

# **PRIVATE SECURITY AND THE INVESTIGATIVE PROCESS**

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**Third Edition**

**Charles P. Nemeth**



**CRC Press**  
Taylor & Francis Group

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# Preface

Works of this kind serve multiple purposes: education and enhancement of the security profession; training for field operations; as a research and database; or to disseminate new practices and procedures in a massive industry. It is my hope that a little of all of these have been accomplished in the authorship of this text, but of primary importance is that the text be a product for the practitioner, both entry level and experienced. At its best, this compilation is a working tool, filled with forms, checklists, guides—documentation that is useful in general and specific cases. Practitioners will want it as a resource filled with references to other sources, ideas, and suggestions for tactics and security strategy and as a refresher on methods in a most complex field. Private security is by no means a dull undertaking. The stereotype of the bank guard who sleeps on the job has little or no truth to it. If one disagrees, merely examine the contents of this work.

In Chapter 1, the phenomenon of privatization of once-public law enforcement functions is fully analyzed. The future expansion of private security is inevitable given this tendency. Additionally, our world needs an inexhaustible supply of information, especially accurate and verified, about people, places, and things. The investigative process serves this end.

Chapter 2 highlights the traits, characteristics, professional skills, and personal attributes so essential to the competent investigator.

How to conduct an initial interview adeptly is the subject matter of Chapter 3. Initial impressions of both clients and their cases and the importance of an objective case evaluation are thoroughly reviewed.

Witnesses, whether lay or expert, are discussed in Chapter 4. Methods of dealing with testimonial evidence, its content, and quality cannot be overemphasized.

One of the text's larger chapters is Chapter 5, "Collection of Information," covering what is clearly an a priori condition of being a good practitioner in the security industry. Topics include leads and their development, public and private sources of information—databases and publications—and computer services. Specific practical applications are also included.

The text's most comprehensive chapter, Chapter 6, "Collection of Evidence and Preservation of the Scene," continues this direction. Subjects include investigative kits, physical evidence and its collection, scene sketches, photographic evidence, and documentary applications.

In Chapter 7 surveillance techniques, whether singular, on foot, or in a patrol car, are examined and graphically reproduced.

Understanding the dynamics of report writing, with specific forms and documentation, is the prime purpose of Chapter 8. Just as in public law enforcement, security professionals are increasingly burdened by paperwork.

Commencing with Chapter 9, the text takes an applied direction. Using the varied skills and competencies discussed in the previous eight chapters, the text sets out to apply these generic principles in specialized case situations. Chapter 9 is dedicated to theft and property offenses. Covering insurance cases, whether workers' compensation or personal injury reviews, is the intent of Chapter 10. Substantial attention is given to vehicular and accident investigation and reconstruction. In Chapter 11, the diverse means of investigating personal backgrounds are catalogued.

Finally, Chapter 12 gives a rudimentary assessment of administrative requirements in the operation of a security office. Topics including billing, letters of introduction, filing, and expense billing are covered.

To my readers go earnest thanks for your patience and trust, and, as always, I look forward to your input and professional insights.

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# 1 Introduction to the Private Security Industry and the Investigative Process

## I. THE TREND TOWARD PRIVATIZATION

Although public perceptions tend to see the justice model as a public function, there is a long history and tradition involving private operatives providing justice services. In fact, most of our national history displays a preference for private justice and police services. Using state, federal, or local officials to provide protection services was a new paradigm commencing in the late nineteenth century. Even with this recognition, life has come full circle since so many once public services are being returned to private control. In courts, parking authorities, public housing projects, federal installations, detective services and traffic control, private sector justice has reemerged. The growth of private sector justice is a phenomenon that manifests unlimited growth. Undoubtedly, a movement toward privatized justice systems and operations is under way. *The Hallcrest Report II*, the well-regarded qualitative and quantitative study of private security, computes this staggering trend in Figure 1.1.<sup>1</sup>

