

Pipe Dream or Possibility?

My background

It is important for readers to understand that my article is not directed at denigrating Government Law Enforcement Agencies, nor is it driven by some long held avarice. It is not the disgruntled opinion of an investigator that always longed to be a police officer but, for some reason, didn't become one. Moreover, this is an impassioned plea for common sense to prevail in an era where Government Law Enforcement can use all the assistance they can get.

Coming from a Police background (11 years) and with a further 29 years as a licensed private investigator I believe that I am well placed to not only talk about the benefits of police and private investigators working together but also to speak about the problems that have arisen in the past that seem to have made it all but impossible for this to ever come about.

The problems

As a former police officer, specifically one who has since retirement from the police received commendations on three occasions for going to the assistance of police under attack who were all in grave risk of injury, I believe my position regarding police is clear. I am supportive of the best interests of the police department and its members.

However my concerns now rest upon the interests of the private investigation industry and a better more cohesive and complimentary working relationship between both parties.

Many of the past problems between police and private investigators have arisen in the main because of a lack of understanding on the part of the police as to just what investigators do. This is even more frustrating when you take into account that the police are the very people charged with the responsibility of regulating the private investigation industry. It is apparent to me that police receive little or no training or instruction



Warren Mallard

A Co-operative & Corroborative Working Model Between Police & Private Sector Investigators & Access to Particular Government Held Data - Pipe Dream or Possibility?

regarding private investigators. The old entrenched stigma associated with private investigators, in the main driven by the media, crime writers and those who will have us portrayed as a dishevelled and disgraceful bunch has in fact lingered despite the fact that Private Investigators are now competency accredited, Government licensed and fingerprinted just like police.

Early attempts at conciliation / education/ breaking down the myths.

In an attempt to educate the police about our industry and the problems private investigators face every day in the detection and prevention of crime I made contact with the NSW Police Commissioner's office and was able to speak with and work with Superintendent Brain Kerlatec, a well informed senior police officer. We spoke about the difficulties and frustrations private investigators faced on a day to day basis and together we constructed a document based upon those problems and the work of private investigators so that the police might become better informed and more considerate of the work of a private investigator. Perhaps in time I thought, Government Law Enforcement Departments would come to have greater confidence in the ability of private investigators and become more co operative and in time work with investigators corroboratively.

Arising out of these meetings with the Superintendent an emasculated document was produced that was eventually published in the Police Weekly March 2008. I was given permission to distribute that article despite it being a restricted document. I use the word 'emasculated' as the Superintendent himself appeared disappointed in what had been cut from the article we had together drafted and certainly any negativity towards police and past experiences had been removed. It seems that politics had already crept in. Interestingly since that article was published I have canvassed dozens of police and none that I have spoken with had ever read that article. So much for education being the pathway to co operative investigation and policing. That published article is on the right.

Many times investigators on surveillance are detected by persons, not necessarily the target of an investigation and because these persons are alert and prudent they call police regarding suspicious vehicles or actions. When the

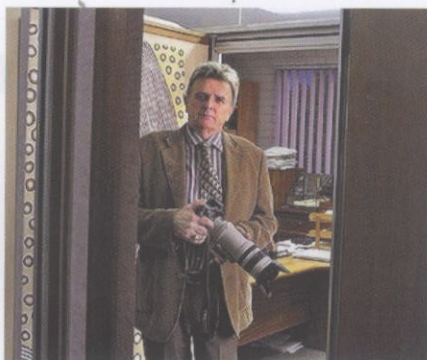
police arrive they have traditionally immediately approached the vehicle, ordered the investigator out and often exposed his/her activities to the target of the lawful investigation. Some would argue that if the investigator was doing the surveillance in a competent fashion this would not occur however no matter the skill of the investigator in remaining covert, we now have a much more well informed and alert population, particularly since September 11.

