

A PROFESSIONAL REVIEW OF THE  
AN OLIVE BRANCH INVESTIGATIVE REPORT  
WITH RESPECT TO  
ALLEGATIONS AGAINST YOGI BHAJAN

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This commentary presents an opinion as to the legitimacy and authority of the An Olive Branch Report titled “An Investigation into Allegations of Sexual and Related Misconduct” (AOB Report) published by An Olive Branch.<sup>2</sup> This commentary also addresses some of the statements made in the letters and "FAQs" issued by the Siri Singh Sahib Corporation (SSSC) Board's Collaborative Response Team (CRT) on August 28, 2020, also published electronically.<sup>3</sup> This document offers *no opinion* as to whether or not Yogi Bhajan engaged in the alleged behaviors, and *no opinion* as to the truth of the allegations made against Yogi Bhajan or the credibility of the witnesses. This letter only offers an opinion as to why the AOB Report is not a legitimate investigative report, and why it should be viewed only as a survey from which the SSSC Board and other readers should not draw any definite conclusions regarding the validity of the findings. This commentary also addresses some of the CRT's responses to criticisms of the AOB Report.

### **Executive Summary**

The AOB Report was prepared in contravention of statutes that require investigators to demonstrate certain professional qualifications in order to satisfy conditions for licensure, and to comply with other statutory requirements. As a result of the lack of qualifications to conduct an investigation and prepare an investigative report, the AOB Report is of no use in forming the basis for any findings as to whether the alleged behavior of Yogi Bhajan occurred.

### **Section I**

Section I of this commentary evaluates the five responses to complaints about the AOB Report, as presented in the CRT Letter of August 14, 2020 (CRT Letter).<sup>4</sup> Section II will address the adequacy of the AOB Report as an investigative report.

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<sup>2</sup> <https://epsweb.org/aob-report-into-allegations-of-misconduct/>

<sup>3</sup> <https://www.ssscresponseteam.org/faq>

<sup>4</sup> <https://www.ssscresponseteam.org/>

## *CRT Letter in Response to Criticisms of the AOB Report*

The topics raised in the CRT Letter include:

1. The District Attorney of Allegheny County, Pennsylvania who was responsible for enforcing the Pennsylvania Private Detective Act of 1953 received a complaint about the unlicensed activity, and after discussions with AOB's local counsel and SSSC, concluded that no one in Pennsylvania was being investigated and none of the activities under investigation occurred in Pennsylvania so Pennsylvania has no legal interest in AOB's investigative activities. The CRT stated that "law enforcement in Pennsylvania is aware of and has familiarized itself with the nature and scope of AOB's investigation and does not intend to take any action concerning AOB's licensing status."
2. The CRT stated, "...any attempt by a state regulatory or law enforcement agency to interfere with AOB's investigation for SSSC would likely violate the First Amendment of the US Constitution," since any governmental agency "is prohibited from interfering with a religious organization's decisions on matters related to internal governance, faith, and the organization's religious mission." The CRT letter further stated, "SSSC's constitutionally protected right to choose its course of action in this context would therefore likely foreclose any legal action against SSSC or AOB under private detective licensing statutes or analogous laws of any state."
3. With respect to the validity of the AOB's investigative process, the CRT Letter claimed that the AOB "followed standard procedures for conducting an investigation, testing the credibility and motives of all reporters of harm and other witnesses, and seeking corroborating or refuting evidence and witnesses." The CRT Letter noted that the AOB investigation "followed best practices."
4. With respect to the qualifications of the AOB "investigators," the CRT Letter claimed, "AOB's training and experience qualified them for this investigation." The CRT Letter listed the experiences, qualities, and abilities the SSSC used to select the AOB, and then summarized the training and background of the AOB's "investigators," concluding that these experiences qualify them to perform investigative work.
5. As to the "fairness" of the investigation because Yogi Bhanjan's interests were not represented in the investigation, the CRT response was that SSSC was "not aware of any other posthumous investigation where such a representative was appointed or any principal of law or practice that would require a representative."

