companies (CONSCO), publishing op-eds in such newspapers as *The New York Times* and *The Washington Times*, and discussing the issue with national leaders. (The enclosed insert features a detailed chronology of these efforts.) A 1992 *Time* magazine article highlighted deficiencies

in the security industry. The story described Guardsmark as the company that “many security experts consider the best national firm in the business” and included a sidebar featuring Ira Lipman and his organization, which singled out their efforts to elevate industry standards despite vehement opposition from key industry players.

The quest for federal regulations that would help security companies better serve and protect the American people took on greater urgency after the 9/11 attacks. That fall, Ira Lipman engaged outside legal counsel to work with senior government officials and draft legislation that would grant security employers access to the FBI criminal database—an effort that demanded an investment of three years and more than half a million dollars from Guardsmark. While lack of time prevented the amendment from passing as part of the Patriot Act, a bipartisan coalition of senators reintroduced the measure the following spring. Sponsored by Senators Carl Levin (D-Mich.), Mitch McConnell (R-Ky.), Joseph Lieberman (D-Conn.) and Fred Thompson (R-Tenn.), the bill focused exclusively on obtaining indirect access to FBI criminal history records; it called for no public funds and included safeguards for employee privacy rights.

From April to November 2002, Guardsmark campaigned among all critical agencies and organizations to obtain a broad support base for the proposed bill. This effort received press in a feature story on Ira Lipman in the May 14, 2002, edition of *The Washington Post*. By the end of the year, the following groups had endorsed the legislation: the FBI, the U.S. Department of Justice, the National Association of Attorneys General, the International Association of Security and Investigative Regulators (IASIR), ASIS International (formerly the American Society for Industrial Security) and the National Association of Security Companies (NASCO), formerly CONSCO. “This legislation provides a fundamental piece of information in an industry where issues of trust and confidence are important, not only to the client, but also to the public,” said IASIR

officer Marie Ohman of Minnesota. Steven Giorgi, Deputy Director of Homeland Security for the Governor's Office of California, believes the act's passage represents a victory for public-private partnerships. "It's more than just a consumer protection issue," said Giorgi. "This legislation furthers the necessary partnership and professional relationship that must exist between law enforcement and private security."

Although no group, organization or individual expressed opposition to the measure, it did not pass by the end of the year, and Guardsmark lobbied to have the act reintroduced in 2003, again sponsored by Senators Levin, McConnell and Lieberman. Senator Lamar Alexander (R-Tenn.) succeeded retired Senator Thompson as a sponsor, and Senator Charles Schumer (D-N.Y.) added his support. The Senate Judiciary Committee unanimously approved the bill on October 23, 2003, and the U.S. Senate likewise passed the act unanimously on November 17. Industry representatives testified before the U.S. House Judiciary Committee, Subcommittee on Crime, in March 2004. The legislation became part of the House Intelligence Reform Bill (H.R. 10) in September, followed by its incorporation in the Senate Intelligence Reform Bill (S. 2845) a few days later, and was finally approved as part of the National Intelligence Reform Act last week—an action applauded by Senator Levin. "The criminal background checks provision included in the intelligence reform legislation will provide important additional homeland security protections for companies charged with guarding much of the nation's critical infrastructure," he said.

How—and why—the legislation works

The passage of this legislation enables security companies—as well as firms that employ an internal security staff—to discover if employees and applicants have criminal records that disqualify them from protecting the nation's critical infrastructure. These employers can now compare information provided in personnel files against the

FBI's criminal database by submitting their request to a state identification bureau. This intermediary forwards these requests to the FBI. The Bureau then discloses whether or not an individual has a criminal history that would make him or her unfit to serve in a security capacity, but it does not release the entire record—simply the existence or absence of a relevant criminal history. The state bureau passes this "yes" or "no" information on to the inquiring organization. Using this new, indirect access reduces the likelihood that a person convicted of a felony in one state will receive a badge and firearm in another.

