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July 27, 2005

Richard A. Hertling
Deputy Assistant Attorney General
Office of Legal Policy
4234 Robert F. Kennedy Building
950 Pennsylvania Avenue, NW
Washington, DC 20530

**Re: OLP Docket No. 100
Intelligence Reform and Terrorism Prevention Act of 2004**

Dear Mr. Hertling:

This office represents the International Union, Security, Police and Fire Professionals of America (SPFPA), a labor organization representing armed and unarmed security officers throughout the United States. On behalf of the SPFPA, I write this letter in order to comment on the Intelligence Reform and Terrorism Prevention Act of 2004. The SPFPA is concerned with certain portions of the law which allow employers to request FBI criminal history background checks of employees in private security officer positions, or applicants for such positions.

The law apparently authorizes employers to submit an employee or applicant's fingerprints to the investigating agency of a participating state for criminal background checks. The law then requires the United States attorney general, upon receipt of a request submitted through the state, to access the FBI's Criminal Justice Information Services Division for criminal background history to determine the suitability of an individual for employment as a security officer".

The SPFPA understands this law to mean that, in determining whether an individual is "suitable for employment", the FBI considers not only criminal convictions, but also arrests, detentions, indictments, and acquittals. Accordingly, an individual may be labeled "unsuitable" based upon alleged charges against him or her that were never proved, or were expressly disproved.

It appears from the text of the law that the Employer obtains only a favorable or unfavorable rating for an employee or applicant, and does not learn the specific reasons for that rating. Nor does there appear to be any mechanism for an employee to rebut the rating. While the Employer must inform the employee whether they received a favorable

Page 2 of 2
July 27, 2005
Richard A. Hertling, Deputy Assistant Attorney General

or unfavorable rating, it does not appear that it is required to reveal to the employee the reason for the rating (presumably because the Employer was never advised of the reason by the FBI).

The possible and probable result of such a system is the effective "blacklisting" of an individual from the security industry. Under one conceivable circumstance, an officer could be barred from employment in the security industry based upon an arrest, which never led to a prosecution, occurring 20 years earlier. Under the terms of the law, the officer would be given no notice as to the reason for his or her rejection. He or she would also be denied the opportunity to rebut the assumption that he or she is "unsuitable" for employment.

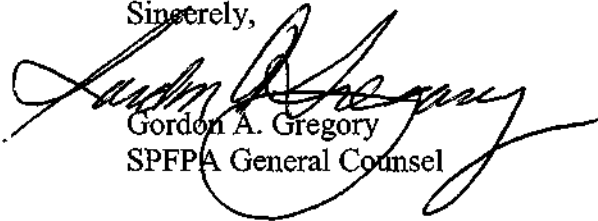
The SPFPA is decidedly in favor of hiring qualified individuals with high ethical standards to serve as security professionals. But the Intelligence Reform and Terrorism Prevention Act of 2004 does not appear to further that goal. On the contrary, it could result in the termination without cause of many highly qualified security officers.

An additional problem that the SPFPA perceives with respect to the Act is the fact that an employee can be required to pay for his or her own background check. The Act does not specify what fees could be associated with this process. However, any fee could result in a significant financial burden to security officers, many of whom earn less than \$10.00 per hour.

The SPFPA therefore urges the Department to ensure that security officers' employment rights are protected by providing them with access to the records if employment is denied and by structuring an appeal mechanism. It also urges that the Employer be required to bear the financial burden of conducting the background checks.

Thank you for the opportunity to comment on this new legislation.

Sincerely,



Gordon A. Gregory
SPFPA General Counsel

cc: D. Hickey