

POSITION PAPER #2
For National Regulatory Minimum Standards
For Private Investigators

Well publicized scandals involving private investigators, such as the prosecution of Anthony Pellicano and investigators employed by Hewlett – Packard to investigate members of that company’s own board of directors, have exposed serious public policy questions that are generally unknown and misunderstood outside the investigative industry itself.

With Missouri implementing a statewide licensing law for private detectives in Fall 2009, the only states which still do not have a statewide, state administered licensing law in place for private eyes are Alabama, Alaska, Colorado, Rhode Island, South Dakota, and Wyoming. In some of these states there are municipal regulatory authorities.

The lack of uniform statewide licensing in these hold-out states creates serious complications for a variety of national legislative goals to protect personal privacy, combat identity theft and prevent fraud. It would be simple to carve out legitimate exemptions in federal privacy legislation for licensed and regulated private investigators if all states had licensing with certain minimum standards in place. Since these last hold-out states have failed and refuse to implement licensing, it leads to yearly wrangling over otherwise legitimate legislative attempts to protect privacy and combat identity theft and fraud while protecting the also-legitimate use of data bases by the private sector.

Some legitimate uses of data base information by private investigators that are under threat by privacy legislation in this climate are the very efforts of the private sector to combat identity theft and fraud. Private investigators also need access to data bases to locate witnesses for criminal defense and civil actions, track down “dead – beat dads,” hidden-assets investigations on judgment debtors, and to locate missing persons.

Examples of legislation that becomes murky and mired in debates that would be unneeded if all private investigators were licensed and regulated properly include efforts to eliminate the public dissemination of social security numbers, close or restrict marriage, death, and birth data bases to the general public, and restrictions placed on access to motor vehicle and voter registration data at the state level.

To remedy this legislative conundrum and create uniform protections for the public’s rights to privacy while balancing the rights of private investigators’ clientele to equal protection of the law and due process of law, the following federal legislation should be enacted:

- Legislate a federal cut-off of Bureau of Justice Assistance funds to any state which does not implement private investigator licensing with a minimum of 6,000 hours of investigative employment for entry into the field, a minimum

of 12 hours every two years of Mandatory Continuing Education (MCE) including at least two hours each of legal updates, privacy rights, and ethics;

- Legislate a federal cut-off of Bureau of Justice Assistance (BJA) funding to any state which does not provide access to private investigators of motor vehicle and voter registration data base information for the service of process, to locate witnesses in pending litigation or in prospective litigation when certified by a licensed attorney
- Legislate a federal cut-off of BJA funding to any state which does not adopt the NASIR (National Association of Security Industry Regulators) endorsed legislative standard for “reciprocity” laws, enabling private investigators to cross state lines to follow up leads and interview witnesses when their investigation began in a state in which they are licensed
- Appropriate BJA funding for states to adopt uniform systems to provide investigative and other ancillary services to indigent defendants, with due process rights and the right to collective bargaining for court appointed private investigators, and insuring the payment of prevailing wage at the federal Criminal Justice Act (CJA) minimum schedule
- Exempt properly licensed and regulated privacy investigators who have completed the above minimum MCE requirements from future federal legislation limiting, restricting, or closing previously available data bases that could otherwise be used for identity theft and/or fraud
- Make it a federal crime (misdemeanor first offense; felony second offense) for an unlicensed person/non-exempt person to cross state lines to conduct an unlicensed investigation and/or to advertise their services in any manner that is interstate in nature, including but not limited on the internet, and/or which otherwise affects federal commerce to a substantial degree.