Part of the reason this act received such widespread support comes from its reliance on existing state regulations and agencies. The new legislation does not interfere with state requirements; it works within the current regulatory framework, but provides guidelines for states without regulations. For instance, the legislation defines criminal offenses that disqualify employees from serving as security officers only in those states that do not have such standards. Similarly, the act allows state executives to designate an existing identification bureau, rather than create a new organization explicitly for this purpose. The legislation thus facilitates more complete screening while minimizing the burden on the states. Assigning the cost for this service to users further mitigates the potential resource drain on state governments and taxpayers.

Another factor behind the success of the legislation lies in the extensive provisions protecting the privacy of employees and applicants. To begin, companies cannot request criminal-record checks without express permission from the candidate. Completed checks only return a finding of whether or not a person is employable; inquiring companies must then share these results with the employee or applicant. Other protections guaranteed by the act include restricting authorized employers to check a person's criminal history only once per 12 months of continuous employment—except for "good cause"—and imposing stiff criminal penalties

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on organizations or individuals that misuse the information they receive through this process.

What happens next?

The focus now shifts to the U.S. Department of Justice, which must develop the final regulations that will implement the Private Security Officer Employment Authorization Act. The legislation requires publication of these regulations within 180 days of becoming law. The specific procedures established will include: how to submit records for criminal history checks, the fees associated with the service, the agencies responsible for serving as the intermediary with the FBI; deadlines for processing requests; and penalties for abuse of the system.

During this process, the agency writing the regulations will publish proposed or interim regulations in the Federal Register. Interested parties can then comment on the proposed guidelines, expressing which aspects they agree with and which elements present problems. The authoring agency will consider this input as it drafts the final regulations—or interim final regulations—to implement the legislation.

Although security companies are not required to employ this service, the editors of *The Lipman Report* and its parent company, Guardsmark, believe that state Attorneys General will encourage its widespread use as a requirement for processing security licenses for companies or individuals. The stakes are far too great to ignore this valuable contribution to improved national security. Inadequate screening of security personnel has long plagued the industry, as an untold number of businesses have encountered significant losses at the hands of those employed to protect them. At the same time, the recent phenomenon of “sleepers”—described in *Militant Islam Reaches America* by Dr. Daniel Pipes—exacerbates an already-perilous situation. The term refers to terrorist agents who embed themselves in society

until called to action. Only by using every tool available can the United States begin to protect itself from such enemy infiltration. That means taking advantage of this new law—or risk contributing to the next catastrophic terrorist attack.

Overhauling the U.S. intelligence network will take years, if not decades. Even so, portions of the landmark legislation have the potential to contribute significantly to the safety and security of the American people. The Private Security Officer Employment Authorization Act represents one such measure. Within six months, this act will enable security providers to confirm that the men and women they assign to protect the nation's critical infrastructure—and its citizens—do not themselves present a security risk, as indicated by a previous criminal history. The impact can be immediate—but it requires a commitment from state Attorneys General and other executives to demand swift, widespread implementation.

Passage of this legislation constitutes an important win for the American public. Those companies charged with their protection now have an important new tool to help reduce internal security threats. Still, much work remains to improve the quality of the nation's private security forces. Inconsistent standards governing screening and training continue to contribute to a false sense of security, as people place their trust in individuals who may not have the background or skills to perform in a crisis situation. Combating this long-standing problem will demand great courage—courage from the industry, which must invest in upgrading service quality, and courage from corporate America, which must recognize the need to support this investment. Such courage will not be easy to come by, but it must come if the nation has any hope of winning the war against terror.



The Lipman Report Editors

December 15, 2004

Chronology of Guardsmark Initiatives for Federal Regulation of Security Industry

February 1970 – Guardsmark President Ira A. Lipman appears in *Gentlemen's Quarterly*, which calls his efforts to reduce the number of armed security officers a possible “trend for the future.”

1970s – Guardsmark and President Lipman encourage the adoption of state regulations for the security industry across the country. As states begin to set regulations, resulting inconsistencies prompt Guardsmark to shift its focus to federal legislation.

October 1980 – Guardsmark introduces a resolution at the Committee of National Security Companies (CONSCO) meeting, calling for a reduction in the number of armed security officers. CONSCO distributes the resolution to members but does not place it on agenda until February 1982 meeting.

