



**Surveillance:
Concepts and Practices for Fraud, Security and Crime Investigation**

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Surveillance is, quite simply, observations conducted to gain information. This simple definition includes a plethora of techniques and methods that can be considered a form of surveillance. Many of these are recognizable through common knowledge produced by popular culture. The most well known methods include stationary surveillance, technical surveillance (typically covert video or audio recordings), electronic surveillance (digital observations, keystroke counting), and many more. Nearly anyone can engage in surveillance once properly trained and educated; individuals using the various techniques of surveillance range from federal officials trying to save lives from terrorists and other criminals to private investigators gathering evidence for civil court.

One of the most versatile and important skills any investigator can possess is surveillance. Communications skills involving interviewing and report writing are usually thought of as the most critical investigative competencies. The primary skill used in surveillance is the power of observation, which always precedes reporting. Surveillance, being such an important part of investigation, is a topic that should not be taken lightly. It is important for investigators to understand when surveillance should be used, the objectives of surveillance, stress related to surveillance, and ethical/legal concerns about surveillance.

Depending of the type of investigation, there are many reasons why surveillance can be beneficial. The objectives of surveillance will vary from case to case, but are most often one or more of following:

- Obtain information for a search or warrant.
- Locate a subject, contraband, or the site of illegal activities.
- Obtain intelligence about a subject, criminal group or location.
- Prevent a crime from occurring through covert or overt surveillance.
- Gather intelligence for a raid.
- Provide protection for informants, undercover individuals or others.

Additionally, many cases end with no observations made. The credible report of no observations may be useful in re-evaluating the method of investigation, the feasibility of surveillance at a particular day or time of day. A lack of observations can also reinforce the positive information indicating that a situation is innocent, legitimate, non-criminal, or beneficial to the client or corporate interest.

The Goal of Surveillance

The observation and reporting mission of private security applies to surveillance. Most surveillance operatives are private investigators, security officers (including retail security and patrol officers), and corporate investigators. While the surveillance role of a police investigator is one of many duties, the specialty of surveillance is more prevalent in private security. As noted in the Protection Officer Training Manual (2003), security officers outnumber law enforcement officers three to one. Operational budgets mirror this statistic, which is relevant to the importance of security officers and particularly the proactive side of asset protection.

The role of the surveillance investigator is to collect information for the furtherance of an investigation. Most cases do not transition from a stationary surveillance to a felony traffic stop, as popular belief would suggest. Accurate observation and credible reporting should be considered the final product and the overall objective of a successful surveillance case. The differences between police and security help to clarify the importance of surveillance in the investigative process. Surveillance may be considered a skill or a task for the police officer. The police officer is, in most cases, reactive to a situation with the intention of apprehension and prosecution of the offender. Private security is more function specific, being the protection of an organization through proactive and preventive services. The function of a private investigator is more specific and more reliant on the specific tasks of observation and surveillance.

LAW ENFORCEMENT	PRIVATE SECURITY
Apprehension/Enforcement	Loss Prevention & Asset Protection
Prosecution	General Services
Reactive	Proactive
Protects Society	Protects an Organization

(International Foundation for Protection Officers, 2003)

There are other forms of government law enforcement beyond policing that private investigators should also understand. This part of law enforcement involves surveillance and other intelligence gathering in a primarily proactive (prevention of crimes) method. The Federal Bureau of Investigations (FBI) is the most recognized intelligence-gathering agency, but there are many others, such as Alcohol Tobacco and Firearms (ATF), the Secret Service, and investigations divisions of federal agencies, state agencies and police departments. The functions of these agencies/divisions are often a blend of reactive (law enforcement) and proactive (security) goals.

As previously addressed, many cases end positively with a lack of observations. The belief that every surveillance case will detect fraud or result in an arrest is a mistake often fueled by Hollywood fiction. Practitioners in the criminal justice system commonly agree that the image of investigators presented by the entertainment industry fills students with false hopes and provides clients or outsiders with unrealistic goals. Surveillance should be judged as a success whenever the outcome of the assignment assists the investigation with credible information or circumstances that contribute to a more credible assessment of the purpose of the investigation. If the surveillance operative is further able to have personal growth from the learning experience or practice of the art of surveillance, then the activity should be considered a personal success, not a waste of time or resources.

Surveillance as Qualitative Analysis

There are many uses for surveillance, including both criminal and civil matters. However, there is also another purpose that is not often discussed. Surveillance can also be used as a method of systemic observation for professional research. This can be accomplished in many fields, not just criminal justice. Businesses often conduct “focus groups” to determine consumer opinions; many

of these are accompanied with covert or overt observations recorded to determine consumer reactions. This can lead to more accurate observations when combined with verbalized opinions. Quantitative analysis (using math to prove something is occurring more often than by coincidence) is currently most popular among social science researchers. This provides proof that observations are more than just anecdotal evidence. However, many observations are too specific or too rare to be measured with numbers. These types of observations are called qualitative observations and are sometimes required for research. Surveillance is often a part of these observations, especially covert surveillance that would not change a subject's behavior. Because quantitative analysis is the "golden standard" today, many investigators are, unfortunately, being discouraged from using qualitative methods for research. However, using surveillance for qualitative analysis and, occasionally, as a source for data used in quantitative methods is often required and useful. Therefore, understanding the concepts of surveillance is helpful not only to full-time investigators, but also to professionals seeking to research any number of topics in nearly any field.

