



THE PALI INFORMANT

Spring 2012



THE FTER METHOD: Forensic Testimonial Evidence Recovery

by **Brandon A. Perron, CCDI**

The role of the Criminal Defense Investigator or any professional investigator is focused primarily upon the recovery and evaluation of testimonial evidence in its various forms. As an “expert” in this discipline, the investigator must approach the evidence from a forensic perspective. Forensic examination has a variety of applications beyond the inspection of physical evidence. In fact, the term “forensic” is often misunderstood as only applying to forensic science. It has become a shortened term used by the media, movies, and television to describe the discipline of crime scene investigation. The CSI mentality has created a pop culture definition of the tradition-rich practice of debate. The term forensic is commonly defined as rhetorical debate associated with a court of law. Therefore, the application of forensic examination is not limited to the physical sciences. Forensic accounting is an example of an investigative approach to evaluating evidence in such a manner. The use of a forensic accountant is a routine process in fraud investigations. The same principles are used in FTER to examine and evaluate testimonial evidence.

The Forensic Testimonial Evidence Recovery method (FTER) was developed as a supplement to the Component Method of criminal defense investigation. FTER is intended to enhance the investigative interview process by elevating the investigator’s understanding of testimonial evidence as it relates to analysis, evaluation, recovery, and documentation. Testimonial evidence often becomes the primary focus in pursuit of the truth and the development of a sound defense theory. Therefore, the professional inves-

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Any questions, suggestions or submissions for this newsletter may be addressed to its editor, Bill Everman, by e-mail to weverman@comcast.net, by telephone at 610-494-0635, or by mail to PO Box 2006, Aston, PA 19014. Many thanks to Greg Pirnik for his help in editing, and to former newsletter committee members Barbara Thompson and Bob Kozura for their invaluable assistance.

The President's Corner

Dear PALI Members, Friends and Colleagues,

My duties as the president of PALI officially began Jan 1, 2012. The primary thought on my mind is how fortunate I am to have this opportunity to serve our members along with the support of our members and dedication of our returning (and a few new) board members. We are continuing to assess our association and strive to add value to your membership and our association. January was a very busy month for our Board of Directors and we have been busy with many behind the scene issues and new initiatives. Our By-laws committee is working on a few recommended changes, we have hired a web design company to modify our current website and make some much needed changes to protect us from viruses, etc. We have a few special seminars planned for 2012 and will be participating in the Northeast Super Conference in October that will be held in Atlantic City, NJ.

I would like to thank everyone for all of their hard work and support for 2011 and a special note of thanks to three great individuals who have retired from the board after years of hard work and dedication to our association. PALI would not be here today if it was not for the contributions by these three members. Jim Carino, Jeff Fry and Fred Bornhofen. Both behind the scenes and at the forefront these members served PALI to the fullest. Fred did an outstanding job as treasurer and his attention to detail and diligence have been greatly appreciated and will be some tough shoes to fill for our incoming treasurer, Dick Miller. These three dedicated PALI members have more accomplishments and accolades for me to address each one, so collectively; THANK YOU!

I would like to encourage our PALI members to roll your sleeves up and get involved in YOUR Association. There are many areas in which you can get involved.

I might also suggest that each of you email YOUR house and Senate reps about the status of our PDA bill- no more and no less, merely the status. I understand that we each have different thoughts and perspectives pertaining to the bill. Please note they did try to sneak something into it in November of 2011. When we found out, we asked to testify at the Public Hearing on House Bill 1774, we were then added to the list to provide oral testimony. However a few days after we were added, they cancelled the Public Hearing pertaining to our bill. Merely inquiring as to the status of the bill may create some activity, as several elected reps will be getting multiple requests from OUR members.

Our goals for PALI are to unite Pennsylvania's licensed investigators and agency owners, to promote the highest professional ethics; to monitor and take action on any legislation that may affect our profession; to upgrade professional standards; to provide for the continuing education of the membership; to further the spirit of cooperation and mutual assistance among the members of PALI; to further a mutual feeling of trust, goodwill, and camaraderie among investigators.