Responses to CRT's assertions:

1. AOB was not licensed to conduct this or any other investigation.

According to the CRT Letter, the Allegheny County District Attorney concluded that since no one in Pennsylvania was being investigated and none of the activities of the “investigation” took place in Pennsylvania, Pennsylvania has no interest in whether AOB is licensed. This statement does not provide a final determination as to whether AOB can legitimately conduct investigations.

An Olive Branch is an active fictitious business name that was legally registered to do business in Pennsylvania on November 29, 2010. It is owned by Kyoki Roberts and the Zen Center of Pittsburgh, both with addresses in Pittsburg, Pennsylvania. An Olive Branch Associates, LLC, with the same owners was also registered to do business in Illinois on June 15, 2020, after the AOB investigation was concluded. All of the activities of the AOB investigative team occurred in Pennsylvania and not in the states where the witnesses and accusers resided.

As duly registered entities in Pennsylvania, AOB and its owners, the Zen Center of Pittsburgh, are subject to the laws of Pennsylvania. That should be sufficient to establish that Pennsylvania has an interest in whether AOB is compliant with all the laws of the Commonwealth. However, the District Attorney decided that since no Pennsylvania resident was being investigated, the AOB was therefore not subject to the Pennsylvania Private Detective Act of 1953 (PDA). The Pennsylvania Private Detective Act does not exempt investigators who are registered to do business in the Commonwealth, but conduct investigations outside the state borders. The PDA states:

"§1 (c) The terms "the business of detective agency," the "business of investigator," the "business of watch, guard or patrol agency," and the terms "private detective" or "investigator" shall mean and include any person, partnership, association, or corporation, engaged in the private detective business, as defined in subsections (a) and (b) of this section, with or without the assistance of any employee or employees."

Clearly, since the investigators and the company for which they worked were and still are registered to do business in and are located in Pennsylvania, they are subject to the mandates of the Pennsylvania Private Detective Act of 1953.

Sections 12(b)2 and 3 of the PDA require that an investigator be licensed to do an investigation of a person and/or determine the credibility of witnesses or persons. The AOB Report specifically states that they did an investigation of Yogi Bhajan and determined the credibility of people they interviewed. They conducted all the interviews as part of AOB that was incorporated and operating in Pennsylvania. They were required to be licensed as private investigators in Pennsylvania.

The question arises: “Do other states’ private investigator licensing laws apply in this situation, so that AOB would also be subject to private investigator licensing laws if a court were to determine that the Pennsylvania licensing law did not apply?” The answer is yes.

The AOB investigation was commissioned by the SSSC,<sup>5</sup> which is registered to do business in California and New Mexico. No entity with any variation of the name “An Olive Branch” was found to be registered with either the California or the New Mexico Secretary of State departments. The private detective statutes in the states of Pennsylvania, Illinois, California, and New Mexico were reviewed to determine the requirements for investigative activity and for licensure under the private detective legislation in those jurisdictions. Pennsylvania and Illinois were chosen since AOB is registered to do business in both states. California and New Mexico were chosen since it is likely that the victims and witnesses were residents of those states,<sup>6</sup> and given SSSC’s business registrations in those states, either state has a legitimate reason to impose the licensing requirement on private investigators interviewing victims and witnesses within their borders. Relevant portions of the Pennsylvania, Illinois, California, and New Mexico statutes and links to the full statutes are attached to this document (Appendix A), and specific sections of the statutes relevant to the facts presented herein are highlighted in yellow.

2. It was not a violation of the Establishment Clause of the First Amendment for a state regulatory or law enforcement agency to interfere with AOB’s investigation prepared for SSSC.

It is remarkable that the CRT raised the First Amendment defense to the complaints against the AOB Report, especially in light of the multiple precedential decisions in trials with respect to the Catholic Church’s crisis involving sexual abuse by priests and other religious leaders. A complete history of the interpretation of the First Amendment is beyond the scope of this commentary, but it is noted that over the decades, federal courts have been called on to interpret the First Amendment.

