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Mission Statement
“The Texas Association of Licensed Investigators is an organization that promotes and encourages the highest standards of professionalism among licensed private investigators through information, education, training, legislative action, membership support and networking.”

Code of Ethics
All members of the Texas Association of Licensed Investigators will subscribe to the following Code of Ethics:

To be professional and to demonstrate integrity and honesty as an investigator and as a member of TALI.

To give each client a full explanation of the work to be performed, rates to be charged and reports to be rendered.

To preserve as confidential all information received in an investigation unless directed otherwise by the client or unless under specific order or legal authority.

To conduct all aspects of investigation within the bounds of legal, moral and professional ethics.

To apprise clients against any illegal or unethical activities and to cooperate with law enforcement or other governmental agencies, as required by law.

To constantly strive for improvements as a professional, to respect the rights of others and to insure the same from ones employees.

To loyally support TALI, its aims, purposes and policies as long as one remains a member.
President's message

Friends -

In 1999, I joined the Texas Association of Licensed Investigators. It seems like yesterday! During my time as a member of this great organization, I have served as Region 4 Director, President-Elect, and currently as President since August, 2016. Some of you may have heard by now, and it is bittersweet to officially report to everyone, that I am retiring and moving out of Texas. It is with a heavy heart that I must resign my leadership position; but after much thought, I feel that it is time for me to move on to my next life-journey.

TALI by-laws require that the association’s President reside in Texas. Consequently, I recently submitted correspondence to our TALI Secretary, Catherine Torrez, at the March 6th Board Meeting stating my intention to step down on April 25th at TALI’s next Board Meeting.

As President, it is my duty to appoint a TALI member to fill my vacancy. At the March 6th meeting, I appointed President-Elect Brad Smith, TCI, to fill the position of TALI President upon my resignation on April 25th. My appointment of Brad Smith was unanimously approved by the Board of Directors attending the meeting.

Your TALI organization is undoubtedly in great hands with the current board members. Moreover, I have full confidence in Brad Smith’s intelligence, leadership qualities and business acumen to take the helm and keep TALI pointed in the right direction. Brad’s tenure as president will begin on April 25th.

I will miss the friendship, mentorship and comradery that you all have brought. TALI is an incredible association and I will truly miss every one of you. I wish each of you a prosperous career and a healthy and happy life.

Claude Bookout, TCI
TALI President
Want to know why we have published so much about interviewing in this issue? Because it’s fundamental to what we do and it can be very challenging! Anyone who conducts interviews on a routine basis will tell you a lot can go wrong.

In our Member Spotlight, Paul McCaghren, a veteran Police Officer and longstanding Private Investigator addresses the importance of interviewing and communications skills. In this issue, we look at some of the common obstacles when it comes to communication such as language barriers, critical importance of understanding dialects and conducting an interview with almost no preparation.

In an accompanying article, retired FBI agent and veteran private investigator Charles Williams, author of C.A.R.E. – An Investigative Way of Life: An Expert Interviewing System introduces us to perhaps innovative ways of approaching interviews that might break certain habits or paradigms we all hold on to.

Moreover, in this quarter’s magazine we examine the rise of environmental, political and social activism which poses unique security challenges. Former CIA operations officer Charles Goslin in his article “Pipeline Activism Expected to Rise Significantly” addresses the potential growing threat to this country.

An enthusiastic thanks to all the other contributors who touch on business leadership, ethics, weapons and executive protection, and much much more.

Please be sure to visit us at TALI.org where “The Texas Investigator” is available on line. Also, please feel free to send me your comments or suggestions about this magazine to IJVikin@gmail.com.

Stay safe out there,

Ivan J. Vikin, CFE
TSCM America
Briggs Investigations Group
Sannhet, Inc.
Keep Your Friends Close, and Your Enemies on Facebook.

By Wes Bearden, Esq.

Al Pacino's character in the Godfather 2 utters the line to his colleague and soon to be turncoat, “In this room [my father] taught me to keep your friends close, but your enemies closer.” Not bad advice, particularly in our business. Many times, we are hired to do just that. Find out what the “enemy” is doing in litigation. But, in the age of Facebook, Snapchat, Twitter, and Instagram, when do you get too close? Can the law prohibit you from getting too friendly? The answer is yes.

Frequently, I am asked the question “Can I friend my Subject on Facebook?” First off, for those less than familiar with Facebook or technology or what the rest of us have been doing over the last several years, friend has apparently become a verb. I don’t know how that happened. But it did. If you have problems with that, this article won’t help you. Coming out of the bunker will help.

In 2009, the Philadelphia Bar Association published an ethical opinion regarding whether a lawyer or his investigator could “friend” a witness to obtain information that was on the Facebook page. See Philadelphia Bar Association, Professional Guidance Committee Opinion No. 2009-02 (March 2009). The committee found that by “friending” the witness, the lawyer or his agent was essentially engaging in deception which violated a section 8.4(c) of the Philadelphia Lawyer’s Ethics Rules. That section is part of the Model Rules of Professional Conduct which has been largely adopted by all states including Texas and has always been part of the catch all rules.

I know what you are thinking. But wait, I’m an investigator, not a lawyer. Why should I care about lawyer’s ethics? I’m surprised they have ethics in the first place. Well, you should care. Mainly because your actions as an agent of a lawyer is an extension of the lawyer. Lawyers are generally responsible for the conduct of their investigators. See Texas Rules of Professional Conduct, Rule 5.03. Violation by you of the rules may potentially subject your client’s lawyer to discipline. Not a great way to make friends. In addition, if the evidence was obtained in violation of the rules the court may allow it or may qualify it. Finally, although you are not bound by those rules, you will be judged by them. We live in a lawyer’s realm and your failure to follow their rules will be the basis to blame you for all ills.

The ethics opinion was that the lawyer or his agent had engaged in deception by “friending” a witness not for the purposes of friendship but, rather for the purposes obtaining information. The committee didn’t get that Facebook friends aren’t real friends. They are people who we have agreed to occasionally look at each other’s cat posts and avoid any meaningful two-way conversation regarding politics.

The following year, the New York Bar Association followed with another ethics opinion which answered the question of whether you could “friend” a party in litigation. See New York Bar Association, Committee on Professional Ethics Opinion #843 (Sep. 10, 2010). That decision reached the same result that a lawyer or his agent could not “friend” the party under the same deception theory and the rationale that a lawyer could not make direct contact with an unrepresented person under Rule 4.2. That rule is known by many investigators as the “no contact” rule. Although that makes sense in the efforts to interview someone who has a lawyer, it makes little sense when you are “friending” someone not for communication purposes but, to see what food they cooked themselves on the backyard grill.

Since then, many bar associations have now held that their rules of professional conduct prohibit lawyers from engaging in deceptive behavior or misrepresentations to third parties in cyberspace. In addition, all the opinions uphold a lawyer or his investigator’s ability to scrape and use any public information that exists on the public part of the page. The only issue is the active “fake friending” of the witness. That is where the ethics rules prohibit contact.

So, we can’t “fake friend.” Can an investigator ask someone to do it? No, the opinions are clear that directing a third party to do it for you is as bad as the act itself. However, there is some authority for an investigator to ask an unrepresented third party (i.e. friend of the Subject) to provide private postings or communications that the third party has access to. See Palmieri v. USA, F. Supp. 3d, No. CV 12-1403 (JDB) (D.D.C. Nov. 3, 2014). In the preceding case, the court upheld a revocation of a security clearance where a friend provided Facebook information on the party to law enforcement who had no warrant. Generally, when a party posts, emails or sends something to a third party they lose their expectation of privacy in the content. See Guest v. Leis, 255 F.3d 325, 333 (6th Cir. 2001). It might be worth your time to ask a friend to willingly give over that information.

So, friends, a friendly reminder on the fake friending of a forbidden friend while friendly focusing on Facebook...Don’t do it.

Say that five times fast.
Legislative event 031717

By the time you read this article we will be nearing the end of the 85th Session of the Texas Legislature. I am writing this at about the half way point of the Session.

There have been approximately 8000 bills filed. TALI will examine in detail about 400 of them. Those that directly impact our way of doing business will have been earmarked and a plan of action developed to manage and mitigate any possible damage to our industry.

We entered this Session knowing we were going to have to play defense. It appears that only a very small number of bills have the potential to have significant negative impact on us. As those bills reach critical stage all of you will be notified and asked to take action.

On March 6th TALI conducted for the 6th straight Session its “Walk the Halls.” Over thirty members joined our leadership team in Austin for this great event. It’s always a crowd pleaser for those that participate. A heartfelt thank you for those that participated.

This Session we partnered with members of the ASSIST team.

Bills that we discussed dealt with expanded rights for our PPO members to carry guns and a bill that would limit access to traffic ticket information.

Also we protested a senate bill that would create unnecessary and burdensome reporting requirements for securing data from a state agency.

I am very thankful for TALI Associate member Steve Hayden for stepping up and working directly with certain Senators to lobby and influence bills that are positive to our industry. Hopefully in the near future, I will report to you our success in this matter which will be attributed to Steve’s efforts.

This is the second Session in which we have contributed working with a business data coalition that has really been paying dividends. Speaking together we have gotten more attention.

If you have been following the Session you probably note that the focus seems to be on statement bills such as the bathroom bill. This perhaps will result in less day to day bills being passed. Let’s hope so.

I am looking forward to giving you a full report at the summer convention.
A four-part interview with retired FBI Special Agent Charles E. Williams.

Part One of Four

TTI: Hello Charles, we are grateful that you agreed to sit down with us, answer some questions and share your insights. Please let our readership know a little bit about yourself. What’s your investigative background?

Charles: I worked as a Special Agent in the FBI for almost 24 years. During that time, I worked a wide variety of criminal matters as well as foreign counterintelligence and civil rights investigations.

While in the FBI I also participated in the following areas:

- FBI Crisis Negotiation Reserve Team
- FBI Certified General Police Instructor
- Certified FBI Assessor
- FBI Certified EEO Investigator
- Completed the FBI Undercover School
- Certified in the FBI Street Survival Training

I retired from the FBI in 2006, and started my own Private Investigation firm – HDI Investigation, Inc. located in Charlotte, North Carolina. To date I have worked on more than 250 criminal defense cases to include more than 75 murder investigations.

What made you decide to write a book about investigative interviewing?

While I was in the FBI I observed agents missing so many opportunities to gain valuable information and cooperation simply because they didn’t fully understand how to approach and interview a wide array of people and engage them in a systematic way that would allow them to get the information and co-operation they needed.

As a private investigator, I read thousands and thousands of interview reports and it became very clear that a lot of people just didn’t fully understand the true nature of an investigative interview, or they were never trained how to conduct a technically sound investigative interview. I also found that many investigators were just copying off of a model that was very limited in its application.

So, I felt I could use my experience to write a book that would show the investigator how to systematically conduct an interview. I knew I could explain many of the secrets to effective interviewing. I could teach the interviewer how to gain an interviewee’s trust, detect deception and then take the interviewee from the lie to the truth.

There are many perspectives about interviewing - What is it that is so unique and special about your C.A.R.E. system?

Ivan, wouldn’t you like to feel confident about your ability to walk into an interview room fully understanding the dynamics of an interview? Wouldn’t you like to feel confident that you’re going to gain that individual's confidence, co-operation, and eventually come out with the information you need? Wouldn’t it be nice to never again view an interview as a hopeless endeavor because the person you're speaking to appears to have nothing in common with you or nothing to gain and everything to lose by cooperating with you?

In order to make that a reality, you’re going to need more than just confidence in yourself. If you want consistency in your interviews, you’re going to require more than a hit or miss approach to interviewing. What is required is the implementation of a conceptualized systematic approach to interviewing. You need a system that incorporates strategies, techniques, and flexibility within a structured proven methodology that can be repeated over and over again. As an interviewer, you become more confident and consistent when you are relying on a system rather than whether you’re having a good day or a bad day.

