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**Tips and advice from experts on
Surveillance and Surveillance Equipment**

Fulfilling Your Duties While Managing Risk

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Pivate investigators operate behind the scenes. It's the nature of the job. But when a private investigator is discovered covertly tracking and observing a target and monitoring their actions or conversations without their knowledge, trouble can follow.

In many instances, should someone being surveilled learn their conversations and whereabouts are no longer private, it can lead to court cases that often result in the plaintiff receiving financial restitution and investigators responsible for paying a costly claim. This makes it imperative that investigators understand the laws associated with surveillance work and take steps to mitigate the risks that come with it.

NAVIGATING THE GRAY AREAS

More than 90 percent of private investigators have previous experience in law enforcement or related fields that require surveillance work. Naturally, they have an understanding of many privacy laws and what actions that compromise someone's privacy are illegal. However, invasion of privacy

laws are very broad and can be interpreted in different ways.

The [Legal Information Institute](#) at Cornell Law School refers to privacy as a concept comprised of several different components. It includes four branches of protected interests as a tort concept – a tort being a civil wrong or wrongful act that causes injury to another whether intentionally or by accident.

As a tort concept, privacy includes protection from:

- Unreasonable intrusion upon one's seclusion
- Appropriation of one's name or likeness
- Unreasonable publicity given to someone's private life
- Publicity that unreasonably places someone in a false light

The issue for private investigators is that it can often be difficult to determine definitively whether or not their actions are compromising these interests. [FindLaw](#) defines invasion of privacy as an unjustifiable intrusion into the personal life of another without their consent. As a private investigator, there will be no circumstance where a surveilled target would be asked to give their consent.

Additionally, because an investigator is often hired for a contract that will help settle a dispute involving substantial financial equity or property, wouldn't most actions to gain information by an investigator seem justifiable? The answer is that it really all depends. The requirements for proving an invasion of privacy vary from state to state, and what "proves" an invasion of privacy often relies on a judge's interpretation.

GPS TRACKING AND RECORDING CONVERSATIONS

Certain contracts for investigators may also include other forms of surveillance with even more gray areas. GPS tracking involves the recording of a surveillance target's location and travel, either through their electronic devices or their vehicles. Wiretapping or eavesdropping in an effort to record private conversations could help with an investigator's surveillance task.

As one would expect, both of these again raise questions about a person's right to privacy. The laws surrounding them also vary from state to state and sometimes even county to county.

For example, according to Matthiessen, Wickert & Lehrer, S.C., Attorneys at Law, there are 11 states in the U.S. that require the consent of all parties involved in a conversation or phone call before the conversation can be recorded. What constitutes that consent is often interpreted differently.

In terms of privacy involved with geolocation through tracking devices, GPS.GOV is still unsure if the use of GPS technology to track someone without a warrant violates their constitutional rights. In fact, although several states have enacted laws involving privacy rights and location tracking, there is no federal statute providing the clear protection of geolocation information. Congress has apparently proposed some legislation surrounding the topic, but nothing substantial has been enacted into law.

MANAGING THE RISKS

For private investigators, the easiest way to protect yourself from expensive claims or a costly court settlement as a result of a surveillance contract is to understand state laws where you are operating and use your best judgment while fulfilling your duties.

It's also important not to intervene when on the job, especially in situations that could lead to a physical altercation. You are there to observe and report your findings. Intervening in any situation not only effectively ends your ability to covertly investigate a target, but can also lead to costly litigation and a legal case that results in a substantial claim.

People do not want their information being recorded or shared without their consent, and there will be instances that turn into a legal dispute. Private investigators can protect themselves and their businesses by doing their due diligence when obtaining information, surveilling a target legally and honestly reporting their findings. These steps will go a long way in avoiding costly legal battles and protecting their reputations.

Further, private investigators who want to mitigate their risk should consider working with an insurance specialist who knows the industry to obtain coverage that fits their specific needs. This insurance coverage adds an extra layer of protection for their business, especially for those who specialize in surveillance. **PI**



Georgiana Eisenhardt is program manager for PI Protect from the Brownyard Group, where she works closely with private investigators, security consultants and professionals in related fields. PI Protect is a leading provider of specialized insurance coverage for investigators. Learn more at www.brownyard.com.

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