The First Amendment Establishment Clause states:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

A seminal case regarding the First Amendment as it affects the regulation of religious beliefs was *Reynolds v. United States* (1879),<sup>7</sup> in which the Supreme Court was asked to determine whether the Mormon practice of polygamy was a violation of the prohibition of government interfering with the free exercise of religion. The Court found that “there never has been a time in any State of the Union when polygamy has not been an offence against society, cognizable by the civil courts and punishable with more or less severity...it is impossible to believe that the constitutional guaranty of religious freedom was intended to prohibit legislation in respect to this most important feature of social life.”

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<sup>5</sup> Cover Letter to the AOB Report by the Siri Singh Sahib Corporations, <https://epsweb.org/wp-content/uploads/2020/08/SSSC-Cover-Letter-Final-with-Link-to-Report-for-Circulation.pdf>

<sup>6</sup> It is impossible to determine where the victims or witnesses reside since their identities are not disclosed in the AOB Report.

<sup>7</sup> <https://www.mtsu.edu/first-amendment/article/920/polygamy>

The Court continued, “To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself.” In *Davis v. Beason* (1890) the Supreme Court stated, “...however free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislation.”<sup>8</sup>

Whether Yogi Bhanjan engaged in sexual abuse is not related to “a religious organization’s decisions on matters related to internal governance, faith, and the organization’s religious mission” and is, therefore, not a violation of the First Amendment’s prohibition against government interference, as stated in the CRT Letter. The CRT Letter’s statement assumes that whether or not Yogi Bhanjan engaged in sexual abuse is a matter solely related to internal governance of the religious organization, the organization’s faith, or its religious mission; however, any crime against society as a whole cannot be solely of interest to a community practicing its faith. Sexual abuse is not likely to be related to the practice of the faith of the SSSC community.

It is also surprising that the CRT Letter raises the First Amendment Establishment Clause to shield AOB from complying with the licensing laws of the various states in which it is registered to do business or in which it conducts its investigations. The First Amendment immunity does not apply to AOB since it is not a religious, charitable, or non-profit organization.,<sup>9</sup> and so it cannot shield AOB from compliance with the licensing laws of any state in which it operates.

In 1971, in *Lemon v. Kurtzman* (1971), the Supreme Court established “a three-pronged test for laws dealing with religious establishment. To be constitutional, a statute must have “a secular legislative purpose,” it must have principal effects that neither advance nor inhibit religion, and it must not foster “an excessive government entanglement with religion.”<sup>10</sup> The same analysis may be applied to whether violation of any state’s private investigator licensing law is a violation of the First Amendment. The private investigator laws have a secular legislative purpose, they do not either advance or inhibit religion, and they do not foster an excessive government entanglement with religion.

### 3. AOB was not qualified to conduct this investigation

The CRT Letter indicates that “AOB’s training and experience qualified them for this investigation.” The CRT Letter states that the SSSC’s requirements to select the investigators included:

- “Experience understanding the issues unique to spiritual or religious-based organizations.

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<sup>8</sup> <https://www.mtsu.edu/first-amendment/article/885/establishment-clause-separation-of-church-and-state>

<sup>9</sup> <https://www.guidestar.org/search>

<sup>10</sup> <https://www.law.georgetown.edu/gender-journal/wp-content/uploads/sites/20/2020/01/Article-4.pdf>.

- Experience investigating claims of sexual misconduct.
- Demonstrated relatability (sic.) to reporters of harm as well as witnesses.
- Ability to instill confidence that all individuals in the matter will be treated with sensitivity and care.
- Service as an impartial third-party, unconnected with the SSSC organizations, lawyers, or law enforcement.”

Unfortunately, these capabilities, with the exception of the second, do not establish the qualifications required by statute to conduct an investigation (see next paragraph). At its website, AOB states that its expertise lies in “providing training on ethics, policies, governance best practices and conflict resolution,” helping “spiritual communities as they react to the suffering, chaos, and breakdown that results from ethical misconduct...,” and providing “healing and restoring harmony.”<sup>11</sup> The biographies of the principals of AOB indicate that their expertise lies in mediation and problem-solving in spiritual communities. Their background and training clearly prepare them for their stated mission. Unfortunately, it has not prepared them to conduct legitimate fact-finding investigations related to sexually-based criminal behavior, or to supervise others in such investigations.