Physical Stress and Mental Stress

Surveillance is defined as covert observations of places and persons for the purpose of obtaining information (Dempsey, 2003). The term covert infers that the operative conducting the surveillance is discreet and secretive. Surveillance that maintains a concealed, hidden, undetected nature clearly has the greatest chance of success because the subject of the surveillance will act or perform naturally. Remaining undetected during covert surveillance work often involves physical fatigue, mental stress, and very challenging situations. Physical discomfort is an unfortunate reality for investigators, which varies from stinging perspiration in summer to hard shivers during the winter.

In addition to physical stress, mental stress can arise from the concentration and focus necessary to conduct proper investigations. This is aggravated by the biggest source of stress: a day in which nothing happens. Operatives often consider such days to be a waste of time or a total loss. Instead, consider the skill it takes to deliver a credible report with no observations of the subject, no crimes to report, no children endangered, or no fraud. Oddly, even with nothing, the operative has something to report and this may be beneficial to the purpose of the investigation.

To understand the covert art of observation and reporting, one must also appreciate that the subjects are human beings, who are unpredictable in most circumstances. If the human subject is a suspected criminal, fraud artist, or child abuser, he/she may have certain patterns or habits specific to the activity that can help the surveillance operative overcome the unpredictability.

The concept of mental stress is a deep concept for the entry-level surveillance operative to understand. This is a state of happiness with a very narrow and limited amount of concerns or social distractions. When sitting in the cold snowy woods with a high-powered deer rifle, the proficient hunter does not listen to the radio or read magazines or text message people from his cell phone. Instead he waits and observes and focuses attention to his surroundings. This activity is called hunting. It would likely be easier for the hunter to simply buy a steak, but fresh air, adrenaline, personal challenge and accomplishment are preferred. If playing a Game Boy, the

hunter might not see the trophy buck crossing the clearing. For the surveillance operative, an important license plate or the make of car could be missed. If the investigator nods off on an uptown surveillance, he or she might get spotted or worse. Being a good hunter involves being aware and in tune with ones surroundings. The following advice can help accomplish this goal.

- When watching a subject's residence, pay attention to the birds and squirrels. When the birds fly and the squirrels run, expect that someone is exiting the house.
- It is easiest to decide when a man is retiring to his motel room for the night based on the thoroughness and the manner that he checks, locks, and double-checks his car in the parking lot.
- Thieves will look around nervously shortly before they steal. If a subject changes his or her demeanor from normal to nervous or cautious, something important will likely soon occur. Nervous activity is best defined by the investigator's instinct.
- Marijuana is smoked differently than tobacco and there are very few substances that are safe to snort. Being able to point out the differences on videotape is the mark of an investigator aware of his/her environment.

Variables in Surveillance

So much has been written about surveillance that another chapter about paying attention to detail and staying alert may be considered repetitious. Surveillance is challenging in the competitive arena of one human versus another, animal against animal. It is a game of watching others without being noticed and a game of gathering facts without appearing to care. The investigator must appear non-threatening or risk being compromised. Some situations permit an investigator to sit in the front seat of a car and videotape a subject 20 feet away without any fear of detection. Other times, however, an investigator may have a claims conscious subject smile and wave hello through the viewfinder of the same camera over a block away. Surveillance is like a masterpiece painting that changes with only the slightest stroke of the brush or the angle of the lighting. Everyone has a similar perspective to approaching the challenge, but it is the artist's skill that affects perspective and will elevate a painter to the level of artist, much in the same way that it is the operative's skill that will elevate him/her to the level of investigator.

Often, students believe that surveillance appears boring. For the Music Television and Playstation generation, a constant entertaining stimulation is needed. To these students, half a day of motionless silence in a cardboard box in a warehouse would surely be like a prison sentence. They fail to consider the field of view through the peephole in that box: watching shipping clerks smoking marijuana while soda vendors steal DVDs. That may be boring compared to the Hollywood image of surveillance in the students' minds, but in reality there is a huge adrenaline rush when the investigator observes the bad guy stealing the jewels. There are no adrenaline rushes like this on television.

Maintaining contact with a fraudster traveling around a city without being detected for nearly six hours is far from boring. The investigator must keep one eye on the subject and one eye on the road - one hand on the steering wheel and the other on the camera. All the while scanning for the unknown, humming along to the radio, and analyzing the surveillance like a lawyer for the

insured. There is too much occurring to get bored during an investigation. When an individual reaches this pinnacle, the individual is becoming an artist and investigator, not just an observer.

One of my proudest cases involved a worker's compensation claimant who spent hours of his physical therapy and physician recommended bed rest driving around the city with his young daughter, visiting relatives and job hunting. Maintaining contact with the fraudster without being detected for nearly six hours was far from boring. One eye on my subject and one eye on the road. One hand on the steering wheel and the other on my camera display screen. Each half of my brain doing their jobs, scanning for the unknown, humming along to the radio, analyzing the surveillance like a lawyer for the insured...when would I have enough evidence to call this day complete. There is too much going on to get bored. When you reach this pinnacle, you are on your way to becoming an artist: an investigator and not just an observer.