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With this said, if you have any feedback, comments and or suggestions, please do not hesitate to shoot me an email at jstein@elpspda.com regarding PALI. I would like to see our membership continue to increase in size and have a positive effect on the industry and everyone that we come in contact with. We, as a board, look forward to serving our members this upcoming year and will continue to promote our organization; while exploring upgrades to our website and continuing to be the best Association that we can be.

Currently a few of our Member Benefits are:

- PALI members only list serve
- PALI Membership Directory
- PALI Newsletter
- Educational Seminars
- Annual Professional Investigators Conference
- Online Member Profiles / Specialties
- Meeting & Networking Opportunities

We have had several great member accomplishments this past year. We truly have a great group of professionals that have authored professional books, lead international investigations, solved cold cases, and protected the innocent and everything else in between! Kudos to all of you!

In closing, let me remind you of the words of the famous Inaugural Address of President John F. Kennedy. "Ask not what your country can do for you...ask what you can do for your country!"

With the same interest for PALI as President Kennedy had for the United States, I ask you, "What can you do? What will you do for PALI?" I am looking forward to a great 2012 both professionally, personally and as a member of PALI.

I sincerely wish for you and your family a most prosperous 2012!

Best Regards,
 Jeff Stein, LPI, CCDI
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tigator must understand the evolutionary process of testimonial evidence and the manner in which it becomes fact and ultimately introduced as evidence.

The investigator must focus upon the identification, evaluation, recovery, and interpretation of testimonial evidence. In fact, one could argue that the majority of evidence encountered is testimonial in nature. Testimonial evidence is found in many forms. For example, testimonial evidence is recorded as documentary evidence on arrest affidavits, investigative reports, witness statements, transcripts, audiotapes and video recordings. The investigator is required to review, analyze, and interpret the testimonial evidence as it appears in such forms. The purpose is to question the veracity and authenticity of the evidence. Such efforts may require a detailed analysis that traces the testimonial evidence to the original source. The identification of inconsistencies, discrepancies, errors, omissions, and conflicts can be clues to improper influence and contamination.

Furthermore, the investigator is tasked with recovering testimonial evidence from the original source in the form of a witness. Again, this source of information is not an inanimate specimen subject to strict scientific study. The source of information is a human being with a multitude of complex issues, motivations, and conflicts. The investigator as the Forensic Testimonial Evidence Recovery Specialist must be prepared to deal with the ever-changing nature of testimonial evidence. This task is not a simple endeavor. The complexities of the human condition must be acknowledged and understood before one can truly explore testimonial evidence.

It is crucial to remember that every interview has the potential to make or break a case. Lack of preparation will almost certainly result in failure. The FTER Method approach allows the investigator to evaluate testimonial evidence as an expert. Testimonial evidence is almost always masked by contamination and human deception. Therefore, the investigator must maintain a perspective that recognizes this fact. The investigator must not allow a strong and compelling personality to overwhelm them with deception. The idea that someone can “sound” innocent or believable based upon personal experience is not a credible means of evaluating testimonial evidence. The truth can be found in the details, not riding the wave of a dynamic personality.

The investigator must search for the truth that is often buried within the details and masked by human deception and error. It is the nature of the beast that must be recognized and accepted. The investigator is a hunter and the truth is the prey. It is the duty of the hunter to understand their prey before it can be effectively pursued.

Brandon A. Perron is a Board Certified Criminal Defense Investigator, trainer, speaker, and author of Uncovering Reasonable Doubt: The Component Method – A Comprehensive Guide for the Criminal Defense Investigator. His new book, Forensic Testimonial Evidence Recovery: The FTER Method – A Forensic Approach to the Interview for the Criminal Defense Investigator is available for purchase at www.CDITCTraining.com

