



UPCOMING MEETINGS

The Next
GAPPI Atlanta
Chapter Meeting
October 12, 2010
at Ryan's Restaurant
705 Jimmy Carter Blvd.
Norcross
(770) 840-9096

Networking and lunch from
11:30 a.m.—12:00 noon
Meeting from
12:00 noon—1 p.m.

The cost is \$15.00 for GAPPI
members

\$20 for non-members
(includes lunch and beverage)

\$10 Training only
(lunch not included)

Students and potential members are
always welcome.

"We look forward to seeing
you all there!"

THE Connection

Official Newsletter of the Georgia Association of Professional Private Investigators, Inc.

How Private Investigators Can Keep Investigations Legal Using Common Sense

by Jeff Kimble

In my home state of Arizona where I am licensed to own and operate an investigative agency, the leeway granted to the [private investigator](#) within the boundaries of state statutes are, in my opinion, less restrictive than many other states. However, with advances in technology constantly changing the playing field and thereby laying the framework for case law trends and statutory adjustments, as well as the never-ending post 9-11 political battles between the security/privacy camps at the federal level, I have found it absolutely necessary to be a perpetual "law student" in order to survive and thrive in the investigative business.

The U.S. Constitution, while permanent in its intent to protect the freedom and privacy of citizens, still allows for each state in the union to "breathe" and "pulse" as a different part of one body. These individualistic "legal rhythms" must be monitored, understood, and obeyed to the best of the investigator's capacity in order to succeed. Just reading local statutes and being familiar with specific case rulings in one's home state is not enough. Always see the forest for the trees. Take your individual, specific case, and what your client has requested, and place it in the context of the entire scope of state and federal law.

In addition to this approach, I have found that a few simple acronyms have served me well over the years. As should be expected, the following is not legal advice; rather, it's just a bit of "homegrown" wisdom, and my hope is that it will serve as a guide to working PIs and the clients who hire them.

1. **R.E.P. (Reasonable Expectation of Privacy)** This is the biggie. What is the subject's reasonable expectation of privacy in any given investigative scenario? Asking this question at every step of an investigation and giving yourself (and the client) an honest answer, particularly in the field of surveillance, will guide you through legal quagmires like a magic compass.
2. **W.O.W. (Who Owns What?)** Who owns the vehicle? Who owns the computer? Who owns the cell phone? Who "owns" the child? Jurisdiction is everything, and it applies to the macrocosm as well as the microcosm. Establishing ownership and/or jurisdiction over the "nouns" involved (person, place, or thing) will give you, in most situations, a quick yes or no as to what you can and cannot do legally.
3. **W.W.J.D.? (What Would the Judge [or the Jury] Do?)** Anticipate yourself sitting in court in front of "Judge Gallows" answering pointed questions from a state prosecutor regarding why you thought it was okay to stick your "super-periscope-cam" into the bathroom window of a second-story apartment. Forget statutes, jurisdiction, and the fine print for a moment and just ask yourself if you could explain your actions to other human beings who will view your choices and justifications through the colored glasses of human foibles, prejudices, and possible righteous indignation. Where, in the courtroom, will you stand if the proverbial excrement hits the fan?

Now take the following examples of PI-related tasks that most of us have probably been asked to perform at one time or another and apply the above acronyms:

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Using GPS to Track Vehicles or Subjects. Apply R.E.P. Does a subject have a reasonable expectation of privacy while driving his or her vehicle? My answer would be yes on private property, but no on the open road. Everyone can see the vehicle plainly driving around town whether it's two human eyes or the eye in the sky. So move on to W.O.W.: Who owns what? If the client does not own the vehicle, you may want to stop right there. In Arizona, the statutes are currently nebulous, but in many states it is already illegal to place a GPS tracker on a vehicle that you do not hold title to. W.W.J.D.? My guess is that, except in extreme circumstances where human life is at risk or severe crimes are being committed, most average Americans in the jury box will not appreciate the fact that you are lackadaisically "bugging" their cars without permission. I tread softly on the GPS debate, and I suggest that you do, too. The winds are blowing both ways and an entire book could be written on the subject. This issue is in courts around the country as I write. Check out Michigan's Senate Bill 325 and its recent passing as a prime example.