It is true that some days there is no obvious excitement. When there is no activity, one should document his or her efforts with enough specific details as possible. If the mail was delivered to the subject's house at 11:00 AM, note the delivery. If a police car drives by prior to the drug transaction, make note of the unit number and the officer's description. Investigators should note even what seems like nothing and a collection of details may provide clues. Analyzing these details in comparison to the case by finding relevant details can lead to the details evolving into intelligence.

The Protection Officer Training Manual (International Foundation for Protection Officers, 2003) defines intelligence as information, data, or facts regarding current, past, or future events or associations. The 'root' of intelligence is accuracy and relevancy, or being properly informed. Information that may be inaccurate or irrelevant should be categorized as rumor, misinterpretation, misunderstanding, legend, or deception. Intelligence is information that is known to be fact.

The concepts of discretion and surveillance are also interrelated. Discretion is often considered in the duties of the police and private security officers, but surveillance operatives must also exercise the same decision making process of whether or not to act. Critical thinking skills are important to discretion and also to the intelligence gathering process; it includes problem solving, identifying perceptions, generating concepts from observations and applying those concepts (Hess & Wroblewski 2003). While conducting surveillance, the investigator may need to think critically and decide on the intelligence value of details. This process, depending on the circumstances, may take seconds or hours. Any field of study (philosophy, theology, history) that helps to boost an investigator's ability to think critically and make decisions without losing sight of common sense should be embraced.

Obtaining Information

How can one observe accurately? Does the investigator know what he or she is seeing? This is a question that may be answered by understanding the purpose of the investigation and by having good intelligence prior to starting the investigation. Good intelligence prior to starting an investigation appears to be a contradiction to the fact that the purpose of surveillance is to gathering intelligence. However, every investigator must at least know a few things about the

case before starting surveillance. Failure to have basic intelligence on the subject, location, and purpose of the investigation could result in failure and result in the investigator being discovered, hurt or killed.

Most companies maintain detailed records regarding employees, which are necessities to prevent liability. Among these records are vehicle descriptions and registration numbers for employee parking passes. Additionally, United States businesses are required to maintain a photocopy of driver's license photos in a file to prove the employee is actually a citizen and entitled to work. Diligent corporations will obtain a release from the employee that authorizes a pre-employment background investigation, with a secondary clause stating that follow-up investigations may occur during the course of employment as necessary, and without notice to the employee. This allows the investigator use of this personal information.

Although most internal investigations typically cross-departmental lines, a human resources staffer cannot be trusted to maintain the secrecy of an investigation. Use the chain of command to obtain access to the files to prepare for surveillance is necessary.

Whenever possible, it is highly recommend that a criminal and civil background check be conducted on the subject prior to the surveillance. The investigator should be prepared with the knowledge that the subject may be a drunk, a fighter, a sex offender, divorced, or in debt. This intelligence helps the investigator know the subject. Cases where an investigator is given only the surveillance subject's name and address are increasingly rare and unquestionably difficult. As the intelligence decreases, so does the chance of successful investigation.

The surveillance investigator must obtain clear and identifiable photos or video images of the subject and the subject's actions. If the subject is not known, the investigator should obtain clear pictures and seek out someone, preferably the client, who can positively identify the subject. When surveillance involves several unknown subjects, in the case of a theft or burglary investigation, attempt to obtain clear close-ups and then create "mug shots" or electronic files for later identification.

All photographs must be considered clear enough to identify the subject. If the picture is not clear, the subject may successfully argue in court that the images and acts depicted are someone else. The investigator may lose the argument that he or she is credible because the subject cannot be positively identified. The subject will claim mistaken identity or coincidence.

Stationary Technical Surveillance

One technique that affords the surveillance investigator with the greatest amount of intelligence with the least effort is the use of stationary technical surveillance. Another term for this may be "unmanned" surveillance. This type of surveillance must be limited to activities that would normally be visible from a public venue such as the street or sidewalk and do not do anything extraordinary that would cause a particular surveillance method to stand out in court.

The concept is more technically involved than placing an investigator into a setting with binoculars and cameras and a notebook. The stationary technical surveillance involves three components: a surveillance platform, a power source, and a camera/recording device. The easiest and least threatening surveillance platform for the stationary technical surveillance is a vehicle, but not the same vehicle used in a regular surveillance situation. Rental cars work well for the surveillance platform and, with a rental, there is the ability to request specific vehicles and to change vehicles to meet specific needs. It is important to choose a rental company that will not identify the investigator and will allow some of their identifiable rental car window stickers to peel off and disappear. A cell phone number should always be the primary contact number on a rental application, in case any problems arise during the course of the stationary technical surveillance. Lastly, the extra insurance coverage for if the vehicle is vandalized or stolen is highly recommended.

Once the platform is established, the next step is to hide the power supply and camera/recorder components into the surveillance platform. The technical connections and preparations should be made covertly in a garage or other secluded location. Most of the equipment can be purchased for less than \$1000 and the versatility of the equipment is limited only by the imagination and creativity of the investigator.

The power source should be 12 Volt DC (also known as marine batteries or gel cells), which cost between \$50 and \$250. The easiest long-term power source is the deep cycle battery, commonly used on fishing boats or in motor homes. "Amp hours" is the approximate number of hours the battery can power an electronic device, which should be used to determine which battery to buy. If a full 24 hours are required, the equipment would have to be approximately 2 amps or less for a 48 amp hours battery. It is recommended that a professional electrician be consulted on the first attempt if there is ever any uncertainty.