At every level, one witnesses this orientation to the private. Even criminal investigative practice is not immune to this change. The industry at large expends nearly \$66 billion per annum<sup>2</sup> and “plays a major protective role in the Nation’s life. It employs an estimated 1.1 million persons, and total expenditures for its products and services are estimated at \$22 billion for 1980. In 1979, federal, state, and local enforcement expenditures were only \$14 billion.”<sup>3</sup>

The industry’s robust growth is also well documented by the Bureau of Census and Bureau of Labor Statistics as outlined in Figure 1.2.<sup>4</sup>

The National Center for Policy Analysis (NCPA) foretells a further expansion of private justice function. Since the mid-1960s the economic impact of private sector justice has been significant by any measure, as the NCPA notes:

- There are nearly three times as many private security guards as public law enforcement officers, 1.5 million in 1990, and the private sector spends almost twice as much on private security as we pay in taxes to support the public police.
- Private bounty hunters, or bail enforcement agents, make the private bail bonding system work for persons accused of crimes by tracking down and apprehending those who try to flee.
- And the private sector on occasion has been used innovatively in other ways to prepare cases for district attorneys, to prosecute criminal cases, and to employ prisoners behind bars.<sup>5</sup>

William Cunningham, John J. Strauchs, and Clifford W. Van Meter, authors of the seminal work on the private security industry, “*The Hallcrest Report II: Private Security Trends: 1970–2000*,” confirm this impetus:

After reviewing the literature covering possible reasons for the steady growth of private protection over the past 2 to 3 decades, the Hallcrest staff believes that 4 interrelated factors largely explain the greater

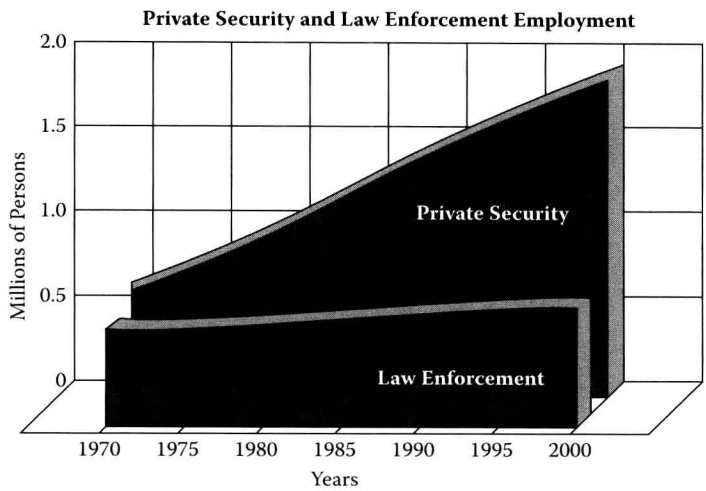


FIGURE 1.1

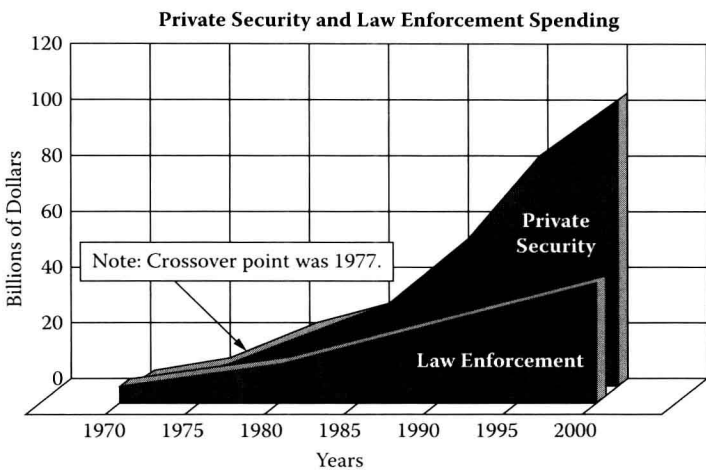


FIGURE 1.2

employment and expenditure shift from public to private protection and the increasing growth of private security, while public protection has limited or no growth. These 4 major reasons for growth are: (1) an increase in crimes in the workplace, (2) an increase in fear (real or perceived) of crime, (3) the “fiscal crises of the state” has limited public protection, and (4) an increased public and business awareness and use of the more cost effective private security products and services.<sup>6</sup>