The C.A.R.E. system is that system and it is unique and special because it has everything I just said and it is a system that works in any given situation. It is a complete system that you can rely on from the beginning of the interview to the end. It is a system that utilizes natural principles which we use every day. It is a defined methodology that can be repeated, evaluated, adjusted and improved on each time you use it.

Remember, a system is by definition a regularly interacting or interdependent group of items forming a unified whole. Therefore, an...
interviewing system must have at least two interacting groups.

The C.A.R.E. system is unique in that it has 4 interacting and interdependent items working together during the interview process and forming a unified whole. They are:

1. Control  
2. Assessment  
3. Relationship  
4. Exit

Charles, what would you say is the essential nature of an investigative interview?

The essential nature of an interview is that it’s a systematic inquiry requiring and utilizing observation and study to obtain relevant authentic information. An interview should never be viewed as a search for the answer. Instead view the interview process as a search for the question and let the questions lead you to the answer. If you search for the answer you will more than likely find what you want the answer to be, or what you hope for it to be or what you expect it should be. Oftentimes an answer ends up being a solution to how YOU see the problem and therefore, susceptible to how you see the world. So if you are not viewing the world that holds the truth as it really is, where does that leave you and your answer?

This phenomenon reminds me of a line in Jay Posey’s science fiction novel titled “Morningside Fall” wherein a mercenary was trying to teach a young boy and his mother how to survive in the open. He told them “We oftentimes see what we expect and miss what we don’t.”

How do you essentially go about conducting an interview in your system?

I go about it understanding that interviewing is simply a matter of identifying, understanding and manipulating the innate stages and elements of the interview process while keeping in focus the purpose of the dialogue and exchange between you and the person being interviewed. The interviewer needs to clearly understand that he must learn to first meet the relevant needs and wants of the interviewee in order to realize the relevant needs of the interviewer. Again, we are talking about the fine art of understanding and manipulating the unique dynamics of the four stages of the C.A.R.E. interview process: Control, Assessment, Relationship, and Exit. This approach will work regardless of who you’re interviewing or the complexity or length of the interview.

The C.A.R.E. system identifies constants that are present during every interview such as control, or lack thereof, fear, the unknown, stress, reality, etc. and uses them to manipulate the interview process. The C.A.R.E. system requires the interviewer to continually assess the overall interview process in order to determine where control can be gained, maintained, increased and eventually used to manipulate the process. My system utilizes interviewing techniques such as caring, feeling, intuition, mirroring, reasoning, boundaries, reciprocity, etc. that run parallel with a natural dialogue between individuals. These techniques elicit the same positive effects in an interview as they do when you engage someone in a purposeful every day conversation. My system uses those same natural principles that you and I use every day to engage our neighbor, our children, or someone at work in a conversation. However, my system gives those natural principles direction, focus and purpose. We use them because they work and are natural and therefore, easy to learn and can be seamlessly incorporated into an interview. They are used in a natural way so that their implementation flows with the natural flow of a conversation contained within the structural purpose of an interview. Therefore, allowing you to surreptitiously manipulate the subject of your interview through a platform based on control.

Charles, what would you say is one of the most important aspects of interviewing?

Ivan, in order to get what you want… you have to be in control of the interview. It is as simple as that!

What is control and how do you get it?

First let me explain…WHAT IS NOT Control.  Control is not being - rude, yelling, cursing, threatening, intimidating, bullying, talking loud, or slamming a telephone book on the table, asking the same question over and over again, or accusing him of lying over and over!

Why isn't it control?

Well, it is not control because there is a better way. That kind of behavior will always paint you into a corner. It will usually leave you with one option or no options at all and in many cases with absolutely no control.

- WHAT HAPPENS:
  - If you have nothing to threaten the interviewee with. Now what do you do?
  - If the threats don't work. Now what do you do?
  - If he crawls into a shell. Now what do you do?
  - If he wants to fight back. Now what do you do?
  - Now that he or she hates you. Now what do you do?
  - If the person you are talking to has nothing to lose and nothing to gain. Now what do you do?

Well you can't do much if you're stuck in a corner. Because the above described behavior will only give you one shot at control.
But more importantly relying on a narrow point of view, threats and bullying tactics will most certainly:

1. Inhibit your growth, skill and development as an interviewer,
2. Place the decision where the interview will go in the hands of the interviewee (therefore essentially relinquishing your control), and
3. Will not promote or produce real change or growth in you or the person you’re interviewing.

In the C.A.R.E. system control is the following:

Subtle and always understated;
1. It is procured via gaining the interviewee’s trust.
2. Showing them that you are not a threat.
3. Focusing on the power of reason.
4. Gaining their confidence in your ability to see them through the situation in which they have found themselves.
5. The CARE system believes in enlightening rather than threatening.

With very little effort you can have control over:
1. Whether the interview environment is safe or threatening.
2. Whether the interviewee gets something to drink or eat.
3. Whether the handcuffs are too tight.
4. Time the interview starts and when there is a break in the interview.
5. Ability to assess the person you are interviewing.
6. How you want to make the interviewee feel.
7. What direction you want to take the interview.
8. Your attitude and how you behave and relate to the interviewee.

Charles E. Williams is an author and founder/CEO of HDI Investigation Service, Inc., a private investigation firm specializing in criminal defense. A graduate of Temple University’s School of Business, Charles has built a reputation as a highly sought after investigator. After 24 years of service, Charles retired as a Special Agent with the FBI. Charles’ FBI career began in 1983 where he was assigned to the New York City FBI Field Office. For 14 years, Charles was a member of the FBI New York City Fugitive Task Force. He also attended the FBI undercover agent school and was a member of the New York City FBI Crisis Negotiation Reserve Team; EEO Investigator; Certified FBI Assessor; Certified Street Survival Agent; Community Outreach Specialist; and a Police Instructor. Charles worked on a number of high profile cases, including FBI “Top Ten Fugitive” investigation cases. He worked on the Crown Heights Investigation; the World Trade Center bombings (1993); United States Embassy bombing in Tanzania, Africa (1998); and the World Trade Center bombing (September 11, 2001).
Developing a Culture of Trust

By James L. Capra

Often, when I am asked about the underlying problems in business, in national security issues or in government, it seems that the major issue comes down to a failure of trust and pursuing success instead of excellence. You see you can cheat and be successful, you can lie and be successful, and you can implement immoral and/or unsafe business practices and be successful; but for how long? Ultimately, pursuing success at all costs, or pursuing personal success at the cost of others, will result in a failed business, a failed organization and failed personal relationship.

Over the course of my nearly four decades as a public servant both in the uniformed military services and as a federal agent, I have witnessed a number of leaders ranging from the truly incompetent to the truly incredible. While there are a number of characteristics that embody great leaders, I submit that the number one characteristic found in most outstanding leaders is their intrinsic desire to truly care about and learn to love those they serve. These leaders recognize that they need to make an emotional connection with organizational members because they understand that developing positive relationships often results in producing the fruit of trust in the lives of their people and in the organization as a whole. Conversely, those organizations that are run by fear and intimidation are typically doomed to fail in their pursuit of growth and production and those leaders who practice the same leave a legacy of chaos, mistrust and anger in their wake.

It is apparent that we are a nation that has a trust crisis; trust appears to be on the decline. Our trust in government, our trust in Wall Street, our trust in organizations, and our trust in each other continues to wane. In an article written by Stephen Covey, he wrote, “Trust in our culture at large, is significantly lower than a generation ago.” It would seem that not much has changed since his article was published as we are daily barraged by the intrusive government regulation may have helped maintain trust in the public market, those executives subject to this regulation understand the amount of time it takes to comply with the law as well as the added cost of compliance. According to a study, the implementation of just one section of Sarbanes-Oxley has cost businesses 35 billion dollars which exceeds the original estimates done by the SEC by 28 times. And that is just Sarbanes-Oxley; the estimates of the cost of complying with federal rules and regulations in the US alone at 1.1 trillion dollars. Compliance regulations come as a lack of trust between the government and private business. Instead of trust, the government legislators believe that it is necessary to prevent deceit…and it is expensive!!

The ability to engender trust to employees, stakeholders, shareholders and partners is a necessary competency for any leader who strives for excellence in their walk. As a competency, engendering trust is something that leaders can learn and become good at if they are willing to lead from the heart. That is, from my tenure as a leader in federal law enforcement I have witnessed organizational cultures grow, thrive and be successful, when leaders first learn and demonstrate care and love for those just think of the burden and costs of the emotional, physical and mental stress when our relationships are based upon the notion that one party will ultimately be deceived.

Although many leaders believe that trust is difficult to measure, there is without a doubt a tangible benefit to high trust in any organization. Studies conducted by a multitude of firms over the past decade have shown time and time again that high trust companies outperform companies of low trust. The Watson Wyatt survey showed that high trust companies outperform low trust companies by nearly 300%. Let that sink in for a moment; 300%...as an organizational leader would you be willing to allocate resources, time and energy into something that would increase your organization’s performance, manufacturing and/or profitability by 300%? And here is the kicker, it’s not something you have to go out and physically purchase; an additional widget, building or computer software program; it is however, something that you have at your disposal right now which simply is a willingness to develop and implement a culture of trust.

The reality is that many organizational leaders think of trust as a soft, sort of nice to have virtue and do not believe that trust is directly connected to their organizations bottom line. However, according to research, trust affects two measurable outcomes – speed and cost. Therefore, when trust goes down, speed goes down and costs go up. Conversely, when trust goes up, speed goes up and costs go down.

Consider the reasoning behind the governments continual use of legislation to initiate regulatory compliance laws that are directly related to the loss of trust in the business sector. For instance, Sarbanes-Oxley was passed in response to the major scandals of Enron, World-Com and other corporate disasters. Although this intrusive government regulation may have helped maintain trust in the public market, those executives subject to this regulation understand the amount of time it takes to comply with the law as well as the added cost of compliance. According to a study, the implementation of just one section of Sarbanes-Oxley has cost businesses 35 billion dollars which exceeds the original estimates done by the SEC by 28 times. And that is just Sarbanes-Oxley; the estimates of the cost of complying with federal rules and regulations in the US alone at 1.1 trillion dollars. Compliance regulations come as a lack of trust between the government and private business. Instead of trust, the government legislators believe that it is necessary to prevent deceit…and it is expensive!!

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they are entrusted to lead, which includes employees, partners and stakeholders. While character and competence for any leader is a must, leaders who are dedicated to treating people right (The Golden Rule) consistently deliver superior value and retain outstanding employees. Employees who recognize that they are valued and cared for by those that lead them often provide superior service and value which generates pride and a sense of purpose among employees that can be tangible. The question for us all is simply, how...how do we develop a trust climate, how do we implement trust across the organization, where do we/I start??

Let me start with 3 principles: People, Purpose and Passion. It has been my experience that you begin to build a foundation of trust by developing a moral position that people, as does the organization, have a purpose. Our people not only have a purpose in the organization, but have a moral purpose in life. The best leaders recognize the importance of developing employees both professionally and personally with a great deal of passion. This is done by a leader’s ability to develop relationship in order to make trust a goal that is communicated and matters to all levels throughout the organization. This kind of leadership then is the ability to get results that inspire trust and that trust is modeled through the leader’s character, competence and demonstrated behavior. I am not offering up any kind of soft or “up with people” philosophy. Rather this type of leadership philosophy is bathed in accountability. That is, as a leader you are accountable to the success and growth of your people and they are accountable to you and the organization.

Caring for people and engendering trust is good for the organization both in terms of a moral and ethical positioning as well as for organizational survival. Consider the security benefits to trust that are often overlooked, such as trust being a major factor in developing a risk mitigation strategy. Good leaders recognize that internal security and IT departments should never be burdened with the sole responsibility of managing risk alone. People, not just processes and policies, play a critical role in mitigating internal and external risk in any organization. It is those same people who can be as important to risk mitigation as technology if they feel valued, if they are cared for and if they feel loyal to the organization and to the leaders within the organization. Herein highlights the necessity for effective leaders to develop trust through communication which instills loyalty, which develops pride and purpose, whereby employees begin to take ownership of the organization, which helps reduce risk substantially.

