

Private investigators

– and why we need them

(part two)

The camera, it is said, cannot lie, and surveillance can yield the evidence required for a rock-solid case. Surveillance work, however, is neither for the untrained nor for the 'amateur' private eye

by Francis Wilkins



In addition to carrying out factual investigations, such as finding and interviewing witnesses and obtaining documented employment histories, private investigators can also carry out overt and covert surveillance.

While surveillance technology has played a part in many a James Bond film, in real life, surveillance regularly provides essential evidence in insurance and industrial relations cases. Lawyers, however, are unlikely to have either the training, the experience or the equipment needed for a surveillance operation.

In one industrial relations case, an employer had sacked 32 employees for illegal action on a picket line. Private investigators Lancaster Investigations carried out surveillance for the employer. The employees claimed in their defence that they had not been at the picket. Video evidence, however, showed not only that the employees had been on the picket – and violently so –

out operations in particularly challenging areas and conditions. Remote rural surveillance, for example, is often thought to be virtually impossible, says Lancaster. Nevertheless, an investigator dressed in camouflage out in the bush could for several days observe a private property from public land. High-resolution video equipment also allows clear pictures to be obtained from up to one kilometre away.

Technological developments in the last couple of years have considerably enhanced surveillance work. Covert "body cams" and other video devices are being made in smaller and smaller sizes and also are available much more cheaply. Recording equipment that can fit in a matchbox can now be attached to a lapel or day-pack. And transmission is now possible across much greater distances, allowing an investigator to operate a camera in the field while colleagues monitor the footage in a van or some other remote location. "Some of the stuff is quite James

The "big issue", according to IMA immediate past president Alan Harries, is that investigators are "agents of a principal", such as an insurer or the insurer's solicitor. As such, it would be inappropriate for an investigator to inform someone that they were under investigation or that records were held about them. This responsibility should lie with the principal. Insurers could, for example, give a "broad brush" notification when an insured files a claim that the company reserves the right to engage in surveillance and other forms of investigation.

Most investigative work is undertaken in anticipation of a legal action, Harries adds. Investigators as agents "exist to get their task done and to get a fee", and the information they obtain is not held but reported to insurers or their solicitors.

Harries says he is pleased with the way in which the commissioner's office listened and responded to the investigators' concerns. Officials have promised to review the IMA

He adds that investigators, who currently only have access to publicly available information, should have expanded access to data.

"There is a shift to recognising the investigation industry has come of age and that it does need tools to conduct an investigation," Mallard says. "We need these tools before we can be a viable complementary agency. Otherwise, we're like carpenters without saws."

private investigation – what it costs

Most private investigators charge on an hourly basis for factual investigation, surveillance and other investigative services. However, investigators point out these hourly rates are nearly always affected by the complexity and circumstances of an individual job. Rates can therefore vary immensely.

Anticipating the services required is particularly difficult. For example, conducting surveillance of a subject might be more costly than expected if the subject proves hard to find, does not appear or takes an unanticipated detour. The number of subjects under investigation, the skills and equipment required and the charges for miscellaneous items such as still photographs can all affect the cost to the client.

As a very rough guide, clients might expect to pay AS50–AS70 per hour for basic surveillance; AS80–AS80 per hour for interviewing and factual investigation; and approximately AS100 per hour for forensic accounting work.

As one investigator points out, however, because there are so many variables involved, trying to put a cost on a service is like asking how much it will cost to have a leg operation.

Covert "body cams" are being made in smaller and smaller sizes and also are available much more cheaply. Recording equipment that can fit in a matchbox can now be attached to a lapel or day-pack

but also that other employees who had clocked in, and ostensibly were at work, were in fact picketing too.

The evidence from surveillance was at the very heart of the employer's case, says director Robert Lancaster. He adds that while lawyers can prepare the background work for a case, surveillance can only be carried out properly by trained professionals using specialist equipment.

Lancaster – who has himself served with the British SAS and the Australian Special Forces – employs several operatives from military backgrounds as well as ex-senior-ranked police officers. While these investigators are already highly trained and are likely to have surveillance experience, they receive further training "before they are allowed out on the ground working for a client," he says.

Such training allows investigators to carry

Bond-ish," Lancaster says.

Despite their key role in the collection of evidence, some private investigators are now concerned the provisions of the new *Privacy Amendment (Private Sector) Act*, which comes into force on 21 December, will render them incapable of adequately conducting their investigations. The Institute of Mercantile Agents (IMA), which represents debt collectors, process servers and repossession agents as well as private investigators, submitted to the Privacy Commissioner in July the institute's concerns regarding draft guidelines to the Act.

Last week, representatives from the IMA as well as from the Australian Institute of Private Detectives, the Law Council and the insurance industry met with the commissioner's office to discuss the implications for investigators of the new legislation.

case and contact the association early in the New Year.

Former IMA president Warren Mallard of Sydney-based Lyonswood Investigations says some activities regularly investigated by private investigators – such as insurance fraud, which leads to higher premiums – have a significant effect on the public. It is therefore important to be able to investigate thoroughly.

"We have concerns that we do a lot of work that the police don't do which involves criminal breaches," he says. "We also do work that the police *can't* do because of the workload that they have."

The NSW Commissioner of Police has outlined the need for officers to work closely with other agencies, including private investigators, and to outsource some of the traditional functions of the police, Mallard says.