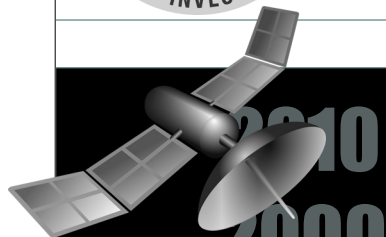




THE PALI INFORMANT

Winter 2015



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You CAN Teach an Old Law New Tricks

Updating the Private Detective Act for the 21st Century

by Barbara W. Thompson

The Private Detective Act of 1953. That's the law that governs private investigators and security professionals in Pennsylvania. It's from 1953. You read that correctly – it's 62 years old.

It's before the Internet and the instant availability of courthouse records. It's before personal computers. It's before privacy concerns and social media investigations. That's before smart phones, e-mail, texting, and surveillance devices more sophisticated than 8mm movie cameras. That's before the FCRA, the DPPA, and the Gramm-Leach-Bliley Act. That's before many of you were born. That's before many of your parents even met.

Nonetheless, the Private Detective Act of 1953 (PDA) governs our industry in Pennsylvania. In 1953, the private investigative and security industries were very different from the practices in 2015. For one thing, there are a lot more investigators and security professionals operating in Pennsylvania today than there were in 1953, which creates a need for updated administration. For another, private investigators and security professionals need to know a lot more in order to operate within the law. There's more to know in terms of investigative and security strategies and techniques. Just the technological advances alone create critical disconnects between how we work today versus the 62-year-old rules of the current law. The PDA has not kept current with other laws that govern our professional conduct today both in the Common-

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

From The Editor

by Bill Everman

Welcome to the Winter 2015 issue of the *PALI Informant*!

Our cover story is one of great importance to every private investigator in the Commonwealth of Pennsylvania. Is it possible to update the law governing our profession to create a better climate for investigators in Pennsylvania? PALI wants to hear *your* voice on this important subject. Very soon, discussion of this topic will move to PALI's member e-mail list, and we hope that you will be a part of that conversation.

Inside this newsletter, you will also learn about what one of PALI's affinity partners, Kahn Insurance Brokerage Group, can do for your business and your family.

I sincerely hope that you will have little use for part two of Greg Pirnik's article on cold weather surveillance until next winter, but as I type, the snow is piling up outside and the thermometer reads 14 degrees Fahrenheit, so it looks like you will have time to take advantage of Greg's excellent advice this winter, as well as in winters to come.

We also welcome to the Informant first-time contributor Adam Nowicki. Adam's article informs us of changes to retail theft laws that you should know about whether you provide security services, criminal defense investigation, or just want to stay on top of the changing landscape of Pennsylvania's laws.

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wealth and nationally.

For the past twelve or thirteen years, PALI has been attempting to update the PDA with minimal success. Jeff Fry, Jim Carino, and Barbara Thompson re-wrote some of the sections of the PDA, keeping many of the current provisions, updating some language, and eliminating some archaic concepts. Jeff Fry and Barbara Thompson undertook the herculean task of writing a “Sunrise Report” for the PA House of Representatives, which provides a rationale for amending the PDA to bring it in line with the current state of the investigative and security practices in Pennsylvania as well as the private investigative and security laws in almost every other state in the nation. Jeff, Jim, and Barbara testified in front of the House Judiciary Committee and met repeatedly with various sub-committees in an effort to push an amendment to the PDA. At one point, it did pass the House but then died in the Senate. The last time the PA House considered the amendment was in the Congress that ended in 2012. We came to realize that PALI just doesn’t have the time, the expertise, the connections, or the financial wherewithal to continue to promote an amendment to the PDA without outside help.

Early in 2013, Jeff Stein and Barbara Thompson met with The Winter Group, established by Lieutenant Governor Mark Singel. Mark established a lobbying firm in Harrisburg that specializes in promoting regulatory legislation for non-profit corporations. Mark and his associate, Peg Callahan listened to us, and evaluated the possibility of moving an amendment to the PDA through to passage. They think our chances of success are good. So good, in fact, that they offered us a significant discount to assist us in Harrisburg. Mark and Peg came to speak to the PALI Board in early 2014, and the Board thought it might be a good idea to pursue using The Winter Group, IF...but I’m getting ahead of myself.

