



# INVESTIGATIONS AND SURVEILLANCE FOR SETTLEMENT

**Doug Marshall** Marshall Investigative Group, Inc.

Clients have asked me what I feel is the most critical thing about investigations and surveillance that lead to positive results. Investigations develop the truth, whether beneficial or detrimental to the case. The way to get the necessary information for successful surveillance is to do the preliminary work that details whether you should even do surveillance. Doing surveillance without knowing as much as you can about the case can result in limited activity, and it can possibly harm your case. I have heard many attorneys tell me that they rarely get anything beneficial on surveillance. That could be because surveillance is all that is being done.

So many people make a limited inquiry into social media and think that is enough. Please ask yourself, do you know all that you need to know about the internet?

## WHAT WE CAN LEARN FROM THE INTERNET

I separated social media from the duties of my private investigators so I could

understand the internet in a whole new way. Authenticity is essential, and you will need metadata and the MD5 hash algorithm to prove that you obtained it from a public site on the internet, which will stand up in any court. Over the last six years, our Internet Presence Department has produced impressive results that have changed the direction of our investigations.

Though social media is not enough, I want my agents to take what we have learned from the internet and verify what we are reading and seeing on the internet. In one case, we learned the plaintiff was working out at a club. From an initial investigation, the team learned where – and more specifically, in what club – this activity was taking place. Knowing this type of information before the surveillance begins results in a productive video. On the other hand, not completing an internet presence or investigation before surveillance could provide the plaintiff with additional leverage to bolster a claim against the defense.

## IS SURVEILLANCE WARRANTED?

When preparing for mediation and arbitration, it is essential to remember that you can't use surveillance if you don't have it. I would never recommend it in every case, but mediation will go nowhere if you don't have leverage; surveillance can sometimes be your best tool.

If you never requested preliminary work before surveillance, you may be making a big mistake. When surveillance is warranted, and you show up to mediation without the right tools, the result could be catastrophic.

For example, you need leverage in mediation, especially when the plaintiff's attorney has slightly reduced or has not come down from their original demand. If an investigation and surveillance were done before and after the plaintiff's surgery, you now have the tools you need to convince the other side. Video may show that the plaintiff has been active and ambulating well while walking with a normal gait since the surgery. You can use the video to convince the plain-

tiff and the attorney to settle with that in mind.

It can be challenging to determine when to use the surveillance, especially when you have an upset plaintiff. However, it has been helpful to show the video to the arbitrator or mediator and let them explain to the plaintiff that it would be in their best interest to settle the claim.

The right time to produce surveillance must be weighed by how reasonable the other side is, and if they are even close to the authority that has been granted to spend on the claim.

One mediation comes to mind when a client called, and he asked if we could have an agent go to an attorney's office in 20 minutes to catch the plaintiff leaving as they were not coming to a settlement. The quick-thinking adjuster suspected that the plaintiff was exaggerating the claim. He noticed him lifting his right arm several times while in a sling. We had an agent there in 15 minutes and saw the plaintiff entering a vehicle of a pre-arranged driver to take him to his apartment. When the plaintiff arrived at his apartment, he removed the sling and used his right arm to grab the handrail. He later walked to a local market and carried a case of beer back to his apartment using the injured arm. Even though the adjuster did not have surveillance at the mediation, he was astute enough to recognize when someone may be untrue in his testimony. The result was a low six-figure settlement from a \$4,000,000 demand.

### DON'T DELAY

If surveillance is in your plans, make sure the proper preliminary work is done; this will increase the chances of a positive outcome. In this world of expanding technology and access to so much information on the internet, research and internet presence investigations are vital to the success of today's surveillance. Without it, you go in blind and have a limited chance to obtain the information you need to determine whether the claim has merit. Also, don't wait to do your internet searches; if you have a claim with significant exposure, do your due diligence and get an internet investigation at the very least.

Each case is not the same and should never be treated as such. Unfortunately, some investigative firms use a cookie-cutter approach and do the same work for every case they receive. Liability claims are different from workers' compensation claims and so on. The investigator handling the file needs to know the differences to effectively provide the client with the required information to evaluate the severity of the injury.

Following someone to his office at a desk job for a liability claim offers no real value to a client. We should know early that this person works in an office during the week and should execute surveillance on the weekend to determine the subject's actual physical abilities. In a workers' compensation claim, we want to know if a claimant is working. Doing the surveillance during the week and one day on the weekend will be more effective.

As investigators, we need to stay informed of the ever-changing world of social media and keep evolving as professionals; that is why it is necessary to make data mining a specialized department. By making this a technical field, the investigator has all the tools and current knowledge to provide the most accurate profile of the plaintiff.

### LEVERAGING INTERNET TECHNOLOGY RESOURCES

When preparing for surveillance, the internet can sometimes provide enough information that makes surveillance unnecessary. We have found webcasts and YouTube content that has been damaging to the plaintiff's side. One that comes to mind is an individual who, by profession, is a personal trainer who walked around in public with a neck brace but posted a daily webcast of herself working out in her basement. In addition, another subject was kind enough to have himself videotaped as he jumped from an airplane at 10,000 feet. Surveillance was ordered on a case after determining through the internet and investigating that a plaintiff is an I-Fly instructor; the plaintiff provided our agent with an extensive example of how to indoor skydive properly.

Even during a pandemic, people were streaming events, and sometimes they became the best resource we had to find the truth about a claim. We have obtained many self-made videos on GTTR.COM where individuals can produce a video of their professional skills and talk about their interests for the world to see. I could continue about how many cases we have solved and where we have saved millions of claims dollars in claims by having the proper knowledge using the internet and investigations.

### DATA DNA

Preserving the metadata or EXIF (exchangeable file format) information from photos is as important as the page itself. I like to refer to this information as data DNA. We use our software to procure this data to make it admissible in court. Without it, you could lose the ability to use vital social media for your case, which will result in you losing the case in court.

Investigating the plaintiff and providing a better understanding of the person's daily activity is vital before surveillance. For example, we recently had a client who wanted surveillance without checking into the person's background because an independent adjuster saw this person just a month before. After convincing the client that a background check could be vital to this case, our agent determined that the police arrested this individual on a warrant for theft, and he was still in prison. Going on surveillance would have been a waste of time and money. So instead, investigators will use the content from what is found on the internet and verify it to be true. You have heard the phrase, "Not everything you see on the internet is true." That is so true, and as investigators, we need to determine whether these leads have any validity.

### CAPTURING GPS DATA

Vehicle sightings is another way to understand a subject's routine better. Through a database that approved private investigators use, we can obtain GPS locations of a subject's vehicle that are captured by police, Google, or security cameras. This system is called vehicle sightings and can be used to identify an individual's habits or even where a transient individual lives.

Once these procedures are followed, surveillance can be engaged, and the agent will be equipped with several helpful details as long as we did the preliminary investigation correctly. A good investigation will determine a current verified address, registered vehicles owned by the plaintiff and family, locations where the plaintiff routinely visits, upcoming activities such as recreational, vacations, fishing or hunting, parties, amusement parks, and so much more.

I'll end with this; a good investigator wants his surveillance to help the client determine the merit of a case. Preliminary work done before the surveillance can improve the results that are beneficial to the defense. Doing the necessary preparatory work will save time and money as well as ensure better results on surveillance.



*Doug Marshall, president of [Marshall Investigative Group](#), has been doing insurance investigative work for more than 30 years. Well known in the industry, he has been a speaker at CLM, TIDA, USLAW and the Chicago and Orlando TLA. Marshall Investigative Group's unique approach to investigations is complemented by its integrity and attention to detail.*