The picture for private sector justice is exceptionally bright. The Bureau of Labor Statistics paints an average 18 percent growth rate for private detectives and investigators until 2016, as shown in Figure 1.3.<sup>7</sup> When security guards and gaming surveillance officers are evaluated, the projections keep on the upward trend with little resistance. Gaming has delivered another avenue of growth for the private sector justice. The statistics are shown in Figure 1.4.<sup>8</sup>

In short, the justice sector, both its civil and criminal components, witnesses a shift from the public mentality to the private contribution. This movement is sometimes referred to as privatization. Privatization is the trend of making services and functions traditionally performed by public entities, the province of private, for-profit entities, usually companies. In order to understand

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**Projections Data from the National Employment Matrix**


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Occupational Title	SOC Code	Employment, 2006	Projected Employment, 2016	Change, 2006–16	
				Number	Percent
Private detectives and investigators	33-9021	52,000	61,000	9,400	18
NOTE: Data in this table are rounded. See the discussion of the employment projections table in the <i>Handbook</i> introductory chapter on <i>Occupational Information Included in the Handbook</i> .					

**FIGURE 1.3**


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**Projections Data from the National Employment Matrix**


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Occupational Title	SOC Code	Employment, 2006	Projected Employment, 2016	Change, 2006–16	
				Number	Percent
Security guards and gaming surveillance officers	33-9030	1,049,000	1,227,000	178,000	17
Gaming surveillance officers and gaming investigators	33-9031	8,700	12,000	2,900	34
Security guards	33-9032	1,040,000	1,216,000	175,000	17
NOTE: Data in this table are rounded. See the discussion of the employment projections table in the <i>Handbook</i> introductory chapter on <i>Occupational Information Included in the Handbook</i> .					

**FIGURE 1.4**

privatization, one must distinguish between public and private functions. Public law enforcement is and has always been saddled with attending to the needs of the public good. Few private security companies have to be concerned with domestic disputes, the transportation of the deceased, stray animals, or protection of the homeless.<sup>9</sup> *The Private Security Advisory Council* characterized police work as a public interest function. Public police have “a wide range of responsibilities to protect essentially public concerns, and their efforts are closely tied to statutorily mandated duties and the criminal justice system.”<sup>10</sup>

**Web Exercise:** The trend towards privatization has been unmistakable in all corners of government, from water to airports, and most other governmental functions. Visit <http://www.reason.org/apr2006>

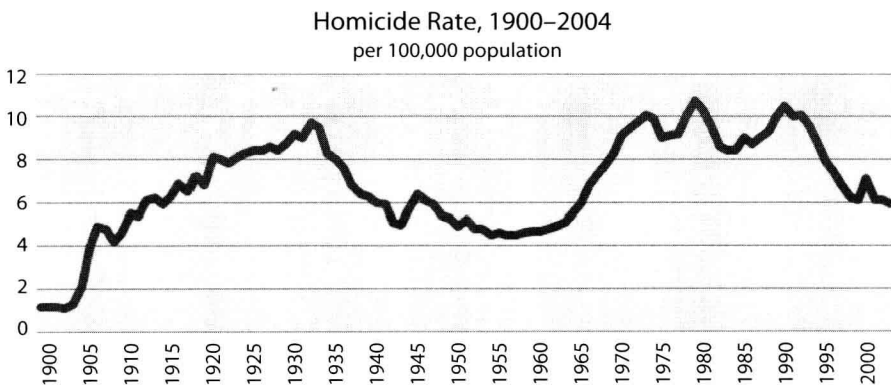
The *Advisory Council* further relates that police are burdened with constitutional limitations and must interpret and implement certain guidelines in the performance of their law enforcement duties, causing natural inefficiencies not experienced by private sector operatives. Public policing is further restrained by public budgeting and financing processes that are inevitably tied to political influence.

