

## **THE ROLE OF THE DEFENSE INVESTIGATOR**

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A Defense Investigator fulfills one of the most important roles on the defense team. The investigator's job is to verify and validate all that has been done by the investigating police department. With that in mind, the investigator has to have accumulated some training or experience which would allow him or her to recognize where any errors or omissions have occurred or to indicate that all proper procedures were adhered to during the investigation. Know what the standards are! The investigator has to talk to each witness and to review and verify all evidence, physical, verbal, video, etc., that will be used by the prosecution.

In addition, the Defense Investigator has to interview all witnesses identified by the defense team. This would include all independent witnesses located along the track of the investigation. Witnesses no one may know existed or thought to talk to previously. The Defense Investigator reviews all the accumulated statements with the defense team to determine its usefulness and to determine whether it must be further refined or defined. It may be up to the investigator to determine whether a written statement should be taken, a tape-recorded statement, a videotaped statement, etc., at the time of the interview.

A Defense Investigator has to have enough self-confidence to act independently when conducting investigatory duties and be able to interpret pertinent statutes or policies, as the need arises. Not all investigators have a specific skill or expertise, but many experienced investigators have developed highly talented detection skills which allow that person to review physical evidence and scientific reports to determine whether what is reported is consistent, accurate, and truthful. It is not unusual for the investigator to detect something unusual in a report i.e. firearms evidence in which the prosecution has identified a specific type of weapon was used and determine there is something peculiar with the report. The investigator would verify with the manufactures the specific identification items mentioned in the prosecutor's report to confirm what has been reported is accurate. Don't be surprised to learn that what has been reported as fact on one hand is not actuality when checked.

An investigator's job experience is usually all encompassing. There's some knowledge about serums and blood stains, human anatomy, artistry and architecture for crime scene reconstruction, photography and how to set up the shot, how to conduct research and locate various governmental records, the art of conducting an interview, some idea of firearms and how they work, how to organize for those large scale cases, the basics of arson investigation, the basics of sexual assault investigations, the basics of crimes of violence against people, i.e. robbery, murder, felony assault, etc.; and a whole host of other areas that are used on a daily basis.

As the investigator gains experience that person then knows where to look for the answers. Do we check the post office for a new address or the prison to see if the person being sought is locked up? Was the witness one of our own clients or could the witness be on probation and required to report to someone? Has the investigator developed the networking capability to contact investigators in other states to assist in locating a witness?

In today's new technology an investigator must have some knowledge of computers and what benefits they bring to the job. Now an investigator can use mechanical gathering to determine people's financial worth, conduct skip trace investigations, locate research materials on any given subject, and a whole range of new subject areas around the world.

It often falls to a Defense Investigator to locate expert witnesses who will play a part in one of their cases. The investigator may also be responsible for the transfer of evidence to that expert for testing or verification of prior tests. It would not be unusual to find the investigator arranging access to evidence held in the possession of the Court or prosecution for examination. Or to arrange for the collection of evidence submitted by the client which will be tested or examined by an expert witness.

Any planning that is conducted in the office for administrative purposes should always include an investigator as a representative. Why? The information and statistical gathering is just as important to the investigator staff. Information stored in the office's computer could be of vital use to an investigator trying to track a client or another witness. Further, disposition information generated would be of interest for investigator staffing purposes.

Even with the culmination of all of this work, there are still many occasions an investigator must take the witness stand and testify. The job of testifying is almost an art form. You stick to the facts, answer yes or no, be respectful, and don't let yourself be goaded into an argument to lose your temper. Always be sure, double check anything you would have to testify to, document calls steps, have physical evidence ready, never let them catch you napping. Use each experience as a teaching experience and try to have other junior staff members present so that they can observe what happens in the courtroom and will be prepared when their turn comes.

Finally, a Defense Investigator acts as a mentor. A mentor not only to other staff investigators and interns, but to staff attorneys, paralegals, sentencing specialists, clericals, etc. All phases of a defense office interact with each other and have to understand the duties and roles of one another. It is the only way to build an effective defense team.

Through all of this, a Defense Investigator must keep perspective, remain objective and upbeat, keep a sense of humor, and develop a method to deal with the stress of deadlines, the types of cases handled, the continual dealing with human misery, lack of recognition, or even a small thank you for caring enough to do a difficult job under trying conditions. Feedback is important, both pro and con, we learn from what we do right and what we do wrong. It fuels the creativity in a human being and the desire to learn as much as possible, to be as good as possible, to present the best case forward possible, and not feeling that anything was missed or overlooked.

**Thomas J. Luongo retired as the Chief Investigator for the Rhode Island Public Defender's Office and is a former president of the National Defender Investigator Association. Mr. Luongo serves on the Advisory Board of the CDITC and is responsible for Award & Commendations. He is the first recipient of the prestigious CDITC Investigator/Philosopher Award. Mr. Luongo is currently a licensed private investigator in charge of criminal investigations in Providence, Rhode Island for Case In Point Investigations of New England.**