Bugs/Wiretapping. If you have to apply the acronyms to answer this one, quit the PI biz now, or pursue some serious continuing education. (Former President Nixon is turning in his grave if you have to ask about this one ...) I'm not saying that unscrupulous individuals do not perform these services, but this article is about performing our jobs legally, and this subject, without a warrant, is and always should be a big no-no. Bug your own property and tap your own phone (and even *that* can be interpreted as illegal in some states), but don't even think about bugging/wiretapping someone else's without a warrant.

Digging Through Trash. This one, I'll admit, cannot be addressed fully by simply applying the three acronyms. Some states have outright banned this practice, others could care less. Check your local statutes. Rule of thumb: If the trash is on public property and set out for obvious disposal, you are likely OK. But again, check the local laws.

Working on a Case Where the Client Wants to Bring Back a Child from Another State or Country. R.E.P. is generally meaningless in regard to the child's privacy as the child, if he or she is an unemancipated minor and in the legal custody of a parent or guardian, is at the mercy of that parent/guardian. Which brings us to W.O.W. In this kind of case, jurisdiction is everything. Does the parent who wants the child legally "own" the child? Make absolutely sure. A clear, jurisdictionally functional court order establishing custody is essential. But even with such a document, this may not give you, the investigator, the right to retrieve the child as the parent's agent - PI state licensing reciprocity aside. W.W.J.D.? They would expect you - or the client - to consult a reputable attorney to make sure all the legal requirements are fully met. Quite honestly, I would be fine with locating the child, but I would leave the physical delivery to the client, especially if the child is uncooperative. "Damn it, Jim, I'm an investigator, not a babysitter!"

Breaking and Entering. See "Bugs/Wiretapping" above.

Recording Conversations (With and Without Consent). R.E.P. and W.O.W. both apply, but specific state laws again can change the game. Two people having a private conversation have a reasonable expectation of privacy and therefore a third party cannot legally record them in any state without a warrant. However, in some states, like Arizona, if one party (your client) consents to the recording, it may be performed legally. Other states have a variation on the theme in that the conversation can be recorded with one party's consent, but the other party must also be notified prior to the recording being made. But even then, apply W.W.J.D.; just because something is "legal" does not mean it's ethical or appropriate. A judge or jury may still despise you for it in the end or deem it inadmissible. This is another area of surveillance that must be carefully considered on all levels before proceeding.

Tampering With Mail. See "Breaking and Entering" above.

Filming a Person While They are In Their House. All three acronyms apply here, but R.E.P. ends this one quickly. Unless the person is in plain view from a public area, e.g., from the road in front of the residence, and is filmed from there, forget it. A man's (or woman's) home is their castle, and you are asking for war if you attack the king on their home turf. We all have a reasonable expectation of privacy in our homes, and filming someone inside their own home obviously crosses the line big time. But what if the owner consents? For example, the wife wants a hidden camera placed in the bedroom to catch the cheating husband with the babysitter while the wife's away on business. I would defer back to the biggie: R.E.P. Even though the wife may comply with W.O.W. (she's on the mortgage), in my opinion, R.E.P. trumps W.O.W. There are easier ways to prove infidelity than by invading someone's bedroom and winding up with surveillance video not fit for primetime. Besides, in no-fault and community property divorce states (like Arizona) this kind of surveillance is pointless in court and simply asking for trouble.

Film a Person While They Are in Plain Sight. Do they have a R.E.P.? Ask this question and you have the answer. It doesn't mean they can't file a complaint against you if you're spotted snapping pictures, but essentially this is what your license allows you to do: loiter in a public place to collect information. Just make sure you are conducting a legitimate investigation and not harassing and/or otherwise behaving unprofessionally. There is no license to be a jerk. W.W.J.D.?

