A MANUAL OF PRIVATE INVESTIGATION TECHNIQUES

# A MANUAL OF PRIVATE INVESTIGATION TECHNIQUES

Developing Sophisticated Investigative and Business Skills to Meet Modern Challenges

Edited by

# WILLIAM F. BLAKE, MS, CPP, CFE

(With 21 Other Contributors)



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## PREFACE

The world of the modern private investigator is rapidly becoming more complex and requires more sophisticated investigative skills. The day when the private investigator could get along with just a few basic interviewing skills is history. While basic interviewing skills are still essential, knowledge of the various illegal acts is needed to conduct a successful interview. Without an elementary knowledge of accounting practices, an interview of a suspect who has been diverting company funds to his own benefit could not be complete.

Although a private investigator need not be skilled in arson or fire investigation, a rudimentary knowledge of this skill is necessary to adequately communicate with the fire investigator. A common understanding of basic terms and concepts will enhance the private investigator's interview of potential suspects.

With this in mind, the authors have provided a basic understanding of some of the more common and frequent situations the private investigator may encounter. This book is not designed to provide all information that a private investigator needs to be an expert in a particular investigative matter. It is designed to whet the investigator's appetite for additional information in his or her special area of interest.

An area of extreme importance to the investigator is compliance with the Federal Corrupt Practices Act, which comes into play when an investigation extends to international locations. The basic theme of the FCPA is to counter bribery to foreign parties to obtain or retain business.

The private investigator has traditionally operated in a reactive mode; that is, he has locked the door after the horse was stolen. For continued success, investigators must transition to a proactive mode of learning how to lock the door to prevent the horse from being stolen. Preventive actions are the key to financial success.

One area that can be easily exploited by the private investigator is security management. Many of the basic skills of the private investigator can be easily adapted to the security-management arena. In effect, security management prescribes preventative actions while the investigator is primarily involved in identifying the situational facts when the preventative measures fail.

When the investigator becomes fully aware of the dynamics of a particular problem, he or she may qualify as an expert witness, which is a financially lucrative specialty. It also offers the opportunity to demonstrate to the legal profession the expertise and professional knowledge of the investigator. This commonly results in referrals among the legal professionals and is the ultimate in free marketing.

The day of the "generalist" private investigator is disappearing into history and being replaced by more sophisticated and complex investigations. To be successful in the modern economy, the private investigator must develop sophisticated investigative and business skills within a niche area of expertise. This is an era of specialization.

The authors hope that the information in this book will encourage private investigators to develop the skills and expertise necessary to meet modern challenges.

W.F.B.

## INTRODUCTION

The world of the private investigator is constantly changing due to the introduction of various legal requirements that have restricted or eliminated some of the methods available for obtaining information, such as various privacy protection acts. Additionally, most private investigators have restricted their business activities to a response mode; that is, they conduct inquiries after an incident has occurred. Their preventive skills have been ignored to their financial detriment.

As restrictions continue to be placed on private investigative activities, it is time to reevaluate personal skills and discover how they may relate to crime and loss prevention strategies. The ability to introduce preventive activities to clients will result in additional revenue. The prevention of loss dramatically reduces financial costs and demonstrates to employees and others that the client is concerned with safety in the work place, thereby increasing confidence and morale.

A primary example of the transition to preventive activities is in the area of risk assessment and reduction of potential negligent security or premises liability litigation.

When a property owner fails to exercise reasonable care to prevent an accident from occurring on his or her property, he or she may be required to pay damages to anyone who is injured as a result. The compensation a victim obtains depends on several factors, including the type of personal injury, the total amount of insurance available, and the skill of the victim's premises liability attorney. In general, victims can pursue compensation for medical costs, lost income and other losses, and pain and suffering associated with their injury.

The cost of liability litigation greatly exceeds the financial cost of identifying and mitigating risks to employees and the business. It is not unusual to have a multimillion dollar judgment in a negligent security litigation matter. This cost does not include possible punitive damages or legal fees. Legal fees will be incurred whether or not the defendant is found at fault or the matter is settled through summary judgment. The range of potential injury claims include but are not limited to the following:

- Slip and fall accidents
- Animal attacks
- Burn injuries
- Assault
- Gas explosions and exposure to toxic fumes
- Faulty machinery
- Accidental drowning

Risk assessment is a skill area that is easily attained by the average private investigator possessing investigative expertise and a basic knowledge of security-management skills. Having the knowledge and skills to convince a business executive that prevention is less costly than litigation can create a friendly customer-oriented atmosphere with the client. Prevention provides a significant return on investment for the client and the private investigator.

A follow-on highly lucrative skill for the private investigator is the attainment of expert witness status. The expert witness is one who has experience and knowledge of a particular subject that exceeds that of the ordinary person. This is not a difficult status to attain but requires unique skill sets and experience.

Crises management is another lucrative skill set for the private investigator. It not only identifies potential risk areas through risk-assessment activities but includes development and implementation of preventive measures. Crisis management also includes disaster recovery issues. Following a crisis incident, the private investigator can assist in restoring business operations to their normal levels.