If you want to become a great leader, if you want to make a difference in your team, if you want to make a difference in your leadership walk, if you want to develop a culture of trust in your organization, you need to first learn how to love the men and women you are entrusted to serve! This is not about everybody gets a hug; this is about a willingness to consistently make a conscious effort to care about those that are entrusted to you. The bottom line, it isn’t about money, not profit, not mission; the bottom line is people and when those people are led by leaders who care about them, who develop covenant relationships of trust, they grow, flourish and outperform other organizations and businesses in their respective markets.

About the Author:

James L. Capra is an author, motivational speaker and currently the CEO and Founder of the Front Line Leadership Group. He has been called to speak on contemporary leadership challenges, national security issues, drug use and abuse as well as the challenges of raising children in a culture devoid of moral absolutes. Jimmy, as he is known by his friends and colleagues, retired after 27 ½ years with the DEA. Prior to his retirement, Jimmy served as the Chief of Global Operations responsible for 227 domestic offices and 86 foreign offices in 67 countries. He has previously testified before the U.S. Senate and House on a host of national security policies impacting the safety and security of the United States. Prior to his DEA career, Jimmy served in the U.S. Navy, U.S. Navy Reserves, Air National Guard. He holds a Bachelor of Science from Marist College and a Masters of Education from Seton Hall University. Jimmy has been married to his wife Shelly for over 34 years and they are the proud parents of six outstanding children, most who have taken up lives as public servants.
Construction Site Investigations

Uncovering, Organizing and Managing Multi-Employer Worksites

According to the Bureau of Labor Statistics, 4,821 workers were killed on the job in 2014 with the fatal injury rate for workers in construction and extraction occupations being 11.8 per 100,000 full time employees. These are alarming statistics, especially since these numbers do not include nonfatal injuries. Based purely on the fatality statistics, it is easy to anticipate significant investigative needs that will involve construction sites. The investigation of a construction site accident is not drastically different from any other investigation. The underlying goal of the investigation is to gather sufficient data on which to answer the basic who, what, when, where and how questions. Since most construction site investigations are being conducted as a result of a tort claim, the need to fully develop the identity of all of the involved parties is a critical initial step. Understanding the relationship between those parties is equally, if not more, important. Understanding this relationship is especially critical for those tasked with evaluating the potential liability exposure of each respective party. So how do you develop a clear understanding of the duties, responsibilities and activities of each of those parties? Utilizing OSHA's Multi-Employer Worksite Citation Policy (hereinafter MEWCP) can greatly assist in developing answers to these questions. But first, let's take a brief look at OSHA and a typical construction site.

As with any worksite related investigation, Occupational Safety and Health Administration (OSHA) investigations and citations need to be reviewed. OSHA citations are often used as a key component to a liability analysis, much like citations issued by a law enforcement agency stemming from a motor vehicle accident. To properly utilize the information available in the OSHA records, a basic understanding of OSHA's role is necessary. Historically, one of the tenants for OSHA is that "each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to the employees." This fundamental principal is generically known as the general duty clause which is often referred to as a 5 (a) (1) citation. A key principal specified in this clause is that the employer owes a duty to each employee. Thus, by definition, a duty is not owed to an individual who is not an employee and, as a result, only the defined employer could be cited under the general duty clause. Consequently, parties often reject the responsibility of hazard recognition and abatement on a construction site due to the fact that they owe no duty to anyone on the construction site that is not their employee. Thus, it is not uncommon to find a construction site in which hazard recognition and abatement are addressed through a trickle-down approach. In other words, the property owner hires a general contractor and the property owner designates the general contractor as the responsible party for hazard recognition and abatement. The general contractor then hires a subcontractor and the general contractor designates the subcontractor as the responsible party for hazard recognition and abatement. This pattern continues to trickle-down through the multi-tier hierarchy (layers) of subcontractors on the job site. This trickle-down approach is commonly seen in contracts between the parties in which the assignment of OSHA compliance and safety are specifically itemized and delegated to the lower-tier party. The end result is a job site at which parties tend to avoid hazard recognition and abatement by way of passing the buck down through the hierarchy of parties present at the construction site. Ask someone who is responsible for hazard assessment and abatement on most construction sites and you might as well start the encore performance of Abbot and Castelo's well known "who's on first" comedy act.

In the typical single employer/employee environment, every worker receives a paycheck from the same employer and reports to a clearly identified chain of command. In contrast, a construction site usually involves a property owner, developer, general contractor, multiple trades, tier one subcontractor, tier two subcontractors and, depending on the size and scope of the project, additional subcontractor tiers. Each of these parties/employers may maintain direct, indirect or specific contractual control over their traditionally defined employees as well as employees working for other employers. To further confuse this multi-faceted organizational chart, general contractors and subcontractors of all tiers often designate each of their workers (tier subcontractors) as independent contractors that are by definition not employees. This non-employee designation would ostensibly remove the general contractor etc. from the duties and responsibilities of an employer.

Confused yet? As is outlined above, the number of parties involved combined with an unclear definition of responsibility leads to a great deal of confusion and misunderstanding with respect to identifying who is in charge of the work site. Beyond creating confusion, the application of this "not our employee; therefore, not our responsibility" approach actually becomes conducive to a hands off philosophy in which no one wants to take proactive safety measures for fear of being found to have assumed that responsibility (i.e. potential liability). This confusion can be compounded significantly when you start reviewing the contracts between each of the parties. These contracts will typically contain indemnity provisions as well as specific assignments with respect to the job site that may not all be in agreement with one another as to job site responsibilities. So, back to the initial question, how do you develop a clear understanding of the duties, activities and responsibilities of each of those parties amidst this sea of confusion?

Enter OSHA's Multi-Employer Worksite Citation Policy (MEWCP). OSHA recognized the unique complexities in identifying the employer(s) on these multi-employer sites and attempted to remedy the situation through the implementation of the MEWCP. This policy provides a classification system that is applied to all of the parties/employers on the site. OSHA will classify each employer
on the construction site as a creating, exposing, correcting and/or controlling employer. When utilizing this classification system it is important to recognize that each employer may be classified as more than one type of employer and that multiple employers may be placed under any number (or all) of the four classifications.

The four classifications listed within the MEWCP are as follows:

1. A creating employer is one in which the employer caused a hazardous condition that violates an OSHA standard. OSHA may issue a citation to this employer even if the only workers exposed to the hazard are those that work for other employers.

2. An exposing employer is one in which the employer's own employees are exposed to a hazard that violates an OSHA standard. If the exposing employer is found to have created the hazard, the employer may be citable as both creating and exposing. If the hazard was created by another employer but the employer is found to have knowledge of the hazard (or failed to use reasonable diligence to discover the hazard) the employer may still be found to be an exposing employer (regardless of who is found to be creating).

3. A correcting employer is responsible for correcting a hazard that is found on the exposing employer's worksite. This employer is generally responsible for the installation or maintenance of safety equipment and is also held to a standard of reasonable care in the detection and prevention of hazards.

4. A controlling employer maintains general supervisory authority over the worksite including the power to correct safety and health violations. A controlling employer is also required to use reasonable care is detecting and prevention of hazards of the job site.

Once the parties have been identified and classified, creating an organizational flow chart will prove very beneficial through the course of the investigation. This flow chart approach is especially useful when you begin to overlay each party’s duties, contractual obligations, contractual relationship, insurance coverage and each employer’s MEWCP classification. This simplistic exercise is often skipped and is one which can greatly assist in the navigation of an organizational hierarchy that can take on the appearance of a software programming matrix. Incorporating the MEWCP classification system and a flow chart into the investigation provides a valuable discovery tool and some insight into the information that clients may find invaluable.

A word of caution to those asked to opine regarding potential liability exposure for the identified parties. The governing law within the applicable jurisdiction will need to be incorporated into the investigation. This is critical in that an OSHA citation based on the MEWCP is not necessarily synonymous with a negligence per se finding. With respect to a liability analysis, it is important to recall that if a particular jurisdiction has deemed that a violation of the MEWCP is not negligence per se, that same violation may remain as viable evidence as it applies toward a general negligence finding.

OSHA's classification system has expanded the potential for an OSHA citation against employers on a job site regardless of the presence of an employee of that specific employer on the construction site. In addition, the MEWCP has injected the need for an employer to exercise reasonable care and reasonable diligence when attempting to prevent and detect violations on the accident site. The application of a reasonable standard to an OSHA interpretation is a variance from the standard letter of the law interpretation that is typically applied to an OSHA regulation. OSHA's decision to incorporate a reasonable care standard into the MEWCP draws immediate attention as reasonable care is a fundamental element in the determination of negligence. A common definition of negligence is the "failure to exercise the care toward others which a reasonable or prudent person would do in the same circumstance." If tasked with evaluating liability exposure as a part of your investigation, a review of the guidance provided by OSHA in CPL 02-00-124-CPL 2.0.124 is highly recommended as it provides valuable insight. This OSHA document addresses the determination of reasonable care (in the application of the OSHA standard) by way of providing specific examples of how to classify the parties as well as the factors to examine in establishing reasonable care. Furthermore, this CPL provides specific factors which may be examined in evaluating the level of care that is (or should be) being performed by an employer. For example, with respect to a controlling employer, it contains the following factors to examine when evaluating the controlling employers need to perform inspections in exercising reasonable care:

"Factors Relating to Reasonable Care Standard. Factors that affect how frequently and closely a controlling employer must inspect to meet its standard of reasonable care include:

a. The scale of the project;
b. The nature and pace of the work, including the frequency with which the number or types of hazards change as the work progresses;
c. How much the controlling employer knows both about the safety history and safety practices of the employer it controls and about that employer's level of expertise.
d. More frequent inspections are normally needed if the controlling employer knows that the other employer has a history of non-compliance. Greater inspection frequency may also be needed, especially at the beginning of the project, if the controlling employer had never before worked with this other employer and does not know its compliance history.
e. Less frequent inspections may be appropriate where the controlling employer sees strong indications that the other employer has implemented effective safety and health efforts. The most important indicator of an effective safety and health effort by the other employer is a consistently high level of compliance. Other indicators include the use of an effective, graduated system of enforcement for non-compliance with safety and health requirements coupled with regular jobsite safety meetings and safety training.

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f. Enforces the other employer's compliance with safety and health requirements with an effective, graduated system of enforcement and follow-up inspections.”

As seen above, the CPL provides an outline for an investigator to use when examining a controlling employer need to exercise reasonable care. This listing of focus areas provides an invaluable reference when determining which documents to review as a part of your investigation. Would you have normally included project management plans (items listed in a. and b. above) or the subcontractor vetting efforts conducted by the contractor (items c. and d. above)? This is just one example of how a construction site investigation may require more than conducting a scene inspection and obtaining photographs. As you might imagine, the multi-employer work site concept is an area that has become hotly contested by both construction trade associations and litigants and one which is receiving intense scrutiny within the courts. Undoubtedly, this legal scrutiny will likely result in continued modification of the OSHA standard as well as the case law in the applicable jurisdiction.

Regardless of the existence of OSHA citations or the prevailing rulings within the governing jurisdiction as to a MEWCP violation being negligence per se, the classification system and suggested areas of investigation spelled out within the MEWCP remain very useful in deciphering the maze of employers on a construction site. Recalling that the fundamental questions to be answered by an investigation center on the identification of who, what, when and how, the MEWCP lays out a framework for classifying each party that is identified and further details how each party is expected to exercise their duties and responsibilities and further provides guidance on what factors to identify in making those classifications. It is critical that the investigation be properly targeted to obtain the information on which to properly identify, classify and evaluate each employer's role on the construction site. The use of OSHA's MEWCP's classification system provides a template on which to base both investigative questioning as well as subsequent reporting. Utilizing this template provides a framework for clear communication that is easily transferred into a coverage and/or liability analysis and which is based on a federal regulation that is often utilized as the basis for both legal claims and legal defenses.