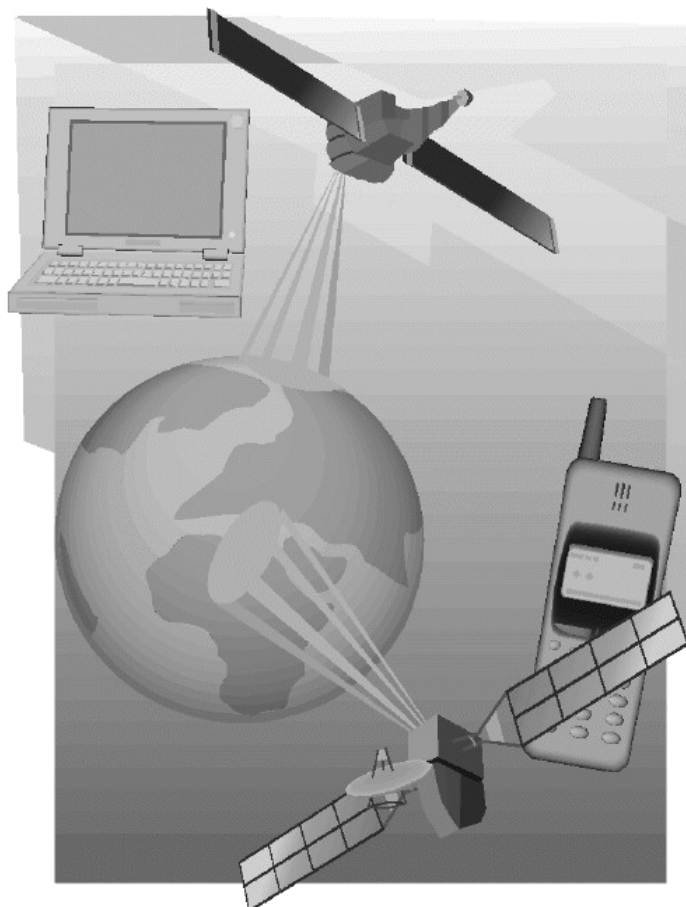
Supreme Court Suppresses GPS Information But Splits On Legal Basis

by James West, Esq.

During the last several annual seminars, questions were addressed to me frequently concerning the legal status of GPS monitoring. It was everyone's hope that the Jones case which was pending before the Supreme Court when we had the annual seminar in September would finally decide the issue. The long awaited Jones case was decided by the Supreme Court late in January but, unfortunately, while the decision to exclude GPS evidence obtained without a search warrant was unanimous, the Supreme Court split badly on the legal rationale for their decision with a five Justice majority (led by Justice Scalia) suppressing the evidence on the basis that it offended property rights to place a GPS device on a private vehicle and with Justice Alito (joined by three Justices) expressing the opinion that it was a mistake to base the decision on an interpretation of property rights because in the "digital age" the "expectation of privacy" rationale announced in the Katz decision should be applied to justify suppression. Accordingly, the only thing that the Justices were truly unanimous about was that it was unlawful for law enforcement authorities to place a GPS device on the defendant Jones' automobile for a protracted period of time without first obtaining a search warrant based on probable cause and they were significantly divided insofar as the legal rationale was concerned, i.e., invasion of property rights versus invasion of privacy rights. Justice Sotomayor made doubly sure it was clear that she was against the use of GPS monitoring without a search warrant by writing separately and basically agreeing with both Scalia and Alito.

The end result of the Court's "unanimous" decision was to reverse the cocaine trafficking conviction of a Washington, D.C. nightclub owner who police had tracked over a four week period by using a GPS device they placed on his private vehicle in a public parking lot, but the case's application to other factual scenarios involving the use of GPS information is up in the air to say the least.

Justice Sotomayor's separate opinion joining in both decisions made it clear that she was concerned that Scalia's property rights rationale would not protect the use of GPS information when no physical invasion occurs, i.e., the police tracking GPS enabled phones without having to commit a physical trespass to actu-



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ally place the GPS monitor. Her expressed concerns raise a high probability that she would switch over to the expectation of privacy rationale as a basis to suppress the gathering of personal information without a warrant under circumstances where no physical intrusion to home, automobile or other personal property occurred, thus creating a five to four majority of the Court supporting the privacy rationale when such a case comes before the Court.

For now, it clearly appears that any use of GPS tracking devices by law enforcement without a warrant would be very risky and that police authorities must adjust and seek warrants in all but situations involving a true emergency.