When concealing the battery in a vehicle, the battery should be placed in the trunk or behind a seat where it can be concealed with a box of meaningless junk. For health reasons, it is important that the battery acid not spill or tip over. Caution should always be used.

The last component of this type of surveillance requires some creativity. If there is activity, the investigator is not going to be able to run up to the car and move the camera to change the field of view. Intelligence about the subject and the purpose of the investigation must be used to determine the location of the camera. Often a front door is the best place to identify individuals who leave and arrive. Knowing what must be obtained through the stationary technical surveillance will determine the placement of the surveillance platform and the positioning of the camera for the right field of view.

Most cars have darker tint on the top of the windshield that helps with concealment. One can also successfully hide this camera in a coat, a box, or a pile of newspaper; anything within the vehicle that conceals the lens. The bigger the lens, the better one must conceal it while still allowing the lens to see through the concealment. Most nosy people will approach the car and determine that it is unoccupied. Very nosy people will press their face to the window and see what is inside. These people will typically not be expecting to see a camera lens and if the investigator does a thorough job concealing the camera and components, the nosy people will never see it.

Typical pinhole lens board cameras have a wide-angle field of view that would require very close placement of the platform to obtain any beneficial video footage. The better option is the use of a small c-mount lens security camera. High quality cameras are available starting around \$200 and they are only slightly larger than an ice cube. Cameras in this style with exceptional resolution and low light capability are hundreds more if the budget allows. The lens must be purchased separately, which allows for great flexibility in the use of the camera. A small 10mm pinhole lens will provide a fair wide-angle field of view of a residence, with the surveillance platform placed close to the property. One of the most versatile lenses is a varifocal 5-45mm zoom lens. The diameter of the lens is not greater than the camera and the length is only a few additional inches. The lens allows the investigator to zoom to the specific field of view and also adjust the light setting for low light night conditions or extremely bright sunrises. This camera and lens can be placed between the visors of the vehicle, looking out the front windshield.

A recording unit is also required for this surveillance method, which is most often a VHS time-lapse recorder or a digital video recorder; both are available in 12 Volt, which is easier and more versatile than a 110 Volt AC recorder. A power converter may be used, but power converters may be noisy, equipped with a low voltage audible alarm, and draw considerable more amps from the power source. At the present time, VHS is often easier because the tapes can be replaced with greater ease in comparison with digital mediums. However, digital recorders often provide better resolution.

All my bad guys that went to jail were from VHS time lapse footage. But don't be fooled to believe that VHS time lapse footage sent every bad guy to jail. Technology can be great when it works well and when it does not work well I hope that you learn from your mistakes like I have.

The typical stationary technical surveillance happens as follows:

- *Make the connection of the camera and recorder to the power supply.*
- *Test and focus the camera and make sure that the video recorder is displaying a correct time and date and record speed. Display the record speed, 40 hours for example, on the footage so there is no question that the recording was made in a time-lapse format.*
- *Make sure of the recording medium, a tape or hard drive is empty.*
- *Utilize a small battery operated monitor that is connected to the video output of the recorder unit and keep this monitor on and nearby when making the final placement of the surveillance platform.*
- *Have the camera adjusted, the recorder set properly and conceal the camera in the vehicle according to my intended field of view.*
- *Make sure that all wires are concealed and go around the outside to check on the concealment quality. Invite another investigator to review the work and play "can you find the camera." Some of the best concealments have been in the air dams or in the grill of cars. Under the rear bumpers are other good spots.*

The next phase requires a second investigator to help coordinate the placement of the surveillance platform. Have the second investigator drive through the neighborhood and we look at the various spots to place the platform. We return to the platform, usually parked in a shopping center or other safe spot. I start the recorder and turn on the monitor. I drive directly to the surveillance location and place the surveillance platform in a position that gives me the best field of view. I am looking down at my monitor and act like I am concentrating on a phone number while I am on my cell phone with the second investigator. I may need to do some

creative angling and in the worst case, I may need to reach to the camera and casually focus. Again, you don't typically have a huge sign on the platform that reads "Investigator with Hidden Camera equipment!" Be casual. Be thorough and then be gone. Get out of the car and lock the doors. If you don't have to, don't set the car alarm. Your rental office will call your cell phone at 2:00 AM if your car alarm is going off in the neighborhood. If you are sleeping 100 miles away from the neighborhood you are going to be inconvenienced and when you arrive on scene you will be very unpopular.

I have exited neighborhoods on foot, on bike, by taxi, and even by the rental car agent who was just providing courteous service. If you have your second investigator pickup you up in the neighborhood, act very casual and act as though you belong. If the nosy neighbor thinks you are acting like you just planted a bomb, you can expect a call will be placed to the police and from

Another part of stationary technical surveillance is the retreat. Arriving in the neighborhood during the night and simply driving away is the best option. However, this is not always possible or convenient. Pretending the vehicle is disabled and using a "repo-man" routine are other alternative exit strategies. It is important to know your story and add credibility to the strategy, such as by checking the VIN number, holding official looking papers in hand, and wearing a "repo-man" style jacket. Often, confrontations can be avoided by speaking to third parties as if the car belongs them. The third-party individual will usually deny being involved with the vehicle and leave.