When Jeff, Jim and I were first considering an update to the PDA, one of the biggest problems, as we saw it, was the fact that each county in Pennsylvania was responsible for issuing licenses and enforcing the PDA. This led to 67 different interpretations of the PDA. We thought it would make for more consistent implementation of the licensing law if it were enforced by the Bureau of Professional and Occupational Affairs under a board consisting primarily of licensees. We’ll provide more detail about this in future publications.

What would the Licensing Board do? It would issue rules to enforce the amended PDA. It would administer the entire licensing procedure. It would ensure that all licensees receive information about changes to the laws and regulations governing the industry. It would ensure that all licensees maintain the highest professional standards by requiring mandatory continuing professional education. The Licensing Board would establish criteria for reciprocal licensing with other states. It would establish and clarify the rules relating to employees. And it would establish and enforce rules for professional conduct. We’ll be disseminating more detailed information about the responsibilities of the Licensing Board in future memos.

Let's get back to the IF that the PALI Board raised after interviewing The Winter Group. The Board decided that before it makes any further effort in support of an updated PDA, it needs to ensure that the majority of PALI membership is in favor of amending it. This is for two reasons. First, the PALI

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Board cannot commit PALI to supporting an amendment unless the majority of the membership is in favor of it. And second, PALI will need to secure funding for The Winter Group and its activities on our behalf until the amendment to the 1953 Act is passed. The Board already has several ideas about how to do that without affecting the current dues structure, and the PALI membership may be able to add to this discussion.

The PALI Board voted to poll the membership in order to determine what the majority of us think about the proposed changes to the 1953 Act. In several weeks, we will begin to post on the List Serve a series of five memos, one each week, detailing the substance of the amendment to the PDA as it is currently written. After you have had an opportunity to digest and discuss the substance of these memos, we'll send out a survey in which you'll have the opportunity to vote either for PALI's support of an amendment or against it.

We will invite list serve discussion of the changes as presented in the memos for a period of one business week following each memo. All comments regarding the memos and the amendment will be sent to the PALI executive secretary, Lindsay Kowalski. This will keep the List Serve from clogging up. Lindsay will monitor all list serve posts, so please keep your e-mails professional in nature and please remember that we are discussing principles and not personalities. If you disagree with another member's opinion, please simply state your reasons for your viewpoint and refrain from personal attacks on fellow members. If someone has made your point in a previous e-mail, it is not necessary to re-publish the same comments multiple times. We would like to have a polite and rational discussion of the pros and cons of the changes to the PDA. Lindsay has been instructed to republish ALL the memos sent to her without editing. As we get closer to the time to vote, we'll issue further instructions.

We're hoping to have a useful discussion regarding this topic of paramount importance not just to PALI members, but to all private investigators and security professionals and the citizens of our Commonwealth who require our services.

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Retail Theft Statute Amended

by Adam N. Nowicki, LPI, LPQ

On the surface, retail crime can be regarded as petty--yet often enough, offenders are linked to activities on the radar of professional law enforcement (regional and interstate organized crime, gang activity, and narcotics to name a few). The FBI has consistently linked revenue of Organized Retail Theft (ORT) groups to terrorist organizations since September 11, 2001.

On December 23, 2013, Pennsylvania again strengthened its retail theft law by passing Senate Bill 731 (Act 131) into law. The retail theft section of the law, being a cooperative effort led by Sen. John Rafferty (R-Berks/Chester/Montgomery) and Rep. Todd Stephens (R-Montgomery) provides a stricter penalty for burglary, robbery, and theft by specifically amending the grading for the offense of retail theft. Act 131 comes on the heels of the 2010 passage of HB 1720 (Act 33), which added §3929.3. Organized Retail Theft to the crimes code, a felony offense for individuals guilty of managing an ORT "Enterprise". The FBI estimates merchants lose in excess of \$30 billion each year due to this activity, the revenues of which have been linked to organizations including Hamas and Hezbollah.

This activity poses a significant health risk to consumers who unknowingly purchase stolen infant formula, medication, and healthcare items which could have altered expiration dates or may have been improperly stored. Furthermore, the lost tax revenue reduces funding for municipal agencies. The good news is that agencies in the Commonwealth are now prosecuting offenders under §3929.3.

