Concept of Surveillance

1) Surveillance is “discovering” without being discovered—covertly
2) Surveillance is done to obtain information that can’t be obtained by any other method
3) A person who is good at surveillance relies on their instincts acquired through experience
4) Surveillance requires the person doing the surveillance to be quick to respond to changes and situations
ORIGIN OF INVESTIGATIONS
- Spying has its roots as far back as 1450-1410 B.C.
  - Deuteronomy 1:22 “Let us send out men to spy out the land
- Joshua 2:2 “Then all of you came to me and said, ‘Let us send me ahead to spy out the land...to bring back a report about the route we should take and the towns we are to come to’
- 1400-1000 B.C. “They sent me to spy out Bethel, the spies saw a man coming out of the city and they said “show us a way to get into the city and we will insure you are treated well. He showed them and they put the city to the sword but spared the man and his whole family. (Judges 1:23).

ORIGIN OF SPYING
- The Roman Army used spies to infiltrate the land they invaded
- In the early history of India, two ministers (Chanakya and Kautilya) created a network of informants and spies in other kingdoms
- Spanish, French and English explorers used spies to infiltrate the Indians
- Paul Revere and their network of spies set out to protect the new American Colonies from England
- Pinkerton spies were used to protect the railroad and their assets
- World War I set the stage for spying as we know it due to the increase in technology and communism.

KNOWING WHEN TO GET CLOSE......
SURVEILLANCE MISTAKES
1) Failure to Prepare & Evaluate
2) Camera Concealment
3) Sound Elimination
4) Proper Concealment/Tinting
5) External Sound: radio, TV, games
6) Cellular Phone sounds
7) People Walking up on You
8) Cigarette smoke and butts
9) Noise while going commando
10) Talking on radio/phone near subject
11) Dome Light illumination
12) Antenna Attractions
13) Special Rims & Tires
14) Designer Light Kits
15) Bumper Stickers
CONSIDER COMMUNICATIONS

PAY ATTENTION TO LIGHTING......

BEING RESOURCEFUL ......
CLIENT RELATIONS

1) Failure to Communicate
   a) to take or not take the case
   b) explanation of events
   c) what the client can expect

2) Contract with client

3) Review of Video

4) Use of Attorneys & Therapists

5) Verbal Updates & Final Report

NON-COOPERATIVE CLIENTS......

TYPES OF SURVEILLANCE

1) Stationary

2) Mobile

3) Indoor

4) Undercover

5) Distance (Travel)

6) CCTV
CAR LOOSING CONTROL......

HEADED FOR THE FRONT DOOR......

HITTING THE FRONT COLUMN......
OVERCOMING TRAVEL & WEATHER......

INTERNATIONAL CASES
- Conducting surveillance in your home town is different outside U.S.
- What happens when you need replacement equipment?
- What about the difference in voltage?
- What about difference in window tint laws?
- Consider differences in privacy laws
- Many countries rely heavily on public transit verses personal autos
- Can you blend into the local environment?
- Can you navigate directions anywhere?

HAVE A COVER THAT GOES ANYWHERE
HOW TO HANDLE POLICE INTERACTION

1) When they approach??
2) Identifying yourself as a PI
3) Identifying the subject of the surveillance
4) Client Contract issues
Surveillance of House from One Street Over

Surveillance of House Using Intersection

The "Curb Technique"
REMEMBER THE GOALS......

"Cut-through" Technique using parking lots

U-Turn Return Technique
Original Surveillance position---
Moving Closer for better position

Turn-off using three investigators (blue)

Three Investigator Parallel Technique
CASH IN ON HUMAN INSTINCTS......
Surveillance on Freeway

"Hop-on/ Hop-Off" Using Access Road

FOOT SURVEILLANCE/ CROSS OVER
CASE LAWS RELATING TO PI’S

1) Fifth Circuit held there is no reasonable expectation of privacy under the 4th Amendment from the use of readily available consumer-grade zoom technology.

2) The court held that Ryan had neither a subjective nor an objective expectation of privacy in his activities outside his home even though his residence was bordered by several large buildings, trees, an electric fence, and parked vehicles arranged to obstruct the view of his home.

3) Ryan tried to raise the “unlawful search and seizure” by stating the Air Force did not have the authority or properly hire Kelmar. Court dismissed this as well.
CASE LAWS PERTAINING TO PRIVATE INVESTIGATIONS

**Tucker -v- American Employers Insurance Company.** (Florida, 1965) In this case, the court held that because of the public interest in exposing fraudulent claims, plaintiffs should expect that a reasonable investigation would be conducted upon the filing of a claim. As long as a surveillance is conducted in such a way as not to harass or intimidate the subject, then invasion of privacy is not committed.

The investigator had been seen while shadowing and trailing the plaintiff on a public thoroughfare; however, he was not liable for an invasion of privacy since the surveillance was not intended to harass or intimidate her into an involuntary settlement. An unobstructive investigation, even though inadvertently made apparent to the person being investigated, does not constitute an actionable invasion of privacy.

**Forster -v- Manchester.** (PA 1963) An investigation into a person’s daily activities to determine the extent to which the subject was physically active, was undertaken as an activity report on Isobel Forster. She had been involved in an automobile accident and subsequently filed a claim. When a claim is made for personal injuries, that person must expect that a reasonable inquiry and investigation could be made into that claim. To this extent, that person’s interest in privacy is circumscribed and she is not entitled to the same degree of privacy that she would enjoy within the confines of her own home.

All the surveillance took place in the open on public thoroughfares where her activities could be observed by passersby. Because of this, the Supreme Court held that Forster could not maintain an action for invasion of her right to privacy based on this action of the investigator following her in an automobile on public streets and highways. The motion pictures were considered as reasonable means of obtaining evidence to be used at trial.

**Jenkins -v- Rainner.** (New Jersey) The plaintiff requested surveillance films be revealed and the court compelled the defendant to answer. The defense was allowed to protect the integrity of the film’s contents by redeposing the plaintiff. The defense did not wish to disclose the contents of the surveillance films because of possible impeachment value. The defense was allowed to protect the integrity of the films by conducting pre-disclosure depositions prior to answering the interrogatories and giving details about the contents of the films. Although the case established the right of the plaintiff to see the films prior to trial, they also delineate a strategy allowing for the protection of the impeachment value of the films.
Jim Bearden -v- Honorable Pat H. Boone. (Texas Court of Appeals, 1985) Bearden was an investigator hired by an attorney for a husband in a pending divorce action to gather evidence about the wife. The investigator sought relief from a discovery order entered by the wife regarding invasion of privacy action against the investigator. The investigator did have authority to claim attorney-client privilege and is protected under work product exemption during pendency of divorce litigation. The court held that the attorney-client privilege belongs to the client and once created, the privilege continues for as long as the client wants to assert it and is not affected by the resolution of the controversy that created the need for legal services. The privilege continues to the investigator.

Philomena Di-Minno Hudson -v- Dallas Winn & Regional Investigators, (Texas Court of Appeals, 1993) A suit was brought against the private investigator and his employer for invasion of privacy and trespass. During the investigation, the plaintiff testified that she invited the investigator into her condominium and discussed her personal life with the investigator without any coercion by him. The investigator testified that he never went into the plaintiff’s bedroom or medicine cabinet and that she signed her name to a note concerning her sexual activity voluntarily. The court held that the investigator therefore did not invade the plaintiff’s privacy or trespass.

The court held that the plaintiff could not recover on the negligence per se theory from the private investigator or his employer on the grounds that neither were licensed to conduct investigations in the State of Texas where failure to acquire license was not a proximate cause of any damages or injuries to the plaintiff.

McClain -v- Boise Cascade. (OR, 1975) The investigators conducted a minor trespass onto the plaintiff’s land during the course of the investigation. The plaintiff attempted to have the surveillance films kept out based on the trespass. The court held that the significance of the evidence was important and that although the investigators trespassed a few feet on the plaintiff’s property, that did not constitute enough of an improper action to find them guilty of trespass.

Hall -v- State of Texas (1992): The court ruled that under Rule 1001 which governs the admissions of photographs, including video tapes, the “7 prong test” must be satisfied. The 7 prong test consists of the following:

1) It must be proved that the recording device (camera) was capable of taking testimony. Note: The investigator must be able to show that the camera was in good operating condition without malfunctions.
2) The operator of the recording device must be shown to be competent in the use and operation of the device.

3) The authenticity and correctness of the recording must be documented. (Document the proper chain of custody)

4) The investigator must be able to show that the tape or photographs have not been altered or tampered with. If a tape is edited, the original unedited copy must be available for review by the court.

5) The court must be shown the manner of presentation.

6) The recordings must show proper identification of the subjects depicted in the tape or photographs.

7) Must be able to show that the testimony or actions was elicited voluntarily without inducement. Note: This goes directly to the "entrapment" of a subject.