

E-Manual: Private Investigation



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At its simplest, ethics is a system of moral principles. Concepts of ethics have been derived from religions, philosophies and cultures. They infuse debates on many topics, including professional conduct, such as the conduct of private investigators.



Ethics are the standards of conduct and judgment in respect to what is perceived as right and wrong. A key element of ethics is the specification of responsibility for human actions. Ethical standards go beyond merely describing conduct that we habitually accept; they seek to define higher goals and the means for attaining them.

The private investigator encounters ethics in two dimensions: first, as an investigator of improper conduct by others; and second, as a businessperson obligated to conduct business affairs in accordance with the intent and spirit of law.

Compliance with ethical standards should carry a high priority by all employees of an investigative organization. A failure to do so can expose the organization, as well as the individual, to administrative sanctions, civil proceedings, and criminal prosecution.



The daily activities of the average investigator do not require making many decisions about morality; for example, deciding to arrive at work on time is not a moral decision. Nearly all investigators operate with a basic notion about common decency that is widely shared throughout society.

When making decisions about right and wrong it is helpful to understand distinctions between behavior that is moral, immoral, amoral, and illegal.

Moral behavior is conduct that is right or not wrong.

Immoral behavior is the opposite, i.e., conduct that is wrong or not right.

Amoral behavior is conduct outside of that to which moral judgments apply.

It is conduct so wrong that it would be incorrect to describe it as immoral.

Illegal behavior is conduct that violates law and can be identified as either amoral or immoral.

Compliance with ethical standards reflects conduct that is moral. Failure to comply with ethical standards reflects conduct that is immoral or amoral or illegal or all combined.

Integrity

Ethical standards play a part in influencing conduct and regulating the behavior of individuals and businesses. Concern for the consequences of one's actions is clearly a powerful motivator.



The deterioration of ethics generally has led to a closer examination of how people carry out their day-to-day job duties. Every day, we see on television and read in the newspapers stories about corporate corruption, illegal trading, and about people at all levels of business who have committed job-related crimes. It very often appears that greed overcomes honesty.

To be ethical on the job requires a person to believe in and operate by the premise that an act is either intrinsically correct or incorrect, and that there is an obligation to act correctly always. To live and work in this fashion, an individual cannot accept the argument that the reality of the human

Ethics on the Job

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In the business environment, ethical conduct should but does not always exist at a level above legal minimums. Being ethical above what the law demands sometimes means losing a competitive advantage or settling for a lower profit.

In companies that abide by high ethical standards, you will find internal work rules and expectations of employees that are enforced and often complied

Ethics in the Business Environment

To be ethical on the job requires a person to believe in and operate by the premise that an act is either intrinsically correct or incorrect, and that there is an obligation to act correctly always. To live and work in this fashion, an individual cannot accept the argument that the reality of the human condition is that we all seek to engage in acts that derive pleasure, and acts that produce pleasure for the greatest number of people are morally correct. This type of rationale is totally unacceptable in the investigative profession.



Society does not demand formal punishment for persons that violate ethical standards, but when ethical violations also violate the law, sanctions follow - often in the form of criminal trial.

Organizational Ethics

Every organization, whether in the private sector or public sector, has a culture unique to it. An organization's culture is a blend of values, beliefs, understandings and ways of thinking that are shared by people in the organization.



Almost all organizations express their culture formally such as in written policies, goals, objectives, mission statements and codes of ethics that apply to members of the organization.

In the typical investigative organization, ethics are often expressed as: Ideals for the true professional. In this format, the ideal investigator is described in terms of personal traits, competencies and professional development. Ideals point to a high level of excellence to which all investigators in the organization should aspire.

Guidelines or principles that correspond to the beliefs of management. These documents reflect the overall philosophy of the organization's leaders. They can be everything from the policy of the chief executive officer

The Social Contract



Every organization, whether in the private sector or public sector, has a culture unique to it. An organization's culture is a blend of values, beliefs, understandings and ways of thinking that are shared by people in the organization.

When an investigator is an employee, he or she performs services according to a written understanding or agreement; certain work will be performed for a certain amount of compensation, possibly including benefits. This is in the nature of a business contract.

But another kind of contract exists and it is called the social contract. In this contract, which is unsigned and not negotiated, the investigator agrees to serve all of society by engaging in off-duty conduct that is exemplary at best and not offensive at its worst.

The social contract has four elements:

Maintenance of the public trust. Investigators must operate within the law and never betray the trust placed in them by employers, clients, and the public generally

Personal Commitment



Ethical conduct is based on a personal commitment to do what is correct and not do what is wrong. Ethical standards spell out values that go beyond what the law specifically demands and prohibits. The law provides a cutoff point above which ethical conduct rises; below the cutoff point are violations of the law, the employer's ethics policy, and work rules.

Although ethical standards are usually considered to be extensions outside of the law, they are often a model when legislatures bring the law into alignment with society's views of right and wrong.

Serious-minded leaders can set standards of ethical conduct well above the minimum. This is not to say that the standards are unrealistic but that each and every employee should aspire to higher goals. When the goals are reached, each of employee can take pride in having made a personal commitment that turned out right.

The Lure of Money

The private investigator knows well such unethical practices as misuse of confidential information, kickbacks, and conflicts of interest. Controls for preventing and detecting crime are well understood by the private investigator, but at the same time the right and wrong of administrative matters may be less clear.



For example, a private investigator familiar with the elements of fraud may be presented with an opportunity to charge a client more hours than actually worked. Another example is to "shade the truth" to please a client in order to obtain repeat business.

What it all comes down to is a question that each of us must ask: "Should I allow the lure of money to take precedence over honesty?"

Right and Wrong

Between right and wrong is a gray area where situations are not clear-cut and specific information and examples are not available to provide guidance.



The deterioration of ethics generally should lead us to a closer examination of our business and personal morality. Mainstream ethicists believe that an act is either intrinsically correct or incorrect, and that we have a duty to act correctly always. Others argue, however, that the reality of the human condition is that we all seek to engage in acts that derive pleasure, and acts that produce pleasure for the greatest number of people are morally correct.

This latter argument explains society's willingness to forgive offenders on questionable grounds and to indulge in personal rationalizations such as: "Everybody else does it, so why not me?"

A Sample Code of Ethics

The traditional mechanism for promoting ethical conduct is a code of ethics. Codes of ethics for investigators can be found in numerous professional associations.

Leaders in the investigative business have long held that investigators must be fully aware of their ethical responsibilities and strive constantly to live up to the standards of the profession.

Following are excerpts from a code of ethics for investigators:

- The investigator shall at all times demonstrate a commitment to excellence.
- The investigator shall obey all laws and all government rules that apply to the investigative profession.
- The investigator will demonstrate the highest degree of integrity on and off the job.
- The investigator shall not allow personal interests to conflict with the interests of clients.
- The investigator shall keep confidential any information pertaining to clients.
- The investigator shall report to proper authorities any crimes that come

Employees and Ethics



An investigative organization, like any other business organization, is driven by the forces of economic reality and is constrained by the limits of law and customs. It would be a wonderful thing if all investigative organizations could depend on a steady and adequate cash flow and not have to bother with obeying the law and respecting the rights and values of others.

An investigative organization is also shaped by the human values of its workforce; it is, then, an institution of people and ethics as well as an enterprise of profit and loss.

Bribery



It is a crime to take a bribe of any value. A gift is a bribe if it involves an agreement between you and someone else for you to do or refrain from doing something that is part of your official duties in exchange for something.

The value of what you receive is irrelevant, except in determining the punishment that can be levied. If you and another party make an agreement that you will do something in return for a gift or benefit--whether it's worth a dime or a hundred dollar bill--you may be guilty of bribery.

Here are some examples of situations where opportunities for bribery lurk.

- You are the travel coordinator for your organization. A travel agent offers you a free round trip ticket for your personal use for booking flights through them.
- Your air conditioner repairman offers you a special discount if you can "go easy" on his brother who is under investigation.

Gratuities and Gifts



Depending on your organization's rules, you may be allowed to accept meals, entertainment, lodging, or transportation--if you are a guest of the giver. This means that the giver--or a representative of the giver--must accompany you during the meal, event, or trip. Note that if the gift includes lodging, your hosts don't have to share your room; but they do need to be near.

A well-managed investigative organization will provide a framework against which employees can measure their own personal conduct, particularly in the matter of gratuities. Gratuities, such as free entertainment and favors, whether offered by employees or extended to them, should be acceptable only when (1) they are of such limited nature and value that they could not be perceived by anyone to affect the judgment of the recipient, or (2) when public disclosure would not be embarrassing to the organization or the recipient.

To protect your own integrity, you should not ask for, accept, or agree to accept gifts in the following situations:

Honest Business Dealings



The law requires a business to keep accurate records and accounts that truthfully reflect business transactions. Such documentation should have the highest degree of integrity.

Investigators who own or operate businesses are compelled by law to maintain records that are accurate and in a format that can be audited.

Vouchers, bills, invoices, expense accounts, and the like should be prepared with complete candor. No false or misleading entries and no undisclosed or unrecorded funds or assets should be permitted for any reason.

Conflict of Interest



The term "conflict of interest" describes a circumstance that could cast doubt on an investigator's ability to act with total objectivity in regard to interests of his or her business.

Activities that involve the unauthorized use of time, equipment, or information should be avoided. Of special concern are situations in which an investigator's personal interests may conflict with the interests of a client or the employer.

The use by an investigator of his or her position in order to gain a personal advantage is unethical and in some cases can be a criminal or civil violation. This prohibition applies as well to advantages provided to members of the investigator's household.

A conflict of interest exists when a decision that you make as part of your

Confidential Information



In a very real sense, confidential information is the stock and trade of the investigative profession. Confidential information can vary widely; for example, client data, case files, investigative methods, business correspondence, employee data, earnings, assets, liabilities, outstanding loans, business plan, bid offers, and so on.

The same is true for information obtained from business peers, law enforcement contacts, and informants.

Confidential information merits the highest degree of security, is to be used solely for legitimate purposes, and is never provided to unauthorized persons.

If there is anything that can get a private investigator into trouble, it is the unauthorized release of information about a client. The issue is not just

Respect for the Law



An investigator is required and trusted to work within the law, and in many situations the investigator's authority and responsibilities are conferred and limited by statute. A fundamental responsibility is to ensure the rights of all to liberty, equality, and justice. This is done by performing the functions of investigation impartially, without favor or affection or ill will, and without regard to status, sex, race, religion, political belief, or aspiration. All persons encountered should be treated equally with courtesy, consideration, and dignity.

The ethical investigator does not allow personal feelings to influence investigative conclusions. Fairness, reasonableness, and a respect for the

Authority v. Power



Authority is the legitimate right to influence the actions of others. In the case of an investigator, an example of authority is the legitimate right to obtain documents in the public domain.

Power is different from authority. Using the example just given, the investigator who asks a government clerk for public documents cannot demand that the documents be produced immediately, nor criticize or threaten the clerk, and above all else not use any amount of touching or force.

The exercise of authority works best when accompanied by persuasion.

Tactics of Terrorism



Tactics Are Unpredictable



“If they can think it, they can do it” expresses the belief of people familiar with terrorist tactics. Another is, “The obvious is not always apparent.”

Terrorists will employ any tactic they believe will meet the objective in mind.

The usual tactics are:

- **Exploitation of the Media**
- **Suicide Attacks**
- **Vehicle Bombs**
- **Infliction of Casualties**

Exploitation of the Media



Historically, the prevailing view has been that terrorists stage their attacks to derive maximum propaganda value. Their attacks are deliberate and calculated to achieve goals: recruiting new followers, obtaining financial and in-kind support, influencing public opinion, forcing political decisions, undermining a government, or demonstrating the capacity and resolve to act. Their targets have leaned to the symbolic and intended to deliver a message, usually political or religious.

The 9-11 attacks conformed to the prevailing view. They were staged, deliberate, and calculated; they influenced public opinion and demonstrated a capacity and resolve; they targeted symbols and delivered a message. Billions of people around the globe received on television screens an impression that the United States was vulnerable. But given the inhumanity of terrorist actions, the prevailing view has shifted: the primary objective of terrorism, certainly religion-based terrorism, may no longer be the attainment of propaganda value but the infliction of mass casualties.

Suicide Terror

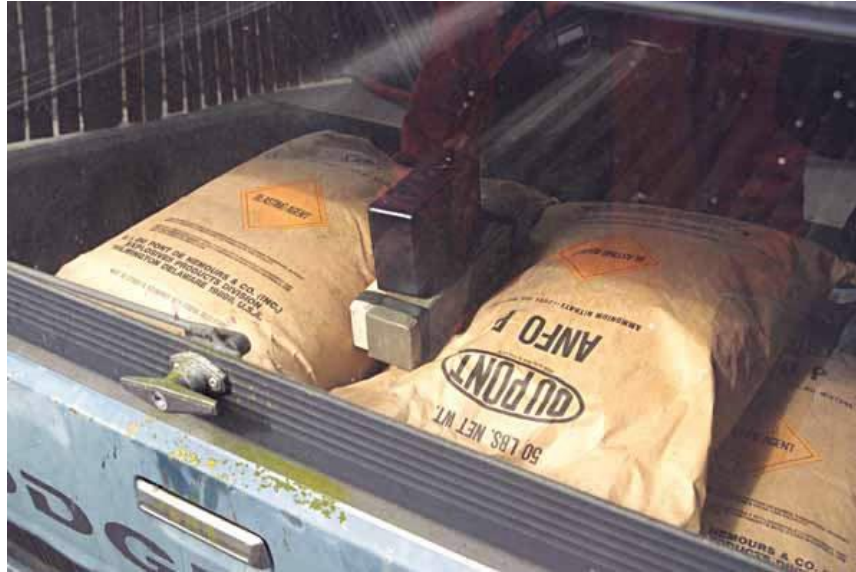


Pellets used in the construction of a suicide bomb

Suicide terror is not new. When the killing weapon was a knife, assassins of public figures rarely escaped with their own lives. The same held true for later assassins firing pistols at close range or throwing makeshift bombs. Today's suicide terrorists use explosive-laden trucks and passenger airplanes. While suicide terror has remained constant, the killing methods have kept pace with weapons technology.