The passage of Act 131 also reduces the felony threshold for retail theft from \$2,000 to \$1,000. Doing so brings Pennsylvania more in line with other states in the U.S. with lower felony level thresholds. The

spirit of the law is to discourage organized crime from viewing Pennsylvania as a target-rich environment as they have in years past. The average shoplifter requires a substantial haul to reach this level and the summary and misdemeanor thresholds remain \$150 for first-time offenders. Another section of this act provides language that now constitutes the use of an Accelerated Rehabilitative Disposition (ARD) program as a prior offense, stating "...the court shall include a conviction, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition, occurring before the sentencing on the present violation, for an offense under this section..."

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These two recently updated laws have given Pennsylvania law enforcement additional resources to combat retail crime. “Whether or not you signed up for the first time offender program, it is still a prior offense and this law will help clarify for the patrolman and district magistrate where sometimes the law is interpreted differently”, said Detective Gary Hammer of the Colonial Regional Police Department, who has a number of retail locations in his agency’s jurisdiction. “Hopefully this eliminates the catch-22”.

Pennsylvania Asset Protection Division Manager Wade A. Hess of Wegmans Food Markets Inc. had this to say, “We need not only the law enforcement and retail community, but our Judges and elected officials to understand some of these so-called retail thefts are actually fueling much more dangerous enterprises. We can talk at length about the negative impact on the retailers, increased prices passed onto the public and millions in lost tax revenue to our state, but when you talk about crimes that impact the safety of people there is a much greater sense of urgency. It is clear that Organized Retail Crime (ORC) has links to gang violence, drug activity, and even terrorism. This puts our children and our communities at risk. Hopefully these laws will provide law enforcement officers with the correct tools needed to prosecute offenders to the fullest.” With up-to-date retail theft statutes on the books, Pennsylvania retailers and police agencies have the ability to continue combating and mitigating the persistent issue of retail crime, which adversely affects citizens and government across the Commonwealth.



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We'd love to hear from you if you're interested in writing for or advertising in our newsletter.

If you are interested in submitting an article, contact Bill Everman at 610-494-0635 or wheverman@comcast.net, or Greg Pirnik at 610-762-1422 or gappi@rcn.com.

We are interested in working with new as well as seasoned writers, so whether you have a complete, polished article, or just an idea for an article that would be of value to your colleagues, we are eager to help you get from that initial thought to a published work.

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Meet PALI's Insurance Partners, KahnIBG

by Elise Kahn

KahnIBG is a group of insurance professionals with over twenty years of various backgrounds of expertise. We're here to help all of our clients and their unique needs. No equation is too big or too small for us; our goal is to simply help create a positive future for all of our clients. We have been *Protecting Working Families* for over twenty years.

We understand that introducing products into your business or membership can be a difficult decision, especially in today's economy. But, rest assured that in our hands we've helped clients with all types of backgrounds successfully and happily develop the menu of services that is best for their employee/membership population. We want to help make that dream become a reality for you and your family too!

Our services include, but are not limited to, life insurance, supplemental insurance (programs designed to protect one's income), retirement solutions and retail programs.

PALI has partnered with KahnIBG in order to bring these solutions to their membership in 2015. We are currently providing to all PALI members a FREE NO COST \$5000 accidental death and dismemberment insurance. In order to receive this benefit, just send back the reply card that you will soon receive in the mail.

We are also making available instant approval/no blood or medical exam universal life insurance up to \$150,000 along with instant approval/no blood or medical exam accident insurance.

We look forward to helping to protect all members of PALI now and in the years to come. Just send back the card and a benefit counsellor will contact you to make it happen!

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--William J. Wiley, President, FOP Camden Lodge 218

Cold Weather Surveillance Tips (Part 2 of 2)

by Greg Pirnik



Surveillance is challenging enough when conditions are perfect, but nothing tests our effectiveness like the winter season...

For part one of this article, please see the Fall 2014 issue of the PALI Informant.

7) Comfort foods: helping or hurting? We can't work on an empty stomach and can't break off our surveillance to hit the nearest fast food drive-through. That voice in our head may say it takes only 5 minutes to run into Mickey Ds, hit the head and grab a happy meal on the way out, but it takes our claimant all of 30 seconds to bounce on us. Maintaining surveillance means remaining on site for as long as it takes, which means we must be self-sustaining and capable of pro-

longed fieldwork if we intend to fulfill our mission at the professional level clients deserve. Packing a lunch remains among the best ways to eat healthier, preventing last minute convenience store stops that result in fistfuls of beef jerky and liters of soda while en route to our start point.