The fact of this matter is that police have the in-field ability to check the registration of a vehicle and on the COPS computer system, run a search of that owner and determine immediately that the owner is a licensed private investigator. This information ought to immediately place police on an alert and to consider a discreet approach. This never happens. Unlike licensed security professionals, particularly those who guard, patrol and protect, private investigators are not in uniform and if we are doing our job well, blend in with the local demographic. Often our vehicles are disguised to appear like those of tradesmen, not dissimilar to those of the police surveillance team. Thus the problem is further exacerbated. Additional problems have arisen where police have advised victims of crime that the evidence of investigators is not admissible in court which of course is a nonsense. Again this is a matter of education or more importantly the lack thereof.

Statistics re police, security and Private Investigators

It is important here to talk about the current crisis within the police, the difficulty the police departments have in retaining police, the average age of police and the pro-rata number of police per head of population. More importantly we should not forget the work of police today as opposed to 40 years ago when compared to the pro rata numbers that existed then and the number of private security persons there are in Australia. Thirty years ago there were no licensed security persons.

Police attended to alarms, served summonses, executed warrants and writs, guarded premises, escorted payrolls, patrolled business premises as well as undertaking all the other duties that they traditionally undertook. If we are to believe the politicians, the crime rates over all are dropping. I personally don't believe this at all. Many crimes that used



"Warren made contact with the New South Wales Police Commissioner's office"

to be reported are now not reported because the population has been conditioned to understand that the police will not be interested in certain matters because in the scheme of things they are just not a high priority. I refer here to corporate crimes, domestic crimes, minor thefts and break ins, neighbourhood disputes and malicious damage. Many of these matter go unreported for the reasons previously mentioned and thus do not appear on statistics. Things have come to a stage where we are now conditioned to believe that if our car is stolen or house is broken into then we did not take all the security precautions we should have. Anyone that believes that police immediately go out and search for your car that was just stolen is deluding themselves. Police of course will claim they recover almost all stolen cars. They don't, you and I report them as a possible stolen car, the police check the register and the police take the credit for the recovery. The very same applies with missing persons. Most of these recover themselves or are recovered by family members.

There is a great gap between what the police currently investigate and what the community believes should be investigated. There is a massive shortfall of skilled experienced police. The difference being between the government sector and the private sector is that governments fund police and the private sector is funded by the community directly. The community is caught up

between the inability of governments to adequately fund the public sector and the victims being unable to fund the private sector. Thus we have the inequality of the present system.

What can investigators do?

If you were to ask the general public this question you would be surprised. Most members of the public have a perception of the investigation industry similar to that which is portrayed ad nauseam by the media. Of course we all drive around looking conspicuous, live on coffee from foam cups, wear trench coats, wear deer stalker hats and have two shots of Bourbon before breakfast and probably carry a .357 magnum hand gun.....NOT!

Most members of the public believe our industry members break the law and pay bribes to Government Officials to get access to restricted information. Some industry members still do this I am sure, however in the main Investigators are law abiding members of the community who have no more privileges for their license to practice than someone without one. There are very few if any, investigators that have been convicted of criminal offenses or served penal servitude. In fact in Australia where licensing has been in force for over 50 years, there is only one event where a private investigator who impersonated a Federal Police Officer was convicted and sentenced. The police had no hand in detecting this person, a member of the public reported him. In that same country, many politicians, police, lawyers and other persons who hold public responsibility are currently serving gaol sentences.

What investigators can do that members of the public can't do is charge someone for their services and nothing more.

Why competency test and license private investigators?

If private investigators have no special privileges then why license them? The present licensing regime is there for one reason only, to regulate the industry. In Australia the police are charged with that responsibility. In 31 years of continuously holding a private investigators license I have never been called upon to have my business or records audited. In fact I don't know anyone in the investigation industry that has. Police are not proactively regulating the private investigation industry in Australia, they are reactive and often that

reactivity is based upon little or no knowledge of the Act Of Parliament or the Regulations.

If Private Investigators are competency accredited, finger printed and licensed then why doesn't the Government take advantage of a complimentary and parallel group of reputable persons to assist them in the detection and prevention of crime or at least give them the tools via which they might assist members of the public who often come to private investigators because the police are either disinterested or just don't have the resources to respond to the public's needs. The needs of the public and business are there, otherwise we wouldn't have thousands of licensed private investigators.