Obtain Credit Information. Forget the acronyms and go read the Fair Credit Reporting Act.

Pretexting To Get Information. Apply W.W.J.D. and then go read the Gramm-Leach-Bliley Act.

Track a Person's Computer Usage. W.O.W. primarily covers this one, but R.E.P. and W.W.J.D. apply. If the computer is owned by two people - a husband and wife - then R.E.P. could not easily be argued by the offended party, e.g., the husband has the computer examined by a computer forensics investigator and erotic emails to his wife's tennis instructor are discovered. The wife can't hope for much R.E.P. from the family computer. Which brings us to W.W.J.D. Imagine a jury's consternation at the thought of their computer information being exposed to a stranger's prying eyes in a simple domestic case. Imagine yours. Proceed with caution, preferably with a good attorney directing the show in advance.

Obtaining Cell Phone Records. Good luck without a subpoena. And even with a subpoena, good luck, depending on how antiquated the information is and whether it is called/received numbers or text messages. Phone companies do not retain all phone information ad infinitum. Phone records are well protected by state and federal law and are generally considered off limits. But then again, W.O.W. comes into play. If you are the primary on the account, you can get a fair amount of information from the phone company on your own as a private citizen. But if you want someone else's records, no self-respecting private eye will comply. The days of pretexting such records and/or having a "source" at the phone company still exist, but the potential criminal penalties are, in my opinion, not worth the meager retainer.

The law in regard to investigative techniques is not meant to be a complex maze of rules that can only be traversed and/or circumvented by a gifted few. Its intent is to protect the right to privacy, to forbidding unreasonable search and seizures, to freedom of religion, speech, the press, etc. Rather than looking for ways to push the limits of what we can do as private investigators, we should always utilize our common respect for personal freedom as our guide. Bending the law to win a case or please the client is the last potentially fatal step immediately preceding the breaking of the law, and there are plenty of PIs who have slid down this slippery slope to ruin. Much of PI work is simply common sense. I hope the above contributes to that sense.

Jeff Kimble is a licensed private investigator and guest writer for PInow.com, which is a trusted network of private investigators. Learn more at www.PInow.com.

10 Tips for Private Investigators to Conduct More Successful Surveillance

Surveillance is an art form, not a science. Unfortunately many of its best lessons are learned through trial and error. Whether you conduct insurance defense or domestic investigations, surveillance is a large part of your day as a [private investigator](#). The following 10 suggestions will help you conduct a more cost-effective and successful surveillance.

1. A Detailed Intake Sheet Start by gathering as much information as you can from the client up front. This sounds pretty obvious but you'd be surprised. Many clients simply want to give you the subject's name, age and address and leave it at that. A detailed intake sheet draws together information above and beyond the industry standard: information such as doctor appointments, therapy appointments, marital status, number of children, hobbies, etc. This allows for a clearer picture of the subject's routine and helps you avoid re-inventing the wheel out in the field. This information, together with a search of public and proprietary databases, will save you time and allow you to provide your client a more cost-effective investigation.

2. Is Your Surveillance Vehicle Completely Forgettable? If not, it should be. White, black, silver and gray are the most popular colors for cars. Beige and brown vehicles tend to be the least noticeable and, incidentally, get the fewest tickets. Red, yellow and custom paint jobs make your vehicle too noticeable. While you're at it, take a good look at your surveillance vehicle and make sure it blends in to your environment. No bumper stickers, no window stickers, no vanity plates, no handicapped plates, nothing attached to the antenna, no custom rims, no after-market accessories and no body damage. Your vehicle should not be too clean or too dirty. The less noticeable your vehicle is the more successful you will be on surveillance. When it comes to tint don't just get limousine tint on your windows and forget about it. Limousine tint is often too dark for surveillance early in the morning and late at night. A combination of dark tint, a windshield cover and black surveillance curtains is enough to mask your presence. Make sure you comply with your state's tint laws.