We want high energy snacks, but those that are high in calories while low in fat. A simple trail mix of equal parts unsalted peanuts, raisins and semi-sweet chocolate morsels packs well, keeps well and satisfies the sweet tooth while replacing unhealthy alternatives. A thermos of coffee or hot chocolate makes a slow day on a cold surveillance more bearable, but caffeine is also a diuretic. We know to stay hydrated during the summer but are more prone to overlook it when cold weather makes us naturally reluctant to take a cold drink. An insulated bag keeps Powerade and bottled water near room temperature when cold packs are no longer necessary, and PB&J sandwiches barely need refrigeration anyway. Empty Powerade bottles also serve as back-up pee bottles, if you decided at the wash rack the night before that your main jug was past its expiration date, then forgot to replace it.

8) Use weather patterns to your advantage. Successful deer hunters know it's pointless to hunt in the teeth of a storm when our quarry is hunkered down in security cover. The best time is right before a storm arrives or immediately after it rolls over. That's why deer are in the fields during daylight hours just ahead of a storm, up and feeding earlier than usual. People are a lot like deer that way, most active during the hours before a weather front arrives. The day before a significant weather event is a must-work day; even otherwise inactive claimants will join the frenzied rush for milk and bread, or emerge to replace depleted resources once snow plows have been through.

9) The low winter sun is our friend. There's a reason why, in those old westerns, the cowboy always rode off into the sunset, and it has less to do with romanticism than we might think. Practically speaking, our hero knew it would be hard for someone to shoot him in the back while looking into the sun. We don't always have the luxury of choice when selecting the most advantageous surveillance position – we often make the most of the only spot available – but when choosing between two or more possible locations, keep the sun at your back

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when possible. This not only ensures the best possible video with no activity lost in shadow, but folks just don't like to look into the sun too much, especially during winter months when the lower sun angle and snow on the ground means more severe glare. If you've ever tried to videotape someone while on the wrong side of this equation you know how pointless that was, so use that glare to your advantage. On sunny days a quick glance at poles, signs, trees or anything casting a shadow points us in the right direction, as the base of the shadow points to the side we want. Shade is our friend in the summer months, but it's just the opposite in winter. Take that solar gain when you can.

10) When in doubt, GO! It's no coincidence that the first and last tips both relate to mindset, since success in the field often begins and ends with the attitude we bring to the table. All else being equal, mental conditioning is the one intangible 'x-factor' that separates one investigator from another, and plays a bigger role in determining our level of success in the field than we care to admit. My first four years as a surveillance investigator were probably my easiest with regard to deciding whether to work or not in foul weather, since I had a boss who removed any guess work for me. If I had assigned files on my desk I was expected to work them, and since shoveling snow is one of the most significant activities a comp or liability claims investigator can hope for, we can hardly take a day off when the going gets tough. It's become trickier in the eight years since launching my own firm, now that I manage my own schedule and exercise my own discretion when deciding whether to postpone surveillance due to inclement weather. These days many of my winter mornings begin in front of the bedroom window, peering bleary-eyed into the pre-dawn darkness to make an assessment of accumulation and road conditions.

We are all human and share an instinctive disdain for discomfort. It's not easy to leave a warm bed when the north wind howls in our eves and every fiber of our being wants nothing more than to burrow back under the covers as our rational mind crafts a perfectly plausible explanation for postponing surveillance. We can even spin it to sound to our client more like a well-intentioned judgment call than simply a sorry excuse. But experience teaches that more often than not, on those harsh mornings when we debate with ourselves about the foolishness of launching but decide to go anyway, our efforts are rewarded.

I've found over the years that those are the mornings when we experience a break-through on a file and come home with video we would not have obtained otherwise, could not have gotten had we waited for a 'better' day. Of course it helps to have four wheel drive, and there comes a point where it's not worth the risk to venture into really severe weather, but we can't be too quick to use those first flurries and a questionable forecast as a reason to suspend operations. Action trumps everything. Surveillance is a degradable skill, like any other. If we think of the winter months as a finish line or a chance to go into hibernation, our skill set atrophies from the lack of repetition and it takes longer to knock the rust off when surveillance assignments spike again in the spring. If, however, we consider winter not as the end of this year but rather the start of the next, and adopt a mindset that embraces winter surveillance assignments as training for future success, we'll soon find our effectiveness increasing. That momentum will carry over into spring and get 2015 off to its best possible start.

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