About the Author:
Keith Hill has been a licensed investigator in the State of Texas since 2004. A graduate of Stephen F. Austin State University and San Juan College (where he received Presidential Honors), he started his career conducting insurance fraud investigations while employed for a large insurance provider. His insurance background led to a legal investigator position with a law firm where he continued to utilize his insurance investigation experience. Keith has received extensive training in vehicle accident investigation/reconstruction and forensic photography. Moreover, Keith has achieved the designation of a Certified Safety and Health Official and Specialist in Safety and Health from the Texas A&M Engineering Extension Service. He also achieved the designation of Safety Health and Environmental Professional from the University of Texas at Arlington.
As an FBI Agent, weeks before the 9/11 bombing I was assigned to assist in a telephone wiretap investigation in the Dallas/Fort Worth Metroplex involving a group of Hispanic drug dealers. Shortly after my assignment I was called by one of our Spanish language specialists, monitoring the wiretap who advised me that she had called out the surveillance squad because the subjects were about to engage in a 12-kilogram cocaine transaction. Quick action was necessary.

Our interpreter was a young lady from New York who hailed from Puerto Rico, but our subjects were a mix of local U.S. citizen Hispanics and illegal aliens from Mexico; a mixed racial bag. Our interpreter was very confident and asked me if I could assist in listening to the recording. I asked her to play the interception. I
listened intently. After listening and processing what I heard, I immediately directed the interpreter to call back all personnel and send them back home. “Why?!” she protested. She was incredulous and confused at my directive. I then explained that the bad guys had ordered groceries including a dozen eggs. What I heard had nothing to do with cocaine or a drug transaction.

The dopers used a legitimate Spanish word, “blanquillo,” common to northern Mexico and throughout the southern U.S. rather than the more common word “huevo” for chicken egg. Blanquillo can also mean, “little white one,” whitish, and the cluster of eggs laid by insects, reptiles and most certainly a common term for chicken eggs. However, “blanquillo” is not used by all Spanish speaking cultures. Our well-meaning interpreter was not versed in the vernacular used by blue-collar Mexicans. The primary reason was that in her Latino culture this word was simply not used. What’s interesting is that had the bad guys been Colombian, Cuban, Salvadoran or just about any other Spanish speaking group from the Americas, the interpreter would more than likely NOT have made this innocent mistake.

A 2013 U.S. Census Bureau statistic puts the national Latino or Hispanic population at about 39 percent, and the statistic for Texas at about 38 percent. It is the opinion of this writer that the actual value of this percentage is much higher. Nonetheless, what is important to us who deal in criminal defense is how many of these folks only speak Spanish and the level of their education. Lastly, what part of the world are they from? Through experience about 95 percent of the clients that I am hired to help defend may not have completed a high school education if they have an education at all. The client’s education, and country or region of origin is a combination that needs to be assessed when evaluating their defense, if a defense exists to benefit them. As demonstrated by the mistake of the interpreter in a language she knew well, all Hispanics do not speak a “one size fits all” Spanish. Now let us assume that your defendant – a native Spanish speaker – is read his Miranda Rights by a police officer whose second language is Spanish. Nothing wrong with that; however, due to his lack of command of the language, he proceeds to advise the defendant in Spanish by saying what translates into, “If you value your life, you should cooperate and talk to me.” I venture to say that this declaration will likely end up in the form of a motion to throw out any statement the defendant may have made, even though that defendant may have signed a Miranda Rights form. What is important here is that this defendant may come from a region of the world where corrupt police and military members participate in kidnappings and killings and where Miranda Rights do not exist. Therefore, the whole ritual of administering Miranda Rights to Hispanics from other countries is in itself foreign to them. The finite nuances of the Spanish language are best left to scholars in the field. However, the truth is that most of us born into Spanish speaking families in this country become a type of “lost boys” in the Neverland that is America. We learn to speak Spanish in the home, not formally. This Spanish is laced with slang and invented words commonly called “Spanglish.” The Hispanic immigrant, legal or illegal, brings his vernacular from the Spanish speaking culture he hails from. They may use and/or avoid certain terms or words that may differ as much as the cuisine they are accustomed to. When defending this variety of individual, knowing something about their education and their particular Spanish speaking culture may make the difference in a successful defense strategy.

About the Author:
Gilberto “Gil” Torrez of Taurus Investigations, LLC is a retired FBI Agent and currently a licensed Private Investigator, Security Consultant and Instructor. Gil is also a veteran of the U.S. Air Force.

Gil is a graduate of Southwest Texas State University where he earned a Bachelor of Science degree. As a retired FBI agent and Private Investigator, Gil is sought as a contributor to Fox News Radio and local television networks with respect to Criminal, National Security and Terrorism matters. Gil is a member of the Texas Association of Licensed Investigators (TALI) and the Society of Former Special Agents of the FBI.
For 19 years, I have conducted a wide variety of interviews from post-arrest jailhouse questioning to extensive complex interviews where the suspect has been charged with multiple homicides. Whatever interview/interrogation school or theory you adopt - Wicklander, Reid, Kinetic, Dynamic - what they all have in common no matter what their basic philosophy is that they all preach that you must learn as much about the person you are going to interview. They basically teach that the interviewer must find out as much information about the “who, what, when, where and why.” The tocsin they sound is preparation, preparation, preparation to help guide and direct your line of questioning. But as an investigator do you always have time to fully and comprehensively prepare for a sit down with a witness or suspect? In a rapidly evolving, fast moving investigation many times our work does not allow us the luxury for complete preparation.

When you’re hitting the ground running and grinding through a rapidly developing case you must be flexible and be able to “go with the flow.” In those instances, the information can come quickly or inaccurately or both and you must be able to follow up with the next lead or witness without preparation. No one likes operating this way; it’s an uncomfortable risky situation; moreover, it runs contrary to our fundamental instincts; it can give us a general attitude of “being off our game.” But an effective investigator must learn and master the art of the cold interview. The investigator can effectively learn to roll with it and still absorb a tremendous amount of valuable information in a short time in the early stages of a case. None of the ideas presented in this paper are original in anyway. These ideas have been presented to me in some form or fashion from various classes, webinars and schools that I have taken over the years. What I present is what I found to be important and a good place to start for someone new to the profession or old in the business.

“This is a very complicated case Maude. You know, a lotta ins, a lotta outs, lotta what-have-yous.”
(The Dude, Big Lebowski)

Arguably, the first impression establishes rapport! Rapport is critically important especially within the context of a cold interview. Your appearance is strongly associated with establishing rapport. Whether you are knocking on an apartment door, speaking with someone on the street or visiting witnesses at a local business; your appearance has tremendous importance.
No matter what people tell you, it matters! I am not talking about if you’re looking like Thomas Magnum or “The Dude” from the Big Lebowski, I am talking about what you are wearing and your personnel grooming. You are not “The Dude”, this is a profession and you should always present a professional appearance. No, you do not always need a suit and tie, they often cause people anxiety in persons in impromptu situations, but you should be dressed in professional business attire. If you wear a beard or mustache it should be groomed and trimmed, your hair combed, no ball caps. You want to give the impression that when you got out of bed that morning it was with a purpose, not just another day to kill time. Is this superficial? Of course it is, but you are approaching strangers and asking questions which at times can potentially be very personal - letting them know you care about how you project yourself will make the initial contact and conversation go easier. Does it seem like common sense, well it is, but we all know some fellow investigators who simply don’t care how they look and how they project themselves. You are a professional; dress like one.

“Respect can be as contagious as measles if it is properly spread”, (Paladin, “Have Gun Will Travel”)

Second, check your attitude at the door and smile. Countless studies have shown that smiling can assist in dropping a person’s guard, set them at ease and build a relationship or connection. It undoubtedly gives your witness or suspect the impression that you are approachable. You must compartmentalize your life when you are in the field. There are going to be days when the weather is cold and rainy and your employees call in and place you in a bind with other cases, or you are having a hard time collecting monies owed from a client - all this affects your mood and can potentially bleed over into your tone of voice and your body language. Humans are very observant and intuitive. Your witness, victim or suspect will mostly likely sense your mood especially when they are already in a state of hypervigilance. You must realize you are playing a part; you are on stage. Put your game face on! We all are different people and act differently depending on the company and the social situation. So, play your part, show respect, sincerity, interest, and empathy when appropriate during the interview. One of the simplest way to place a person at ease and build rapport is mirror the person’s body language. It is subliminal but it works to lighten the situation. What I am suggesting is not to be fake or completely out of character, because people will notice and shut down. Take what you really feel and place it on the back burner so you can accomplish your mission.

“Too much positive is either scared, stupid or both. Reality is uncertain.” (Spenser, “Early Autumn”)

Third and final; now that you have gotten in the door, what do you do? Firstly – listen - silence is golden. You are not there to show the person how smart you are and how much you know, or how educated and worldly you are; you are there to learn, to gather information, not give it. So, let them talk. You give a person an open-ended question and let them run with it, taking notes can show an individual you are interested it what they have to say. If they go to fast, slow them down by asking a follow up question, then let them continue. Your language should be clear and concise - no slang or street terms - that does not mean using words that people do not use in everyday conversation. The person your interviewing does not need to know how expansive your vocabulary is - keep it simple. No acronyms, no industry terms, no insider language. Take your time; this is a marathon not a sprint; do not rush a person when they are giving you information, you may miss something that ends up being important later in the investigation.

If you are in the investigative business for any amount of time, you will at one time or another be in a situation where you will need to conduct a cold interview. Whatever your approach is to conducting cold interviews armed with very little or no advanced information, it is important to remember these few simple rules, appearance, attitude, and patience. You cannot always control the location, person, and type of interview. But the investigator that can adapt these rules and respond to rapidly evolving situations. By being flexible, patient and adaptable you will find success and gain the information you need to further your case.

About the Author: Chad Stanbery

Chad, a graduate of Appalachian State University, is a Private Investigator based in Charlotte, North Carolina. A former Criminal Investigator with Mecklenburg County Public Defender’s Office, he has over 15 years’ experience in the field of investigations. His company, Stanbery Investigations provides investigations and consulting for clients throughout North Carolina. Chad’s primary focus is criminal and civil defense investigations. A veteran of the U.S. Navy, Chad is currently serving as a Staff Sergeant with the North Carolina National Guard.
Surveillance
Foul-Up’s & Follies

For those investigators who have spent many hours behind the windshield of a car performing surveillance, either during time with Law Enforcement, early on as a Private Investigator, or both, you’ve realized that learning the tricks of the trade is truly an art form. It requires either someone coaching you or simply being thrown to the wolves to figure it out for yourself. Either way, the first several times performing surveillance, there will be Foul-up’s and Follies. Honing your surveillance skills requires a few errors along the way. A few tips—have a sense of humor….. laugh at yourself even though there maybe times you “escape your mistake” by the skin on your teeth.

At the beginning of my investigative career, I was blessed by having an exceptionally patient and skilled trainer. A few skills, experiences and boo-boos I picked up on my first training day (remember self-deprecating humor is important):

1. Learn how to sit still, literally be still and stop fidgeting, for four hours minimal. For those people with ADHD or a similar disorder, surveillance or extended surveillance may not be for you. This isn’t the time to read a book because you’re bored, check your email, or play a game on your phone. You have to be still, focus, stay alert, and most importantly…awake;

2. When you move to readjust to do so fluidly without rocking the vehicle. I wish I had kept score for every time I was told to be still - I’m sure I would’ve had the highest score; a prize would have been in order;

3. What not to wear to avoid getting noticed inside the vehicle despite your window tint. This was not the time to wear the bright red and white checkered shirt and red shorts. I was told I looked as if I were attending a picnic rather than a surveillance and politely asked if I had something else to wear. Fortunately, I had a dark colored shirt in my car;

4. What not to eat and drink during your four to eight hour stakeout. I knew it was going to be hot and we couldn’t keep the vehicle running, so I made sure to drink plenty of water before we left, brought water bottles in a cooler, with chips in a bag, carrots, and apples for snacks. What’s wrong with this whole scenario? Nothing I thought initially, until 30 minutes into surveillance I asked where a person went to the bathroom on surveillance;

Obviously, these experiences were all the mistakes I made on the first day while performing a workers’ comp case. Needless to say, my trainer didn’t want to get burned so the scolding came swift and to the point. The scolding worked – on the 2nd day I was a little bit better.