A knife or a gun or a thrown bomb has a limit to the number of casualties

Vehicle Bombs



A pickup truck loaded with ANFO and a triggering device

Compared with other weapons, vehicle bombs are inexpensive, simple to assemble, and easy to use. The number of vehicle bomb attacks around the world supports the view that vehicle bombs are the weapon of choice. In the United States, where vehicles of all types are commonplace everywhere, it is extremely difficult, if not impossible, to differentiate between vehicles that are innocuous and those that are lethal.

The challenge is to establish procedures for keeping vehicles outside the blast zone of the protected facility. The blast zone is the area within which a

Infliction of Casualties



Terrorists have elevated the level of violence by attacking simply for the sake of inflicting casualties. This was seen in part by the two attacks on the World Trade Center (February, 1963 and September, 2001). They have killed people on airliners and ships, in theaters, schools, churches and subways, and at sporting events. They do not care if they kill children and women. The attack on the school in Beslan demonstrated a complete disregard for the lives of children.

The killing power of weapons used by terrorists is as great as the terrorists can acquire or construct. Experts in terrorism believe that the only reason terrorists have not used biological and chemical agents and nuclear

Explosives: The Weapon of Choice



Military C-4 (Plastic Explosive)

Terrorists obtain explosives by gifts from supporters, theft, purchase, and construction. The various types of explosives are:

- **Military C-4**
- **PETN (pentaerythritol tetranitrate)**
- **TNT (trinitrotoluene)**
- **Dynamite**
- **Nitroglycerine**
- **ANFO (ammonium nitrate and fuel oil)**
- **RDX**

Terrorist Surveillance



Operatives will reconnoiter the areas around the target site, and travel routes to and from the site. They will look for police patrols to determine:

- Frequency and pattern, and if patrolling is random or periodic.**
- The number of officers in a patrol unit.**
- The distance and time between the target site and the nearest police station.**

Operatives will stakeout the target site from several vantage points at various times: day and night, workdays and weekends, holidays, shift changes, and morning and afternoon rush hours. They will take notes and make sketches and maps. Operatives will look for vulnerabilities such as

Terrorist Planning



Terrorists use up-to-date technologies to acquire planning information

An Al Qaeda training manual obtained by United Kingdom authorities provides insights to terrorist preparation in targeted countries. The manual suggests that up to 80 percent of information useful to a terrorist group can be collected from public sources. Much of the collected information is downloaded from:

- **The target's web site where it may be possible to obtain the names of senior persons, their photographs, and biographies; physical addresses and photos of site locations and processes; phone numbers; and announcements of upcoming conferences and stockholder meetings.**
- **Government web sites that contain public records.**
- **Fact sheets and images discovered by internet search engines.**
- **Chat rooms and bulletin boards on the internet.**

Targets of Terrorism



A logical target: power grids

In the present context, “target” means both those targets that have been attacked and those that may be under consideration for attack. The latter are special or logical targets, i.e., targets that if destroyed or significantly damaged would cause considerable disruption.

American society is very much dependent on the functioning of private-sector entities that provide food, fuel, power, communications, transport, financial services, health and medical services, and information processing.

In the government sector is the administration of a multitude of social and public services. Damage to any of these critical national infrastructures would alter the ways we live, work, and recreate.

Crime Defined



Over the years, the federal government and each of the states has developed their own sets of criminal law. For this reason it is not possible to give a single accepted definition of crime. However, it is correct to say that most jurisdictions are basically uniform and consistent in their views on crime. It is widely agreed that a crime is:

- A legal wrong
- Prohibited by the criminal law
- Prosecuted by the appropriate jurisdiction
- In a formal court proceeding
- In which a sentence may be imposed

A crime can result from the commission of an illegal act or from the omission of a required legal act. To illustrate, a person who steals the property of another has committed an illegal act, and a person who fails to file a crime report or has committed a criminal offense.

Crime Classifications



Felonies and misdemeanors are the two most common classifications of crime in the United States. The decision of whether a crime is a felony or a misdemeanor rests with the individual jurisdiction. The federal government and each state has its own body of criminal law and penalties. The principal distinction between a felony and misdemeanor is the degree of seriousness. In the simplest of terms, a felony is a serious offense and a misdemeanor is a less serious offense.

Black's Law Dictionary says:

"A felony is a crime of a graver or more atrocious nature than those designated as misdemeanors. Generally it is an offense punishable by death or imprisonment in a penitentiary. A misdemeanor is lower than a felony and is generally punishable by fine or imprisonment otherwise than in a penitentiary."

Elements of a Crime



Criminal statutes define offenses in very specific language. From each offense we identify what are called the elements of a crime. For example, a state's criminal procedures might define burglary as follows:

"A person commits the offense of burglary when, without authority and with the intent to commit a felony or theft therein, he enters or remains in the dwelling house of another or any building, vehicle, railroad car, watercraft, or other structure designed for use as the dwelling of another or enters or remains within any other building, railroad car, aircraft, or any room or part thereof."

From this statute we can conclude that to prove the crime of burglary, the police must be able to show that the suspect:

- **Entered or remained**
- **In a dwelling house or other structure**
- **Without authority**

Proof of a Crime



In proving guilt of a specific crime in a court of law, the prosecution establishes three general facts:

- **An injury or loss has taken place**
- **The injury or loss resulted from a criminal act**
- **The accused committed the act**

For example, the accused stole money (the injury or loss) from a storekeeper. The accused used a gun (a criminal act) to force the storekeeper to give him the money. The accused (the person who committed the act) was identified by the storekeeper as the person who stole the money using a gun.

Here's another example: a pedestrian was killed (the injury or loss) when

Corpus Delicti



The term corpus delicti is often used erroneously when referring to a homicide. The term really means "body of the crime"—not the body of the victim.

Corpus delicti consists of three components: actus reus, mens rea, and a combination of both.

Actus Reus

Actus reus means "guilty act." It is a physical act done in the commission of a crime (or the omission of a required legal act). To illustrate, in the crime of arson the actus reus is the setting of a fire and in burglary it is the breaking and entering into a dwelling. An example of the actus reus in the omission to perform a required legal act is the failure of a father to obtain medical attention for his severely injured child.

Actus reus is not thinking about a crime; it is the action part of a crime. It is the physical act that must be proven in a criminal case. If the actus reus is not proven, the crime cannot be established.

Overt Act



An overt act is an outward act from which criminality may be inferred. Examples of an overt act would include "casing" a bank before robbing it; acquiring bolt cutters to remove a lock on the door to a warehouse targeted for burglary; and changing the license plates on the car to be used to flee the scene.

The concept of the overt act can be critical in proving the crime of conspiracy. Even when the crime that was contemplated by the conspirators did not occur, for whatever reason, the conspiracy is demonstrated by any overt act such as those mentioned above.

Here's an example of an overt act: An individual in charge of a storage room agrees to "look the other way" so that another person can steal a computer from the room. The first individual loans to the prospective thief a key to get into the storage room. But then the first individual gets worried that he will be caught. He retrieves the key before the other person can act. The

Principals and Accessories



Principals

Persons who commit a crime, whether directly or indirectly by helping, are called the parties to the crime. In some jurisdictions, the concept is extended to include persons who help the offender avoid arrest, trial, conviction, or punishment.

Generally, the actual offender who commits the crime or who uses an agent to commit the crime is called a principal in the first degree. A principal in the second degree is a person who has knowledge of what is going on and aids and abets the principal in the first degree. A lookout or the driver of a getaway car would be such a person.

Accessories

An accessory before the fact is a person who, before a crime is committed, assents to or approves of it, and expresses a view of it in a form that

Federal Offenses

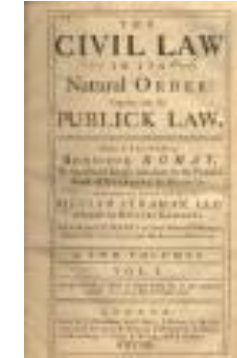


There can be no federal crime unless Congress first makes an act a criminal offense by the passage of a statute, affixes punishment to it, and declares what court will have jurisdiction. This means that all federal crimes are statutory. Although many of the statutes are based on common law, every federal statute is an express enactment of Congress. Nearly all crimes are defined in Title 18 of the U.S. Code.

The principal federal agency charged with investigating federal offenses is

Civil Law

Legal systems elaborate rights and responsibilities in a variety of ways. A general distinction can be made between civil law jurisdictions, which codify their laws, and common law systems.



In general, law is a system of rules, usually enforced through a set of institutions. It shapes politics, economics and society in numerous ways and serves as a primary social mediator in relations between people. Here are examples of law:

- Contract law regulates everything from buying a bus ticket to trading on the stock market.
- Property law defines rights and obligations related to the transfer and title of personal (often referred to as chattel) and real property.
- Trust law applies to assets held for investment and financial security, while tort law allows claims for compensation if a person's rights or property are harmed (often considered civil case if filed under an issue

Public Wrong v. Private Wrong



A crime is a public wrong and a tort is a private wrong. A public wrong is remedied in a criminal proceeding and a private wrong is remedied in a civil proceeding. A single act in some instances will constitute both a crime and a tort. For example, if a person commits an assault and battery upon another, he commits a crime (a public wrong) and a tort (a private wrong). The law will seek to remedy both wrongs, but it will do so in different ways.

The state will move on its own authority to do justice by bringing a criminal action against the offender. The victim is also entitled to bring action against the offender in a civil suit. Tort law gives the victim a cause of action for damages in order that he may obtain sufficient satisfaction. The victim, however, pursues a civil remedy at his own discretion and in his own name. Whether the victim wins his lawsuit or not, the judgment will not prevent prosecution of the offender by the state.

Criminal Law v. Civil Law



The civil injuries involved in tort cases usually arise from acts of negligence. The fact that by his own negligence the victim contributed to the harm done may afford the offender a defense in a civil action of tort, but it does not constitute a defense to the offender in a criminal prosecution.

The single characteristic that differentiates criminal law from civil law is punishment. Generally, in a civil suit the basic questions are:

How much, if at all, has the defendant injured the plaintiff, and

What remedies, if any, are appropriate to compensate the plaintiff for his loss?

In a criminal case, the questions are:

- To what extent has the defendant injured society, and
- What sentence is appropriate to punish the defendant?

Tort Law Purposes

Tort law has three main purposes:

- **To compensate persons who sustain a loss as a result of another's conduct.**
- **To place the cost of that compensation on those responsible for the loss.**
- **To prevent future harms and losses.**



If a loss-producing event is a matter of pure chance, the fairest way to relieve the victim of the burden is insurance or governmental compensation. Where a particular person can be identified as responsible for the creation of the risk, it becomes more just to impose the loss on the responsible person (tortfeasor) than to allow it to remain on the victim or the community at large.

The third major purpose of tort law is to prevent future torts by regulating human behavior. In concept, the tortfeasor held liable for damages will be more careful in the future, and the general threat of tort liability serves as an incentive to all persons to regulate their conduct appropriately. In this way, tort law supplements criminal law.

Damages: Compensatory and Punitive



When one person's tortious act injures another's person or property, the remedy for the injured party is to collect damages. The common law rules of damages for physical harm contain three fundamental ideas:

Justice requires that the plaintiff be restored to his pre-injury condition, so far as it is possible to do so with money. He should be reimbursed not only for economic losses, but also for loss of physical and mental well-being.

When the plaintiff sues for an injury, he must recover all of his damages arising from that injury, past and future, in a lump sum and in a single lawsuit.

If the defendant's wrongful conduct is sufficiently serious, the law permits the trier of fact to impose a civil fine as punishment to deter him and others from similar conduct in the future.

The Intentional Tort of Intrusion

Interference with the right to be "left alone" can be grouped into four categories: intrusion, appropriation of one's name or likeness, giving unreasonable publicity to private facts, and placing a person in a false light in the public eye. The latter three of these are founded upon improper publicity, usually in the public press or electronic media.

Intrusion is a tort closely related to infliction of emotional distress. Both torts protect a person's interest in his peace of mind. A person has a basic right to choose when and to what extent he will permit others to know his personal affairs.

Intrusion can also be an intentional, improper, unreasonable, and offensive interference with the solitude, seclusion, or private life of another. It embraces a broad spectrum of activities. It may consist of an unauthorized entry, an illegal search or seizure, or an unauthorized eavesdropping, with or without electronic aids.

The tort is complete when the intrusion occurs. No publication or publicity of the information obtained is required. It is, of course, essential that the intrusion be into that which is, and is entitled to remain, private. Additionally, the harm must be substantial. The intrusion must be seriously objectionable, not simply bothersome or inconvenient.