My conclusion to the effect that caution must be used and that there is a real exposure to the civil liability for a private individual installing and monitoring a GPS system still holds up in light of the Jones case. While private detectives are not sworn law enforcement officers as such the expectation of privacy rationale (on which the Court split in the Jones case) still has validity and could form the basis for civil liability under an invasion of privacy theory and under the right set of facts the property rights (trespass) theory could also result in civil liability. If anything, the Supreme Court's unanimous decision (based on a split rationale) lends weight to the conclusion that caution is the better part of valor in the GPS situation. Of course, the Jones case is limited to its facts, i.e., law enforcement placing a device on a private vehicle without permission of the owner, and any change in the facts could also work a change in the results. Unfortunately, those cases with changed facts have yet to be decided and the Jones case shows the result cannot be predicted with any degree of clarity.

James West, Esq. is PALI's legal counsel. He can be reached at 717-233-5051 or jwest@jwestlaw.com



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***PALI Informant* Submission Guidelines**

by Gregory Pirnik

The purpose of the *PALI Informant* is two-fold; as with any newsletter, we intend to keep the membership of the Pennsylvania Association of Licensed Investigators informed about Association activities, current events and issues or practices relevant to our profession. We also believe our newsletter better serves our membership by giving preference to member submissions.

In addition to submissions by contributing editors or Board Members, unsolicited manuscripts or articles from members and readers are encouraged. We encourage new and previously unpublished authors to submit articles for consideration. If a submitted manuscript is weak in style or grammar but strong in content and message, our editorial team may offer suggestions or collaborate with the author to produce an improved second draft. We believe this policy helps us maintain the professional standard our members and readers expect from our newsletter, while also developing the latent writing talent among our own ranks.

The newsletter committee appreciates the efforts of article contributors, without whom our newsletter would not be possible. To make the process easier for all involved, our editorial team has established the following general guidelines for submissions;:

It is assumed that manuscripts submitted for review are not being considered concurrently by another publication, in either print or digital format. If the article has been submitted to or published elsewhere previously, the author shall so indicate, is solely responsible for obtaining permission to reprint, and shall give proper credit to the original publishing source upon acceptance by the *Informant*.

Manuscripts of no more than 2000 words are preferred, although consideration is given to longer articles. Our editorial team reserves the right to edit manuscripts as necessary for publication if accepted, due to space or layout limitations. There is a limited amount of discretionary space available in each quarterly issue, so articles may be accepted well in advance of publication date. Please also note that PALI holds copyright on all articles accepted and published in the *Informant*.

Manuscripts should be submitted to the editorial team (wheverman@comcast.net or gappi@rcn.com) via a separate email attachment in Microsoft Word format (.doc, .docx), along with a cover letter containing the author's name and contact information. Please note titles, degrees or certifications and agency or institutional affiliations where applicable. (See Submission/Publication Dates Table below.)

In addition to our General Guidelines, the following supplemental guidelines are offered to help our contributing authors better prepare their manuscripts for submission;

The Basics

The text of the article should be submitted as a double-spaced Microsoft Word document in Times New Roman, 12 point font, as a separate email attachment.

All submissions should adhere to basic standards of good journalism, with factual accuracy and proper grammar, spelling and punctuation. Be sure the submission answers the key questions: who, what, when, where, why and how.

Tables, captions, figures and graphics should be submitted as separate high quality files. Preferred formats are JPEG, GIF, and TIFF. JPEG is preferred for full color photos. When possible, submit all graphics files at highest quality. It is helpful for our editorial team to have the original file prior to conversion, such as an Excel table or chart before saving to an image file.

A version of the article with embedded tables, figures, and graphics may be submitted as an additional file to indicate the preferred layout of the tables, figures and graphics within the article.

All tables, figures, and graphics should be accompanied by a caption. Captions may be appended to the end of the text file. Editorial and layout staff may edit, crop, or resize the illustrations as needed.

We welcome images or photos with submissions where appropriate. Action shots are preferred but headshots are acceptable. Images can also be logos or other artwork relevant to the story. All images should be color and high-resolution (600 dpi is preferred; 300 is acceptable; anything less is difficult to reproduce well). Jpegs or Tiffs are acceptable; please do not send png files. Do not digitally manipulate the photo in any way.

If photos include people, contributor is responsible for obtaining approval from the subject prior to submission. (Especially with photos including children; if possible, take photos with children facing away from the camera.) The contributor is responsible for providing identification of persons in photographs. Group photos do not require individual identification. Please tell us the photographer to whom we should credit the photo.