Police administrators must evaluate and allocate resources according to the needs and demands presently operating within their community structure.<sup>11</sup> Norman Spain and Gary Elkin, in an article titled "Private and Public Security: There Is a Difference," note that:

One of the traditional functions of the public police is to deter crime. In reality, their ability to do this is drastically limited. The primary reasons are that the police have little authority to change the conditions that foster crime. They have no authority to decide who will reside in their jurisdiction, whom they will police. Private security forces, on the other hand, may alter—at times drastically—the environment in which they operate. They can have walls and fences erected, doors sealed, windows screened, lights put up, and intrusion detectors installed. They can often play a decisive role in determining whom they have to monitor—who is to be an employee of the company—by conducting background investigations of potential employees.<sup>12</sup>

Such differences are difficult to debate, for private security is primarily concerned with the private concerns of private property assets and particular individuals. Individuals and privately funded organizations and businesses undertake measures to provide protection for the perceived security needs, which involve their private interests, not in the public domain. Private security is an option exercised to provide an additional or increased level of protection than that afforded by public law enforcement, which must respond to the larger concerns of the public.<sup>13</sup>

What forces have prompted this shift to the private? There are numerous explanations for this movement in the paradigm, though most relate to, first, a growing perception, whether actual or perceived, about rising crime rates in America; and, second, the cost/benefit supremacy of private law enforcement versus public operations. In the former instance, there is widespread agreement that crime is out of control in the American landscape. Even though studies may indicate minor drops in the murder rate, the reality of crime spreads in just about every sector of American life, from the corporate boardroom to the local grocery store. The world has witnessed the daily avalanche of crime in the community. Both qualitatively and quantitatively, crime has a tendency to trend upward. This is a perennial problem and is especially evident over the past 50 years. Although a recent decrease can be seen in overall rates, the rate is at an historic high. The Bureau of Justice Statistics targets homicide as evidence of crime's ascendancy.



*Note:* The 2001 rate includes deaths attributed to the 9/11 terrorism attacks.

*Source:* National Center for Health Statistics, data available from the Bureau of Justice Statistics at <http://www.ojp.usdoj.gov/bjs/glance/hmrt.htm>.

It can also be safely argued that the post-9/11 world of terrorism has directly driven growth in the private sector. The task of homeland security is rightly construed in the context of a public-private partnership with the Department of Homeland Security (DHS) fully advancing cooperation.<sup>15</sup> Private security plays key roles in developing security plans for corporations and health facilities,



parking authorities, and entertainment complexes. The list of corporate and business interests in need of protection and coordinated plans of response with public authority are simply too long to delineate.

**Web Exercise:** See the DHS “Best Practices on Public Private Partnerships” at <http://oja.wi.gov/docview.asp?docid=14758&locid=97>

Aside from this victimization perspective, the economic aspects of crime also drive the movement to privatization. Business, industry, and the corporate world measure crime in dollar terms and evaluate how the bottom line feels the pain and pinch of a crime-ridden world. The effects of crime upon business are many and varied:

- Increased costs of insurance and security protection;
- Costs of internal audit activities to detect crime;
- Cost of investigation and prosecution of suspects measured in terms of lost time of security and management personnel;
- Reduced profits;
- Increased selling prices and weakened competitive standing;
- Loss of productivity;
- Loss of business reputation;
- Deterioration in quality of service;
- Threats to the survival of small business;
- Cost of crime prevention programs;
- Cost of crime reporting and mandated security programs;
- Loss of tax revenue;
- Increased costs of consumer goods and services to offset crime losses;
- Loss of investor equity;
- Increased taxes;
- Reduced employment due to business failures;
- Increased costs for technological equipment.<sup>16</sup>

The coupling of economic influences with the tidal wave of criminal victimization gives the private security industry legitimacy and poignancy that it would not have otherwise. Not everyone is pleased. Howard Rice critiques not only the growth of private security, but also the striking entanglement resulting from the private employment of public police as both entities carry out their responsibilities:

In recent trends, private security has outstripped the growth of the public police; more people are now working in private security than in public policing. Yet this numerical comparison fails to reflect another recent trend: the substantial growth in off-duty employment of uniformed police officers by private employers.<sup>17</sup>