Physical Evidence



Physical evidence is any material, substance, or object, regardless of size or shape. Physical evidence can be categorized as:

- **Moveable Evidence.** Items that can be transported or moved easily, such as weapons, tools, and glass fragments.
- **Fixed Evidence.** Items that cannot easily be transported or moved because of their size or permanency.
- **Fragile Evidence.** Items that deteriorate or are easily contaminated or destroyed, such as shoe prints, blood, and fingerprints.

Physical evidence is anything that is real; anything that can be seen, touched, smelled or tasted; it may be large, small or so tiny that it requires magnification to be seen; it can be solid, semi-solid or liquid; it might be something collected at a crime scene or at a location miles away; and it might

Testimonial Evidence and Opinion Testimony

Testimonial evidence is evidence presented by a witness under oath. The term is often loosely used to denote information obtained verbally or in writing from a person connected to a case. It is not testimonial evidence until it is given from the witness stand under oath.



Opinion testimony is a conclusion or judgment made by a witness, hence the term opinion testimony. Opinion testimony is not admissible. However, an exception can be made to the rule when no other description could be more accurate. For instance, a witness may be allowed to testify on such matters as size, distance, time, weight, speed, direction, drunkenness, and similar matters, all of which require the witness to state an opinion.

There is no requirement for the witness to be an "expert" when testifying to facts such as these. If the witness is not testifying as an expert, the witness' testimony is limited to opinions that are:

- Rationally based on the perception of the witness.
- Helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.
- Not based on scientific, technical, or other specialized knowledge.

Expert Testimony



The data upon which an expert bases an opinion are those made known to the expert at or before the trial. If the data are of a type reasonably relied upon by experts in the particular field in forming opinions on the subject, they need not be admissible as evidence in order for the opinion to be admitted.

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion if:

- The testimony is based upon sufficient facts.
- The testimony is the product of reliable principles and methods.
- The witness has applied the principles and methods reliably to the facts of the case.

Direct and Circumstantial Evidence



Direct evidence is evidence that shows the existence of a fact without requiring proof of any other fact. A birth certificate is direct evidence of a birth, a fingerprint is direct evidence of a person's identification, and a bank statement is direct evidence of an account balance in the account

holder's name as of a certain date. Direct evidence is distinguished from circumstantial evidence, which is also called indirect evidence.

Circumstantial evidence is a fact that can be inferred either alone or from collateral facts. In cases where the prosecution relies wholly on circumstantial evidence, the facts must be of such a nature that they exclude to a moral certainty every other hypothesis except that of the defendant's guilt. To illustrate, a shell casing that bears certain marks can be linked to the weapon in which it was inserted and extracted. The person found in possession of the weapon is circumstantially linked to the weapon, the casing, and the crime related to them.

Examples of circumstantial evidence include the findings of forensic tests made of physical evidence such as biological fluids and tool marks.

Exclusionary Rule

In general, a witness is excluded from presenting testimony other than those things of which he or she has direct knowledge. This is called the Exclusionary Rule; specifically, the direct knowledge of a witness is what the witness saw, smelled, tasted, felt, or heard.



The “fruit of the poisoned tree” doctrine resulted from a U.S. Supreme Court decision in 1920. A U.S. marshal unlawfully entered the offices of a lumber company and seized several documents. When the company complained to the government, the documents were returned - but not before they were copied. The copies led to a grand jury indictment of lumber company officials. At trial, the government demanded that the lumber company produce the original documents. The lumber company refused and was then convicted of contempt of court. The Supreme Court ruled that the documents, upon which the government case rested, could not be used as evidence.

In this way a legal concept was born. It holds that evidence may be

Fruit of the Poisoned Tree Doctrine



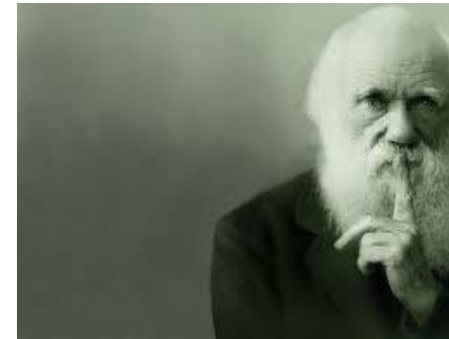
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In this way a legal concept was born. It holds that evidence may be suppressed if it is tainted by prior illegal conduct on the part of the person collecting the evidence. The doctrine has been applied in many cases. For example: Information is obtained by using an extension telephone to listen in on a conversation. The details of the conversation can be suppressed, as well as any evidence obtained as a result of acting on the details.

Inevitable Discovery Doctrine

The exclusionary rule, which incorporates the “fruit of the poisoned tree” doctrine, is not applied when it is apparent that evidence obtained illegally would in all likelihood have been found eventually by legal means.

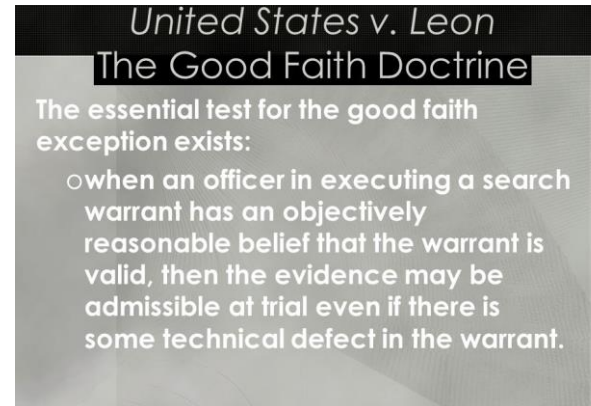


The inevitable discovery doctrine was established in 1984 when the U.S. Supreme Court examined a murder case (*Nix v. Williams*). The suspect’s right to counsel was violated. The suspect then told the police where the victim’s body could be found. An intense search already underway in the area named by the suspect was called off. The police went to the spot identified by the suspect and found the body. At trial, the defendant claimed that his right to counsel had been violated prior to his making an incriminating statement, and that therefore the discovery of the body and the evidence pertaining to it should be suppressed. The Supreme Court disagreed by ruling that “the exclusion of physical evidence that would eventually have been discovered adds nothing to either the integrity or fairness of a criminal trial.”

The exclusionary rule is intended to deter police from violating the

Good Faith Doctrine

The “good faith doctrine” is another rule established by the U.S. Supreme Court in 1984 (*United States v. Leon*). The case involved drug trafficking and information obtained by the police from an unreliable informant.



Based on the informant's information, the police conducted surveillance. When they were satisfied that drug trafficking was indeed in progress, they submitted to a court an affidavit showing probable cause and asked for and obtained a search warrant. The search resulted in the seizure of illegal drugs and the arrest of several persons.

At the trial of one of the defendants, the defense attorney moved to suppress the seized evidence, claiming that the affidavit was not sufficient to establish probable cause because of the informant's unreliability. The court hearing the case agreed, and the U.S. Court of Appeals affirmed the decision.

The case then went to the Supreme Court. The Court ruled that illegally obtained evidence may be admissible if the police were truly not aware

Burden of Proof



Burden of proof is a rule that says no person accused of a crime can be required to prove his or her innocence. The prosecution must establish beyond a reasonable doubt that the crime was committed and the defendant committed it. The defendant is not required to submit proof of innocence.

Proof beyond a reasonable doubt is the standard required to convict a person who is charged with a crime. Although burden of proof is not specifically mentioned in the U.S. Constitution, many Supreme Court rulings have created and reinforced the requirement. For example, in a 1948 decision (*Brinegar v. United States*) the Court ruled:

"Guilt in a criminal case must be proved beyond a reasonable doubt and by evidence confined to that which long experience in the common-law tradition, to some extent embodied in the Constitution, has crystallized into rules of evidence consistent with that standard. These rules are historically grounded rights of our system, developed to safeguard men

Business Records



An official statement in writing made as a record of fact or event by an individual acting in an official capacity is called a business record.



Records are of two types; private and public. Private records can include personal records, such as a person's diary, and business records such as accounting files. To introduce private records, someone associated with the individual or business must show that the individual or company kept records, that the record produced was one of these records, and that the record was the original or certified copy of the original. Public records are often introduced at trial by presenting certified copies.

Evidence Standards

Absolute certainty	No possibility of error; certainty is 100 percent
Moral certainty	Beyond reasonable doubt; conclusive proof; the defendant has the benefit of any possibility of innocence
Clear and convincing	Persuasive to the judge or jury
Preponderance of evidence	A collection of evidence more convincing than an opposing collection of evidence; applies in civil cases only
Probable cause	Facts sufficient to cause a reasonable person to believe that a crime was committed and that a certain person is involved or guilty
Sufficient evidence	Evidence adequate to reverse a trial court
Reasonable suspicion	Facts that warrant an investigation of a crime but are less than facts required for probable cause
Less than probable cause	Mere suspicion

Interview v. Interrogation



An interview is the gathering of information from a person who has knowledge concerning a matter under investigation. The person being interviewed usually gives, in his own manner and words, an account of the incident or provides details concerning another person connected to the incident.

Interrogation, on the other hand, is the extraction of information from a person suspected of having committed a violation or from a person who is reluctant to make a full disclosure. Interrogation involves a process through which the investigator uses conversation, questioning, and observation as a means of eliciting truth. The process is adversarial in nature and depends upon the application of logic and reasoning without coercion.

Comparisons



An interview is non-accusatory	An interrogation is accusatory
An interview is two-way communication	An interrogation is mostly one-way communication
An interview is done in a comfortable environment	An interrogation is done in a less than comfortable environment
An interview is done in a private or semi-private setting	An interrogation is done in an absolutely private setting
An interview is done when guilt is not indicated	An interrogation is done when guilt is indicated
An interview is not lengthy	An interrogation can be lengthy
An interview is non-adversarial	An interrogation is adversarial
An interview is friendly	An interrogation is non-friendly
An interview is unstructured	An interrogation is highly structured
An interview requires some amount of planning and preparation	An interrogation involves extensive planning and preparation
An interview usually involves note taking	An interrogation can be less than effective when taking notes
An interview usually does not require an observer	An interrogation often requires an observer
An interview usually does not require video/sound recording	An interrogation usually merits video/sound recording
An interview is aided by documentation, usually moderate	An interrogation requires extensive documentation

Uncooperative Persons



A person's apparent attitude and willingness to cooperate will help you choose the appropriate questioning technique.

Expect to encounter difficulty when interviewing a person who has any of the following reasons for not wanting to cooperate:

- **Fear of self-involvement**
- **Inconvenience**
- **Resentment**

Obtaining the Facts



A sensible way to prepare for the interview is to look at your case file to identify facts that have not yet been established but which need to be established before moving on. Prepare a script or a list of questions to ask in order to ascertain what is missing.

Consider facts relating to the incident:

- Date, time, and place of the incident in accurate detail.
- Manner in which the incident occurred and the known details; for example, tools used, places of entry and exit, mode of travel to and from the scene, items taken or damaged, and injuries sustained.
- Full description of the incident scene and the surrounding area.
- Possible motives relating to the incident.

Consider facts relating to the witness:

- Personal background information such as other names used, social security number, date of birth, place of birth, education, marital status, current and prior places of residence and places of employment, financial circumstances, and prior arrests and convictions.
- Past and present physical and mental condition, particularly with respect to drug or alcohol addiction.
- Relationship to the victim or the offense scene.
- Attitude such as prejudices against authority figures, business, ethnic and

Semantics

Semantics is the study of words, their meanings, and human interaction through communication. The significance of semantics to interviewing is that words:

- Can be other than the things they stand for
- Are only symbols
- Must be interpreted
- Can create emotional responses
- Can denote or connote, i.e., the word "home" denotes the place where one lives, but to one person it may connote comfort, intimacy, and affection, while to another person it may connote misery, estrangement, and abuse



At some time prior to the questioning, you should seek an opportunity to evaluate the vocabulary of the person to be questioned. Questions must be phrased in words used and commonly understood by the person being questioned.

You must be assured that the wording of each question will evoke the desired picture in the mind of the individual. Except when intended, you should avoid words that elicit an emotional response.

Following are guidelines:

- Phrase questions so that they are simple and direct
- Avoid legal terminology, e.g., misprision and defalcation

Situational Analysis

Situational analysis holds that a variety of components are present in any given situation at any given point in time. The point in time of concern here is the early stage of an investigation when:

- The applicable law, work rule, or policy is known and can be examined carefully to determine what must be proved.
- Evidence has been examined to determine if the individual to be interviewed is possibly connected to the offense. Evidence can consist of physical facts, forensic test results, testimony of witnesses, documentation, photographs, etc.
- Evaluation has been made of the persons involved, e.g., victims, accusers, complainants, and other witnesses.



Although situational analysis has application at any time during an investigation, it has critical importance during the preliminary stage. The preliminary stage can be considered that period of time from occurrence of the incident to identification of a suspect. Interviewing, which takes place during the preliminary stage, is essentially non-accusatory in nature, whereas interrogating, which takes place in the final stage, is the opposite.

It is during the preliminary stage that facts are analyzed through a continuing

Behavioral Analysis



Behavioral Analysis is an interviewing method that seeks to differentiate between deception and non-deception in the answers of persons being questioned.