The licensing statutes in most states require the following in order to be qualified to be professional investigators (See Appendix A). An applicant for a private detective or private investigator license must, at a minimum, establish that he or she *has been regularly employed as a detective for a period of three years* (emphasis added). Some of the states in which the Yogi Bhan investigation was conducted require an internship with a licensed investigator for more than three years, and that the work experience must have taken place within the five years preceding the application for the license. An educational degree in a criminal justice or related program may partially substitute for the work experience. In addition to work experience and education, California and New Mexico also require applicants to pass an examination that includes questions related to competence and to laws relating to privacy and professional ethics. The California Act states, “Notwithstanding any other law, experience for purposes of taking the examination for licensure as a private investigator *shall be limited to those activities actually performed in connection with investigations...*” (emphasis added). New Mexico also has continuing education requirements.

The language and intent of these statutes governing private investigators, as well as statutes in jurisdictions other than these four states, indicate that persons without the requisite work experience, and/or educational training are prohibited from conducting investigations and from providing reports related to these investigations to clients. The states recognize that special training and skills are required in order to conduct competent investigations whether the final reports are provided for trials or for other purposes. Investigators are required to comply with the professional standards for legitimate investigations regardless of the final use or the description of the end users. When unlawful investigations are conducted and/or reports prepared, there is a danger to the safety and welfare of the citizens of the various states. This danger is reflected in the various statutes’ requirements for insurance or bonding associated with licensure.

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<sup>11</sup> <https://www.an-olive-branch.org/>

According to the U.S. Bureau of Labor Statistics, most private investigators have some sort of prior work experience, having worked in law enforcement or with the military, in insurance or finance, or as attorneys or paralegals.<sup>12</sup> On-the-job training is generally required, since different types of private investigations require different knowledge and skills.<sup>13</sup> A private investigator must uncover information that is not readily obtained without specific knowledge and skills; he or she needs to know how to research, observe, prepare and conduct interviews, prepare reports, and comply with the laws as they apply to private investigations. Qualification for licensing private investigators usually favors experience over education. Some states require written or oral examinations before granting licenses.

Some form of prior experience and training is required in order to be licensed as an investigator because there are special skills and techniques that investigators are required to use in order to determine the truth of any facts they seek to present in an investigative report, including the credibility of the victims and witnesses. There are certain elements required in any investigative report including, but not limited to, a specific description of how the investigation was carried out, so that the users of the investigative report can independently determine whether adequate investigative processes were used and assess the credibility of the witnesses. It is insufficient to state, “an analysis of the credibility of the witness was conducted and it is concluded that it is ‘more likely than not’ that the alleged behavior or event occurred.” The AOB Report should describe specifically the evidence used for the credibility analysis. It is not possible to assess the credibility of the accusers and witnesses based on the AOB conclusory statements alone.

The AOB Report does not specifically describe the investigative techniques employed; instead, it merely states that AOB:

- “Evaluated all information received with respect to customary legal standards for judging credibility of the people who presented it and its alignment with other available information
- Made a determination of whether there was sufficient and reliable information to conclude that the alleged behaviors were ‘more likely than not’ to have occurred”

However, nowhere is it explained how the information received was “evaluated,” nor what the “customary legal standards for judging credibility” were. Its “alignment with other available information” was not explained nor was the specific nature of the “available information” that was part of the evaluation process.

The CRT Letter states that the AOB consultants have careers in fields that make them well-qualified in this work because they are “professional mediators and facilitators, ...know how to listen deeply and ask probing questions to tease out important details and distinctions in what people say. They also have graduate-level training and experience in gathering and analyzing qualitative data...” all of which makes them “competent to conduct

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<sup>12</sup> <https://www.bls.gov/ooh/protective-service/private-detectives-and-investigators.htm#tab-2>

<sup>13</sup> <https://www.opssecuritygroup.com/hiring-a-pi-what-to-look-for-in-a-private-investigator/>

the investigation and synthesize their findings into a report.” Further, the consultants are “guided by social science knowledge, insight and practice... and experience support[ing] large-scale inquiries such as this one... Moreover these consultants have performed similar investigations for two other organizations in the past, demonstrating their ability to do the work necessary in this matter.”