Contributors must secure permission to print or reprint if applicable and provide the required text to be included with the article. If an article uses copyrighted material, it is the contributor's responsibility to obtain permission from the copyright holder. Such items should be annotated with "permission to print/reprint...". It is always appropriate to indicate the source of material/graphics, even if it's in the public domain.

Types Of Articles

Features: A feature article examines a relevant topic in greater depth and can run from 1,000 to 2,000 words or more, as the subject matter or story merits. Feature stories can include several high-quality photographs.

Beneficiary: This is a category of content we're most interested in receiving. These are stories that show how PALI members, member agencies or our specialty organizations are demonstrating a servant's heart in their community through pro-bono or volunteer service. These stories should explicitly describe the need that was met, and should include quotes from the beneficiaries of the services. Beneficiary stories may be formatted as "Members at Work" or "Members Serving Their Community" items, short stories of about 150 words. Some may be expanded to feature stories when merited.

I'm Not a Private Investigator! —I'm a Business Person

by William F. Blake, CPP, CFE

Those of us who have moved from the public sector investigation agencies and into the private sector invariably call ourselves “*private investigators*.” This is an erroneous statement and one that will cause many future financial problems. While serving in the public domain, the term “*investigator*” or “*special agent*” was appropriate.

Upon moving to the private sector, another title is automatically attached to your activities with or without your consent. You are no longer an investigator but have become a “***business person***.” Regardless of whether or not you are a sole employee as a private investigator or as a member of a multi-person investigative firm, you must engage in business activities to be successful.

In the public sector, there never was a paucity of work: normally the workload exceeded the unit idealistic capabilities. You did not have to seek work as the work normally came to you at an excessive rate. At the same time, there was a support staff to take care of administrative functions.

In the private sector, you will probably be the sole administrative staff member. The major administrative task that will be required of you is that of marketing your skills and business. Work will not come to you as if formally had but you will be required to find work, which in itself, is not an easy task. As your marketing and public image improves over time, you will be in a better position to get more clients and workload.

One of the problems facing many transiting to the private sector is that many individuals have specialized for many years in one particular area of the criminal justice system. While these skills are very valuable and will be worth much as your reputation increases, but until that time, the fledgling private investigator must resign him/herself to work cases that would not normally be accepted. These trivial cases are where you develop clients and increase your reputation.

One area normally overlooked by the new private investigator is that of the civil justice system. Many of us worked nothing but criminal cases while in the public sector and do not realize the number of billable hours that can be obtained in the civil litigation market.

The billable hours in civil litigation are driven by the client's desire, for various reasons, to recover property and not involve law enforcement. When law enforcement and the criminal justice system are involved, the client may suffer adverse public relations, including the loss of customers and reduced staff morale and efficiency.

While working a civil litigation matter, many of the skills used in criminal cases will be of extreme value. The civil litigation matter will be investigated in the same manner as a criminal case but slated for civil litigation for the recovery of assets and other non-financial properties.

The field of private investigations can be a lucrative and self-gratifying endeavor. The most difficult is the ideological transfer from the reactive nature of the public sector “criminal” investigation to the preventive nature of the private sector “civil” investigations. You can no longer think like a law enforcement officer but must become a part of the business community where the answer to problems is not putting someone in jail.

William F. Blake is the president of Blake & Associates, a full service firm specializing in security consulting and investigative support, in Littleton, CO.

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Profile: Profile of a person who exemplifies or epitomizes today's post-modern professional private investigator. Generally NOT told in first person; about 500 words, plus at least one photo.

Photo Essay: Five to 10 photos with captions, plus about 100 to 150 words of accompanying narrative.

Brief: News items; book or product reviews; investigative tips; member accomplishments, promotions, awards or new certifications; etc. About 75 words, plus a photo when warranted.

Any questions about the suitability of a proposed article's content for the *Informant* should be directed to the editorial team *before* investing significant time in article preparation.

Gregory Pirnik, LPI, has been previously published in The Morning Call, The Washington Times and PI Magazine. He currently serves PALI as Eastern At-Large Director (Regions 1 & 2), Public Relations Chair and Newsletter Committee member.

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