All of us tend to rely on words without much conscious thought given to gestures and poses that accompany the speech. When we do notice, it is usually in the extreme. For example, the message is inescapably clear when your “significant other” responds to your question by saying, “I told you I am not going,” and to emphasize the point sends you a withering glare.

In the investigation context, answers given by a person being questioned are not so easily deciphered. However, there are a number of responses that are known to suggest guilt or innocence. For example, “Why would I do something like that?” is evasive and takes on greater import when it is accompanied by the crossing of arms—an action associated with fear. Confronted with the same question, an innocent person might respond with, “No, I did not do it” and look the questioner in the face without a hint of fear.

Compared to behavior, verbal answers are less revealing. This is because an untruthful person can be skilled at lying because he has done it all his life and/or has had time to rehearse verbal responses to the anticipated questions. But the untruthful person cannot easily hide non-verbal responses because they can occur without the individual realizing it and even when trying to repress it.

When using the behavioral analysis method, the investigator should not conclude guilt or innocence on the basis of one or a few responses. When the deception-

Psychology

The skilled investigator recognizes that human factors strongly influence the success or failure of an interview. Human factors include such variables as fear, reluctance, prejudice, revenge, hate, and love. An investigator who can figure out the variables and adjust the approach accordingly will excel at interviewing.

The complex motivations of people make questioning an art rather than a science. Recognizing the subtle signals sent out by a witness is the first step on the path leading to truth.



More important than anything else is an ability to correctly assess what the interviewee wants, what he/she is afraid of, and what is going on inside the person's head. This is not an easy task. Performing the task well is founded on a base of knowledge sharpened through training and practice. Ideally, the investigator will know basic psychology and be a keen observer of persons.

Among different investigators are different levels of people-knowledge and different levels of skill in making sense of what a witness is communicating in words and body language.

Confabulation



Confabulation occurs when a witness adds details that do not correspond to known facts. For example, assume the witness saw a hit and run collision at a toll booth. The collision had been recorded by a video camera mounted above the booth. The recorder had a time/date generator. The known time of the collision was 5:15 PM. The witness states the time was between 5:45 and 6:00 PM.

Did the witness lie? No. Did the witness offer an untruth? Yes. What was the reason? There can be several reasons. The witness may:

Have made an assumption, such as recalling that every day on his way home from work he arrives at the toll booth between 5:45 and 6:00 PM. He therefore concludes the time of the collision that he witnessed must have occurred in that time frame.

Want to help the investigator.

Not want to appear stupid or uncooperative.

Want to show off.

Have a vivid imagination.

Confabulation is more likely to occur when describing an event from finish to start. Recalling facts in a reverse order can be a problem for some people. The better approach for the investigator is to ask the witness to freely describe (without interruption) the event from start

Perception

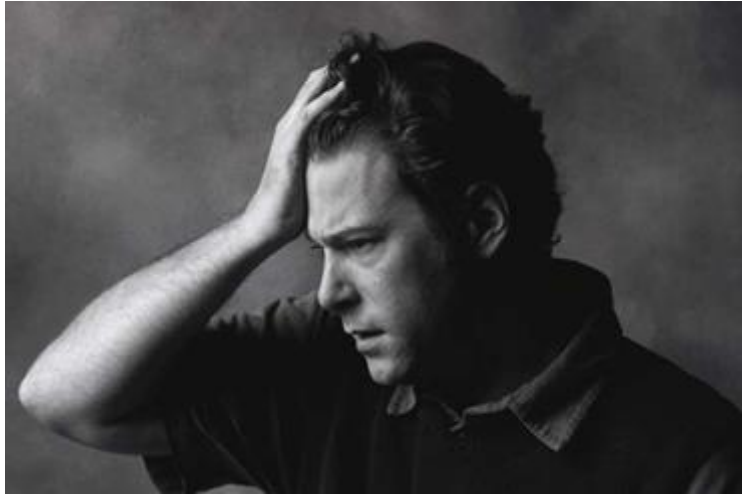


Perception is conditioned by differing abilities to see, hear, smell, taste, and touch. Distance and geographical perspective affect vision, as will the amount of time intervening between occurrence and interview. Also confusing can be the number and nature of events that occur during the interval between occurrence and interview.

What are the implications? For one thing, you should attempt to discover if the person being interviewed has physical disabilities that impair the senses. If it is known, for example, that a witness has a vision problem, you should be careful in accepting at full value statements based on what the witness saw. It is far better to discover problems in a witness's perception at the outset of an investigation than to have such problems surface at time of trial.

It might be helpful during an interview for you to ask the interviewee to place himself on a map or a sketch that depicts the physical layout of the scene at the time of the incident. The position of the interviewee in relation to other persons and objects can help you evaluate how much the person could have seen, heard, or smelled. This technique also discourages fanciful elaboration.

Memory and Stress



Because memory erodes over time, interviews should be conducted as quickly as practicable. Memory not only fades; it becomes colored, either consciously or unconsciously by what the witness was exposed to after the incident. Remarks made by other witnesses or newspaper accounts may cause an interviewee to fill in the gaps of personal memory with details about which he/she has no direct knowledge. A witness may even form a personal opinion of guilt or innocence and shape testimony accordingly. This possibility is reduced when the interview is conducted soon, that is, before the witness has time to form personal judgments that distort the truth.

A person subjected to stressful, exciting, or injurious events after observing an incident is likely to forget details. To illustrate, assume a pedestrian observes a speeding motorist strike another pedestrian and drive away from the scene. The witness is caught up in a series of actions in which he or she might render first aid

Prejudice

It is not unreasonable to expect every witness to be prejudiced to some degree. The strength and targets of prejudice vary among people. You should be alert to prejudice and deal with it when it surfaces.



One way to keep information from being distorted by prejudice is to require detailed, specific answers. If allowed to talk in generalities, a prejudiced person will make statements that are partially accurate and partially misleading. By remaining within a narrow line of discussion aimed at a specific issue, you force the witness to respond with information free of bias.



Resistance

Many people are unfamiliar with investigative methods and as a result are cautious about agreeing to be interviewed. Some people will have committed an offense of some type at a previous time and are fearful for that reason.

A witness can be reluctant to talk because he/she fears reprisal by a suspect or condemnation by other witnesses.

Many persons think that incidents that do not happen to them directly are not their business, or they believe that the misfortunes that befall victims are of the victims' own making.

Some witnesses can be very private, disliking publicity in general. When you know the underlying reason for resistance, you are better able to overcome or work around it.

No one wants his or her lifestyle disrupted. We are all pretty much animals of habit and we dislike it when the routines of our daily living are upset because we are kept waiting or inconvenienced by an unexpected event. Some people will actually disclaim knowledge because they wish to avoid questioning. We are also aware of witnesses being required to wait several days in courthouse hallways and then told to go home. Even when a witness is compensated for lost time, there is a residue of

Mutual Respect



Occasionally an interviewee and investigator will get along wonderfully well right from the start. More often, an interviewing session will begin with mixed feelings but then through the normal give and take of interpersonal communications the session will evolve to mutual respect and cooperation.

Sometimes interviewer and investigator will find it impossible to communicate at all. When this happens the conflict usually has its roots in the attitude of the interviewee. A skilled investigator will adjust his/her own personality in relation to the person being questioned.

Where you are unable to overcome a personality conflict, the best course of action is to voluntarily withdraw in favor of another questioner. This should not be regarded as failure, but recognition of a human factor that must be accommodated in the interest of achieving a successful investigative outcome.

Using an Observer

Questioning a witness does not usually require the presence of an observer. If you feel, however, that the person to be interviewed may be more than just a witness, it is appropriate to have an observer present.



This would be the case when you believe the witness possesses a large volume of very important information and you do not want any of it to fall through the cracks. Another reason would be an expectation that the witness may turn hostile, even violent.

An observer does not have to be an investigator. Anyone who can take notes, such as a secretary, will be a logical choice.

When a person of the opposite gender is interviewed, either as a suspect or non-suspect, it is standard practice to have another person present, preferably a person whose gender matches that of the person to be questioned. Otherwise, conduct the interview in an open room or semi-public area. This is done, of course, to squelch a later accusation of impropriety.

In those instances when a non-suspect interview calls for the presence of an observer, only one should be used and should remain neutral, unless planned otherwise. Too many persons present during an interview, or even the presence of a single antagonistic person, can cause the witness's statement to be later challenged.

Victims



Since nearly all incidents have victims, interviews are used to develop the basic facts, at least from victims' point of view.

In some instances the nature of the incident or the victim's condition as a consequence of the incident will reduce the amount of information obtainable.

The interview of a victim is likely to occur at a location not of your choosing such as a hospital or the victim's home.

Although you can normally expect a victim to be cooperative, you cannot expect the information to be highly reliable. A victim may be overly eager to please.

You also have to guard against the possibility that the incident had been staged. For example, the witness wanted:

- An insurance payoff
- Attention such as from an inattentive spouse
- Recognition such as a security guard that sets a fire and then puts it out
- Sympathy

Then there is a possibility that a victim is an accomplice.

Witnesses



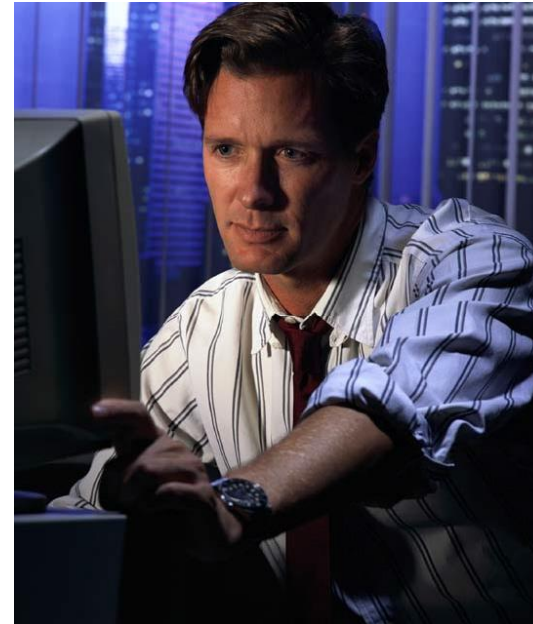
A witness is any person, other than a suspect, who has information concerning an incident. Victims, complainants, accusers, laboratory experts, and informants are types of witnesses.

A witness can be anyone possessing information about the matter under investigation. A witness can be a person who:

- **Directly observed an incident.**
- **Can testify as to the actions and whereabouts of other persons before and after the incident occurred.**
- **Heard others make self-incriminating comments.**
- **Has information concerning motive.**
- **Is a specialist able to give expert and impartial testimony regarding forensic studies of physical evidence.**
- **Is an informant, i.e., a person who trades information in exchange for pay or other consideration.**

Preparing for the Interview

A very critical part of preparation is readying the mind. You should prepare for an encounter with an individual who may be friendly or hostile, communicative or reticent, full of facts or devoid of facts, truthful or lying. The best start that can be made is to acquire a thorough grasp of case facts, know something about the person to be questioned, and know what information is needed to bring the case to a successful conclusion.



Another important part of preparation is to thoughtfully select the time of questioning. Although it is always useful to talk to a witness as soon as possible, it is sometimes more valuable to postpone questioning until key facts have been determined. The next steps would be to develop sets of questions for different parties and to schedule questioning in a particular order. The benefits of this approach are the building of facts, one upon another, and avoiding the need for follow-up questioning.

As a general rule, witnesses who appear cooperative are interviewed first and uncooperative witnesses are put on hold. Changes to the rule are merited when new information is developed from other sources such as the discovery of new evidence, findings of forensic

Conducting the Interview



Begin by introducing yourself and establishing the identity of the interviewee. A few minutes spent in a professional, yet friendly, introduction provides an opportunity to assess the interviewee and choose an appropriate interviewing technique.

The introduction affords the interviewee an opportunity to overcome nervousness and relate to you as a person. You can use the introduction to make a general statement about the case without disclosing specifics.

Right from the start you should try to create harmony or agreement with the interviewee so that a productive dialogue can follow. Your demeanor during initial moments can greatly affect the tenor and outcome of the session. The objective is to get the interviewee into a talkative mood and guide the conversation toward a full and accurate disclosure. In the best of situations, the interviewee will tell a complete story without prodding.

In many situations, you will have no choice except to guide the conversation in productive directions, exercise patience, and after the story has been told, review it and clarify confusing points. Matters not touched upon can be covered at the end.

Knowing What to Ask, How to Ask, and When

A common mistake of the fledgling interviewer is a tendency to interrupt or dominate a conversation to such a degree that the interviewee is not permitted to tell the story. The inexperienced investigator, perhaps out of nervousness, will fail to ask the pertinent questions.



It is important to know what to ask, how to ask, and when to ask.

Here are some pointers:

- Ask one question at a time.
- Group questions according to relevance. Cover one group thoroughly before moving on to another.
- Stick with a question until it has been fully answered.
- Phrase each question simply and directly. Avoid long and complex sentences.
- Avoid legal terms and words that might confuse, shock, or embarrass.
- Don't ask questions that have implied answers. There is not much point in asking a question that provides its own answer.
- Avoid questions that produce yes or no answers. The idea in interviewing is to encourage elaboration.
- Do not make side remarks, gestures, or facial expressions that are open to interpretation.
- Respond differently to answers that are deliberately misleading and answers that are mistaken but honestly given.