November 23, 1980 – Beginning with an op-ed in *The New York Times*, President Lipman calls for higher industry standards—including stricter regulations for armed security officers, enhanced training, polygraph examinations and use of the MMPI—in national and local newspapers.

1980s-1990s – Guardsmark appears frequently in national print media, including an op-ed by President Lipman in *The New York Times* in January 1982; articles in *The New York Times* in December 1981, April 1988 and July 1993; a December 1993 article in *USA Today*; and an op-ed piece in *The Washington Times* in December 1991.

February 4, 1981 – A CONSCO member makes a motion to table the resolution by Guardsmark to reduce the number of armed security officers, and the motion carries by a 12-1 vote.

January 1982 – *The New York Times* editorially praises President Lipman for leadership in reducing the number of armed guards.

February 17, 1982 – Guardsmark introduces a resolution before CONSCO, calling for a reduction in the number of armed security officers. No other CONSCO member supports Guardsmark's position, and the resolution is defeated: 10-1.

September 10, 1982 – Vice President Frank Lowie of the Guardsmark Inspection, Regulatory and Compliance (IRC) Division, addresses CONSCO meeting on how the Federal Bureau of Investigation (FBI) and the National Crime Information Center (NCIC) criminal records systems work. Lowie explains two system deficiencies: long processing times and lack of information about criminal activities in other states.

June 25, 1986 – Guardsmark takes the lead in supporting exclusion of security companies in the Polygraph Protection Act (S. 1815). This exclusion permits security companies to conduct polygraph tests of conditional employees, which the Act would otherwise prohibit.

April 26, 1988 – President Lipman calls for access to FBI criminal history records for private security companies during presentation to the Institute of Criminal Justice and Criminology of the University of Maryland.

June 27, 1988 – Congress enacts Polygraph Protection Act. (The legislation passed the House of Representatives by a vote of 210-209.) Guardsmark's efforts result in an amendment that exempts security services companies, allowing them to polygraph prospective employees.

July 5, 1988 – Then-Senator Albert Gore Jr. (D-Tenn.) joins President Lipman and company executives at Guardsmark headquarters, where they discuss the need for security industry regulations.

1989 – President Lipman testifies before the Crime and Correction Committee of the New York Senate to explain the need for industry regulation. (The New York legislature strengthened regulation for the security industry.) President Lipman provides similar testimony to other state legislatures, continuing his crusade to raise industry standards through state legislation.

April 13, 1990 – President Lipman and Guardsmark executives meet with then-Senator Albert Gore Jr. (D-Tenn.) and staff members in the Senator's Capitol Hill office to discuss drafting legislation for security industry regulation.

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August 1990 – President Lipman appears on NBC's *Today* to stress the need for security industry regulation.

June 1991 – Guardsmark initiative to raise industry standards for screening and learning and development prompts introduction of the Gore Bill (S. 1258). The proposed bill includes extensive standards such as mandatory criminal records checks; mandatory submission of fingerprints to the FBI; psychological evaluation; physical fitness evaluation; mandatory training of security officers; mandatory employment history checks; mandatory first aid training; credit checks; and mandatory U.S. citizenship or an intent to become a citizen. Guardsmark executives travel to Washington, D.C., to demonstrate support for the bill and to convey the legislation's importance to lawmakers. The bill is pending in the Senate Judiciary Committee when Senator Gore is selected as the Democratic nominee for Vice President. The bill is not reported out of the Judiciary Committee.

November 12, 1991 – President Lipman, Frank Lowie and a Guardsmark staff attorney meet with Senator Phil Graham (R-Texas) and representatives from the FBI and the General Services Administration (GSA) to seek support and lobby for enactment of the Gore Bill.

March 9, 1992 – *Time* magazine publishes landmark article about deficiencies in the security industry. The article includes a sidebar featuring President Lipman and Guardsmark titled "A Man the Guard Firms Love to Hate." The sidebar singles out Guardsmark as the security company that insists upon higher standards for security officers. The article also highlights the fact that competitors in the security industry aggressively oppose Guardsmark's efforts to enhance standards.