With these dual forces at work, the thrust toward privatization is inevitable. In a climate of growing frustration regarding crime and the criminal justice system, private security will certainly flourish.<sup>18</sup>

## II. THE INVESTIGATIVE PROCESS: PRIVATE SECURITY’S ROLE

Investigation is the process of factual assimilation and the systematic collection of evidence. It is a process of observation, inspection, and analysis, involving continuous and regular inquiry into a specific subject. It requires balancing the theories of investigative practice and the information in policy manuals and textbooks with experience and “street smarts.” Investigative practice depends on facts and hard information. Without these, an investigation rests on an uneasy and tenuous

foundation. A successful private investigator must provide the information necessary to support or refute a claim, cause of action, or criminal prosecution. Solid investigative practices usually rely on the following traits:

- Energy and alertness.
- Knowledge of the law.
- Ability to set realistic objectives.
- Methodical approach.
- Knowledge of human nature.
- Observation and deduction abilities.
- Ability to maintain meaningful notes.

Solid investigative practice operates under an investigative plan, creates a theoretical framework that underlines the investigative process, and proposes a cause or case in law that relates to the investigative regimen.

The investigative process must reconstruct events, conditions, or (as is often stated) the “truth” itself. Finding the truth can be a challenge for even the most seasoned investigators. Objective and fully reliable information is hard to come by. To reconstruct events and circumstances, the investigator will engage many parties and practices including witnesses, physical and real evidence, documents, forensic science, demonstrative evidence, and the sophistication of expert opinion. In a sense, the investigator reconstructs history for the present. James Davidson and Mark Lytle’s *After the Fact* suggests that the investigative process is really a journey into the historical past:

“History is what happened in the past.” That statement is the everyday view of the matter. ... The everyday view recognizes that this task is often difficult. But historians are said to succeed if they bring back the facts without distorting them or forcing a new perspective on them. In effect, historians are seen as couriers between the past and present. Like all good messengers, they are expected simply to deliver their information without adding to it.<sup>19</sup>

In sum, the process of investigation requires the conversion of alleged acts into real and useful evidence.<sup>20</sup>

The functions of investigation are many and multifaceted. From its Latin derivative, *vestigare*, investigation implies a tracking, a search, an assimilation, or collection of information and facts. Russell Colling, in his work *Hospital Security*, concludes that the differences between the investigative protocol of the public officer from the private officer are really one of form and mission, and indeed the missions are very complementary.

It is techniques and varying purposes that differentiate the security investigation from that of a law enforcement agency. This is not to say that the security investigation always has a different focus. A police investigation is conducted basically for the purpose of apprehending the perpetrator of a crime and locating evidence for the successful prosecution of a case. Security investigations, on the other hand, may involve, in addition to crimes, the gathering of information in regards to the violation of organizational rules and regulations; a job applicant’s background, for conditions that may lead to criminal violations; the need for new security controls and procedures; liability claims or potential claims; unsafe conditions; or evidence needed to prove or disprove certain allegations.<sup>21</sup>

The American Society for Industrial Security recognizes the expanding investigative role that private security is playing:

Along with this burgeoning of the prevention role, investigative responsibilities have grown as well, calling for more expert investigators using more sophisticated techniques.

Today, many business firms and other organizations employ investigators directly as part of their in-house security programs. Others retain outside investigators for temporary assignments or on a more permanent basis through contractual arrangements. Some organizations delegate security and investigative duties to employees having assignments in other fields, for example, personnel, safety, or insurance. Others call on persons with law enforcement experience but little or no exposure to private security to perform these tasks. Private investigative agencies and in-house security departments must sometimes employ persons with limited background in the private investigatory arena to meet the demand for security services.<sup>22</sup>

The broad spectrum of individuals and entities in need of private security's investigative skills can only impress those once unaware of this contribution. For those laboring in the field it is a given that these relationships are part and parcel of the private sector function. The following is taken from Pinkerton's *Investigations Department Training Manual*:

Public Prosecutors and Law Enforcement Agencies

- Investigation of crimes.
- Locating fugitives and witnesses.
- Securing evidence and surveillance.
- Public/private coordination and planning for Homeland Security.