Concluding the Interview



Do your best to keep an interview from ending on a sour note. Although you may dislike the witness, keep in mind that a follow-up interview may be necessary. If important information is later developed that can be corroborated by the witness, much can be lost if the witness refuses to be interviewed again.

Conclude by thanking the witness, commenting on the value of the information (even if that is not the case), and saying that you thoroughly enjoyed meeting and talking with the witness.

The ending of an interview is not necessarily the termination of communications. On the contrary, the ending of the session is one more opportunity to acquire

Purposes of Notes

Taking notes is an essential task for anyone engaged in investigative work. It is very accurate to say that an investigator's "stock in trade" is information. It is also true that the human memory has limitations. Even the least consequential investigation will generate details well beyond the average human's ability to absorb and retain. This is where note taking has great significance. Without a means for recording and storing information, you could not possibly do your job with any acceptable degree of efficiency.



Anything that could in anyway be of interest to another party now or later should be recorded in your notes. Another party could be a supervisor, employer, client, prosecutor, defense attorney, judge, jurors, government and elected officials; in fact, almost anyone.

Some items that are entered into notes may never be needed, but you don't know that to be the case at the time you take notes. It is much, much better

Notes Track Progress



Notes should contain details concerning the who, what, where, when, how, and why of the investigated matter. Notes include every relevant detail. When there is a question as to whether a detail is relevant or not, write it down. If you are going to make a mistake, make it on the side of caution. When your investigation is complete, you will have no difficulty differentiating between relevance and irrelevance.

When you are writing a final report, simply leave out the irrelevant details but don't throw away the notes that contain them.

Your notes should reflect what triggered the investigation; the actions that you personally engaged in throughout the investigation such as record searching, active surveillance, and stakeouts; the notifications you made to persons associated with the case; arrests made by law enforcement; evidence collected; suspects, witnesses, victims and complainants identified; losses and injuries sustained; statements and admissions obtained; reports

Notes and Reports

Notes serve as the primary reference in the preparation of reports. It is correct to say that a report cannot be complete without the use of notes. They can help you visualize and reconstruct the important events in an investigation, especially when a report is in the narrative form.



For every fact or action expressed in a report there must be one or more supporting entries in your notebook. It is usual and normal for notes to exceed in number and depth anything that you place into a report. A report is, after all, a re-creation of notes.

Some investigators do not like to take notes and write reports, even though they may enjoy and be good at interviewing, collecting physical evidence and analyzing facts. These individuals do not live up to their full potential and eventually fall under criticism when a need arises for information they failed to record in notes.

Notes and Memory

Notes can jog your memory and help you to recall what has been done and to determine what remains to be done. The important point is that every event or transaction connected to a matter under investigation needs to be recorded on the spot in a note of some type.

Whether you care to believe it or not, your memory has a limit both in terms of what you can absorb in the short run and what you can remember in the long run.

More often than not, an extended period of time will elapse between completion of your investigation and its disposition, which may be a hearing, a deposition, a trial, a settlement, a briefing, or other event that will require your testimony. Several months or even years can pass during which you have conducted many other investigations. When you are informed of the requirement to testify, you will discover that your memory has eroded, the facts of the case are fuzzy, and the certainties in your mind about the results of the investigation now seem less certain. It is at this point that your case notes are invaluable.



Notes and Testifying

A legal proceeding often marks the end of an investigation. A favorable result, certainly from the point of view of your client, will depend to a large extent upon the testimony you give. The quality and effectiveness of your testimony will be founded on the notes you prepared in the course of your investigation.



Concerning notes and testimony, some investigators prefer to study their notes immediately prior to testifying and to not bring them to the witness stand. Notes you produce on the stand can be examined by opposing counsel and if they are deficient (or made to appear deficient), opposing counsel will attempt to destroy your credibility and undermine your testimony by characterizing you as incompetent and unprofessional. This does not mean that notes have a negative value reference testifying, because the opposite is true; they are absolutely essential in preparing to testify.

All of the effort and cost put into the investigation of a matter can be lost when the failure to take good notes results in weak testimony.



Notes and Other People

Notes are useful to a variety of people for a variety of purposes:

- Investigators who work with you may learn from your notes a technique or method you found successful.
- Your supervisor may use your notes to revise a procedure.
- The client may use your notes to justify continuing an investigation or taking a new tack.
- The client's attorney may use your notes to develop a litigation strategy.
- A prosecutor may decide to drop or reduce a charge on the basis of your notes.
- A judge may decide to allow presentation of evidence referenced in your notes.

Notes can contribute to many serious decisions and for that reason they have values that go well beyond the value they give to your investigative efforts. If they do nothing else, notes will serve you well when preparing reports, briefing others, and testifying in court. When done well, notes demonstrate professional competence.

Field Notes



Notes prepared outside of the office are called field notes. These can relate to:

- What you saw, heard, touched, smelled, or tasted.
- Persons you interviewed out of the office and what you learned from them.
- Physical evidence you collected.
- Photographs you took.
- Notifications you made.
- Agencies you visited.
- Record searches you made.

Field notes are understood to be notes written by hand on paper. They are regarded as primary notes in the sense that other recording media are regarded as supplements. This traditional view, however, is giving way to notes prepared with the use of portable electronic recording devices.

Key Details



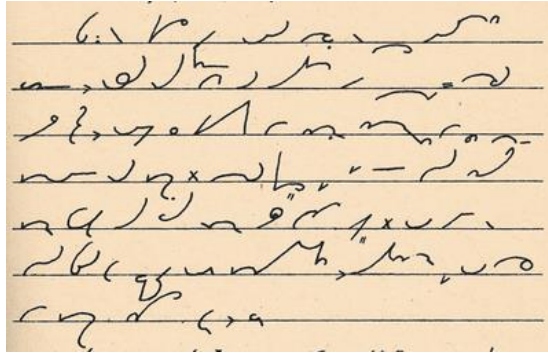
Taking notes is not as simple as it sounds and requires a skill acquired through practice. The more you take notes, the easier the task will become. And with practice the quality of your notes will improve.

Many times, notes have to be taken “on the run” such as when a witness is talking rapidly or when important activities are occurring simultaneously. To keep up, you must be able to select the details that need to be noted and to write them down quickly. At the same time, however, you must not scribble. Notes that cannot be read later have no value to the investigation.

Selecting relevant details is mostly a matter of separating important facts from information that may be nice to know but not relevant. The fact that the hit-and-run vehicle was a late model Ford is relevant. The opinion of the witness concerning the poor attitudes of drivers in general is not relevant.

As Joe Friday used to say, “Just the facts, ma’am.”

Shortcuts



Unless you know shorthand or can speed-write, your best bet is to use abbreviations when information is coming at you fast and furious. Everyday words like building, department, manager, supervisor, telephone, and vehicle have commonly accepted abbreviations, for example: bldg, dept, mgr, supvsr, tele, and veh.

Acronyms also help, for example: SUV instead of "sport utility vehicle" and ASAP instead of "as soon as possible."

Another time-gaining step is to leave out connecting words like "I," "a" and "the." Later, under less demanding circumstances, you can convert the shortened versions to their actual forms. Here is an example of a note taken on the run:

"Met Jones @ Carbo's. Says Brown not in C'town. Skip?"

Converted, the abbreviated version becomes:

"I met with Jones at Carbo's restaurant. He reported that he was unable to

Office Notes and Reading File



Office Notes

Actions you take in the office are recorded in office notes. These can include telephone calls you made and received and the information obtained as a result; your examination of evidence, both physical and documentary, and what you learned as a result; forensic reports received and how they relate to the facts of the investigation; and information obtained from persons who visited you at the office.

Notes taken when interviewing or interrogating can be either field notes or office notes depending on location. When these particular notes are made by an observer, you and the observer must sign them.

Field notes and office notes should be entered in the same notebook, and one notebook used for each separate investigation.

Types and Purposes of Reports

Even when two agencies do the same kind of work, the reports generated by them will differ in one way or another. The differences tend to be in matters of style and format rather than substance.



Despite the differences, four types of reports stand out and each has a distinctive purpose.

- **Initial Report.** This report states how it came to be that a case was opened and what was done in the initial stage of investigation. The initial report is often prepared within five working days
- **Progress Report.** This report states what was done and learned since the initial report or since the last progress report. A progress report is usually prepared every 30 days until a final report is prepared.
- **Final Report.** This report states the outcome of the investigation. A final report signifies that all investigative actions have been taken.
- **Supplemental Report.** This report creates a record of something that occurred after the final report was prepared, such as a court action or the discovery of new evidence.

The Initial Report



An initial report describes the nature of the matter, what you did at the very outset and what you learned from the actions you took. The initial report also identifies work that remains to be done such as interviewing witnesses and obtaining documents.

You will write the initial report soon, usually within five days after the case has been opened.

Very often, the matter will not be fresh. If it involves a crime, it will most likely have been investigated by law enforcement and may have moved from the law enforcement agency to the prosecuting agency. In such a case, you will have no "hot" crime scene to search (although visiting the scene to obtain a general orientation is advised) and you will not have the benefit of speaking with witnesses whose knowledge of the facts is fresh in their minds. Even so, your best opportunity to obtain information is during the preliminary stage, no matter how cold the case may be.

Initial Report: Opening Statement



The initial report often begins with a brief opening statement. This statement can identify the basic details of the matter to be investigated. An opening statement might read like this:

On June 30, this agency was contacted by Mr. William Holloway who stated that on May 30 he was charged by the Smith County District Attorney for involuntary manslaughter in the matter of the death of Maude Johnson, a pedestrian killed by a motor vehicle at the intersection of Main and Broad Streets on February 28 of this year. Mr. Holloway stated he is able to provide an alibi because at the time of the accident he was 20 miles distant from the accident scene, as can be attested by me since I was being served divorce papers not the driver of the motor vehicle and that he wished to retain the

Initial Report: Body



The initial report would continue with a narrative description. For example:

At 10:00 AM, July 1, I met with Sergeant Charles Coffey. Coffey was the person in charge of the traffic investigation team and the person who prepared and signed the traffic accident report concerning Johnson. Coffey acknowledged that the copy of the accident report in my possession, which was given to me by Mr. Holloway, was a true copy of the accident report on file. During my conversation with Coffey, he said that two prior accidents involving pedestrians had occurred at the same location. The report prepared by Coffey does

Initial Report: Ending



The initial report may also identify investigative leads to be followed and investigative actions remaining to be performed. A lead might be the discovery of an eyewitness who had not been interviewed by the police and a pending action might be to take photographs of the scene.

For example:

I have scheduled a meeting for July 10 with Ms. Pauline Abdul. She is identified in the accident report but there is no record of her being interviewed by the

The Progress Report



This type of report picks up where the initial report ended. Progress reports are usually prepared on a scheduled basis, such as every 30 days, or on an as needed basis, such as when an important development needs to be communicated to the client.

If the initial report or a prior progress report mentions a lead to be followed or an action to be taken, the current progress report should reflect the results, even when the results are minor in importance.

A progress report is different from and much more important than internal records that also track “progress.” Records called the “Daily Progress Report” or “Reading File” or “Log of Investigative Activities” usually are for in-house use and intended to

The Final Report



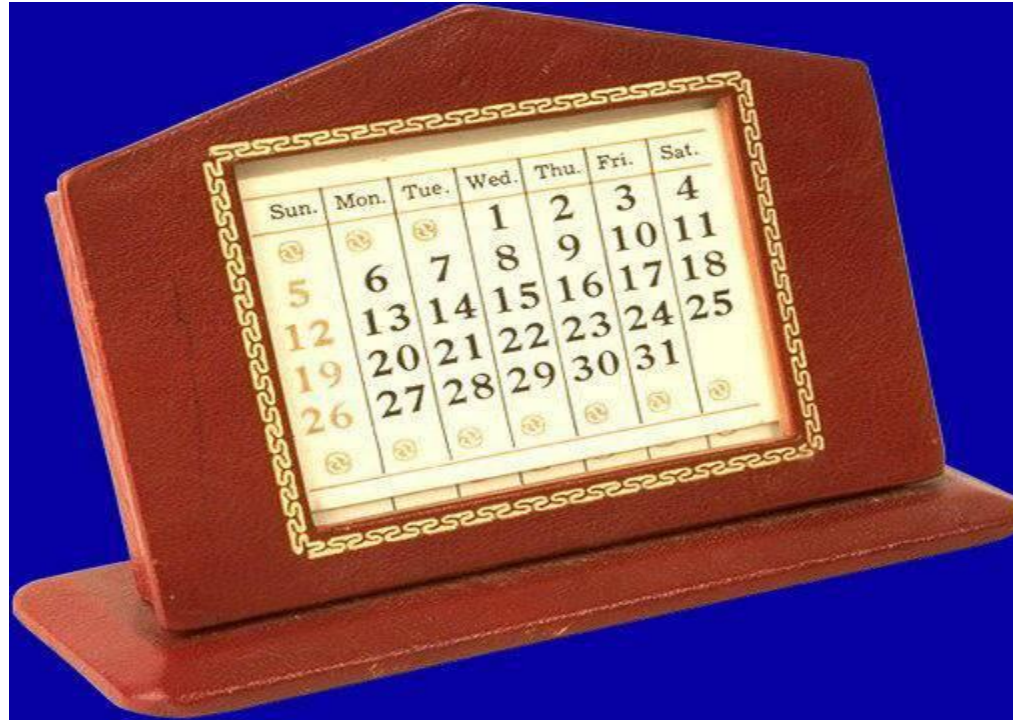
A final report is prepared when the investigation has ended such as when:

- **A definite conclusion has been reached.**
- **All investigative avenues have been exhausted.**
- **The client instructs that the investigation be called off.**

The final report incorporates everything mentioned in the initial and progress reports. However, it does not consist of copies of prior reports stapled together. It is a stand-alone document that brings all the facts together and presents them in context.