September 8, 1992 – Representative Matthew Martinez (D-Calif.) introduces the Martinez Bill (H.R. 15340), proposing less comprehensive background checks than those Guardsmark advocates. The bill calls for rudimentary guidelines that would provide a false

sense of improvement and fail to serve the public good. The non-binding Martinez Bill provides access to FBI criminal history records, but does not require participation by individual states. Moreover, the bill discusses minimal standards for security officers that are too low and are not mandatory.

March 1993 – President Lipman shares Guardsmark's commitment to rigorous standards on *NBC Nightly News*.

April 1993 – A CNN special report quotes President Lipman on need for strict licensing standards.

June 17, 1993 – Subcommittee hearing on Martinez Bill takes place. President Lipman travels to Washington, D.C., and testifies before a Congressional subcommittee to express his opposition to the proposed bill and to raise legislators' awareness of the more stringent bill Guardsmark is preparing to introduce.

July 1993 – Guardsmark initiates introduction of the Sundquist Bill (H.R. 2656) by then-Representative Don Sundquist (R-Tenn.). The legislation, even stronger than the Gore Bill, creates requirements for the screening and instruction of security officers. The Sundquist Bill ultimately fails to be reported out of the House Judiciary Committee.

March 1994 – ABC's *20/20* features Guardsmark and President Lipman for high employment standards.

June 1994 – *America Tonight* on CBS quotes President Lipman as leader in raising standards.

September 1994 – CNBC's *Market Wrap* interviews President Lipman about need for regulation of the security industry.

October 1994 – On CNN's *Moneyline*, President Lipman calls for stricter employment standards.

July 1995 – Barr-Martinez Bill (H.R. 2092) is introduced as follow-up to earlier Martinez Bill, with the additional sponsorship of Representative Bob Barr (R-Ga.). The bill ultimately dies in the committee hearing process.

February 22, 1996 – Legislators amend the Barr-Martinez Bill to include a provision that would prohibit security companies from having restrictive covenants or non-compete agreements with employees—a move calculated to give competitors an advantage over Guardsmark.

1996-1997 – President Lipman and Guardsmark executives meet with Representative Ed Bryant (R-Tenn.) and Senate Judiciary Committee staff in Washington, D.C., to discuss inadequacy of Barr-Martinez Bill and to develop a strategy to introduce meaningful legislation.

January 1997 – Revised Barr-Martinez Bill (H.R. 103) is introduced as “sense of Congress” bill, imposing no mandatory provisions.

July 1997 – Guardsmark efforts help prompt Bryant Bill (H.R. 2184), introduced by Representative Ed Bryant (R-Tenn.), as an alternative to the Barr-Martinez Bill. The Bryant Bill concentrates on giving private security companies access to FBI criminal history records. The bill excludes many of the other standards sought in the Gore and Sundquist Bills in the hope that eliminating more contentious provisions will allow passage of the modest goals set forth in the Bryant Bill. Unlike the Barr-Martinez Bill, the Bryant Bill is mandatory and would give private security companies the right to access FBI criminal history records. Additionally, the Bryant Bill calls for a “user fee” to be paid by private security companies seeking to access the information, eliminating any public expense and requiring no federal funds.

October 7, 1997 – The Barr-Martinez Bill passes in the U.S. House of Representatives.

June 1998 – The Barr-Martinez companion in the Senate (DeWine Bill) dies in the U.S. Senate due to lack of support after opposition by the Fraternal Order of Police (FOP).

February 1999 – Barr Bill (H.R. 60) is reintroduced. National Association of Security Companies (NASCO)—formerly CONSCO—supporters lobby, but cannot get

Senate companion bill introduced, claiming that FOP opposition is influencing Judiciary Committee Ranking Member Senator Patrick Leahy (D-Vt.). House bill dies at end of session and is never reintroduced.

September 2001 – Following the September 11, 2001, terrorist attacks, President Lipman renews efforts to enact federal legislation allowing private security companies access to FBI criminal history records. Guardsmark begins working with outside legal counsel and the staff of Senator Carl Levin (D-Mich.) to respond to this urgent need. Lack of time prevents passage of an amendment addressing Guardsmark’s concerns.