The Police and Surveillance

In all surveillances, the investigator must decide if the police should be notified of the investigation. This consideration applies to manned as well as the stationary technical surveillance. If the investigator is working in a jurisdiction where he or she has police contacts or if there is a connection with the case to a criminal matters, then contact with the police is preferred. A police supervisor can often establish the proper protocol to handle any citizen complaints about "suspicious" activity. The police will rarely ever ask for details; simply explaining to the police who the investigator is and the surveillance matter will be sufficient. The investigator should provide the police with a vehicle description and cell phone number. Most officers will be thankful for the courtesy and for saving them time in the future.

This worked to my advantage one night when potential car thieves interrupted my surveillance and I was rescued by a sergeant and a patrolman. My immediate 911 call stated merely my occupation, vehicle description, and vague location. Their response time was within seconds when the 911 dispatcher told them a private investigator needed help.

If the investigation is in a small municipality or a rural area where everyone knows everyone, then caution and discretion is recommended in notifying police about surveillance activities. If there is any indication to believe that notifying the police might compromise the integrity of the investigation, then discussing this dilemma with a supervisor or with the client may be the best option. If the investigator does not check in with the police and the case goes sideways, then there may be legal problems.

Laws may differ on the requirements and permissible purpose of surveillance investigations. The overall conclusion seems to be that police notification is a courtesy. If a police officer tells an investigator that it is department policy that the department approves all surveillance, then the investigator should professionally apologize for his or her ignorance and take whatever legal steps necessary to continue.

There is also a concern for private investigators regarding felonies. Many states currently have laws requiring all citizens to report any felony offenses. In cases of surveillance involving felonies, notifying the police may be necessary depending on state and local laws. Federal offenses carry a similar legal requirement. Additionally, the more serious a criminal offense, the more likely it is being investigated by the appropriate agency/division. Proactive government investigators will more often be willing to cooperate with private investigators, as their goals are more compatible. Notification of government investigators about surveillance should be a decision based on the individual case, as well as federal, state and local laws.

Presenting Evidence

The investigator will need to write a detailed narrative report based on observations. The report should be written with the understanding that most people will not see the video or pictures unless they are included with the report. Many judges will review video footage privately but will not permit the showing in court in the interest of time. This is most common in worker's compensation cases. Most criminal jury trials, however, will set up a device to display the video footage. Plea bargains often are the result of video footage alone.

The investigator must also be prepared to testify about the photographs or video footage. One of the first questions a sharp defense attorney will ask is how the investigator knew the subject was actually the defendant. A credible answer to this question, such as referring to a photo or a formal meeting, will harden the investigator's credibility.

I once testified in a child custody and perjury matter where the defense attorney challenged my ability to know and recognize the defendant and her boyfriend, based solely on a brief encounter during rush hour traffic. I testified that without a doubt the man I observed exiting the defendant's car was the child-abusing boyfriend. My file included a copy of a police-booking photograph. I received the photograph from a police officer that provided it to me voluntarily with a copy of a warrant for the boyfriend's arrest. The officer told me that if I saw the boyfriend to call the police right away. I saw the photograph nearly everyday for over a month. Also in my file were photographs of the defendant and the child she was endangering. The judge finally had to tell the defense attorney to proceed with other questions, as it was clear "the investigator knows who the persons are in this case."

Industry Standards and Professionalism

There have been isolated instances of surveillance operatives filing false reports, claiming no activity when the inactivity report is actually just a cover for the operative's failure to pay attention or failure to be on location. In response to this, some clients will request that an

investigator obtain footage of the subject's residence upon arrival at the start of surveillance to prove their presence, which some suggest should be an industry standard practice. At the present time, there is no industry standard in the U.S., but such documentation must be considered on a case-by-case basis.

The requirement of video footage to document presence at the start of surveillance is a common request from sub-contractors (other investigative agencies or claims managers who hire an investigator specifically because of local familiarity of the region or convenient response time to the subject). Once a relationship is established with the client and they learn to know the investigator doing the work and that his or her reports are credible, the arrival video footage requirement is relaxed. An ethical issue arises when the surveillance operative obtains video footage of "no activity." Is that operative using film and staying on location based on solid decisions and intelligence? It is doubtful that lengthy surveillance of inactivity is in the best economic interest of the client. The client may question if the expense is truly worthwhile. In this case, the investigator should probably attempt to vary the surveillance times to cover other periods throughout the day. The ethical investigator will work with findings of inactivity to develop patterns that can help suggest the best investigative approach for the client.

I share a recent private investigator newsgroup posting regarding a questionable surveillance ethics situation. Used with the permission of the author, Private Detective Gary Definis, Philadelphia PA:

Recently I questioned... the way another investigator did surveillance for my company. From time to time, out of area investigations arrive to my office. Some times I refer these... to investigators in the area of the investigation and other times, I farm out the case to an investigator in that particular area. Either way, you want to insure (sic) your customer that the case will be handled by a competent person who can perform as well or better than yourself. A professional and ethical effort should always be expected.

When a fellow investigator contacts me to do a job for them, I work the case to a standard that is above and beyond the call of duty. I charge lesser rates, do more work and create the report in a timely manner. Maybe it is just me, but being a young investigator, I have to work very hard at my cases to prove myself to those who have more experience. I understood that 15 years ago when I entered this field and I understand that now. My theory was to always provide the best proof possible about any investigation. In doing so, I gained respect among the investigative community and also within my professional clients.