These qualifications clearly prepare the consultants to practice their mediation and facilitation functions. However, they do not qualify them to conduct fact-finding investigations consistent with statutory mandates. According to the licensing requirements, investigators must have at least three years of work in a relevant investigative environment. The CRT Letter acknowledges that AOB has completed only two prior investigations of an unidentified nature. The consultants have no training in criminal justice or any other related educational experience. One principal of AOB is titled “lead facilitation consultant,” with stated experience that includes “strategic planning, facilitation, research, board development, project management, and volunteerism.”<sup>14</sup> She has authored books and developed training curricula for non-profit organizations and earned a Ph.D. focusing on “market segmentation of volunteers based on their values and lifestyles.” Another principal is a “certified mediator” and has had a professional career as a project manager. A third principal is a certified mediator and “has 40 years of experience studying, intervening in and writing about conflict, negotiation, and collaboration.” She has “conducted mediation, team building, facilitation and conflict assessments for multiple types of organizations...provided negotiation and conflict management training to organizations worldwide... and published more than 1000 articles and four books on collaboration, complex problem solving... and has received awards for research on conflict and collaboration.” These principals of AOB are more than qualified to fulfill their social services mission – but they are not qualified to act as investigators. They have not served the required minimum of three-year internships in relevant investigative settings nor received any investigative training. They have not sat for nor passed relevant investigative examinations.

The CRT Letter states, in conclusion, that the AOB’s consultants have “followed best practices for conducting this type of investigation despite the subject of the investigation being deceased. They listened carefully...tested the credibility... sought corroborating or refuting evidence and witnesses...and prepared a completed account.” However, none of this is available for examination and verification in the AOB Report.

#### 4. The AOB Report was intended to be an “investigative” report

The AOB Report is frequently described as being “investigative” in nature even though AOB goes to some lengths to deny its investigative purpose. At its website, AOB discloses that it is not an investigative body, and it does not intend to conduct investigations.<sup>15</sup> In a July 15, 2020 news article in the online Los Angeles Magazine,<sup>16</sup> AOB is described as “a Philadelphia-based consultancy guided by Buddhist principles that

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<sup>14</sup> <https://www.an-olive-branch.org/meet-us/>

<sup>15</sup> <https://www.an-olive-branch.org/mediation/>

<sup>16</sup> <https://www.lamag.com/citythinkblog/yogi-bhajan/>

helps spiritual communities navigate ethical misconduct,” At its website, AOB states, “We are not investigators and do not try to uncover the past; instead, we try to improve things for the future.”<sup>17</sup> In an August 15, 2020 article published in Yoga Journal,<sup>18</sup> AOB is described as “an organization formed in 2011 to respond to ethical misconduct in spiritual communities.” AOB states that it focuses on remedying the effects of ethical misconduct in spiritual communities.

The AOB Report states, “...this report is not a legal investigation; it is not intended to gather facts for a case that would be tried in a court of law. Rather, it is intended to report An Olive Branch’s findings as to whether it is more likely than not that Yogi Bhajan engaged in sexual and related misconduct.”<sup>19</sup> While AOB took some care to indicate that the Report was not investigative in nature, it nonetheless reports the results of its “investigation,” and forms the conclusion that it was “more likely than not” that Yogi Bhajan engaged in the alleged conduct.

On the other hand, the AOB Report goes to some lengths to give itself the imprimatur of a professional investigation. The Los Angeles Magazine article refers to the AOB Report as an investigation into whether the alleged behaviors of Yogi Bhajan did occur. In the news article announcing the AOB report, it was referred to as an “investigation.” The Los Angeles Magazine article discloses that the sexual allegations against Yogi Bhajan “...are likely true, according to a report released August 13, 2020 by An Olive Branch...” Siri Singh Sahib Corporation announced that it was launching an “independent investigation into allegations and hiring An Olive Branch on March 9, 2020.”<sup>20</sup> The AOB Report was completed and is dated August 10, 2020.