Lawyers

- Investigation of cases in preparation of trial or adjudication.
- Locating witnesses and missing heirs, etc.
- Locating concealed assets and serving papers.

Patent Attorneys

- Investigation of infringements.
- Establishing facts in respect of adoption, use and abandonment.

Publishers

- Investigation to defend libel actions.
- Investigation of unfair competition.
- Investigation of copyright infringement.

Banks

- Investigation of crimes.
- Investigation of applicants and employees considered for advancement to positions of trust and responsibility.
- Protection of transportation of valuable property.
- Surveillance of employees and others suspected of improprieties.
- Verification of reported assets.
- Checking the operation of business enterprises.
- Investigation of credit applicants.
- Investigation of computer and e-transaction fraud.

Insurance Companies and Self-Insurers

- Investigation of defalcations [embezzlement], robberies, burglaries, thefts, losses, fires and other casualty claims.
- Investigation of life, accident, malpractice, compensation and other claims.
- Shadowing claimants to establish extent of their disabilities.

Railway, Bus and Airline Companies

- Honesty and service inspections.
- Investigation of claims.
- Terrorist threats.

Motor Freight, Warehouse and Freight Terminal Companies

- Investigation of thefts, etc.
- Investigation of claims.

Stores

- Store detectives.
- Investigation of thefts, etc.
- Locating credit skips and frauds.

#### Manufacturing and Wholesale Distributing Companies

- Investigation of product liability claims.
- Investigation of unfair competition, willful attempts to damage products' reputation, fraudulent disclosure of trade secrets and violation of trade agreements.
- Homeland defense plans.

#### Hotels

- Hotel detectives; investigations of thefts, etc.
- Inspection of service in various departments for honesty, efficiency, waste and violation of regulations.

#### Character Investigations

- Investigations to establish reputation, confirm residence address, present and/or prior employment or business, marital status, habits, mode of living, income, financial and credit responsibility, social and business connections, police record and other details as desired.

#### Surveillance

- Establishing movements, associates, attention to duty during business hours and mode of living, etc.
- Video recording service to document activities of personal injury claimants.

#### Plant and Store Surveillance

- Over weekends, on holidays, and during night hours, keeping premises under surveillance to detect removal of property, attempted depredations, admittance of unauthorized persons and other improper acts.

#### Undercover Investigations

- Investigation of employees to expose dishonesty, waste, carelessness, inefficiency, willful neglect, violation of safety rules, favoritism, employee discrimination, lowered morale, sabotage, and other irregularities.<sup>23</sup>

### A. TYPES OF INVESTIGATIVE ACTIVITIES

The investigative process serves many purposes in both the criminal and civil justice systems, including:

1. To determine if there is sufficient factual evidence to support or defeat each element of a cause of action.
2. To accumulate the necessary factual evidence to prove or defeat a case at trial or to form the basis for a settlement.
3. To locate leads to additional evidence.
4. To locate persons or property.
5. To find evidence that might be used to discredit (impeach) a witness or the opponent.<sup>24</sup>

The role of private security in the investigative process is also determined by the subject matter of the investigation. Professor Thomas Eimermann affirms how the subject matter of an investigation, and its corresponding methodology, will depend upon the subject matter of that investigation.

The nature of the investigation will, of course, vary considerably with the area of law involved, as well as with the particular facts of the case at hand. Negligence cases require a great deal of investigative work. Damaged cars, broken machines, and injured persons all have to be examined. Witnesses have to be interviewed at length in order to determine the existence of negligence on the part of one or more parties to the accident. In work[ers'] compensation cases, negligence is not an issue, but the extent of damage is. Likewise, the extent to which an injury was work-related becomes an important aspect of the investigation. In probate, an investigation could involve either locating missing heirs or attempting to determine what the mental state of the deceased was at the time the will was written. The underlying skills in all areas are basically the same.<sup>25</sup>

The range and scope of investigative practice is as varied as the multiplicity of subject matters. A representative list might include: