



THE PALI INFORMANT

Winter 2015-2016



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Ring in the New Year with PALI

As the calendar changes from 2015 to 2016, we look back on 2015 as a banner year for PALI and forward to another great year for the organization.

One recent highlight for our association was the September conference in Pittsburgh. The conference was informative, well-attended, and enjoyable. We also saw many first-time conference attendees. One highlight was a demonstration of a drone by presenter James Nanos.

We had an attendee from Iowa, Lou Olson of Current Whereabouts, who said the following:

"Nearing the new year, I have reviewed the highlights of 2015. One was my attendance at your conference. I was being received into the Third Order of Carmelites on the same day as our IAPI (Iowa) conference. So I looked for a conference near my son in Pennsylvania and your conference coincided with our previously planned visit.

I was pleasantly surprised by the quality of your conference. Iowa has a population of a little over three million; Pennsylvania, twelve. We are a little more rural and 'Midwest.' I expect that the nearer you are to the east coast, the more need there is for our profession. Your conference reflects that need in its professionalism, speakers, topics and attendance. Excellent conference!

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I heard that your conference is held in various places in Pennsylvania but, if I notice it is near Pittsburgh in the future, I would like to drop in again. Thanks for having me. By the way, my grandson ran to his mother and said, 'I got to hold the drone – TWICE!''"

We've also polled our membership regarding House Bill 514 and, more generally, the opinions of our members regarding proposed changes to how our industry will be regulated in Pennsylvania.

2015 was also an election year for PALI. As our new leadership comes into office, we appreciate the work done by the outgoing board. In 2016, PALI will continue to serve as a source of information and referrals for investigators throughout the Commonwealth, to provide networking and training opportunities, and to be a voice for professional investigators in the legislature.

PALI wishes you a prosperous, successful new year!

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Succession Planning for the Private Detective Agency

by Joseph Carroll, J.D.

A well run private detective agency can become an asset of value in addition to a source of income. But unlike most businesses, which can be bought and sold to the highest bidder in an open market, transfer of the assets of a private detective agency is limited by licensing requirements and confidentiality issues. As a result, advance planning is critical to obtaining full value for the business whether a transfer is to be made through a sale by the owner(s) or as a result of the death of the license holder.

The primary saleable assets of a private detective business will include equipment, contracts, clients, and good will. The license itself is of little value since: 1) anyone who qualifies under the Private Detective Act can get a license; 2) licenses can't be transferred to individuals or entities that couldn't qualify on their own; and 3) except for corporate licenses (for which a qualified successor may be appointed in the event of the death, resignation or removal of an officer) licenses cannot be transferred even to a person or partnership that could qualify for a license.

While equipment owned by a private detective agency can be sold to anyone, the value of the business itself will be based on the perceived value of the contracts, clients (past and current) and the reputation/good will that the agency has developed. But without advance planning it may be difficult to obtain value for those assets. There are three primary reasons for this.

First, a contract for private detective services would normally be considered a personal services contract that cannot be transferred without the consent of both parties. Your client has not just bargained to have a service performed, he/she has bargained to have you (or your company) perform it. They are expecting a level of service based on the size of your business and the qualifications and professionalism of the people you employ to perform services for them under the contract.

Second, to the extent that you provide investigative services (as opposed to guard or patrol services) there is a clear expectation that all information provided by your client or obtained as a result of your work on your client's behalf will remain confidential, except to the extent disclosures are necessary and reasonable in order to perform your duties, or to the extent disclosures may be required by law. The transfer of client files as part of a sale of the business would not fit either category, and could not be done without the consent of the clients.

A third factor is crucial in the event of the death of an individual license holder, or the only qualifying partner in a partnership, or the only qualifying corporate officer of a corporate license holder: the agency can no longer engage in any private detective work, effective immediately. The value of any contracts, client lists and good will is likely to dissipate rapidly once the agency becomes inactive.

There is no perfect planning formula that would maximize the sale value of the assets of a private detective agency in all circumstances. Any plan will depend on many individual factors including the company structure, the nature or the services provided, the size of the company, how long it has been in business, the personal relationships between the license holder and the clients, whether you contemplate sale of agency assets in the near future, how many people who meet licensing qualifications work for you, and even what your relationship is with unrelated license holders who could be sale partners. But there are some general factors that

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should be considered in deciding on a strategy to maximize value. They include the following.

A corporate structure gives you the greatest flexibility. Contracts are with a business entity, not individuals. Ownership can be transferred through a sale of corporate stock. And as mentioned above, an individual who qualifies for a license can be appointed as a successor corporate officer, thereby allowing the company to continue doing business under the corporate license. Having a succession plan in place in advance of the need for a transfer can facilitate a sale. There are, however, tax consequences and other considerations that may make such a structure impractical.

Client contracts can include language that allows transfer to another license holder upon notice to the client under certain circumstances, such as the death or disability of the license holder, at least for a limited period of time. The estate could then receive compensation for transferring the contracts to another license holder. Covering that subject matter has the added benefit of protecting the estate of a license holder from claims for breach of contract. Consider, for example, a situation where an individual licensee has contracts to provide guard services through his employees, and the license holder dies. His employees can no longer lawfully provide those services pursuant to the contract, resulting in a breach. The clients may have to pay a premium to get emergency coverage on short notice, and may have to pay a higher price for comparable services over the remaining life of the contract. Potentially, the clients could file claims against the estate of the licensee for breach of contract.

Contracts for investigative servicers can likewise include language regarding the manner in which open cases will be handled in the event of death, disability or retirement of a license holder. That could allow for compensation to the license holder or his/her estate for transfer of those cases, especially if some or all of the work will be performed by former employees of the license holder who will then work for the licensee who purchased those accounts. Clients would have to be notified about the change in licensees, and they could decide to take their business elsewhere. However, some would likely stay with a successor agency, and the successor agency may be willing to pay a fee to obtain the opportunity to provide service to those clients.

Partnership agreements can include the terms of compensation between partners in the event the partnership is dissolved.

Long term planning should allow you to maximize the value of your business. Consultation with an attorney and tax accountant may be helpful in that process.



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An ISPLA Update: Drone Use for Investigations or Security by Bruce Hulme

From November 11 to 13, I attended the annual conference of the International Association of Security and Investigative Regulators (IASIR) in New Orleans. The theme of the meeting was "Regulation in the Eye of the Storm." IASIR is an association that represents state and provincial regulators from the U.S., Canada, and the United Arab Emirates. The regulators have governmental jurisdiction over private investigators and the security, alarm, and armored car industries. ISPLA board members Jim Olsen and Nicole Bocra Gray were also speakers at this event on "When Disaster Strikes: The Investigator's Role" and "Using Social Media."

As the sole elected board member representing the interests of private investigators, I acted as a moderator and presenter in addressing the subjects of Unmanned Aerial Systems (UAS, commonly called drones) and the current legal/licensing status of Trustify, formerly known as FlimFlam. *(Editor's note: This topic will be covered in an upcoming issue.)*

Lightning Roundtable: Drone Use for Investigations or Security The Federal Aviation Administration deems it illegal to fly UAVs for commercial use, including film and television. However, investigators and security companies are using the remote-controlled aircraft to snap images to better suit their investigations. How are drones being used by licensees in your area and what regulations are currently in place?

The Federal Aviation Administration has ruled that commercial uses of UAS or drones without first obtaining a special waiver under Section 333 of the FAA Modernization and Reform Act of 2012 (FAA Act) are illegal and subject to a \$10,000 fine per violation. However, for recreational use of drones, Section 336 of the FAA Act has established that as long as the drone is "operated in accordance with community based guidelines," weighs 55lbs or less, does not interfere with manned aircraft, and avoids flying within five miles of an airport unless certain notice is given, then such use is legal.

To date at least one licensed private investigator has been granted a waiver from the FAA to operate a drone for commercial purposes. Most waivers, however, have been granted to the motion picture and TV

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film industry, real estate businesses, aerial photographers, for agriculture and forestry purposes, and to pipeline inspection firms.