A few weeks ago, I contacted an investigator and asked them to work a surveillance assignment for my company. They accepted the case.... I did not get any updates from this company. I did not know if they were working the case or if they were simply sitting on it and so I contacted them two weeks later about the status of the case. I spoke to the person who I originally gave the assignment to and was told that they had given the case to their other office. They indicated that the case supervisor would contact me on that same day.

The case supervisor called me and apologized for the delay and explained that he was on vacation over the last week but the case was done and he would email and snail mail me the completed case. A few minutes later, I got the report as an attachment as an email. The report was initially short and substandard. That's expected because they had previously explained that

they never saw the claimant on the first day and on the second day they positively identified that he was not home.

A few days later, I went to my post office box and there was a package from this company. It seemed awful flat to me. I was expecting a videotape but then thought maybe they are sending it separately or they are sending me a DVD in this package. My hopes were diminished immediately upon opening the envelope. There was no video and there was no DVD. An invoice and a substandard report... I like to make a report flow like a good story. I realize that my reports are decent as I do put a lot of time into them but it very important to not stray from the truth. I use all the information that the other investigator gives me and I add little details that they may have missed that are clearly present in the video that they send. In this case, I had no video to refer to and so in my hands is a substandard report that is literally not worth using as....

My next step was to contact the investigator and ask for a copy of the videotape and or to determine if they were sending one separately from the report. I was told they would send one via priority mail the same day. Two days later, I get the videotape in the mail and I am very happy that I can now finish the report.

I drive to my office, fire up the computer, pop the video tape into the VCR and get ready to start... and I am immediately disappointed. For one thing, there was no videotape of the first day of the surveillance. The tape went right into the second day of the surveillance. The initial time on the film was 8:17 AM.

According to the top of their report, the investigation started at 6:00 AM and ended at 2:00 PM. Their first entry indicated the investigator arrived at 7:15 AM and yet the first video shot started at 8:17 AM. Hmm, my suspicions are rising by the nano-second. There was a video shot at 9:36 AM, 11:43 AM and a drive by video shot at 12:48 PM and nothing else with regards to video tape. The report also indicated that the investigator positively identified the claimant was not home at 12:15PM. There were three vehicles in the residence driveway and not one vehicle tag was presented in the report. My suspicions are running wild and now I am starting to get very angry.

I wait a few minutes, gather my bearings and contact the investigator again. Upon this telephone conversation, I learned from him that it was not their policy to film when there is no activity. I told him this was a strange policy given the fact that there was no activity on the 2nd day and the investigator did take time and date video. Shortly thereafter, I hung up the telephone and questioned my colleagues about the use of time and date video as an "Industry Standard" and the responses were both interesting and enlightening to me.

I have learned the consensus on this issue is that there is no consensus. Some investigators indicate that they always take time and date video shots during a surveillance investigation and some say their clients only want video of the subject of the investigation. With regards to insurance related investigations video time and date stamps appear to be the "Unwritten Standard". But it is important that the investigator has flexibility in his or her decisions when working in the field. I personally feel if a client wants the investigator to videotape the location of surveillance when we arrive, during the day and when we leave to show the time and the date then this adds great integrity to the client, the investigator and the investigation. I do not feel that there is a trust or mistrust issue on part of the client to the investigator, however it is a way to create quality control. When an investigator is on the street working a case, the client usually has an idea that the case is being worked. They might not know what day or what times

the case is being worked and they are usually only aware of this information when the investigator contacts them with a daily update of their activities. An investigator could make up times and dates and type them onto his report and the client would never know, however by adding times and dates is a sort of proof positive that you were where you said you were during the investigative periods.

Some scholars believe that the client may request the time and date stamp because they had a problem with a prior detective agency with regards to unethical and unprofessional work. Some believe that taping upon arrival and departure adds nothing to the investigation itself. I however disagree. In the past, the old gumshoe detectives used 8 mm or 16 mm film and time and date on these types of cameras did not exist. No person ever complained in the old days.

The investigators testified on their written reports as to when they arrived and departed and everyone was happy. I believe this was the standard of the time. But today, we investigators are different. We are fortunate enough to need the skills of the out of date gumshoe detectives and also the skills of the modern and technological advances of the times. Today, video cameras come with time and date as a standard and it should always be used. But, there must be flexibility and it should not be considered as an "Industry Standard".

Some insurance companies, employers of surveillance investigators and surveillance firms that subcontract to surveillance investigators have been burnt. Unfortunately we always have some dishonest surveillance operatives and, for this reason, our entire profession will be viewed with a certain degree of suspicion. It is important that we give our clients what they want, but remember we are professional surveillance people and we must advise our clients as to what is the best way to provide them with the best possible results. If obtaining time and date videotape every half hour or hour to prove we were on site is important to the client, then we should do that for them. However if this approach interferes with the ability to get results on a case then it should be abandoned. Every case is different. Every situation calls for a different plan of action and so the industry standard in investigation should always be results first. Time and date videotaping does add to the results in many situations but it must be abandoned if it effects the outcome of the investigation in a negative way. A prime example of this would be at a location where as there is no place to take a fixed surveillance position. In this case, the investigator would be expected to take video shots every hour or so. In eight hours of investigation, this would mean he would have to do drive by video eight times during the course of his surveillance. This could be extremely detrimental to the idea of getting in, getting evidence and getting out. The investigator must try his or her best to never be noticed. And in this situation, time and date video would be detrimental to the results.