3. A Pre-Surveillance Check Very few companies conduct a pre-surveillance check because they're more concerned about their financial bottom line than providing quality work. With a pre-surveillance check the investigator drives by the subject's residence in the daytime the day before what would typically be an early morning surveillance. This allows the investigator to observe the correct address in daylight hours, observe what vehicles are present, locate a suitable area to set up and park, look for potential problems and scout ahead for likely exits. It's the first step in a more successful surveillance.

4. What Time Do I Start? Typically it's best to be in place for a workers' comp or liability surveillance by 6:00 a.m. Any later and you risk the chance of losing the subject or wondering if they are even home.

5. Moving into Position Move your surveillance vehicle into position quickly, particularly in a residential area, and get set up. If you performed a pre-surveillance check you won't waste time circling the block twice or wondering where you'll set up surveillance. You'll simply move right into your pre-determined position. Look for spots that tend to make you less noticeable such as parking between two residences, next to large trees, walls or heavy vegetation.

6. Answering the Call of Nature One of the biggest mistakes made by not only rookies but seasoned investigators is thinking they can temporarily break off surveillance and grab lunch at a drive-thru or take a quick restroom break. It's practically a truism that the one time you do it, is the one time the subject decides to leave. Be prepared for a long surveillance by keeping a small ice chest in your vehicle. Fill it with water, energy bars, fruit, anything that's quick, easy and will give you energy. Of course that means when nature calls you're going to have to stay right where you're at. Old water bottles or half-gallon juice jugs are good for storing urine. Whatever you use make sure it has a solid lid. If you're a female investigator a water bottle won't do. You can purchase a small portable RV toilet which can be used again and again. Unfortunately, it'll have to be cleaned again and again.

7. Do You Possess Superhero Powers of Observation? It's easy to pull up on surveillance and crack open a paperback book. But you won't get very far in the surveillance world. Use your powers of observation and stay focused. Vigilance is its own reward. Is everyone's lawn mowed except the subjects? Is it trash pickup day and his cans are still on the side of his house? Are there bags of fertilizer in front of the subject's garage door? Use your powers of reasoning. Remember: people are creatures of habit. Men begin shaving on the same side of their face every time. Look to establish patterns in your subject's behavior.

8. Keep That Camera Steady Do your clients need Dramamine when they watch your videos? Technology, like Sony's "Steady Shot," has helped image stabilization. Go a step further and use either a monopod or a tripod.

9. Just the Facts, Ma'am ... Just the Facts. Your surveillance notes should contain clear and concise facts, not opinion. Write your notes as if you expect them to be subpoenaed. Any derogatory, inflammatory or discriminatory comments regarding the subject are unprofessional and could hurt your client in court.

10. Follow That Car! Unfortunately, following someone is best learned by trial and error. Most of it seems obvious. For example, it's usually better to lose someone rather than be burned. It's all about watching slightly ahead of the subject's vehicle and speculating what they will do. Will they make the light? If so, you'd better speed up. The distance you keep between your surveillance vehicle and the subject's vehicle is dictated by the kind of traffic you're in. Heavy traffic: stay close. Highway or rural traffic: you can allow some distance between you. When you begin following a subject try to look for anything on their vehicle that makes it unique, e.g., bumper stickers, window stickers, body damage, etc. Regardless of what kind of vehicle they're driving, as soon as you begin following them in traffic you'll see nothing but that particular model of vehicle.

Scott B. Fulmer is a guest writer for PInow.com. Fulmer is President and CEO of Scott B. Fulmer Investigations in San Antonio, Texas, and has been in the private investigations industry for about 20 years. He is a Gulf War veteran and a graduate of the University of Texas at San Antonio.

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