During my first surveillance, without supervision, the “scheduled time” was 4 hours of surveillance on a Divorce/Disabled Spouse Case. How hard could this be? By this time, I’ve done about seven to eight ride-along’s and knew I had this down. The camera was charged with an extra battery on hand and one more memory card for backup. Camera affixed on the monopod, research had already been performed on our subject, I had a great story for when a neighbor approached me, local P.D. notified, and here we go. My subject was disabled so all I had to do was watch to see if anyone arrives or departs and any activity is video’ed at the residence. Simple enough right? Well…the first thirty minutes into the surveillance, subject exits the residence and begins yardwork, planting flowers, pulling weeds, mowing, trimming bushes, bending, stooping, kneeling and appeared to be getting around just fine. My subject, according to the information provided by client, was disabled and couldn’t get around without assistance so they needed five figures monthly for spousal support. After the first two hours of continuous activity, both camera batteries were exhausted and one 4GB memory card was full. Luckily, a power converter had been plugged into the cigarette lighter to keep the camera running but the vehicle key had to be turned forward. I had informed the Case Manager, my trainer, early on about the activity and they were proud I was able to be there to get the money shot and would make the case my first time out. After the approximate two hours of activity, subject appeared to have dwindling energy and an aching back, therefore, replaced the yard trimming tools in the garage and closed the door. Whew, that was great, about an hour or so left to sit.

Much to my surprise, thirty minutes later, my subject exited the residence, walking with no problem and appeared to have showered and cleaned up ready for the day’s activities. They walked around the yard inspecting the mornings’ efforts and proceeded back into the residence. Only moments later, the second of three garage doors opened and out backs my subject, driving the vehicle the client claimed to be in possession of due to subject being too disabled to drive themselves. Great, here we go to see what more they are capable of. Because the camera had been running on the power from the car, (without the engine running), my battery was dead, THE CAR BATTERY. I wasn’t going anywhere and my subject pulls away without anyone to follow. Luckily they were only gone a little over an hour; however, they returned with a trunk load of groceries, all of which they unloaded with the garage door open, walking in and out through the front door of the residence. Fortunately, I managed to charge my camera batteries on the remaining juice from my car battery and was able to video the grocery unloading. Luckily for me, the subject remained inactive for the remainder of my extended stay in the neighborhood eventually being rescued by someone with jumper cables.

Written & experienced by: Connie Briggs
Briggs Investigations Group
Legal Compliance and Ethics: Obedience and Good Purpose

That which you must do, are allowed to do, are not allowed to do, can do, cannot do: these have to do with legal compliance. These are actions that are encouraged, discouraged, forbidden, or sanctioned by force of legal contracts, rules, and laws and the enforcements thereof.

That which I should do, should avoid doing, feel compelled to do by some inner drive, wish to do despite the probability that it will harm me, choose to do though it will not profit me in any material way: these have to do with ethics or with “good purpose.” These are actions that are prompted by an inner voice, a dedication to one’s duty, faith, or a well-formed character, and are sanctioned by what is sometimes known as “something higher or bigger than myself.”

The remarks above are overly simple, of course. For, surely, one can act from both motivations at the same time and just as surely, both are proper. Too often, however, people never dig deeper than the legal level to see what “inspired” those rules or laws. The better and best of those rules and laws come from a deliberate application of ethical and moral “good purposes.” To illustrate the important difference between these two motivators for appropriate behavior, I will share a story.

I had a colleague who was a member of the Mohawk tribe. He said that it was his tribe’s tradition that when the leaders were to meet to generate or enact some important tribal mission and activity, the call would go out for them to assemble and discuss those matters. Obviously, in those cases they would gather to construct a plan of action with which they would want the whole tribe to comply. It would have, as it were, a legal force on all loyal members of their community. But before coming to the meeting, it was also a traditional personal expectation that the leaders would come “with good purpose.” That meant that you would join the discussion if and only if you intended only help and goodness for the tribe as the outcome of the plan and the meeting. If you meant harm and malice, you were not to come to the gathering. That was the ethical requirement for even participating in the meeting. That was the moral foundation and context for anything that one would propose or accept at the gathering. It was essential and non-negotiable. It went far beyond an interest in what we now call a “win/win.” Your “heart” had to be right for you to have any input into the important matters of your community. Your conscience had to be clean of malice and deceit. You had to show up “good” and wanting to do only the good for all concerned.

When we comply with rules and laws, I happily settle for sheer legal compliance regarding the right thing to do. But, in the same vein, I truly always admire and wish to imitate those who go far beyond legal obedience and who do the right thing even if compelled to do so by no other force than their own inner, firm set of deeply held values. When operating without existing rules and laws, those people would still act well. When constructing new rules and laws, those people will try build “with good purpose.” Obedience is good, but “good purpose” is better.

About the Author:

Daniel Primozic is currently the Director of Curriculum for the FBI’s Law Enforcement Executive Development Association. A longstanding advocate and instructor for various law enforcement associations and training centers, Daniel was also a faculty member at Santa Fe Community College. He received his Bachelor's and Master's Degree in Philosophy from Southern Illinois University. Daniel achieved a PhD in Philosophy from the University of New Mexico.
What on earth do “Water Protectors”, “Doxxing”, or “Valve Turners” have in common?

These arcane terms describe different tactics used within the murky world of pipeline activism and protest. Pipeline protests – a familiar headache in the oil and gas industry – had been in remission until last July when Dakota Access, a subsidiary of the Texas-based Energy Transfer Partners, received permit approval by the North Dakota Public Service Commission to begin the construction on a four-state crude oil pipeline. The proverbial flag dropped, bringing groups from the Red Warrior Camp to Black Lives Matter out of the woodwork and onto the bleak plains of the Standing Rock Sioux Tribe’s reservation in North Dakota. The gathering evolved quickly into a mixed-bag of Native American tribal representatives, (the Ponca, the Cheyenne, various other Sioux tribes, a representative from the Amazon basin, and more) eco-grievance groups, and others all protesting that the pipeline threatened the reservation’s water supply and traversed culturally sacred sites.

As a matter of record, peaceful protest is a constitutionally protected form of free speech that has a long and honorable tradition in the U.S. Our beef is not with those protestors who came to voice their opposition peacefully. No, what is of real concern is how peaceful protest movements like this one and others are exploited and abused to the point that they offer cover for violence, for further “trashing” of the environment (the sad conclusion of this protest event) or for casing activities by threat actors using the herd of “sheep” for cover while they gather surveillance data.

The above said, considerable investment had already been made in serious and expensive studies by the stakeholders involved, concluding that no sacred items or land were traversed along the route, nor that the pipeline was buried 90 feet beneath the body of water it had to cross. These facts were drowned out in the cacophony of pro-
test that extended into the winter and finally adjourned last month. The only ecological damage experienced so far has been the massive amount of refuse and hazardous waste left behind by these environmentally sensitive youths, and a large mud pit scarring the hillside where they camped. If environmental sensitivity was the point of the demonstration, that point lies dead and buried in the images of the frozen garbage left behind.

“Water Protectors” describe exuberant individuals willing to be used as cannon fodder. These youngsters man the barricades and gulp down the tear gas when it inevitably flows. As the name implies, they are there to “protect” the water supply for the Standing Rock Sioux tribe. They camped out on private property, blocked access to the public right-of-way of the pipeline, and set construction equipment on fire. The authorities eventually responded with pepper spray, bean bag bullets, water cannons and dogs in retaliation. The blood & dog bite marks, tears, and bruises are all useful for the cameras and that is precisely why they are exposed on the front lines. Publicity. The protestors have even been known to bring their own camera crews, just in case the national media misses some galvanizing imagery.

Meanwhile, others affiliated with the protestors used their internet savvy to access private information about local law enforcement and their families, and post anonymous threats. This is called “doxxing,” and it certainly rattled the nerves of authorities in the area.

Finally, a few fanatical “true believers” from a group known as Climate Direct Action (CDA) simultaneously broke into at least five different pipeline sites on 12 October, snapped the chains on pipeline valves and briefly shut down each one of them. In doing so, these so-called “Valve Turners” successfully executed the largest coordinated attack against U.S. Energy Infrastructure ever by an environmental group.

All of this occurred before the election of President Donald Trump, the renewal of the XL Keystone Pipeline project, and expedited permitting process for the contested Dakota Access pipeline.

The threat of an escalation of this kind of aggressive, in-your-face activism witnessed at Standing Rock is high given the history of the groups involved, and their logistical sophistication. To believe that these groups are strictly grass roots activists with altruistic motives would be short-sighted. The anti-pipeline movement is less about pipelines, and more about identifying a manageable tactic to hurt Big Oil. These activists are exceedingly well-funded and led through something known as a “directed network” campaign that involves strategic coordination from various entities headquartered in Washington, D.C., San Francisco, Chicago, and Seattle. This “top-down” strategy provides funding and advance coordination for a host of grass roots organizations involved in activism against pipelines, the fossil fuel industry, and other extractive industries that are in the crosshairs of environmentalists.

With organization and funding, what escalates this threat further is the recent executive order signed on 24 January by President Trump reviving the Dakota Access pipeline project as well as the long-dormant Keystone XL pipeline project. The order also expedites environmental reviews of other infrastructure projects, a measure certain to upset groups who manipulate the review process to stall projects. This executive order smoked out clear statements of intent from these groups, for example, Greenpeace Executive Director Annie Leonard stated that a broad coalition of opponents, “indigenous communities, ranchers, farmers, and climate activists managed to block these projects in the past and would not give up now. “We all saw the incredible strength and courage of the water protectors at Standing Rock, and the people around the world who stood with them in solidarity,” she
said. “We’ll stand with them again if Trump tries to bring the Dakota Access Pipeline, or any other fossil fuel infrastructure project, back to life. We will resist this with all of our power, and we will continue to build the future the world wants to see,” she added.

Leonard’s statement is mild, compared to other groups. The Red Warrior Society, which claims it is a group “building a culture and community of Resistance on every level” is representative of the “grass roots” eco-activist groups found at pipeline protests and other related anti-oil protests around the country. They take the rhetoric further. Following the Standing Rock incident, they stated in a communique on the internet that, “one of the lessons we have learned that has inspired us is the very real need for a mobile resistance movement that is ready and willing to dismantle the capitalist regime that is destroying our planet. The mobilization of resistance is key to shattering the oppressive illegal military occupation of the so called ‘Amerikkkas’, for too long we have lived with broken treaties, genocide, racism and colonization.”

In summary, we believe that the current climate of threat to oil and gas pipelines and oil and gas companies in general, is ripe for escalation. There is recent history of violent protest and coordinated direct action against pipelines. As noted, there is an increasing sophistication in the activist community between strategic planners with access to funding, and grass-roots organizers who are ready and willing to execute protest or direct action operations against pipelines and/or the oil and gas industry (including corporate headquarters and supporting financial institutions). The operational environment, since the recent election, reflects a climate supportive of protest and “resistance” to the shift in political power within the country. There is stated intent to launch more robust and frequent activist events by organizations; within this context, there are more specific and ominous statements of intent by fringe groups that could engage in eco-terrorist actions. Finally, these groups are capable of coordinated action, as demonstrated by the simultaneous October 2016 shutdown of five pipelines by CDA operatives.