The disclaimers on the AOB webpage and also contained in the AOB Report are insufficient to negate the fact that the AOB intended to conduct what appeared to be a professionally conducted investigation. The caveat that the AOB Report was for “internal purposes only” fails since the alleged conduct was criminal in nature and thus immune from the prohibitions of the First Amendment. Finally, the fact that the Report was prepared for “internal purposes only” does not remove it from the purview of the private investigative legislation as enacted in the four states in which the investigation took place.

The AOB Report provides only one statement as to the purpose of the report not being investigative; however, the word “investigation” appears 146 times throughout the text of the 72-page AOB Report. This frequent use of the word “investigation” leads to the perception that the AOB authors are legitimate investigators and that the AOB Report, like any professionally-prepared investigative report, is based on credible and provable evidence, on generally-accepted investigative principles, and on an ethical code of conduct. Thus, the AOB Report is presented as an “investigation” and the reasonable inference is

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<sup>17</sup> <https://www.an-olive-branch.org/mediation/>

<sup>18</sup> <https://www.yogajournal.com/yoga-101/abuse-in-kundalini-yoga>

<sup>19</sup> AOB Report, page 10

<sup>20</sup> <https://www.yogajournal.com/yoga-101/abuse-in-kundalini-yoga>

that its findings can be given the same treatment as any professionally- prepared independent investigation. It cannot be given that significance.

## **Section II**

This section points out some of the failings of the AOB Report.

### **The Investigative Process**

There are many different types of investigations, each of which requires a different investigative process. The investigative process for a traffic accident is different from that for a robbery is different from that for a fraud investigation. Each type of investigation should start with an investigative plan.

The investigative plan is critical to the success of an investigation into an event or a series of events to determine what types of inquiries are required to find the relevant facts and to provide a fair assessment of the credibility of the victims and witnesses. Typically, the investigative plan does not include a conclusion or findings as to whether the event(s) occurred since that must be left to a court of law.

In the situation involving Yogi Bhajan, the planning step should include preparation of the investigators to make the investigation. It should include a clear statement of the allegations, including dates and times. It should include the relevant facts that need to be proven in order for the SSSC Board to determine whether or not the behavior occurred. It should include a plan as to how this information can be obtained, including the names of victims, witnesses, the types of official documentation that should be obtained, and the nature of any electronic searching. A determination should be made as to whether the investigation should include reference to internal documents, external documents, interviews, and/or other types of evidence. The issue of credibility as it pertains to the investigation itself is whether there are sufficient *independent* facts to support the allegations, thus making the perceptions of the investigators irrelevant to the assessment. All final determinations as to the credibility of the evidence should be left to the SSSC Board or other trier of fact. Part of the planning process may include both research into the history of laws and precedential decisions related to the alleged conduct and/or consultation with an attorney to determine what elements of the allegation are required to be proven.

Investigative tasks include “identifying physical evidence, gathering information, evidence collection, evidence protection, and witness interviewing. These are essential tasks that must be learned and practiced with a high degree of skill to feed the maximum amount of accurate information into the investigative thinking process.”<sup>21</sup>

The final investigative report should state specifically what the investigative process entailed. The SSSC Board should know exactly which facts were used to determine credibility. The relationships among accusers and witnesses could improperly influence the

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<sup>21</sup> <https://pressbooks.bccampus.ca/criminalinvestigation/chapter/chapter-4-the-process-of-investigation/>

perceptions of each and thus the facts that each presented to the investigators. The AOB Report states in Section 8, page 6, that it has "...sufficient evidence to conclude that it is more likely than not that Yogi Bhajan engaged in several forms of sexual/unethical misconduct with 36 of his followers. Specifically it is more likely than not that Yogi Bhajan engaged in sexual battery and other sexual abuse, sexual harassment and conduct that violate Sikh vows and ethical standards." The AOB Report does not state what the "sufficient evidence" was, other than the unverified statements of several accusers. If such evidence of verification exists, it must be disclosed with specificity.

After the planning process and the fact-finding part of the investigation are completed, an investigative report must be prepared. Only the facts found in the investigation, and *documentation* of the credibility of the accusers and witnesses should be included in the investigative report. In the AOB Report, the investigators/ consultants took it upon themselves to decide that it was "more likely than not" that Yogi Bhajan engaged in the alleged behaviors. If the investigative report had been properly prepared, the facts either would or would not have led to that conclusion.