Pilots have reported over a thousand incidents of near-misses with drones. Drones have hindered firefighters and rescue operations; a drone operator was killed in a New York City park when his UAS landed on his head and the propellers removed the top of his skull. A Connecticut Muslim pled guilty to an attempted act of terrorism in planning a drone attack with explosives against that state's capitol building in Hartford and undertaking a similar plan against Harvard University. In October, the FAA proposed a record \$1.9M fine against SkyPan International of Chicago for conducting dozens of unauthorized flights over New York and Chicago.

There are also state laws relative to privacy issues and trespass on property. Intrusion upon seclusion and publication of private facts are tort causes of action with respect to protecting privacy. Thus far 45 states have considered 165 bills regarding drones in 2015. In October, a Kentucky judge dismissed state charges against a man who shot down a drone hovering over his property.



UAS sales, according to the Consumer Electronics Association are estimated to top 700,000 for recreational drones alone, a 63 percent increase over last year. On October 18, 2015, the FAA announced that it will require all drones, commercial and recreational, to be registered. The FAA is also working to enact additional rules with regard to commercial drone use to be finalized in June 2016.

In November 2015 the House Committee on Energy and Commerce held a hearing entitled "The Disrupter Series: The Fast-Evolving Uses and Economic Impacts of Drones." In an opening statement, one House committee member estimated that one million drones would be sold in the Christmas season.

ISPLA (Investigative & Security Professionals for Legislative Action) is an organization formed to ensure that our profession is properly represented in Washington, and to help guide federal and state legislation to benefit our industry. You can find out more about ISPLA and its mission at www.ispla.org.

"DJI Phantom 2 Vision+ V3 hovering over Weissfluhjoch (cropped)" by Capricorn4049 - Own work. Licensed under CC BY-SA 4.0 via Commons

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In Memoriam: Richard C. Payton

Richard C. Payton, past President and Chairman of the Board of PALI, passed on October 30, 2015. After completing his second term as Chairman, Rick demonstrated his dedication to PALI and his solid work ethic by seeking and winning election to the Regional Director position for Region Four in PALI's 2015 election. He also demonstrated his humility by first inquiring to confirm that there were no rules against a past President and Chairman running for election. Rick will be well remembered by many as a colleague, leader and mentor.



We could easily fill a whole newsletter with remembrances of Rick, but here are just two:

“Just shy of 10 years ago I had graduated from Penn State University and mailed letters to all the local private investigators hoping to find work or even an internship. Not only was Rick Payton the only one to even respond to my letter, he entrusted me with a post-murder conviction appeal case and paid me for it! I was ecstatic. Only much later did I learn from a mutual acquaintance that Rick had taken on the case pro bono. So, not only did he spend his own time on it free of charge, he lost money by paying me, a rookie to whom he owed nothing, to work on it. I would not have my current consulting career without Rick. I could, and did, listen to his stories and advice for hours, whether it was in his office or on car trips to pursue various leads and interviews. Rick was my mentor and friend, and I feel privileged to have spent the time together that we did. “

—Lindsay Kowalski, *PALI Executive Secretary*

“I first met Rick Payton when he hired me to work security for him on Saint Patrick's Day weekend, 1990. I knew that Rick worked hard to start and run his business and to compete in a small market that undervalued security. The business he built and grew was admirable and respected in our community, in the region, and the university. We may never know the full account of the help Rick provided to others.

Rick was responsible for my introduction into the PI business 25 years ago. The value of Rick's inspiration was never as clear to me as when I relocated to State College about 8 years ago. It was great to reconnect with him as a colleague and friend. Like many others in our ranks, Rick always took my phone calls. He got me into some interesting cases and I was honored that he trusted me to help him out on many occasions.

Rick introduced me to the Wecht Institute at Duquesne University. He loved to talk about the JFK Assassination theories and about Cold Cases. He was a big proponent of the Fresh Eyes concept in Cold Case investigation: Where an outside and unburdened perspective could benefit a case by seeing what others might overlook.

I miss seeing Rick at the Post Office wearing his warm up suit and ball cap. I miss driving past his office on Beaver Avenue and seeing him all dapper in a shirt and tie with suspenders. What gives me peace is to know that Rick was driven by his faith. I like to think he has already heard JFK's version of the conspiracy theory, already met Martin Luther King, and that God has thanked Rick for the work he did to help the victims of those cases the public has forgotten.”

—Brian Baker, *Baker Security Group*

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