For example, Cindy Jones has been identified in the initial report as the only eyewitness. Cindy gave to the police certain facts that led to the identification of Holloway as the driver of the car that killed Johnson.

Final Report: A Summary of Facts



The final report should state the basic facts, which can be quite long, often several pages in length. Some agencies want the opening paragraph to describe how the agency first became involved, such as when Holloway retained the agency, or describe the central circumstances of the incident such as the death of Johnson. The latter approach is chronological because it starts at the beginning and moves forward in time.

The first mention of a person should include the proper form of address (e.g., Mr., Mrs., Ms., Sergeant, Attorney, etc.) and, if appropriate, the person's organization (e.g.,

Final Report: Proof



When the matter involves the commission of a crime, you will need to examine the criminal code and determine the elements of proof. In the Holloway matter, the crime cited by Police Detective Cesta was involuntary manslaughter.

When you research the criminal code, you might find the elements to be: (1) Causing the death of another, (2) While performing a legal act, (3) In an unlawful manner likely to cause death.

Cesta is confident he has met the elements of proof. You have learned, however, that an eyewitness, Cindy Jones, has given conflicting statements and was heard to say that Holloway was not the driver.

Further, you have obtained a sworn written statement from a restaurant waiter who declared that Holloway was dining at the time his vehicle struck and killed Johnson.

Your final report will conclude that the elements of proof have not been met.

Final Report: Substantiation

Substantiate means to verify, corroborate, validate, or support. Substantiation in a final report is a recitation of facts you have determined. Considered together, these facts show proof of your findings.



Substantiation can be drawn from a variety of sources: statements obtained from the suspect, victim, complainant, and witnesses; notes, sketches, diagrams, and photographs; physical evidence collected; reports of analyses made by forensic experts; and official records. Here's an example of substantiation:

The purported last will and testament of the deceased (Carmichael) is false as shown by the report of the questioned document examiner (Andrews) who concluded that the signature on the document had been forged; by the report of the fingerprint examiner (Epstein) who concluded that the document bore none of the fingerprints of the deceased; and by the sworn written statement of the deceased's nurse (Langley) who recalled hearing Carmichael declare that he had "never prepared a will and did not intend doing so."

Final Report: Investigator's Conclusions



A final report typically ends with one or more conclusions reached by the investigator. An investigator's conclusion is not the same as an opinion.

A conclusion is a reasoned judgment made from a combination of facts. The substantiation part of the final report states those facts. In this part of the final report, the investigator states his or her conclusion.

Unless a case is extremely complex, the number of conclusions will be few, and in any event should be stated in simple language. For the Holloway case, the conclusion could be:

I conclude that insufficient evidence exists to show that Holloway was the driver of the vehicle that killed Johnson.

For the Carmichael case, the conclusion might be:

I conclude that sufficient evidence exists to show that the last will and testament of Carmichael is false.

Final Report: Attachments

Attached to or included with the final report of investigation will be the case documentation such as copies of written statements, laboratory reports, sketches and diagrams, questioned documents, official records, maps, photographs, estimates of loss or damage, a list of persons connected to the case, and descriptions of physical evidence and where stored.



Originals of documentary materials and physical evidence are not attached to a final report. They are retained until needed for adjudication.

The investigator's notes are seldom attached to a final report. They are retained in the case file along with telephone message slips, business cards, newspaper clippings and like items.

The Supplemental Report



The supplemental report covers new issues that arise after the filing of a final report. These issues often relate to the outcome of a trial or hearing, punishment and penalties imposed, persons confined or released, punitive and compensatory awards, restitution, recovery of property, and out-of-court settlements.

It sometimes happens that new evidence will come to light concerning a previously closed investigation. A supplemental report is filed and, if desired by the client, the investigation can be re-opened.

However, if new information comes to light before the final report is submitted, the new information should be reported in a progress report.

The final report, which precedes writing of the supplemental report, will usually be stored in a secure container under the control of one or two persons such as the agency head and second-in-command. The supplemental report is joined to and made a part of the complete case file.

Mechanics of Writing a Report



Think of a report has having three parts: Introduction, Body, and Ending. The introduction is a lead-in to the Body. It usually consists of one or two sentences. Here is an example of a lead-in to a progress report:

This report covers the period June 15 thru July 14. Following is a description of investigative activities conducted, information developed through public record searches and interviews, and documentary and physical evidence obtained.

The Body would then describe those activities.

Ms. Olive Chase was contacted at her home (6543 Myrtle Avenue Atlanta, GA

Use Your Notes



Think of notes as tiny building blocks kept in a box on your desk. As a case moves forward, you place more and more blocks into the box. The blocks can be small details, like names, addresses and phone numbers, or important details, like facts obtained from questioning witnesses, evaluating physical evidence, and examining public records.

When it comes time for you to write a report, you spill the contents of the box on the top of your desk and you begin to assemble them in a pattern that makes sense. If your building blocks are solid to begin with and your pattern logical, your report will meet its fundamental objective, i.e., inform the users of the report.

Keep in mind that a report of investigation can be no better than the notes from which the report was prepared.

Focus on Key Points



One way of arranging the key points is to ask yourself, “Who did what to whom, when and where did it happen, how was it done, and why?” Thinking along these lines can help you write the opening paragraph of the narrative section of an investigative report. For example:

At 10:30 PM, on Wednesday, July 30, in the parking lot of the Rendezvous Lounge, Smith struck Jones in the face with a steel crowbar. The incident occurred during an argument between Smith and Jones concerning a woman they had met inside the lounge.

The central matter is then presented in specifics, e.g.,

The aggravated assault by Smith upon Jones was demonstrated in the use of the 36-inch steel crowbar that is shown in photographic exhibit A; injuries sustained by Jones that are shown in photographic exhibits B through E, and

Identify the Persons Involved

Persons connected to the case must be identified. Full name, driving license number and/or social security number, date of birth, address, place of employment, and contact phone numbers are the minimums. A main objective is to acquire information that can be used to locate the persons at a later time.



Additional background data, such as prior military service and nearest relative, may be required depending on the person's connection to the case.

Data on suspects should be much more detailed: nicknames and aliases; full physical description; past and current addresses; past and current employment; places habituated; name and contact information of spouse, blood relatives, friends and associates; description of vehicles owned or driven; habits; and hobbies.

Describe the Evidence



There can be many types of evidence and each has to be identified. In the assault case previously described, the evidence consisted of a combination of physical, forensic, photographic, documentary and eye-witness evidence:

- A blood-stained crowbar that was found at the scene
- A forensic laboratory report
- A photo of the crowbar
- The attending physician's report
- Statements by Gallagher and Green

A more detailed description of the evidence might read like this:

The crowbar I found at the scene (see photographic exhibit F) bore bloodstains that matched the blood type of Jones (see Crime Lab Report, Exhibit J).

The findings of Dr. Anderson (see Attending Physician's Report, Exhibit L) are consistent with eyewitness accounts of blows inflicted on Jones (see Written Statements of Gallagher and Green, Exhibits C and D).

Elsewhere in the report will be details as to the time and date each item of evidence

Rely on Facts



A report of investigation is in the nature of an allegation. An allegation has to rest on facts. Suppositions, opinions, and theories are not facts.

In the sample case, a number of facts were established:

- **A crowbar was collected at the scene.**
- **Markings on the crowbar matched the initials of Smith.**
- **Bloodstains on the crowbar matched the blood type of Jones.**
- **Gallagher and Green saw Smith strike Jones in the face with a crowbar.**
- **Jones sustained facial injuries.**

The above facts are supported by evidence. The investigator in this case can reasonably conclude that Smith committed an aggravated assault upon Jones.

Use Separate Paragraphs for Separate Ideas



Write the report using a separate paragraph for each action, person, place, or time, for example:

At 10:00 AM on January 13, Mr. Jonathan Jackson, owner and operator of Empire Hardware, 123 Main Street, visited me at my office.

Mr. Jackson stated that when he left Empire Hardware on the evening of January 11, he placed a cash box in a padlocked steel filing cabinet in his office at the rear of the store. The cash box contained \$5,300 in paper currency. When he arrived at work at 6:00 AM the following morning, he found the lock on the cabinet pried open and the cash box missing.

At 1:00 PM, January 13, I went to the scene and examined the padlock and filing cabinet. I lifted three partial fingerprints from the filing cabinet. I also

Tense



You will need to be concerned only with past tense and first person. These writing conventions will be familiar to you because you use them in your everyday conversations. And this is fine because the more conversational a report is, the clearer it will be to your readers.

Past Tense

Use past tense when describing what happened, for example:

“The cash box contained...”

“Mr. Jackson stated...”

Most of what you write will be in the past tense.

First Person

Use first person when talking about yourself, for example:

“I went to the scene...”

“I interviewed Mr. Jackson...”

Do not refer to yourself as “this investigator,” “the undersigned,” or “the writer of this report.” The same applies to the use of legalese, such as “the corpus delicti in this matter is established by...” or the jargon of investigators such as “perpetrator.”

Who, What, Where, When, How and Why



In collecting your thoughts, it might be helpful to ask yourself: “In this case, who did what, where and when did the act take place, how was it done, and why was it done?”

Here is an example of a paragraph that contains the essential elements:

(When) At about 4:30 AM, January 13, 2003, (Who) Mr. Jason Smith, an employee of the Empire Hardware Store, (Where) 123 Main Street, Lake Charles, Louisiana, (What) stole from the store a metal cash box containing \$5,300. (How) Smith entered the store with a key used in the normal course of his employment. He removed a pry bar from a sales rack and used it to snap open the hasp on a padlock attached to a metal file cabinet in the office of the store’s owner, (Who) Mr. Jonathan Jackson. (Why) When I questioned Smith, he admitted taking the money because he wanted to go on a cruise in the Caribbean.

Be Objective and Direct



Write without any hint of bias for or against anyone or anything. Names like “wino” and “pot head” are unacceptable. A theft is not a “rip off” and a witness with a faulty memory is not a “liar.”

Use direct words like “shoot” instead of “blow away” and “assaulted” instead of “beat to a pulp.”

It is better to say, “The subject was staggering and slurring his words,” rather than “He was intoxicated” or “Under the influence.” These are opinions or subjective judgments.

Instead of saying Brown was uncooperative, describe the specific behaviors, for example, “Brown refused to identify himself, refused to answer questions, and tore up a photo I showed him.”

Avoid comments like “It would appear that...” or “In my professional judgment...” or “According to all indications....”

Help the Reader

Help the reader by:

Not going into unnecessary detail, e.g., "I saw him enter Andre's Fashions for Men, an establishment known for its fine collection of Sulka ties."

Being clear on what and who you are referring to. Write "Smith" instead of "The subject of this investigation."



Using words correctly, e.g., say "relevant" instead of "revelant."

Staying away from sentences like: "At the above date and time, I proceeded to the aforementioned address in response to the incident identified in Section I of this report."

Critique and Revise



When you are finished writing your report, do not think for an instant that you are actually finished. What you really have is a first draft. You may end up with ten drafts before the report is the best you can make it. Read the report from beginning to end. Look for factual errors, omissions, inaccuracies, biases, wordiness, repetitive phrases, incorrect word usage, misspellings, and incorrect punctuation and grammar.

Many word processing applications have features that automatically check spelling, punctuation, and grammar. Learn to use these features and don't be hesitant to ask a fellow investigator to read and critique your report before turning it in.

Every writer, even great ones like Ernest Hemingway, learned the

Points to Remember

The investigative report is a clear, comprehensive and objective documentation of facts, presented chronologically in first-person tense.

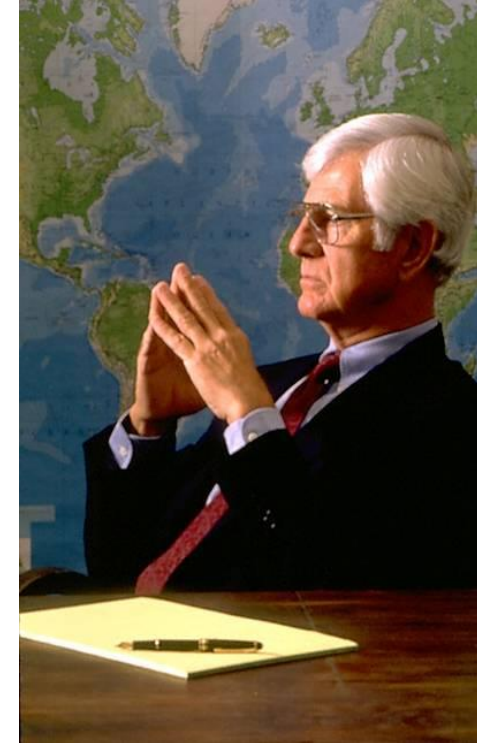
Words common to the investigative profession, such as “perpetrator,” or to the legal profession, such as “heretofore,” should not be used.