If the government won't allow private investigators to access locator information or criminal history data for a lawful purpose, then why? None of our members are serving time in gaol and we are all deemed to be persons of good fame and character by the police themselves which is attested to by the license held. It is a prerequisite of a license that the license holder be a person of good fame and character.

Why do we have private investigators at all one might ask? Of course, we are here because of public demand, a gap between what police do and what the public expects the police to do and to assist members of the public and businesses to get justice. That justice might relate to locating a debtor, locating a missing person, placing a building under surveillance to obtain video evidence of stealing, detecting illegal listening devices, installing hidden cameras to catch people committing unlawful acts etc. All of these things and much more that investigators do every day save the police forces of the world countless millions of hours of work and allow them to focus on the work that they believe is most important. If the private security and investigation sectors were to immediately cease, there would be mayhem.

Is the current private investigator legislation working?

Many would argue that the current Commercial Agents and Private Inquiry Agents Act is working and I suppose that because very few investigators come under adverse attention by the police that it could be argued that it is working, but it's not. The reason it's not working is in the main the facts that I have already demonstrated, the police don't understand

the legislation nor what we do and thus are inept at the regulation. We currently have a Government Regulated model and despite the preferred model of the investigation industry being a co regulated model, the government paid no attention and perhaps believed we were incapable of assisting in that regulation.

A well known and infamous Sydney Private Investigator has managed to defeat the police at several attempts to have him struck off the licensing register because they have failed miserably to detect both his offences and breaches of the legislation and even when advised by the industry members have failed to act in time.

The only model that works and is a proven model currently being enjoyed by members of many professions such as lawyers and psychologists, is a co regulatory model, one where government and industry jointly have the power through an industry representative body where mandatory membership, meeting attendances and Continued Professional Development (CPD) to ensure members behave lawfully and appropriately and if they don't, they can't remain.

Why should governments allow investigators accountable access to certain data and direct police to co-operate with investigators?

The text preceding this heading of itself explains why, but to get to the nub of it, there is a competent and qualified force of expert investigators that are being underutilised and disadvantaged by the very same group of persons who licensed and regulated them. It just doesn't make sense at all! Millions of crimes are solved by private investigators every year. It makes sense for both parties to co-operate. Many more millions could be solved and a lot of heart ache saved if we had the support of law enforcement and regulated accountable access to certain Government held and protected data such as Roads and Traffic address data and criminal history data. Police currently have access to and use this data effectively in the detection and prevention of crime and it is generally a first up approach for expediency and early detection and prevention. We all know just how valuable that data is in the detection and prevention of crime so why not make better use of it?

The argument that investigators will abuse that access to that information is just not good enough. Police are regularly

reprimanded and prosecuted for the abuse of access to this information for other than lawful reasons. Does the government then deny them access? Of course not. The fact that police do this of itself demonstrates a much broader need for this data. It also demonstrates that the checks and measures that are currently in place to detect unlawful access are effective.

User funded, lawful access to Government Held Data

Governments around the world are cash strapped and in many cases under resourced. Despite what we are told by those governments, (that crime is on the decline) it's not. The way crimes are committed has changed and many members of the public have been driven away from reporting crimes. This is due to the mindset that the police have too many crimes to deal with and that in the scheme of things, certain crimes are not worthy of expending valuable resources upon investigating.

It would be a reasonably simple matter to implement a system whereby Government Licensed Investigators could make application either in written form or on line via password and license number access, to this data. There is no reason why that data ought not have a fee attached and that fee ought to reflect at least the running and maintenance of that system. The public needs not only to be protected from criminals but also from people who abuse lawful access to Government data.

Fidelity bonding

As a component of the Investigation licensing fee, a fee for a fidelity bond through an insurer would ensure that if any investigator offends or misuses that data that those that might be offended against are compensated. Abuse of access ought to bring a mandatory disqualification of the license holder responsible. Access to data would for the very first time give investigators the tools they need to investigate and at the same time give them a sense of receiving something for their licensing fees.

How do we bring about changes?

Only through writing like I have and lobbying Governments and remaining persistent and alert and educating the police and the public about the value of a competent private investigator will there ever be changes as I have indicated are required. I am certain given time and good dialogue this will eventually come about.