With the above threat picture in mind, we strongly recommend oil and gas companies re-evaluate their physical, procedural, cyber and personnel security countermeasures to build resilience into their infrastructure, corporate presence and personnel. While the good news for the industry is its steady recovery from the slump of 2014 – 2016, its renewal of upstream activity will bring with it an uptick in the kind of activism outlined above…not all of it peaceful.

Charles Goslin, CPP

Charles is a Senior Operations Advisor who draws on 30+ years of experience in international security, intelligence, foreign affairs and business in both the public and private sectors. He is a retired CIA operations officer, with a career that bridged both technical and HUMINT intelligence disciplines. Charles is currently a subject matter expert and partner with Butchko, Inc. located in Tomball, Texas.
Thoughts on What a Balanced Life Might Look Like

Since high school, I’ve always been a big fan of journaling - recording thoughts, ideas and documenting both personal and professional setbacks. Over time I have written down reflections on what a balanced healthy life might look which I want to share. I welcome your thoughts. Please feel free to email me at IJVikin@gmail.com.

1) Faith.
Maybe not politically correct, but I believe faith in God or a higher power grounds you, humbles you and helps you lead a more centered life.

2) Self-less Service.
Service to your faith, family, profession and teammates – always strive to be someone reliable, ready to serve and contribute……always ascribe to be that go-to person who can always be counted on. Be an authentic individual with the highest standards of integrity when the time comes to step up which may require sacrificing personal or professional time. Know your priorities and don’t waiver.

3) Mission First.
It took me until my 40s to realize it’s not about self. I finally matured past the point of chasing promotions, accolades/ trophies – and have come to realize these are fleeting and ultimately unfulfilling. Turning this corner is incredibly liberating.

To be clear. It’s not about you; it’s about others and the mission. Know your mission and your people - it can lead to fulfilling personal goals and benchmarks. Solely pursuing personal wants and desires can be like chasing a ghost.

4) Patience.
Not unlike the SEALS, Green Berets……special operators are quiet and humble professionals who are “grinders.” There’s an understanding that huge leaps forward are few and not the norm; most advancement takes time - incremental and evolutionary. Keep moving forward, never stop improving, embrace training, have a tremendous thirst for knowledge and keep an open mind. Daily small steps forward lead to big gains over time. Stop looking for short cuts and get to work.
5) Understanding the difference between “Experience” and “Wisdom.”
Everyone has experience. Wisdom, I would argue, is derived from your “emotional intelligence” - the ability to self-reflect, to be introspective and then self-regulate. Self-regulation can only be achieved once you’ve identified your blind spots, your weakness and your “phantom values” – those things that you secretly pursue in life professionally and personally that might override your better judgement and lead to unethical choices.

Honestly evaluate and admit to your mistakes……take ownership, forgive yourself and learn to step back and face your “opponent” another round in the ring.

6) Knowing What to Do versus Actually Doing It.
Arguably most of life’s decisions are fairly simple, direct and straight forward. I know this is not always the norm; some decisions are complicated but most crossroads are black and white. We, as humans, insert the grey into those black and white areas.

Most of the time we know what is the “right thing to do.” The tough part is actually doing it. It’s the doing it that is hard.

7) Humor.
Never take yourself too seriously. Always find humor in things that happen in your life. Always have a good laugh at yourself; self-deprecating humor is a great quality.

8) NEVER stop learning.
Learning is indispensable to improving oneself. Never accept stagnation. There is always something to learn; always someone to learn from. Always have a thirst for knowledge your entire life – improve, evolve and always “shed skins.”

9) Don’t Stray Too Far from Your Purpose.
Vacations are great. Hobbies are nice; but they aren’t your life’s work. True professionals don’t live for the weekend. They find engagement, fulfillment and joy in their tradecraft and it’s never far from the front of their mind. Work isn’t a burden – it’s part of who you are – and enriches your life and the lives of the others who you serve.

This is not to say that you shouldn’t take time out for yourself to decompress and recharge your batteries……. doing some form of fitness training and a healthy diet, of course, are imperatives.

10) Hardiness.
You’ve got to be able to take the hits, possibly get knocked down, stand up and get back into the fight. This takes heartiness, but also forgiveness (mostly of yourself), humility, and more work on the fundamentals. Never stray from the fundamentals!

An interesting dynamic happens in life. The older you get, the more experience you have, the more financially secure you become – complacency then sets in; you lose your hunger/ your drive/ your passion.

Many in their later-years lose the willingness to take a risk – professional, personal, etc. Avoid this trap! Don’t get stuck in that worsening, boring, soul crushing “rut” of comfort. Know that change is exciting, stimulating and invigorating. Seek to live a life of adventure and enthusiasm.

11) Gratitude.
Always focus on the positive and be thankful in both your professional and private life. Each and every day appreciate how fortunate you are, how amazing your life is, and give thanks for those people who enrich your life.

About the Author: Ivan J. Vikin
Ivan, a graduate of the United States Coast Guard Academy, has been in public service for over 30 years starting in the U.S. Army, the Coast Guard and as a Federal Agent. After retirement from the federal government, from October 2015 to July 2016, Ivan was Department Chair over the School of Criminal Justice at Remington College.

Currently, Ivan is a licensed private investigator, personal protection officer and a Technical Surveillance Counter Measures technician. He is currently working for TSCM America doing eavesdropping detection and private investigative work for Briggs Investigations Group and Sannhet, Inc. Ivan is also Editor for the “The Texas Investigator” magazine.
Weapons and Executive Protection

As an Executive Protection practitioner (“Operator”), the more “senior” you become the more you may conclude you don’t need to have a firearm as part of your toolbox. I have seen this habit of leaving a firearm at home develop and strengthen over time from a number of my colleagues. There are a variety of factors (e.g. legal issues, training, complacency, culture etc.) that can impact and overwhelm your fundamental instinct as an Executive Protection officer to carry a firearm.

Moreover, in today’s litigious climate, those clients you’ve been hired to protect – celebrities, athletes, corporate VIPs, and wealthy individuals - may perceive that they have “more to lose” from civil or criminal exposure that far outweighs the added protection afforded by Operators who are carrying firearms. In today’s world, to most VIPs, the “risk” of gun-toting protectors isn’t worth it. My research has shown unfortunately that most executive protection work is performed un-armed.

Of course the client dictates the terms of the protection contract but absent any contractual prohibition, a firearm while performing EP work should be a critical tool that should never be left at home. Just carrying a firearm, however, doesn’t make you a proficient and effective Operator with sound judgement. I have met far too many executive protection officers who fail to train with their weapon regularly, who are not fully aware of all the legal rules and legal traps (which can cause hesitancy) and most importantly don’t possess a warrior mindset. In other words, there are some Operators who carry their firearm but are woefully unprepared to properly use the tool.

I have always trained and preached that a firearm is a tool not dissimilar to other tools you might carry such as a radio, restraints, OC spray, etc. A weapon is simply a tool to fully equip you for any situation; a situation that may turn tragically violent. A weapon of course should be a tool least depended upon but not forgotten, not ignored - a tool kept in its proper prospective.

Some pitfalls:

Here are some dangers with weapons in Executive Protection. They can be a crutch professionally, psychologically, emotionally. Carrying a weapon can dangerously compensate or mask your professional and personal weaknesses. Carrying a weapon can provide a false sense of professionalism, security, ability, courage, comfort, self-esteem and authority. A weapon can also give you an ego-rush or shot of adrenaline that can override proper judgement and cloud your ability to make the right decision in a rapidly evolving situation.

I am pro-gun; there can be projects where it is a requirement to carry a weapon (contractual obligation, legitimate threat, client’s peace of mind, deterrent, etc). The corporate culture I reside in dictates an unwritten rule where my coworkers and I always carry a weapon. This norm also dictates that we consistently train and remain proficient.

Author Gavin De Becker, in the research he conducted for his book The Gift of Fear, concluded that a violent situation can unfold in “Just 2 Seconds” - your time line is exceedingly compressed. Moreover, your adversary has the advantage because he (in most cases) is dictating the time and location for the confrontation.

So what I am suggesting to you is this - executive protection work at a professional level is all about what you do before and after those 2 seconds. It’s more than just being a sharpshooter. It’s about staying cool under pressure, having sound judgement, protecting your client while utilizing cover or concealment, being effective with your firearm from any position, etc......the list goes on. Moreover, executive protection is about proper planning and preparation for and prevention of those 2-second events along with the recovery if an event occurs. Every executive protection project, its requirements, the potential threat(s) and the environment are always unique.

So as an Operator, before you leave your house, perform an honest self-evaluation about why you are carrying a weapon and, most importantly, should you be carrying. EP work is not for everyone! If you perform executive protection and carry a weapon, do so for the right reasons and with the right competency and mindset. Let’s all be true professionals as we walk not just as we talk.

About the Author:

Kent Brown has been a part of the security industry since 1980. A lifelong resident of Texas, Kent is a licensed Personal Protection Officer and Private Investigator. He has built his professional life working projects related to Executive Protection (EP), intelligence gathering and threat analysis. Kent works for Frame Work Protective Services and Investigations where he develops and conducts training; supervises field operations; and develops strategic plans. Kent is currently a member of the American Board for Certification in Homeland Security, ASIS’ Executive Protection Council, and longstanding member of TALI. Kent has a passion for training and elevating the professionalism of PPO and Executive Protection practitioners across Texas. He is a strong advocate of education (both legal and operational), improving the State’s certification process, and improvements in company policies.
Over the twenty years that I have been in TALI, I have seen different things come and go. When the U. S. Congress passed the GLB act there was a lot of talk of the “unintended consequences” that Bill caused for our profession. For several years that was the catch phrase when dealing with, not only the U. S. legislature, but especially the Texas legislature. For a time, it seemed that our lobbyist, Keith Oakley, spent all his time putting out fires at the Capitol in Austin. When there was a bill that would hinder our ability to obtain the information we needed, Keith would find it necessary to visit the author(s) of that bill to explain the “unintended consequences” if that bill were to pass it's initial form. He would suggest to the representative or the senator that, surely, they did not mean private investigators licensed by the Texas Department of Public Safety. Well, of course they did not and the bill might then carry an exemption for us.

There are other situations that come and go, but there is a sickness in TALI that rears its ugly head from time to time. It’s not always active, but you bet it’s there. It’s kind of like malaria, it might be dormant and fool you into thinking it’s cured but it’s there right under the surface and just waiting for conditions to be right for it to flare up again. That is the TALI virus.

The TALI virus is a sickness that permeates every association run by volunteers. The symptoms of the TALI virus are seen in the expressions of its members’ comments. You here it when a member says, “Why should I take time away from my business to walk the halls at the Capitol? Someone else will do it.” You can also hear the symptoms when several members gather and say, “Why don’t the members of the Board of Directors see that our way of handling this situation or that situation is better than what they’re doing now?”

There is a cure for the virus, but those infected with it rarely take advantage of the cure. To eliminate the complaints, members can run for office and get themselves elected to the Board so they can change things. from the inside. Infected members want to complain, gripe and b…well, complain, but they don’t want to do any of the work necessary to make change happen. Another symptom I hear from time to time is, “Well, my business is so heavy right now that I do not have the time to dedicate to being a Board member. But that doesn’t mean I don’t have a right to complain. I pay dues. That buys me the right to complain about the Board.”

Maybe it does, but does it give you the right to spread dissention throughout the Association? Years ago, we had a small group of members who did not believe we should keep our previous administrator. They were able to obtain a copy of her contract and wanted to have a Board meeting excluding the administrator so they could make accusations against her without her presence. Unfortunately for the group, the administrator was also a member and members cannot be excluded from Board meetings. One of the group even ran for office and got elected. The member was adept at accusing the administrator of “double dipping” by being paid as administrator and being paid a commission on selling magazine ads.