Terminology such as “the undersigned person” should not be used. “I” should be used instead of “the undersigned” and the name of the person, such as “Jones,” should be used instead of “the previously mentioned person.”

The investigative report is a record of the investigator’s experiences, conversations and observations from which the events of the matter under investigation can be reconstructed.

The investigative report should be understandable to the reader even after a considerable lapse of time.

The investigative report loses its effectiveness when it contains errors of grammar,



A Final Note



Regardless of the type of report you are required to prepare, the following elements have to be considered:

Be timely: When a report is required, get on with it. Don't wait until the last minute.

Be complete: The report should say everything reasonable that was done to arrive at the findings.

Be objective: Do not have an axe to grind. Lay out the facts. If the client is looking for a recommendation, base it on your analysis of the facts--not on what you hope will happen as a result of the report or what you think the client wants to hear.

Be convincing: Don't be wishy-washy. Tell it like it is. Don't beat around the bush.

Be clear: If the report is not clear to you, it will not be clear to anyone. Re-write, re-write, and then re-write some more. Ask someone else--a person skilled at report writing--to read the report and offer helpful advice.

Be concise: Make the report only as long as necessary. Don't go off on tangents. Long reports can be hard for other people to understand or even want to read at all.

Photography

A principal objective in the taking of photographs is create a visual record that will enhance the understanding of anyone who was not at the scene.



Photography is a tool that enables you to record the evidence of a crime. Photographs made of a crime can be stored indefinitely and retrieved when needed. There is no other process that can record, retain, and recall criminal evidence as effectively as photography.

Photographs Communicate

Photographs are also a means of communication. They tell something about the objects photographed as well as the scene of the incident. They can be extremely powerful in clarifying issues when testimony is given in a judicial proceeding.

Because photographs are meant to communicate information honestly, you have a great responsibility. Your photographs must portray a view as it would be observed by anyone who stood in the same position as the camera and looked at the scene from where the photograph was made.

Photographs as Evidence

Photographs by themselves are not substantive evidence. Photographs accepted in court must be attested to by a person who saw the scene and who can truthfully state under oath that the photographs accurately represent the scene. In the non-judicial venue, the finished photographic print can stand on its own, but in investigative work all photographic procedures are subject to review and inspection by the court. Obviously, this rigid requirement makes it imperative that investigative photography conform to high standards of quality and ethics.



Exposure

A factor frequently contributing to inferior results is over exposure, mostly seen as soft, grainy images of low contrast and brightness. Exposure recommendations for any given film are based upon the requirement for a so-called average subject, that is to say, a



photographic subject containing light, medium, and dark tones. If the subject appears in a photograph as a combination of all light tones, it is said to be high in brightness, and thus in need of less exposure. When, on the other hand, the photograph appears in all dark tones the subject is reflecting very little light. In this case you would adjust the equipment to provide more exposure. For example, less exposure would be called for when the photographic subject is a white sheet of paper lying on snow, or at the other extreme, charred wood in arson debris. In short, you must learn to evaluate the photographic subject by contrast and brightness, and to make appropriate camera adjustments.

Sharpness

Sharpness, or image definition, suffers when the diaphragm of a lens is stopped down, i.e., adjusted from a large opening to a small opening. When a lens is stopped down, three things happen:

- The aperture is reduced and less light passes through during a given period of time.
- The depth of field increases.
- The image definition improves to a point (although in a few special cases the definition softens at the smallest apertures).



A common difficulty is a dirty lens. Dirt and oxidation may form on the lens. Both the outer and inner surfaces of the camera lens should be checked frequently and cleaned when necessary.

Camera Movement and Lighting

Loss of detail in photographic prints is usually the result of movement of the camera when the shutter is released. This problem can be reduced through the use of a rigid tripod and a fast shutter speed.

Indoor lighting is rarely satisfactory for photographic purposes. Depending on size, shape, and location of the scene, you may elect to provide additional illumination through photoflood, photoflash, or electronic flash equipment.



Rulers

Because a court may object to the presence of rulers or similar measuring devices in a photograph, photographs can be taken first without the devices and later with them. Devices used to show the relative sizes of and distances between objects should be placed in such a manner that they will not obscure any important part of the evidence.

Admissibility of Photographs

The final determination of court admissibility often depends on legal points which have little to do with you personally. Your contribution comes mainly from the accuracy and custody of photographs prior to trial. You must be able to account for negatives and prints from the moment they are made until the moment they are presented.



Each photograph must be verified by a person who viewed the scene and who is able to state that the photograph is accurate and truthful. This requirement can be met through your testimony and/or the testimony of others who witnessed the taking of the photographs.

In some cases a court may declare some photographs to be excessively "gory" and not allow them to be seen by the jury. This is not a reason, however, for you to not take photographs of all pertinent aspects of a scene, whether gory or not.

Key Points



Photography aids in:

- Creating a record that can stand on its own
- Creating a record that can supplement other records such as notes, sketches, and written reports.
- Refreshing the memory.
- Communicating a message.
- Influencing thought processes.

Photographs alone cannot serve as evidence. They can corroborate and confirm but not substantiate. To be admissible in court, a photograph must be verified by a person who viewed the scene, object, or person represented in the photograph, and is further able to state that the photograph is an accurate and truthful representation.

When you are required to give testimony regarding photographs you should be prepared to explain the details of the photographic procedures used and to testify regarding safekeeping of negatives and prints. An understanding of the rules of evidence and an application of common sense is usually sufficient to ensure that photographs taken in connection with a crime will be admissible in court.

Preparing to Testify

Giving oral testimony is the culmination of a case. All of the work done up to this point can be wasted if the investigator's testimony is faulty. Giving superior oral testimony relies on:



- The quality and completeness of notes prepared during the course of the investigation and other documents generated such as formal reports, status and progress reports, memoranda and letters to the client.
- Preparations made immediately before the legal proceeding such as re-interviewing witnesses to refresh their memories, studying notes and documentation, reading statements, admissions and confessions obtained, reviewing photographs and laboratory reports, and examining physical evidence.
- The quality of depositions the investigator gives prior to trial.
- The investigator's:
 - Understanding of how a trial is conducted.

Discovery



In American law, discovery is the pretrial phase in a lawsuit in which each party through the law of civil procedure, subpoena, or through other discovery devices, such as requests for production of documents and depositions, can request documents and other evidence from other parties and can compel the production of such materials in court.

Discovery usually requires the production of interrogatories, motions or requests for production of documents, requests for admissions, and depositions.

The common or traditional forms of discoverable materials include reports, photos, medical images, drawings, reconstructed video, video and audio tapes, e-mail, faxes, archived materials, and data drawn from a variety of sources, such as:

- Servers

- Hard drives

The Trial



The key players in a trial are:

- The judge whose job is to preside over the trial, rule on the admissibility of evidence, maintain order in the courtroom, and interpret the law for the jury.
- The jurors who hear and weigh the testimony of witnesses and evaluate evidence. Jurors are typically unfamiliar with the law and courtroom procedures. As much as anything else, jurors base their decisions on the personalities and attitudes of the attorneys and witnesses, especially private investigator witnesses.
- The attorneys who represent both sides in the case. Their conduct is regulated by established procedures and the rulings of the judge.
- The defendant (or defendants) who may or may not testify. A defendant who testifies is not afforded the Fifth Amendment protection of self-

Direct Examination

Direct examination is the initial questioning of a witness (or defendant) by the attorney who is using the witness to advance his or her case. Your first appearance as a witness will occur when you are called to the witness stand by the defense attorney (friendly counsel).



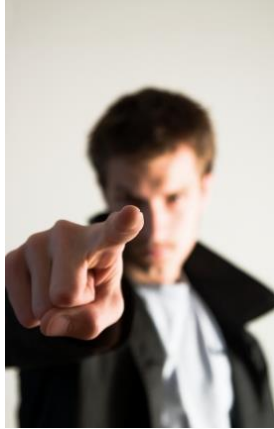
Walk confidently to the front of the courtroom and come to a stop in front of the witness stand.

The clerk of the court will administer the oath. You should face the clerk directly and raise your right hand to shoulder height, hold the palm of your hand forward. The oath will be in the form of a question: “Do you promise to tell the truth, the whole truth, and nothing but the truth, so help you God?” You should answer “I do” in a loud and clear voice.

You will be asked to sit in a witness chair that is positioned to allow you to be seen by the judge and jury, and vice versa. Sit straight and fold your hands or hold your notes in your lap.

Friendly counsel will ask you to state your name, your position, and possibly

Cross Examination



When the defense attorney concludes the direct examination, the prosecutor questions the investigator in what is called cross examination.

It is the duty of both sides to use every legal means to secure a favorable verdict. In order to achieve that objective, the prosecutor will likely attempt to discredit, nullify, and minimize testimony given by the investigator during the direct examination.

The private investigator can expect to be told:

- You did not have the proper opportunity to observe or acquire facts.
- You are mistaken in your observations or conclusions.
- You are lying or leaving out facts.

Specificity and Truth



Being specific contributes to credibility. Stating the exact time, date, distance, and so forth can be convincing. When an exhibit, such as a photo, is used to aid your testimony, be specific when referring to it. For example, don't point at the exhibit and say, "There." Use a specific term such as "the center panel on the left front door" or "the hole in the front windshield on the passenger side."

Aside from ethical considerations, a distortion or exaggeration on a single issue, no matter how inconsequential, can cause the judge or jury to doubt your credibility on other issues, and consequently reject all your testimony. It can help to be painfully truthful; for example, in admitting an error. Although the admission may aid the opposing side, the effect of the honesty can add strength to the credibility of other details. If you give a wrong or ambiguous answer, clarify it immediately. It is far better to correct mistakes than to have them revealed later.

Surveillance



Surveillance Defined

- Surveillance is the systematic observation of a surveillance target. A target can be a person, a place, or an activity. An objective of surveillance is to obtain meaningful information that can be applied to a legitimate purpose. A key task is to make a photographic record and/or make notes of relevant details as they occur.
- Overt surveillance may be appropriate when it is useful to let the subject know he or she is being observed. For instance, a nervous subject who is aware of the surveillance may lead the investigator to accomplices. Overt surveillance can consist of conspicuously following and taking photographs of the target in public places.
- Covert surveillance is the option when it is important to gather information about the movements and actions of the target without the target being aware of the surveillance. The methods of covert surveillance can vary widely, e.g., stationary surveillance (stakeout), foot and mobile surveillance, and photographic and electronic surveillance.



Uses of Surveillance

- Surveillance has many uses and can be a valuable method for obtaining information meaningful to the work at hand. The uses of surveillance include:
- Documenting the activities of a spouse in a divorce or child custody action.
- Observing the activities of persons suspected of making false workers' compensation claims and medical insurance claims. Providing early warning of an anticipated crime.
- Gathering information to plan a protective services operation.
- Monitoring a public event to spot trouble brewing. Concerts, football games and other crowded public events are sometimes disrupted deliberately by persons who object to the event for one reason or another.
- Identifying criminal activity. A client may engage an investigator to determine if his personal or business property has been targeted by a criminal enterprise or if his business processes have been corrupted by crime or are being used to carry out criminal activity.



Moving Surveillance

- Surveillance on the move can be conducted in any manner that involves mobility: on foot, on a bicycle, or by motor vehicle, train, helicopter, airplane, boat, etc.
- Depending on the movement of the target, a mobile surveillance can quickly and unexpectedly become stationary or fixed.
- Surveillance by motor vehicle usually will not involve more than three vehicles. Vehicle A is typically the second or third vehicle behind the target vehicle, with Vehicle B closely behind. Vehicle C might travel a parallel road that has short-distance intersections that permit intermittent observation of the target, or Vehicle C might drive ahead of the target vehicle. In this latter technique, the three vehicles could "leap frog" as needed to maintain the surveillance while avoiding detection.



Fixed Surveillance

- Also known as a stakeout or static surveillance, this method is used when the persons or activities of interest are stationary. The number and positioning of investigators depends on the number of persons to be observed, the nature of their activities, and the size and layout of the area.



- When operating from separate locations, a means of secure communication is essential both for the success of the operation and personal safety.
- It is not unusual for a fixed surveillance to switch suddenly to a moving surveillance and then back again to the fixed mode. For this reason, the planning of the operation has to allow for alternate forms of transportation, well understood procedures, and coordination among members of the surveillance team.
- When the surveillance is strictly covert, the general rule is to abort the operation when there is a chance that the surveillance has been detected. In less critical operations, snap decisions are often made by the leader of the surveillance team.

Loose and Close Surveillance

- Loose surveillance is in the nature of spot checks made randomly. A common technique is to watch the target in one phase of his or her daily routine and then cut it off. The surveillance is resumed each following day at the last cutoff point.
- Loose surveillance is a good choice when the surveillance has to continue over a long period. If absolute secrecy is required, the investigator should not be the same person every time.
- Among the forms of surveillance, close surveillance is the most difficult to work and the most likely to be discovered. Several investigators are required, they must be good at what they do, and they must work in teams so that if surveillance is lost or broken off, a backup team is already in place and ready to take over.



