

**TECHNIQUES  
OF  
LEGAL INVESTIGATION**

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Anthony M. Golec, a certified legal investigator and registered private detective, has been a legal investigator since 1965 and continues to actively investigate almost one hundred cases each year.

He is a founding member of the National Association of Legal Investigators and served as its National Director from 1972 to 1974 and as its Comptroller from 1985 to 1994. It was during his term as National Director in 1974 that the Association instituted its professional certification program for legal investigators.

He and his wife, Gail, live in Belleville, Illinois.

Third Edition

# TECHNIQUES OF LEGAL INVESTIGATION

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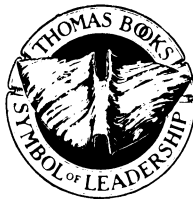
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*To  
my colleagues  
in the  
sometimes elusive  
search for truth  
this book is  
respectfully dedicated*



## FOREWORD

**I**t is no longer sufficient to answer the questions: who, what, where, when and how to fulfill the demand for investigation. As litigation becomes more and more complex, the attorney will look to experts and legal investigators for solutions to the technical problems. Because of advertising and media exposure the public is less trusting of lawyers, but the legal investigator has gained the respect and confidence of the courts. This is due to an intense effort to educate and develop investigators to work with care and accuracy.

This Third Edition of *Techniques of Legal Investigation* assists the professional to search into the latest court decisions and keep abreast of changing opinions. Tony Golec continues his contribution to enhancing the profession of legal investigator with this updated edition. Every inquiring mind will want to add this book to his or her bookshelf of necessary primers.

Alden B. Wolfe





## PREFACE

**T**HIS manual is intended to fill the need that has long existed for a general reference work on techniques, procedures and practices in the field of legal investigation and is the result of requests for such a manual from colleagues, those interested in entering the profession, and instructors in investigative techniques. It is based on the author's experience of thirty years in the field of legal investigation exclusively for trial attorneys and the preparation of thousands of civil and criminal cases for trial. It is intended for the professional investigator of facts and is a book written by an investigator for investigators.

Scores of volumes have been written on police and criminal investigation, especially within the past three decades of the monumental Supreme Court decisions in this area of jurisprudence, but little, if any, attention has been given to the field of *civil* investigation and general investigative techniques applicable to all types of investigation. Such is the purpose of this manual. It will not attempt to intrude into those areas in which adequate texts are already available and will, in fact, refer the reader to those texts whenever possible.

Because of the impossibility of getting one standard work to conform to the laws, procedures, and practices of at least fifty different jurisdictions, much of the material presented here is by necessity general in nature but is intended as basic technique and procedure, applicable to most situations.

This book is intended for all investigators who must gather the facts of any occurrence, whether a tort or a crime, for eventual presentation before a court or other tribunal. The basic knowledge and procedural requirements contained herein should readily lend themselves to use by any professional investigator of facts.

This book has attempted to provide a concise summary of the investigative requirements of most cases the legal investigator is likely to encounter and to provide the latest pertinent case citations. Its purpose is to ensure that the painstaking work of the investigator will have maximum effectiveness, i.e. that it will be legally relevant and material,

and that it will be admissible in a court of law, with the end result that justice will be served. If this book succeeds in even a small way to help accomplish this end result, that is reason and reward enough for its publication.

The first edition of this book, published nineteen years ago, has grown and evolved into this revised edition. The up-to-date education of a new generation of legal investigators was the impetus for this revision. The reader is assured that every bit as much research and energy went into this revision as went into the original work that was first written by a much younger man nineteen years ago.

The law is so challenging because it is a living thing, constantly evolving to accommodate new and changing situations. We as legal investigators must evolve and grow along with it as we go toward the twenty-first century.

Anthony M. Golec

## ACKNOWLEDGMENTS

The author acknowledges his indebtedness and appreciation to a number of individuals responsible for the successful completion of both this original book and its two revisions.

First of all, I wish to express my sincere appreciation to those of my colleagues who indicated the need for this text and originally encouraged me to undertake its publication as well as both revisions.

I gratefully acknowledge the assistance of C.E. “Rick” Heiligenstein for reviewing the chapter on “Products Liability Investigation” and his suggested changes to make the material presented accurate and up to date and the assistance of Melroy B. Hutnick for a similar review and suggestions with regard to the chapter on “Criminal Defense Investigation.” I also gratefully acknowledge the assistance of my colleagues, James M. Wolf, who reviewed the section on FELA Investigation, and Michael T. Pierson, who researched several California cases and decisions.

I am deeply grateful to retired St. Louis County Circuit Judge Orville Richardson for his permission to quote at length from his unpublished paper on *Physician and Patient: Duties and Rights*, and to Dean A. Robb of the Michigan Bar for the same permission with regard to his book, *Rights of Railroad Workers*.

I also gratefully acknowledge the special contributions of Gerald Koester, Fabian L. Sickles, the late Ralph L. Frillman, and Jim Hanner, all master legal photographers, for their photographs that are reproduced in the text.