This all came to a head at a conference in Houston where the elected member was impressed with the fact it would have been better for that member to have done the member’s own work correctly before attacking the administrator. In the end, it turns out the
group had gotten a copy of the contract (which any member can do) but they had an old contract. The administrator's current contract included those disputed duties in the job description. Had this group chosen to work from the inside, or even approach the Board for the correct contract, they would have seen that all their complaint was based on misinformation. Instead, the TALI virus reared its ugly head again and took over the group's actions. After that Houston conference, the member of the small group resigned from the Board, left the hotel and, to my knowledge, never returned to a TALI conference. Another member of that small group also never returned. I believe neither of them are TALI members any more. That is the biggest example of the TALI virus I can remember. Most outbreaks seem to just dissipate, not end abruptly.

Please don't misunderstand me. There are legitimate reasons for TALI members or groups of TALI members to rise in defense of their rights as members. In Austin one year, those of us on the Board were assailed by another small group of TALI members who were not happy with the way we ran the Association. Unfortunately, they were saying one thing but we were hearing something else. We were comparing apples and oranges. After the Board meeting before the conference, the Board and most of the group of complainers went to dinner at the County Line restaurant. It was there, over good barbecue, the member James Bennett made me understand that their complaint was not about what we did or didn't do, but the fact that we were not adequately informing the members of our activities. At that time, minutes were recorded at a Board meeting, but were not approved and available for dissemination until the next Board meeting. And if the Secretary did not do his or her job, the minutes might not be disseminated for several months so the members had no idea what transpired at a meeting. This group of members, instead of letting the TALI virus guide their complaint, approached the Board with a legitimate complaint and, once we were talking apples and apples, things changed for the better.

In another case, the Board recognized the need for more income based on the advice of TALI Treasurer, John Feighery. Instead of sitting in his chair complaining, John started an almost one-member membership drive which greatly increased our membership and, with it, TALI's income. John didn't allow the TALI virus to derail what he knew had to be done. His actions, in part, are what led to John's reception of the Hudgins-Salee Award.

Ladies and gentlemen, this summer is time for our Annual Conference which will include our annual business meeting. At this meeting, members are free to address the board with any cares or concerns. If there is something you don't like about TALI, this is your opportunity to try to change it. It's also your chance to make change from the inside. This is the meeting when we elect officers. This is your chance to affect change by running for office or nominating another person you deem reliable to run in your stead. It is also your opportunity to propose changes to the TALI Bylaws.

Soon you will receive information on how to nominate yourself or someone else to run for office. You'll also receive information on how to propose a bylaw change. Remember, each of these processes have specific deadlines and are addressed to different people. Do you have a complaint? Do you dislike the way we do something? Don't let the TALI virus, the tendency to complain but take no corrective action yourself, keep you from improving your Association. Let us see your name on the ballot this summer. The only true serum to cure the TALI virus is personal action. ACT NOW!
The NCISS Legislative Advocacy Hub is monitoring state legislative activity through the State Legislative Awareness Monitoring (SLAM) Program for member state associations! (blue are active legislative sessions, white are not in session)

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**Legislative and SLAM Committees Activities for Investigations & Security from Lobbyit**

**State Legislative Awareness Monitoring (SLAM)**
Lobbyit has set up NCISS's "state-level" tracking, continues to identify hundreds of bills in currently active states. Members may view bills impacting private investigators, private patrol operators or security guards in your state, by going to the Advocacy Hub and State Legislation at [www.nciss.org/legislation](http://www.nciss.org/legislation). Members can search alphabetically by state or click on a specific state on the United States map provided at the top of the page (current example above). If your state is not listed, it means that either your state was either not in session or there were no bills introduced that met our search parameters. If you know of a bill in your state that we need to become aware of, please contact your any NCISS Officer or Director - [www.nciss.org/officers-directors](http://www.nciss.org/officers-directors).

To be both effective and current, NCISS and Lobbyit need suggestions for legislative and regulatory keywords to track activities at the state and federal levels. Please contact your Regional Director to provide these keywords.

*NCISS extends its appreciation to TALI and members.  NCISS has a strong relationship with TALI through NCISS board members supporting TALI with membership – Dean Beers (President), Terry Myer, Sr. (1st Vice President), and Mark Gillespie (Regional Director). In addition, NCISS welcomes all the members of TALI supporting NCISS through membership, including several TALI board members. Your NCISS Regional Director is: Mark Gillespie – (512) 680-5851 and Email: Mark@gillespieinvestigations.com*

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**Key Federal Legislative and Regulatory Activities and Outlook**

We do not yet know the direction Congress will take under the new administration concerning issues that impact us and will likely not have an idea for another month or so until the committees get organized. We anticipate a fast-paced year and predict movement on many legislative fronts. We must pay careful attention to all bills with an eye for unintended consequences. Expect measures on tax reform, cybersecurity provisions, and encryption as the year develops.

**Affordable Care Act**
With the changes in Washington and the new President, there is a very real possibility of the repeal of many of the provisions Affordable Care Act/ObamaCare during 2017. These changes could drastically affect our industry and business.

- The employer mandate may disappear, along with minimum essential coverage plans.
- The 1094/1095 reporting will stop.
- The Cadillac tax will be a thing of the past.

However, current provisions that are likely to stay would be guaranteed coverage for preexisting conditions and allowing dependents to stay on plans until age 26. Congress will seek to pay for indigent care by limiting the individual exclusion for healthcare benefits provided by employers. This will further facilitate the shift to high-deductible plans. Medicare will not change.
The politics on this are a losing battle for whoever takes it on. Drug costs are going to come down. While pharma is a powerful lobby, this issue has too much momentum. We must continue to watch the changes to see how our industry and employees may be affected.

**Employment**
A few other bills that we need to watch are the National Labor Relations Board Reform Act, Security Officer Screening Improvement Act, and the NLRB’s “ambush: election rule. It is important to follow these bills to ensure that our businesses are up-to-date on the knowledge.

**Drones**
Private investigators (PIs) are licensed professionals who employ drones for a variety of lawful surveillance activities. Unmanned aerial surveillance provides a safe and effective way to observe persons and property which are the subject of investigation. The ability to conduct at-a-distance observation greatly increases the safety of all parties involved.

- *Whether the rules are set by regulation or statute, PIs must retain the ability to use drones to conduct legitimate business and investigative activity.*

**Geolocational Privacy**
Like UAVs, utilizing GPS for surveillance is safer that following an individual in traffic. Uses include investigating fraud, false worker compensation injuries, theft, parental abductions, child custody disputes, missing persons and others.

Previous bills sought to amend the federal criminal code to prohibit intentionally intercepting geolocation information pertaining to another person, using such information, or disclosing such information to any other person. This issue will likely find new ground in 2017

- *NCISS Members must insure that private investigators are not swept into the definition of data brokers, and should ask for a specific statutory exemption.*

**Data Privacy and Pretexting**
Proprietary data providers vet subscribers for legitimacy. They provide vital information for a variety of uses for private investigators such as locating witnesses (criminal and civil), missing persons, parental abductions, worker compensation fraud, theft and others.

Private investigators are in the business of uncovering information, often to be used in formal legal proceedings, which the target individuals typically are deliberately hiding. PIs will sometimes employ simple misdirection to acquire basic information, like confirming residency, location, or employment status.

Previous bills sought to prohibits data brokers from obtaining or causing to be disclosed personal information or any other information relating to any person by making a false, fictitious, or fraudulent statement or representation.

- *While PIs do not currently fall under the definition of “Data Broker,” NCISS members must ensure that we aren’t inadvertently incorporated into the prohibition.*

**Access to Credit Reports**
Previous bills sought to amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks against prospective and current employees for the purposes of making adverse employment decisions.

A recent investigation conducted by an NCISS member found that a credit check on a company comptroller who embezzled several hundred thousand dollars would have revealed large gambling debts. Credit reports often reveal false information on employment histories. Credit reports for employment purposes, especially with an employee’s consent should not be denied to employers.

*Private investigators must retain the ability to acquire and use credit reports for the vetting of prospective employees, especially where financial responsibility directly impacts on the nature of the employment.*
Financial Considerations for Private Investigators

Howard Savage, Ph.D.

Tools of the Trade

How can you use financial analysis to help your Private Investigation business? Let’s see what you can do with some basic financial analysis as a private investigator and business owner. Finance is not accounting, although it uses accounting reports. Finance is about understanding the dynamics of how the company operates using financial assets and tools.

First, we need to examine some basic financial tools. The biggest financial practical tool is called the DuPont ratio analysis system. It is also called the 3 Principal Components of Earnings. Here is what it does.

The first part of the DuPont system is Return on Investments (ROI) = profit margin asset turnover.
What is profit? It is Net Income/Sales. We will return to profit later, for a larger perspective on it.

Asset turnover is Sales/Total Assets. Essentially it is how hard your assets are working to produce sales.

So the Return on Investments deals with the percentage of return you are receiving based on your work.

The second part of the Dupont system is Return on Equity (ROE). Return on Equity uses the ROI discussed above and adds financial leverage to the equating. ROE = ROI / (1 – debt ratio)

The debt ratio is total debt/total assets. This is only business debt and business assets here.

Why does the debt ratio matter? The more debt there is, the higher the Return on Equity (how much money you have in your business).

In the real world, the profit margin has practical limits. If its too low, you go out of business. If your profit margin is very high, others will try to copy you and compete with you at a lower price, driving down your profit margin from competition. That is how capitalism works.

What about asset turnover? If your asset turnover is very low, what you are selling becomes obsolete and worthless. If your asset turnover is very high, with lots of sales per unit of investment in assets, you will have to buy more assets to keep up, resulting in further investment costs in people or equipment to support your sales effort.

What about debt? If there is very little debt, your ROE will be much lower than those using some debt in their business, making it worth less than other companies. If there is too much debt (compared to your industry), your interest rates will go up because of added risk of not being able to pay it back in a timely manner.

Lenders have access to industry standards of what ranges of debt (as a percent of value) are acceptable in each industry, and they use those standards in awarding loans or lines of credit. Those same resources have information on the sales and earnings of companies in each industry for different sizes of businesses, based on their level of yearly sales.

Let’s return back to the concept of profit margin we started with. You need to know a little more about profit margin.

Sales price – variable cost = something called Contribution Margin (not yet Net Profit).

Variable cost is the same for every unit of business being sold, such as an hour of surveillance or a search on a computer.
What is Contribution Margin? It is the part that is used to first pay for Fixed Costs, then it becomes real Profit. When the Fixed Costs for the year are paid with the Contribution Margin, what is left is Net Profit. What is fixed cost? It is whatever you have to pay that is the same over the whole year, like rent or insurance, or your license fees, regardless of how much business you do. In some cases, it could also be a monthly salary for say, an office person. Once you have accounted for the variable costs, and the fixed costs have been paid, all the Contribution Margin goes to your Net Profit for the year.

How do you know when you will reach the point of making real Profit? It is called the Breakeven Point, and here is how it is calculated.

Breakeven = fixed cost / contribution margin (per unit of work).

The result will be in terms of units sold. You then need to multiply that by the sales cost to calculate how much sales you will have to generate to “break even.”

If your business is growing very fast, you may think you are going to make a great profit. However, that depends on whether or not you need to purchase any more business assets to help you do the work. All business assets have a given capacity – so many units of work it can perform effectively. That could be called the “operating capacity” of an asset – the limit of its usefulness. As a rule of thumb, the usefulness of an asset is about 80% of its physical capacity. Why? Because all things (and people) require down time and maintenance. Once you try to go beyond that point, it will not be very useful. Then you will have to buy more units of what you are using – floor space, vehicles, computers, or other business assets.
One thing you should do is figure out the “operating capacity” of whatever assets you are using, so you will know when you have to buy more of them - and don’t forget you cannot get more than 80% of that physical capacity that will actually be productive for you.

Once you buy more assets as part of your operation, your Fixed Cost goes back up again, and your actual Net Profit goes down. This happens in all companies. You are making lots of money, then you expand, and soon, the profits go down instead of up like before. The company is worth more, but may pay less, based on the higher fixed costs.

Of course, now that you earned Profits, you will need to pay Taxes. But we will not go into that now.