In circumstances where time and date does apply, then I think that it can add quite a bit to an investigation. It will allow your client to see what the neighborhood is like, what the residence is like, what the condition of the dwelling is in, if the property is well kept, what the income level of the area is and it can also document what is at the residence. Take for example a situation where you videotape when you arrive and you notice two jet skis on a trailer in the residence driveway. Next to the jet skis are a lawn mower and a nicely groomed lawn. From this you could assess that someone in the household is into gardening and takes care of the property. Maybe it is the subject and maybe its another family member but you as an investigator should want to get to the bottom of who in fact is doing this landscaping and who is driving those jet skis. This can only add to your time on the case and to the understanding of the activities of the claimant even though he or she claims that they are totally disabled. Time and date videotaping provides you with a medium through which you can go back and review what you have documented. For example, on Monday, you videotaped the residence and

noticed a large pile of wood for the fireplace on the side of your claimant's house. On the following Saturday, you notice the pile has significantly decreased in size. Video review can provide you with the sustenance necessary to go back to the client and ask for more time in an effort to understand clearly who is in fact moving the wood.

In the end, it all comes down to having a little common sense as to when to use time and date and when not to use time and date. Each situation is different, each investigator is different and each investigation is different and flexibility is the key to this issue.... In today's society, everyone has to be on the alert. There are predators on our streets. In a world full of child molesters, drug addicts, rapists, thieves, and the mentally disturbed; life has become very much like a chess game. Know what's around you and make your moves wisely. So, it is important for every person to take notice of what is going on in their neighborhoods, which makes our job more difficult. Getting in to an area and getting out without anyone knowing we are there is important... It was important to me to question the way this aspect of investigations was viewed by my fellow private investigators. Understanding and educating ones self is the key to all freedom. But we must be very careful as professionals in throwing around terms like "industry standards" when it is applied to something more than qualifications or ethical/moral or professional issues for which we all should operate. Each case should dictate what tactics are used. Those investigators equipped with the ability to adapt, modify and mold their approach based on the unique circumstances of each case are the ones who get the clients the facts and evidence they need to reach an appropriate resolution to their matter. Either way, you want to insure your customer that the case will be handled by a competent person who can perform as well or better than yourself. A professional and ethical effort should always be expected as the "Industry Standard". Thanks to all the investigators from the Pennsylvania and New Jersey Private Investigator Associations that assisted me with their wisdom for the purposes of my understanding of this matter.

Conversely, some insurance companies will request that the investigator limit any photographs or video footage to the activity of the claimant subject only. This requirement is because the claimant subject is able to ask the insurance company what activity has been conducted in the administration of the claim. This process is known by the legal term discovery, which is the equivalent of the insurance company pushing their file across the table for the claimant subject to look at. If no photographs or video footage exists, the insurance company has certain rights to protect the details that an investigation or the fact that surveillance has taken place. Insurance claims representatives and special investigators will often require only verbal reports from the surveillance investigator. Some claims managers may request that a written report be withheld while an investigation is temporarily suspended.

Flexibility is the key to successful surveillance and practices such as time and date video should be abandoned if it places one in jeopardy. In addition to video, field notes and surveillance logs become an important tool when documenting the surveillance investigation. Notes should be detailed about observations upon arrival at the surveillance location. What cars are parked at the residence? Are there lights on inside the house? Are any neighbors outside walking dogs? Time and activity are the fundamental concepts for field notes or logs. The weather conditions and temperature should also be noted. No longer should clients expect the operative to hold up a copy of the morning Times and photograph the date and issue with the subject's residence in the background.

Ethical Concerns

Surveillance should never intrude on the subject's reasonable expectation of privacy. If the investigator is utilizing technology to observe into the subject's life where one normally could not observe, then perhaps there is an issue of privacy intrusion. Utilizing a digital zoom to see through sheer curtains of a living room and observe into a house, observing what is happening in the hallway or a back bedroom, may be considered a use of unique means that may be an invasion of privacy. An investigator that rents a bucket truck to ascend a utility pole, just to look over the subject's 7-foot privacy fence is going to extraordinary means and may be violating privacy. Although private security and surveillance operatives are not police officers with the primary concern over search and seizure protections, if there is a violation of a subject's rights through unreasonable means, there will likely be civil liability.

A stationary technical surveillance platform should never be placed on the subject's private property. Nor should an investigator enter posted private property or attempt to utilize a right of way to access a better vantage point of the subject's property. Right of ways are legal property agreements between two parties and the fact that a right of way exists on the subject's property does not make it a public thoroughfare.

An investigator must establish the surveillance location from the same vantage point that any non-investigator with a legitimate reason for being there could have the same observation. The investigator must answer the question, "If someone walked down the street, would they be able to observe the same thing that I see?" When doing surveillance around a corporate facility, there are far greater options for hiding or concealment but the concept of expectation of privacy still applies. Hiding in a locker in a changing room would be a violation if there is an expectation that workers may use the area to change clothes. The expectation of privacy in the workplace is generally at a lower standard than around a person's residence, but an expectation exists regardless.