Now is the time for the private investigator to reevaluate business opportunities and identify goals for the future. The investigator can no longer rely only on a private investigation but must provide expanded preventive services. The emphasis for survival is on business flexibility and exploration of new opportunities.

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A MANUAL OF PRIVATE INVESTIGATION TECHNIQUES

# Chapter 1

# THE ROLE OF THE PRIVATE INVESTIGATOR IN PREMISES LIABILITY LITIGATION

#### WILLIAM F. BLAKE

## WHAT IS PREMISES LIABILITY?

Premises liability claims arise when someone suffers an injury or loss in violation of the theory than individuals should be reasonably safe in their business, residential, or recreational environments. An owner or occupier of property cannot guarantee that injury or loss will not occur, but ignoring evidence of potential injury or loss can result in a claim of negligence.

When a claim of negligence is asserted, the private investigator is a vital asset to the attorneys for the plaintiff and the defense. In either case the investigator will be tasked to obtain detailed situational information pertaining to the elements necessary to prove or disprove the allegation of negligence. To be successful in this endeavor, the investigator must have at least an elementary knowledge of what elements of law must be proven to substantiate the attorney's theories of action at trial.

The legal questions arising from an injury or loss are the domain of the attorneys for the plaintiff and defendant, as well as the responsible owner or manager:

- 1. Did the defendant owe a legal duty to the plaintiff?
- 2. Did the defendant actually know about a danger on the property, or, as a person using reasonable care, should the defendant have known about it?
- 3. Did the defendant fail to use reasonable care to protect against the danger on the property?

4. Was the defendant's failure to use reasonable care the direct cause of the plaintiff's injury, damage, or loss?

The interpretation of these questions as they apply to a specific set of circumstances is frequently in dispute and depends on the investigator to identify the supporting facts. Determining injury or loss is normally not a difficult issue. The more complex issues are:

- 1. Did the business owners know, or should they have known, there was a problem that a specific type of incident would occur?
- 2. Were the measures taken to protect individuals on the property, if any, reasonable in nature and sufficient in quantity to counter the probability of a specific incident occurring?
- 3. Did the injury or loss occur as a direct result of the business owner's failure to take reasonable and appropriate measures to safeguard the injured party?

The process of analysis for identifying appropriate safety and security measures is used by both parties to the litigation to develop information to prosecute their litigation. An understanding of the analysis process is as much a tool for loss prevention as it is for prosecution or defense of litigation. An understanding of the legal concepts involved and the identification of appropriate measures to provide adequate safety and security will contribute to profit levels.

*Probability* and *reasonableness* are not difficult concepts. A problem arises when the plaintiff in the litigation alleges a business owner unreasonably placed the pursuit of profit ahead of providing a safe and secure environment in which to work, live, shop, or engage in recreation. While numerous factors impact the definition of a duty to protect business customers, the analysis strategy is relatively simple and frequently can be easily accomplished by the investigator without large financial expenditures. The legal implications must be interpreted by an attorney.

An understanding of the methods of evaluating risks and identifying reasonable security measures for reducing premises liability can be a significant loss prevention tool. The costs of liability prevention measures are sufficiently less than the average settlement costs.

Whether a review of safety and security measures is undertaken for purposes of loss prevention or litigation, it is important to know the laws pertaining to premises liability, the various safety and security issues to be identified and evaluated, and how a qualified investigator can contribute to corporate objectives. Investigators should consider the ramifications of a landmark premises liability case, *Berry Property Management, Inc. v. Bliskey*,<sup>1</sup> when evaluating reasonable security measures for a property. An intruder, after going through tenant files in the management office, took a key identifying Ms. Bliskey's apartment number from where it was hanging on a pegboard in the manager's office. He used the key to enter Bliskey's apartment and raped her. Bliskey alleged that Berry was negligent in handling its residents' keys and violated the Deceptive Trade Practices Act by failing to provide door locks as required by statute and warranted by the lease. Bliskey was awarded \$17 million, later reduced to \$16 million, for negligence and violation of the Texas Deceptive Trade Practices Act.

Court testimony revealed that Berry opted for the pegboard method of key control instead of purchasing a locking metal key box, priced about \$30. The Deceptive Trade Practices Act requires that the owner of the property, upon request of the tenant, install one deadbolt lock and one night latch on each exterior door other than a sliding door, screen door, or garage door. Assuming a cost of installing locks on two exterior doors of \$100 each and \$30 for the locking key box, reasonable loss prevention measures would have cost \$230.

For failing to spend \$230, the litigation cost Berry \$16 million in judgment costs and unidentified legal expenses—more than 69,500 times the cost of prevention!

## WHAT ARE THE LEGAL ELEMENTS OF PREMISES LIABILITY?

Lawsuits against businesses for inadequate security may be brought under various legal theories, depending on the facts of a particular case and the creativity of the lawyers. Common theories include breach of contract, promissory estoppel, deceptive trade practices, and negligence. The most common theory, however, is premises liability.

Although premises liability law varies from state to state, the general legal analysis used is consistent. As with other negligence theories, attorneys apply the tort law concepts of duty, foreseeability, reasonableness, and causation.

<sup>1. 850</sup> S.W.2d 644 (Tex. 1993).