

## Private Investigators: How to Choose One, and How to Use One?Effectively

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Tuesday, October 31st, 2017



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Attorney F. Lee Bailey began his career as an investigator. Undoubtedly, that experience helped him succeed in his more noteworthy vocation. Most lawyers realize the need for superior investigation. However, they actually deal with this vital aspect of their work with the same enthusiasm they demonstrate when going to the dentist. Perhaps this reluctance is due, in part, to the unsavory mystique that has relentlessly haunted the professional private investigator since the days of Sam Spade and ?The Maltese Falcon.?

Nearly all attorneys who have practiced law in the state of Texas for a few years have undoubtedly met a private investigator in one situation or another. Oftentimes, they have been the person hired to provide

assistance during the discovery process and preparing cases for trial. In many instances within this adversarial process, the opposing side has employed an investigator who successfully uncovered more information than the lawyer who relied principally upon their own resources and the client's assistance in determining the facts. Consequently, this valuable support to the practitioner can be of inestimable value when dealing with complex cases. This is particularly true in a case requiring answers to questions the average attorney would be unable to ascertain due to time constraints, lack of contacts, or even because of not knowing where to look.

Some law firms have turned over investigative responsibilities to paralegals, expecting them to abandon their LEXIS for a trench coat. Although paralegals may have other skills allowing them to work well with investigators, generally they do not have the resources available to the qualified, licensed professional investigator.

Investigative methods have changed drastically over the years. Now, many investigators routinely use sophisticated technology as a means of retrieving secondary source data in almost every investigation. Access to this information is available only to those investigators who have met stringent requirements and have been properly vetted. But many lawyers are unfamiliar with the information these resources yield. For example, the Social Security number has grown increasingly important in recent years as an investigative tool, in addition to the various methods used to obtain this valuable data.

Every attorney should become familiar enough with basic investigative techniques to manage an investigation properly and cost effectively. In all but the most conventional cases, the attorney should take time to schedule a face-to-face meeting with the investigator to seek constructive input from those of us proficient in fact-finding. Simultaneously, they should provide the investigator with all available relevant information—including documents, reports, and statements that the investigators should read, evaluate, and assimilate before their investigation commences. Failure to provide such relevant information will guarantee a duplication of efforts.

Just as attorneys specialize, so do investigators. It is important to ensure the individual whom you hire to conduct an investigation has the technical competency, objectivity, intuitiveness, personality, creativity, and the requisite background and skills to design and carry out the type of investigation that will provide you with substantive information. You want an investigator who will "leave no stone unturned." You should also understand that some investigative agencies may be unsuitable for your needs because they lack the knowledge to properly and effectively conduct a law-related investigation. For that reason, many large law firms employ several different investigators. I cannot stress enough that it is essential to find the investigator with the right qualifications each and every time you make a referral. Clearly, this is the key to obtaining efficacious results in your case.

Taking the time to meticulously evaluate your own needs before locating and interviewing a qualified investigator will be well worth the effort. Simply stated, exercise due diligence in your selection process. Undoubtedly, the most desirable quality an investigator should possess is honesty. If your investigator's credibility was ever called into question, you would become concerned with the integrity of the information received to date, not to mention your concern with the investigator as a potential witness in your case.

When you decide a certain case warrants the use of an investigator, consult with your colleagues if you are not certain what investigator to engage. More often than not, other attorneys will share the names of competent professionals they have employed in the past. Colleagues can objectively critique an investigator's level of proficiency, thoroughness, and overall quality of work. It is advisable to undertake this process when hiring an investigator, just as you would when employing any other expert witness.

You are responsible for recommendations made to your client, and for the ultimate selection of an investigator, in the same way you are responsible for the direct legal services you provide throughout your

representation. Accordingly, it may benefit you to interview prospective investigators before deciding whether to make a referral to them. In evaluating investigators you should review their experience in serving other attorneys. Ask for references. You should also ask for a sample of reports they might furnish you and review them for content, quality, objectivity, attention to detail, grammar, clarity of thought, insight, and especially usefulness. Because the investigator may also be working with your client, attempt to assess the kind of impression they may make upon the client. A negative impression could certainly undermine your own relationship with your client. The selection process is finally complete when you have successfully matched your firm's long-range needs with the investigator's capacity to undertake in-depth creative discovery.

### **When Do You Use An Investigator?**

Following are several cases from our files, which may illustrate the value of an investigator's services:

An individual from Georgia had allegedly absconded with a large sum of money entrusted to him by his employer. The employer's attorney contacted me when he believed the subject might have moved to an area within the state where I provided investigative services. Although there were active warrants for the suspect's arrest and the Georgia authorities were willing to extradite, law enforcement agencies were not particularly interested in continuing to look for this individual.

After determining that local law enforcement agencies had little, if any, substantial information to offer, we proceeded with our investigation. We uncovered a trail of assumed names and fictitious addresses left by the suspect to confuse authorities. Over time, however, using a myriad of investigatory resources we determined the suspect had moved to San Pedro, California. We subsequently ascertained his place of employment and his address. Based upon our information, California authorities arrested the suspect on a fugitive warrant, and he was returned to Georgia to stand trial and ordered to make full restitution to his former employer.

In another case, I became involved in a conspicuously dubious rape case. In this matter the state had charged the defendant with aggravated sexual misconduct based solely upon the statements of the complainant and her female companion, who had been with her and the defendant at the time of the alleged incident. The complainant alleged the defendant had forcibly raped her at gunpoint during their first date. My investigation revealed the complainant and defendant had actually been engaged in an intimate relationship for at least a month prior to the incident. Additionally, we located several corroborating witnesses who refuted the complainant's allegations.

We also unearthed information showing the complainant was involved in an automobile accident on the date of the alleged crime. Significantly, she was driving the defendant's vehicle. Since he did not have insurance, the defendant asked the complainant to pay for the damages to his car and to the owner of the other car involved in the collision. When she refused, the defendant threatened to reveal the details of her promiscuity, as well as that of her companion's, to their parents. It was this threat that motivated the complaint of rape against the defendant. When the aforementioned facts were disclosed to the prosecutor he agreed voluntarily to dismiss, with prejudice, the criminal charges.

Résumé fraud is a type of deception that appears with increasing frequency. One notable case involved Janet Cook of *The Washington Post*. Cook was a reporter who won a Pulitzer Prize based on a fabricated story. Later investigation revealed the truth and also exposed that Cook had falsified her credentials when she applied for her position at the *Post*.

Background investigations on prospective employees have become even more important considering the surging number of lawsuits resulting in judgments against employers who made no effort to check the credentials of a new employee. In the typical scenario, the employee is involved in a crime against a fellow employee or customer. The subsequent investigation reveals a history of violence, criminal activity,

deception, or other forms of illegal and unethical conduct that could have been discovered if the employer had diligently examined the employee's past before hiring. In some cases the courts have awarded significant judgments against the employers on the basis of their negligent hiring practices.

In summary, I suggest when considering a case for investigation, be as explicit as possible when defining the scope of the investigation and its limitations. In a tort action, for example, if liability (rather than damages) is your focus, then explicitly say so. Make sure your investigator understands the specific information you need and define it in writing. Be sure to set a timetable for completion and a maximum allowable budget. On more protracted investigations or complicated cases, give assignments in phases. Sometimes facts you discover early in the case will make the remainder of the investigation unnecessary. Assign any follow-up investigation as soon as possible. Don't wait until contacts fade away or witnesses develop amnesia. Be sure to point out any flaws or omissions to your investigator since feedback you provide will probably enhance the end product. Despite popular belief, an investigator's job is based upon relentless determination and thankless drudgery. Your constructive feedback helps them avoid some of this drudgery. Communicate early and often.

Also consider that you don't always get what you pay for. In other words, an investigator's hourly billing rate may not be a reliable measure of their quality. Additionally, some investigators assume the attorney merely passes the cost of an investigation on to their client. Consequently, an investigator's invoice that states "for professional services rendered: \$3,000" but lacks appropriated detail about the investigation, should be rejected. Use investigators who maintain detailed time and expense records in a form suitable for sharing with your clients. This is expected of lawyers. In the same vein, it should be unquestionably required of investigators.

Lastly, insist upon the details involved with each expenditure and service provided by your investigator. They should be cost-effective, always keeping your budget in mind. Be certain to ask for a list of fees for any flat-rate services or expenses (such as mileage, photographs, online data research fees, etc.). And determine how much you are charged for travel time, as opposed to field investigation. Simply stated, be sure you understand all of the costs your investigator is billing.

While a professional investigation may shape the outcome of a case, your choice of an investigator will indubitably shape the outcome of the investigation. Therefore, do your homework before deciding which investigator to hire—ask your colleagues for recommendations. Then set a budget and take a leadership role in managing the investigation. Follow up and provide constructive feedback as the investigation progresses. Lastly, demand detailed time and expense information in all your investigator's invoices.

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