My deep appreciation also goes to many individuals, too numerous to name, for critically reviewing both the original edition and its first revision and providing the many helpful suggestions as well as the much-needed moral support and encouragement that have resulted in this revision.

To my employers and clients of the past three decades whose work has provided me with both the impetus and the experience to write this book, I express my profound gratitude.

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**TECHNIQUES  
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# Chapter 1

## THE LEGAL INVESTIGATOR

### PURPOSE AND FUNCTION

#### What is Legal Investigation?

“Pilate said to him, ‘What is truth?’ ”

John 18:38

**A**NY investigation is simply a gathering of *facts*. Legal investigation is the gathering of facts pertaining to a situation which is likely to be the subject of litigation.

The legal investigator is the trained professional who searches out the facts to which an attorney can apply the law. He is an individual trained in techniques of fact-finding and forensic procedure whose job is to assist the attorney in achieving a desired result for a client, whether it be a favorable judgment, an agreeable settlement, or an amicable disposition.

The legal investigator is committed to the pursuit of *truth* above all else because it is only by having the true facts at hand that an attorney can intelligently proceed in the best interests of his client. But *fact* and *truth* are not synonymous. What one person perceives and believes to be truth is not necessarily fact. His perception and belief can be distorted through no fault of his own. It is by the careful sifting and study of the assorted perceptions of many persons that an investigator arrives at the true facts and, in turn, at the truth of a given situation.

Legal investigation is a relatively young profession. Lay legal investigators have been used in the broad range of litigation for only about forty years. But their ranks are swelling daily as the necessity for successfully dealing with the increasing amount of litigation dictates the need for more technical and specialized assistance.

The legal investigator is trained not so much in the practice of law as in successful techniques of fact gathering and human relations. His job is to assist the attorney in the preparation of litigation, but his work is done

in the field where the event that is the subject of litigation has taken place.

The law guides the case but *facts* make the case. To the legal investigator, there should be no such thing as an unfavorable fact.

The primary function of the legal investigator is to interview prospective witnesses, prospective parties to the litigation, and prospective experts in the technical areas of the litigation and to search out any pertinent evidence, be it testimonial, documentary, or physical, so as to assemble as complete a factual picture of a situation as possible. He is less concerned with legal aspects than he is with factual ones, but he must nonetheless be aware of what is legally relevant, material, admissible, and permissible.

A common misconception of the legal investigator is that he is a private detective. While such may be true in the strictly literal sense, it is *not* true in the generally understood sense of the term or in the concept that the public has of the private detective as a shady, overbearing, somewhat seedy individual whose practices and ethics are at best questionable. Legal investigators have been working for forty years to divest themselves of this image the general public has of the private detective.

The legal investigator is most commonly employed in the investigation of personal injury cases, where his function is to determine liability for the tort. He is, however, called upon in any type of civil litigation where the collecting and sorting of facts is important, especially in highly technical matters.

But perhaps in no instance is the legal investigator of more value than in the criminal defense case, where his function parallels that of the police in determining whether a crime has been committed and, if so, whether the accused is guilty of its commission.

As a non-lawyer, the legal investigator is more easily able to maintain rapport with witnesses and also to serve as a buffer between witnesses and an attorney. He frees the attorney of an enormous amount of work and allows him to devote this extra time to the legal aspects of the litigation, which, after all, is what the attorney is trained for. The result of such an attorney-investigator team is a better job for the client. Another tangible result of such teamwork is the easing of court congestion, because the proper and complete investigation of a matter makes a disposition out of court increasingly likely. The results of a good investigation often serve as a basis for compromise or settlement.

The investigator is also often able to provide valuable insight for the attorney, who, being highly trained as he is in the abstraction of law, can fail to see the practical side of a given situation. This is especially true in the case of the novice lawyer or the experienced attorney who may be out of his field in a particular case.

The competent legal investigator can help to breathe new life into the equal protection clause of the Constitution.

### **Staff Investigator or Independent?**

There are two basic kinds of legal investigators: the staff investigator and the independent investigator. The staff investigator is an employee of one particular attorney or law firm or legal organization. Most sizeable law firms throughout the country have one or more such investigators, as do most legal aid offices, public defender offices, and an increasing number of medical examiner offices.

A problem in many law offices is that there is not a sufficient ratio of investigators to working attorneys, and as a result, the most effective use is not made of the legal investigator in the overall case load of the office. It is the experience of the author that in the reasonably busy law office the most effective ratio is one investigator for every two attorneys engaged in trial work. Besides allowing for adequate attention to current cases, such a ratio also permits some degree of specialization among the investigators, which provides for more expertise and effectiveness from the investigative staff.

The independent investigator is the self-employed businessman whose services are available to any attorney on a contract or individual case basis. The current trend is toward the independent investigator, and it is the opinion of the author that such independence is a requisite for true success as an investigator since, as with any professional, the absence of allegiance to any one employer engenders more respect for and acceptance of the work and opinions put forth by an investigator.

Most legal investigators are by necessity general practitioners, although many specialize in certain fields such as admiralty or professional malpractice, or handle only certain types of cases such as FELA or railroad accidents.