Photographic Surveillance



- The logistics for photographic surveillance can be daunting. In addition to having a good 35mm camera with zoom and wide angle lenses, the operative should be equipped with a hand-held video camera with features that include image stabilizer, zoom lens, time/date stamp, auto focus, and night viewer. Accessories consist of videotapes, batteries, tripod and/or monopod, and power adapter.
- When working with this equipment and a covert approach is needed, the operator can either find a concealed location (inside a van or behind a curtained window) or the operative can work from an open location such as by role playing as a tourist or vacationer.
- It is lawful to videotape or film any view where there is "no expectation of privacy." A person walking from his front door to the mailbox has no expectation of privacy, but if the person is inside his home, the expectation exists. It would be unlawful to "zoom" to the interior of the home or to climb a tree or pole to take pictures. It would be okay, however, to stand on the side of a road that looks down on the home and take photos of a party in the backyard. It is okay because anyone else on the road who wished to look down could do so; thus there can be no expectation of privacy.

Working from a Vehicle

- When working from an automobile or van, use one that is common to the area. Avoid using vehicles that are flashy in style or color, emblazoned with bumper stickers or magnetic signs, or accessorized with antennas and spotlights. Fog lights that are mounted inconspicuously are desirable. Install a switch that will cut off brake lights and back-up lights. Turn off the interior lights. The windows should be tinted and/or curtained. All things being equal, a minivan model is a good choice.
- Your presence can be better concealed by parking in secluded areas or moving the vehicle from place to place during a static surveillance. The idea is to keep from being noticed by someone in the home or building occupied by the target or by people living or working nearby. People tend to be protective of their “territory” and will communicate their suspicions to one another; for example, by telephoning the target that alerting him to a strange vehicle in the area or by calling the police and asking that a patrol be dispatched.



When working in area where police patrolling is highly active, it may be advisable to inform the patrol supervisor and ask that the surveillance vehicle not be checked out. When there is little chance that the police will be curious, the recommended procedure is to not inform them of the surveillance. The chance of compromise rises proportionate to the number of people who are aware of the surveillance.

Types of Surveillance Vehicles



Aerial Surveillance

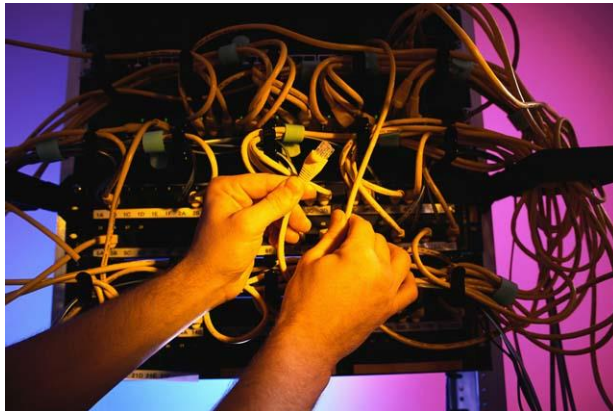
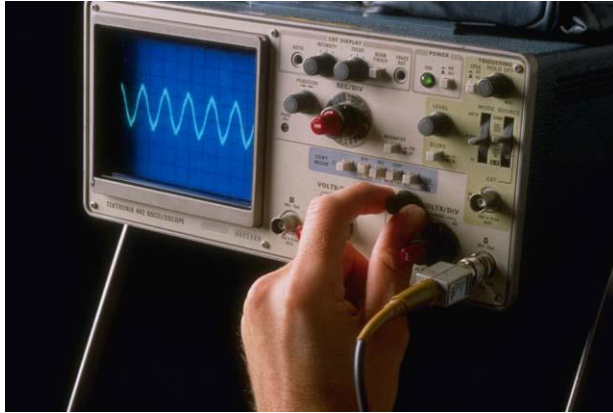
- This form of surveillance is often overlooked because of cost considerations, which may be short-sighted because in some instances a single hour in the air may yield results requiring hundreds of hours on the ground.
- Aerial surveillance may work where other forms of surveillance will fail; for example, when the target of the surveillance is adept at spotting and shaking a tail. A tailing vehicle can stay out of sight far to the rear of the target and receive route directions sent by radio from a partner flying overhead. Surveillance of this type can be assisted with the use of an electronic locating device that has been covertly attached to the target's vehicle. The effectiveness of this approach can be enhanced by using telemetry and satellite technology.

Aerial surveillance conducted at night can be assisted when a small hole has been drilled in the upper facing of the rear light on the target's vehicle. (It has been reported that such a hole can be created using a one-quarter inch drill bit and a battery-operated drill.) In the dark, light escaping from the hole shines upward, allowing persons in the aircraft to differentiate the target's vehicle from other vehicles.

Aerial surveillance is easily justified in cases where the stakes involve loss of life, serious injury, or substantial loss of property.



Electronic Surveillance



- Let's make a distinction right off. Electronic surveillance for the purpose of this discussion is not wire tapping, bugging, eavesdropping, or any type of illegal information gathering.
- Private investigators are sometimes called upon to design and set up surveillance systems using electronic-assisted equipment. Such equipment can include CCTV (closed circuit television); miniature cameras that operate with pinhole and low-level light lenses and fiber optic cabling; video and sound recorders; and sensors based on the principles of detecting motion, heat, sound, vibration, and changes in pressure; interrupting an electric or magnetic circuit; and disturbance of an energy field.

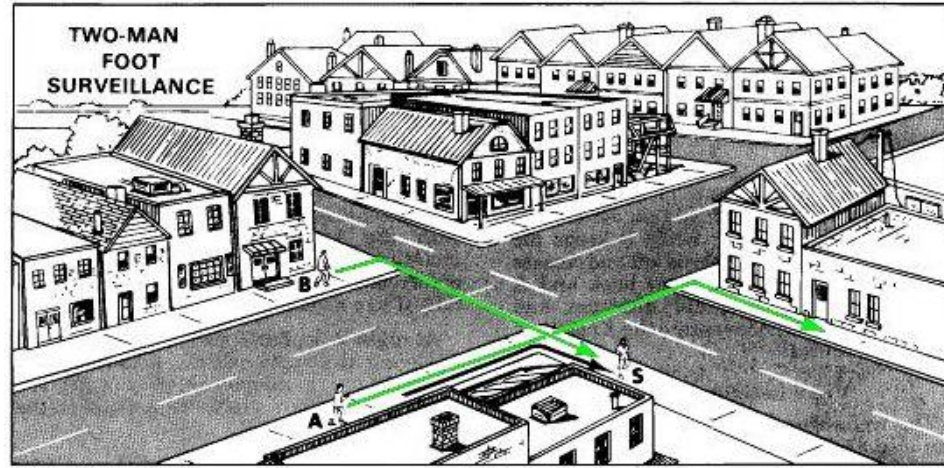
Electronic Surveillance

- A facet of this service may be to detect electronic surveillance from another source, which could be a party attempting to obtain information about the investigator's client. In the corporate arena where information is a highly valued asset, competitors are tempted to eavesdrop for the purposes of acquiring trade secrets, business plans, client lists, research and development information, and plans for introduction of new products or services. Electronic surveillance for the purpose of detecting the adversary's unlawful and unethical attempts to obtain competitive information is often called TSCM (technical services countermeasures).

Electronic surveillance can be put to numerous uses: crime prevention and detection; intruder detection; and access control. The places of use can vary: homes, offices, children care centers, manufacturing plants, warehouses, shipping terminals, banks, shopping malls, stores, hotels, entertainment venues, parks, and many, many more.



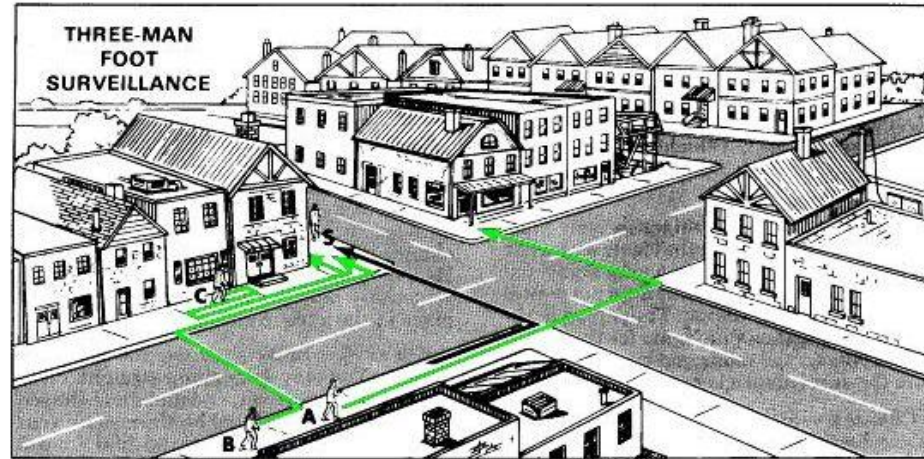
Two-Man Foot Surveillance



- This technique can be called "AB" surveillance. Investigator A walks directly but discreetly behind the target while Investigator B takes up the rear, often from the opposite side of the street. If the target makes a turn, Investigator A continues straight ahead while Investigator B makes the turn. In so doing, B now becomes A, and A moves into place at the far rear. These movements are pre-planned and require no signaling between the two investigators.

Three-Man Foot Surveillance

- This form of surveillance is called the "ABC" technique and is appropriate when close surveillance is required. Investigator A is behind the target, with Investigator B behind A on the same side of the street. Investigator C walks on the other side of the street. If the target turns left, A continues straight ahead, crosses the street, and picks up the trail. At this point, A becomes C; C becomes A; and B holds his position as the middle investigator. These movements are depicted in the diagram.
- However, if the target turns right, A continues across the street, B takes the A position; C takes the B or middle position, and A brings up the rear from the other side of the street in the C position.



Surveillance Tips

- One-man surveillance is not nearly as effective as surveillance by two or more investigators.
- Never look directly into the eyes of the person under surveillance.
- Don't fool yourself into thinking that the target is aware of the surveillance, i.e., don't break off the surveillance unnecessarily.
- Break off the surveillance on the "third strike." If you think you have been spotted three times on the same surveillance, call it off for that occasion.
- Show up for the surveillance prepared to deal with all contingencies: clothes to change into; health and comfort items; personal medicines; water and food; camera; note taking supplies; foul weather gear; a full tank of gas; spending money; etc.
- Have an up-to-date photo of the target.
- Know the details of the geographical area where the surveillance is to occur such as the location of the target's home or office, routes into and out of the area, traffic flow, and the probability of inadvertent interference by police patrols.
- Inform the police of the surveillance only when it is necessary.



Tricks of the Trade



- Change on the Ground
- Place something of value or high interest on the ground in the path the target is expected to take. With a camera, move to a position out of sight. When the target stops to pick up the item, take a picture.




- Pebble on a Watch
- Using super glue or tape, attach a pebble or piece of gravel on the face of an inexpensive watch. Place the watch snugly under a tire on the subject's parked vehicle. Return later. The crushed watch tells the exact time the car was moved. A variation is to place a chalk mark on a tire. The tire is looked at later. If the location of the chalk mark is different, the vehicle had been moved.

Planning

- Planning is an essential early step in the conduct of surveillance. Ideally, planning is conducted by a seasoned investigator with experience in surveillance. It also helps to include in the planning process input from the investigators that will perform the surveillance. The planning process includes these elements:
 - Target identification
 - Mission objectives
 - Selection of the team leader and team members
 - Duties and tasks of the team leader and team members and the overall supervisor/manager of the operation
 - Assignment of inexperienced investigators to non-critical tasks
 - Procedures for coordinating actions such as switching back and forth between static, foot, and moving surveillance
 - Means of communication among the members of the team and the team leader
 - Contingency, backup, and abort procedures
- Equipment required such as vehicles, radios, changes of clothing, food in the event that the surveillance extends over a long period of time, and toilet accommodations
- Special expertise required such as proficiency in another language and driving skills
- Pre-operation reconnaissance of the areas and routes that are expected to be involved
- The planning process does two important things: It organizes the surveillance team and anticipates possible eventualities.



Attributes of the Investigator

- Among the many attributes that go into the making of a PI that has skill in conducting surveillances, these stand out:
 - Resourcefulness. This is the ability of the investigator to make on-the-spot changes and obtain resources the need for which were unanticipated in the planning process.
 - Experience. This attribute is founded on the application of knowledge in the performance of surveillances.
 - Patience. This is the ability to stay with a surveillance operation even when it appears that further surveillance will be unproductive.
 - Tenacity, endurance, and stamina. This is the ability to cope with deprivations such as primitive toilet accommodations and lack of food and sleep.
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- An ability to blend. Blending is to merge with the environment so as not to be noticeable. Examples include wearing clothing that corresponds to people that live and work in the setting, and engaging in activities that are usual for the setting.
 - Skill in the language of the environment.

Equipping, Training and Rehearsing

Equipping

After the planning process has been completed, the team is ready to receive and become familiar with equipment that will be used during the surveillance. The major pieces of equipment are radios and vehicles, followed by photographic equipment, night-vision devices, and binoculars. Other equipment can include clothing and tools, such as that worn and used by repairmen and vendors, and fake identification.

Training

Training can consist of modified lecture, demonstration, showing of films and videos, role playing, and table-top exercises. Rehearsal is in the nature of performing the operation but without the actual target being involved. An investigator that is not a part of the operation role plays as the target. He or she does and moves in a manner that would be typical of the target. The team members perform the surveillance with attention given to contingencies and possible abortion of the operation.

Rehearsing

Finally, and very importantly, the lessons learned in the rehearsal are evaluated and adjustments are made to the plan. Earlier assumptions must be modified in light of what