April 2002 – Guardsmark plays a key role in initiating the Private Security Officers Employment Standards Act of 2002, also known as the Levin-McConnell Bill (S. 2238). The bill is jointly introduced by a bipartisan coalition of senators, including Senator Carl Levin (D-Mich.), Senator Mitch McConnell (R-Ky.), Senator Joseph Lieberman (D-Conn.), and Senator Fred Thompson (R-Tenn.). The bill focuses solely on obtaining access to FBI criminal history records for private security companies. It calls for user fees to avoid the need for public funds, and it includes safeguards to protect employee privacy rights.

April-November 2002 – Guardsmark campaigns among all critical agencies and organizations to obtain broad, bipartisan support for the proposed legislation. These groups include: the FBI, the U.S. Department of Justice, the National Association of Attorneys General, the International Association of Security and Investigative Regulators, ASIS International and NASCO. Each organization responds favorably and endorses or otherwise supports the proposed legislation.

May 14, 2002 – A feature article on President Lipman in *The Washington Post* highlights his long-standing mission to raise industry standards. The story discusses the Levin-McConnell Bill and quotes lead sponsor Senator Levin identifying President Lipman as a leader in the drive to improve the quality of the private security industry.

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Chronology of Guardsmark Initiatives for Federal Regulation of Security Industry

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November 2002 – Although no group, organization or individuals express opposition to the Levin-McConnell Bill, a controversy between the Senate Judiciary Committee and the Senate Appropriations Committee over fingerprint user-fee jurisdiction prevents its enactment.

April 2003 – Guardsmark plays a key role in initiating the re-introduction of the Levin-McConnell Bill (S. 769, later revised and re-introduced as S. 1743). As the Private Security Officer Employment Authorization Act of 2003, the bill is sponsored by Senators Levin, McConnell and Lieberman. Senator Lamar Alexander (R-Tenn.) joins as a co-sponsor (having succeeded retired Senator Fred Thompson, previous sponsor of the bill), as does Senator Charles Schumer (D-N.Y.). Virtually identical to the prior Levin-McConnell Bill, the bill quickly receives the endorsement of the same organizations. The bill is assigned to the Senate Judiciary Committee for action.

October 23, 2003 – The Senate Judiciary Committee approves and reports out the Levin-McConnell Bill on a voice vote without opposition. It is recorded as being approved 19-0. The bill is sent to the Senate floor for final approval.

November 17, 2003 – The U.S. Senate unanimously passes S. 1743, the “Private Security Officer Employment Authorization Act of 2003.”

March 30, 2004 – Several senior Guardsmark executives, including Lowie, Vice Chairman Weldon Kennedy and Vice President Stephen Kasloff of the IRC Division, attend hearing before U.S. House Judiciary Committee, Subcommittee on Crime, where testimony concerning this legislation is considered.

September 29, 2004 – The Private Security Officer Employment Authorization Act is added to the House Intelligence Reform Bill (H.R. 10), which was reported favorably out of the U.S. House Judiciary Committee by a vote of 19-12.

October 4, 2004 – The Private Security Officer Employment Authorization Act is added to the Senate Intelligence Reform Bill (S. 2845).

October 6, 2004 – Senate Intelligence Reform Bill containing the Private Security Officer Employment Authorization Act passes the U.S. Senate by a recorded vote of 96-2.

October 8, 2004 – House Intelligence Reform Bill containing the Private Security Officer Employment Authorization Act passes the U.S. House of Representatives by a recorded vote of 282-134. A conference committee is convened to reconcile the conflicting versions of the two intelligence reform bills.

December 7, 2004 – Conference Committee agreement on the National Intelligence Reform Act, containing the Private Security Officer Employment Authorization Act, passes the U.S. House of Representatives by a vote of 336-75.

December 8, 2004 – Conference Committee agreement on the National Intelligence Reform Act containing the Private Security Officer Employment Authorization Act passes the U.S. Senate by a vote of 89-2, clearing the measure for the President.

December 17, 2004 – The Private Security Officer Employment Authorization Act becomes law as part of the National Intelligence Reform Act.



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