What else do you need to know about finance in your company? Mostly you need to develop what is called a Cash Flow Forecast. It is not the same thing as a Cash Flow Statement for companies, one of the accounting statements produced by CPAs. A Cash Flow Forecast does a month to month analysis of all the estimated sources of cash and all the estimated sources of cash expenses for the business for a 12 month period. You can figure this out from your yearly statements from your CPA or your own bookkeeping system, and update it using your plans for the new year. This statement refers to sales only when they are in the form of collected cash, not an Accounts Receivable from a customer. It refers to expenses only when they are actually paid, not an Accounts Payable to a supplier. As a result, you can see whether there is money left in the bank at the end of the month or not. It is not uncommon to have a lot of Accounts Receivable if you are dealing with corporations, or to have some Accounts Payable if you buy lots of supplies for your business.

Now why is this important? Because cash flow is the second most important aspect of any company. What is the most important aspect of any company? That is always sales – if you don’t have many customers, the IRS says you have a “hobby” – that is what the tax law says.

If you do not have a Cash Flow Forecast, you won’t know whether you can buy things or even make payroll or pay your monthly bills. You can’t pay bills with an Accounts Receivable someone else owes you. I have seen many profitable companies with customers who do not have enough cash to pay their bills.

You might say, so what? If I am profitable, it is no problem as I will eventually pay my bills. There is something called the Uniform Commercial Code. If three of your creditors are not being paid, and they think you have the funds, they will go to an Administrative Judge for a remedy. The Judge will then appoint someone to control your funds in your company and pay your bills from the receipts of sales. You just lost financial control of your company, but if you change your ways, you can get it back. You will have to do what the Judge tells you for a period of time. During that time, you also cannot borrow any money for your company. I have seen companies worth several million dollars go through this process. It is not pretty, but it does work. So you need to do a Cash Flow Forecast every year and update as often as needed, to keep up with whether or not you have enough money to pay your bills.

I have had people tell me they use only the last year’s financial statements to guide them. The problem is that all things change, especially when it comes to income and expenses in a company. That is sort of like driving a car forward using only the rearview mirrors. It will be an adventure, but may have some surprises ahead of you, because you are not planning your future. What if you end up not having enough money to pay your monthly bills even though you have plenty of sales? You need
to go to a bank and get either a personal or a company line of credit for several thousand dollars (about 5% of yearly sales). When you are short on cash, draw on the line of credit. When you have made more collections of your Accounts Receivables, pay down the line of credit, so it will be available the next time you run short of cash. Usually the lines of credit are only for up to 90 days at a time, long enough to collect your Accounts Receivable and pay the debt off.

What if you personally had a bankruptcy and do not qualify for a line of credit? Then you need to find a financial Factor – usually a subsidiary of a commercial bank which loans money against your Accounts Receivables. They take over the right to collect the Accounts Receivables, then pay off your debt from what money they advanced to you, and if there is anything left, you will receive the balance. They usually charge a 1% fee and up to 1% a month. You will be paid on the spot by check about 70% or so of the Accounts Receivable. The credit check done is on the customer who owes you the money, not your personal credit. It is not ideal, but it is better than not being able to make payroll and pay your bills and possibly have your creditors take over financial control of your company through a judge.

How much should you charge for your services? Here we need to look at two financial considerations. First, how much is the competition charging? It is usually a good idea to not charge the lowest rates or the highest rates. On the other hand, if you are charging the highest rates and still have a lot of demand for your services, you probably need to raise your rates. If you charge too little compared to the market, your customers may think they are buying a service at a lower price for a reason.

I once had a client who asked me to help him set his rates. He was charging a very low rate compared to other professionals in the area, working over 60 hours a week with no vacations. I told him he needed to raise his rates, and work only 40 hours a week. He said if he did, many of his clients could not afford his services. He did not raise his rates. Six months later he had a serious health issue and the doctor told him he could not work more than 20 hours a week or he would soon die. His wife made sure he retired.

The other concept you should consider is the “opportunity cost.” Opportunity cost is what you could be making if you used your time elsewhere in something in which you are skilled and experienced. That is different for everyone. Perhaps you could be working in a big company in their security department, or working with an insurance company supervising investigators. You should be charging at least what you would make if you were doing those things, if they are actual options for you. You do not have to explain this to others, just use it as a rule of comparison for what you should be charging.

Think about going to all day seminars. The cost of the seminar is the same for everyone, but the opportunity cost is different for everyone. What did they give up to come to the seminar? How far did they travel? Did they have to pay someone to take care of their children that day? Where did they stay? What work could they have done instead of going to the seminar? All of those factors help determine the actual opportunity cost for each person.

Am I saying that only financial considerations should be used in running your business? No. Sometimes you will want to do a case that does not pay very well – either for the experience or just to help someone who needs your help. No one would blame you for doing that. Good for you.

Financial concepts do not solve all your problems in running your business. But they do raise important questions you need to address to make your business and your life work to your greater satisfaction.
Paul McCaghren, a native of Dallas, gained his investigative acumen as a Dallas Police Officer who rose through ranks and achieved the rank of Assistant Chief of Police. His years as a DPD officer from 1953 to 1974 were preceded by his service in the U.S. Marine Corp where he saw action at the Battle for the Chosin Reservoir during the Korean War where he was awarded the Purple Heart. Paul, while an officer with the DPD, earned his Bachelor of Science in Police Science from Sam Houston State University and his Master of Liberal Arts from Southern Methodist University. Paul and his wife, Deloris, have two daughters, four grandchildren and thirteen great-grandchildren. After leaving the police department, Paul formed his own private investigation and security consulting firm, and founded and co-founded numerous state and regional organizations before retiring from the Private Security profession in 2010.

TTI: What makes a PI a great investigator?
Inquisitiveness. An unrelenting search for the truth…by being a master of doubt and never accepting anything at face value. Always strive to peel back the onion. A great investigator never stops asking why?

TTI: Looking back at your career, what was your life’s greatest work?
When I formed the Regional Organized Criminal Intelligence Conference (ROCIC) in Atlanta, Georgia. During its inception, I conceived and initiated an organization where 18 law enforcement intelligence officers came together every six months to network and share critical intelligence information to help identify and solve criminal activity. I have always felt that networking, breaking down bureaucratic walls and disparate agencies coming together is always a good thing and ultimately helps solve crimes!

As a Private Investigator, I would have to say that breaking an internal theft case in a particular national company where we were able to dismantle a significant theft ring and assisting them in getting a large amount of property and money recovered. There is no greater feeling than making a difference by tackling a case where innocents were robbed and exploited and recovering their losses and more importantly bringing those responsible to justice.

TTI: What’s your biggest advice to new investigators?
Be aware of your surroundings and who you are speaking with. In the context of interviewing, to the extent you can, know the person you’re interviewing. Do your homework! I have seen too many investigators in an interview/investigation get into trouble when offering their own opinions before they have all the facts. Some investigators already have an opinion about what happened that clouds their judgement; self-imposed blinders that keeps you closed from the full truth. I have seen too many investigators, after hearing certain details about a case, immediately form a conclusion then seek out facts to fit that same conclusion they have formed in their mind. This is backwards from how a PI should handle an investigation.

TTI: How important was TALI in furthering your career?
TALI was extremely important! It gave me a greater perspective and broadened my information base that reached beyond my specialty and my geographical area. Being a member of TALI helped my business and expanded opportunities.

TTI: How and why did you become a private investigator?
I was fortunate enough to develop a large number of contacts as a Police Officer before retiring and even more fortunate to be able to leverage those contacts when I entered the PI profession by turning them into clients. You just never know the person you might meet today or the person you met two years ago, could someday be a client. Your network of friends and associates can also be a source of referrals to you. I can’t stress enough the importance of cultivating relationships both within TALI and outside TALI.

TTI: Interviewing is a fundamental skill for a PI. Can you recall an instance where you questioned the subject and finally got the individual to talk?
I touched on this topic earlier. You have to have as much knowledge of the situation and circumstances as possible before speaking with subjects, witnesses and especially the suspect. We know that we must learn as much about our suspect as possible before interviews but many investigators don’t look beyond the immediate case, meaning the crime. To do the best job for your client you must also gather as much background as you can on your client, their industry, image, goals, any policies or procedures and the mindset of the client contact person. Your representation to your client is to the totality of their business or organization not just the immediate incident at hand. After you have a good grasp of these factors then you will stand a better chance of reaching a positive conclusion to your case and for your client.

TTI: In your experience, what benefits can be gained by being a TALI member?
Contacts, contacts, contacts! Despite our profession being filled with independent business people (our competition) you cannot ignore the importance of connecting with others for information, advice, mentorship, support and for referrals. None of us are the total package.
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**APPLICATION FOR MEMBERSHIP**

Please read carefully. Type or print all answers in full. Upon receipt of your request for membership, your application will be forwarded to the Board of Directors for their review and investigation. Upon approval, you will receive a “welcome packet” which will include your Membership Certificate and other important information about your Membership. **TALI Memberships are individual memberships, not corporate.**

Please note: Your application must be accompanied by your first year’s membership dues. Failure to include any of these items will delay the approval of your Application.

**Classification Applied for:** (please check)

- ACTIVE - $175 Individuals licensed by the TX-DPS Private Security Bureau with Class A or Class C licenses.
- AFFILIATE - $150 Persons in an investigative capacity with industry (non-voting membership) Note: staff investigators, insurance investigators, etc.
- ASSOCIATE - $150 Persons residing outside the State of Texas who are licensed by a governing body where they reside and are actively engaged in investigations (non-voting membership)
- ASSOCIATE VENDOR - $200 Individuals and businesses who are engaged in providing products and/or services to private investigators. (non-voting membership)
- STUDENT - $75 Open to students registered in an accredited university or program acceptable to the Board of Directors and not licensed as a private investigator. (non-voting membership)

**Please circle Specialties:** (maximum of 10)

- ADJ Insurance Adjusting
- ARC Accident Reconstruction
- ARS Arson
- AST Asset Checks
- ATM Auto/Truck/Motorcycle
- AVN Aviation
- BGK Background Checks
- BNK Bank/Accounting Fraud
- BOA Boating
- CHL Child Custody/Abuse
- COM Computer Crime/Fraud
- CON Construction Sites
- COR Corporate Investigation
- CRM Criminal Investigation
- CVL Civil Investigation
- DAT Computer Data Recovery
- DDR Drunk Driving Defense
- DOC Document Examination
- DOM Domestic
- DRG Drugs
- ELC Electronic Surveillance
- EXC Executive Protection
- EXP Explosives/Firearms
- IND Industrial Accidents
- INS Insurance Investigation
- INT International Investigations
- INV Investigation
- MAL Malpractice/MD/Legal
- MRT Maritime
- MSP Missing Persons
- ORG Organized Crime
- PAT Patrol
- PHO Photography
- PIN Personal Injury
- POL Polygraph
- PRB Probate
- PPS Process Service
- PRT Product Liability
- REA Real Estate
- SEC Security
- SIT Skip Trace
- SUB Subversive Terrorism
- SUR Surveillance
- TAC Transportation & Cargo
- TOX Toxic/Hazardous Waste
- TRP Trial Preparation
- VID Video
- WHT White Collar Crime
- WKR Worker’s Compensation

Check these boxes if you do NOT want to be included in:

- TALI Yahoo Group
- TALI E-mailings

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We MUST have ALL INFORMATION. We will NOT be able to process your charge without it. Incomplete and/or incorrect applications will be returned and will NOT be processed. Thank you for your cooperation.

I give full consent to the Texas Association of Licensed Investigators, Inc., its officers, members and/or agents, to investigate this application and to inquire into my reputation, character and fitness for membership in TALI. I hereby release the above named organization, its officers, members and/or agents from all liability, claims, injuries (implied or actual) in matters emanating from such investigations. If accepted, I promise to uphold the By-laws and rules of this Association.

Signature ____________________________  Date ____________

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