Entrapment is also an important topic for investigators. It is a concept that applies to police actions to entice a person to commit a crime that the person would not otherwise commit. The key words are police and crime. Entrapment in the legal sense does not apply to non-criminal investigations and surveillance. However, it is important to make this point with two clarifications. If one is conducting an investigation that may lead to criminal prosecution, then the investigation will be scrutinized and discredited if there is even a taint of entrapment. Steadfast private sector investigators will argue that entrapment does not apply to private security or private investigators. Unfortunately, it only takes one juror disagreeing with that to end an otherwise successful case.

Early in my career I worked for an investigative agency that conducted undercover stings for insurance fraud cases. We posed as marketing representatives or as disreputable auto parts dealers. Our claimant subjects were contacted in a neutral or haphazard nature and through our contact we utilized undercover techniques to develop rapport and trust in the relationship. We offered the subjects opportunities to "test sample" various merchandise, such as motor oil, soda, camping supplies, exercise equipment. Some subject's would "win" resort vacations where they could play tennis, hike, ride horses, or go swimming. Some subject's were offered "stuff" for their shade tree mechanic practice, such as \$1 cases of anti-freeze or power

washers. And we used hidden cameras and long lenses to video tape the subject carrying cases of motor oil with a bad back, or using the power washer with carpal tunnel, or para-sailing with post traumatic stress disorder. Resort vacations and shopping sprees were better medicine than bed rest for most of these claimant subjects.

Claimant's attorneys heavily scrutinized these techniques and the practices were reviewed through litigation that proceeded to the upper appellate levels. The overriding conclusion was that while the courts did not approve of the methods; the methods were not deemed to be illegal. This decision however contributed to the arrogance of the techniques used and it was a matter of only a few years until the practice had been widely disseminated by claimant's attorneys and labor unions and the practice was worn out and discontinued. The undercover stings were so widely known that the fraudulent and the viable claimant alike were claims conscious and highly suspicious of surveillance. But despite the awareness campaign by those claimant's rights advocates, the insurance companies and their legal representatives also recognized that so much time and money was being put into the investigation techniques as well as the argument to defend those techniques that the practice unanimously lost favor.

Investigators should conduct surveillance discreetly and surveillance should represent the subject in as natural a manner and environment as possible. Cutting a subject's tire for the purpose of filming him changing that tire is an example of unethical and criminal conduct. Dumping a handful of change onto the ground around the subject's vehicle, just to film her stooping to pick up the change is unethical and presents a situation that is unnatural. An investigator must be able to say under oath that the observed actions were not in any way influenced by the investigator's presence.

Conclusions and Final Thoughts

Surveillance is not an easy task and is not always exciting. The goals and objectives often vary from case to case, as do the applicable methods of surveillance. Understanding how to be best prepared for surveillance and what the objectives are can help make the job easier and more beneficial. To be a successful investigator, experience is a requirement. There is no substitute for experience, but research can be a good starting point. It would be impossible to cover every bit of information an investigator needs for surveillance, but here are some general tips that are often useful for new and inexperienced "gumshoe" investigators:

- Take vitamins and eat a healthy balanced diet.
- Pay attention to driving habits. Poor driving skill is the number one cause of death and injury to police officers and undoubtedly the most dangerous activity in surveillance.
- Be discreet and don't be a big mouth.
- Separate television investigators from reality investigators and work extra hard to separate private life from professional life.
- Learn to relax and exercise and build your stress coping skills.
- If using stimulants or tobacco, understand the stress that these chemicals are putting on the human heart and organs.
- Alcohol should be saved for the weekend when there is less chance of a call to duty.

- The human mind will endure the mental stress that boredom may cause and the human body will survive the physical fatigue of sitting still for hours at a time, but only when the investigator is healthy.
- Use a reliable and capable vehicle to do the job. Don't use a Ferrari unless working in Hollywood and don't use a Pinto if planning to sit in a middle class neighborhood for 8 hours.
- Equip the surveillance vehicle with a survival kit, rations, a repair kit with a portable battery booster, air compressor, change for tolls, food and drink in a cooler, a place to urinate, headache medicine and stomach acid medicine.
- Keep a clipboard and writing tablet within reach.
- Keep all briefcases and equipment bags secure so moving out quickly won't spill everything onto the floor.
- Investigators must have a simple pretext prepared for if discovered. Having photographs of vehicles for telling people about being a "repo agent" is a good start.
- Always understand the scope of surveillance and understand that when certain observations are made or certain objectives are met, the day is done.
- Develop note taking and short hand abbreviations for field observations and consider handwriting reports or typing them into a laptop computer immediately upon conclusion of the surveillance activity.
- Know the job! Surveillance is conducted for a specific purpose.
- Keep in mind that surveillance can be physically uncomfortable.
- Surveillance can be dangerous if caught filming someone who does not care to be filmed.
- Carrying a gun while on surveillance is very uncomfortable.
- Be prepared for everything that could occur in the negative and if prepared, do not become paranoid.
- Maintaining good physical conditioning and training for everything regarding the use of force can be advantageous.
- Surveillance is often solitary and assistance may not be available in an emergency.
- Lastly, it is important to know yourself. How much coffee and diet pills are enough to supplement a healthy diet and a good night's sleep. What foods that you eat the night before will cause you intestinal discomfort on the job.

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