Investigators should not make findings or draw conclusions. It is not made clear why the AOB investigators sought to provide a decision as to whether Yogi Bhajan did or did not engage in the alleged behaviors, except that the CRT requested that it do so. Professional investigators have a responsibility to inform their clients if they are requested to do something that is beyond the scope of the investigation. Presumably, the investigative report should have been prepared to be provided to the SSSC Board so that its members, based on the facts found during the investigation, could draw their own conclusions as to whether the alleged behaviors did or did not occur.

Investigators are hired to present all the evidence that surrounds a specific issue to the triers of fact. The most common settings are trials – criminal, civil, administrative, military, etc. They can also be used for internal matters. The most common examples are companies where the Human Resource Department is presented with a claim that an employee of the company in a position of authority has misbehaved (sexual harassment, etc.). Another example is a Hospital Peer Review Committee that reviews bad patient outcomes when it is alleged that a physician has done something that injures a patient.

Regardless of the setting, the purpose of the investigation is to give the decision-makers all of the information that supports and refutes the claims so that the decision-maker can decide what, if anything, needs to happen. The information provided is very detailed – dates, times, places, alleged claims, defenses, among others. The decision-maker then makes its findings. The decision-makers do not task the investigators to carry out their responsibilities of making findings and decisions. Here, the decision-maker should have been the SSSC Board and not AOB.

## **“More likely than not” was the wrong standard to use in this investigation**

Many of the behaviors that Yogi Bhanjan is alleged to have committed are criminal in nature.<sup>22</sup> The “preponderance of the evidence” standard as used in the AOB Report for burden of proof (“more likely than not”) is appropriate only in civil actions. The standard of proof required in criminal trials is “beyond a reasonable doubt.”<sup>23</sup>

What does “more likely than not” refer to? In any case where a person or the state makes a claim against another person, the determination starts with the scales of justice being equal. (Recall the statue of the Lady of Justice holding scales that are even) If, after all of the information presented is considered by a decision-maker, the scale on one side moves just one percent, that is either more likely than not that it did happen or more likely than not that it did not happen – a one percent difference change.

That standard is used in most cases where someone sues another person such as in an automobile accident where the issue is whether the person is accused of being negligent (not yielding to oncoming traffic, for example). When the claim is more serious, the standard requires more than a one percent change. In fraud cases, for example, the standard is that there must be “clear and convincing” evidence that the fraud happened, an approximately 75 percent surety that it did occur.

The most serious cases are criminal cases in which the defendant can be incarcerated for life or even given the death penalty. There the standard is that the evidence must prove “beyond a reasonable doubt” that the person committed the crime, or an approximately 95 percent certainty that he did it.

In this matter, the standard for labeling Yogi Bhanjan a rapist and a pedophile must be greater than “more likely than not.” Since the allegations against him constitute some of the most serious crimes that can be committed, the correct standard must be “beyond a reasonable doubt.”

Since the AOB report states that it “Evaluated all information received with respect to *customary legal standards for judging credibility of the people who presented it...*” (emphasis added), then the AOB Report should use the *customary legal standards* for judging credibility in a criminal trial. However, the AOB Report acknowledges that the burden of proof it used for the analysis of its findings was not that used for criminal trials (“beyond a reasonable doubt”). Unfortunately, the AOB Report does not indicate why the greater burden of proof was not used for its analysis and conclusion if customary legal standards were employed as a basis for their analysis.

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<sup>22</sup> There are two major types of investigations: civil and criminal. A civil action is related to “private disputes between individuals or organizations in which a person or entity will bring forward complaints that another person or entity failed to uphold their legal duty.” A criminal investigation is required when an individual is charged formally by the government on behalf of the people of that state. A crime is any act that is prohibited by statute passed by the state government. Legislatures pass statutes making certain activities criminal in order to protect the people of the state. *The victim is not responsible for bringing forth a criminal case.* Yogi Bhanjan is accused primarily of sexual abuse and exploitation, which is prohibited by statute in all states, thus rendering it a crime. <https://www.pinow.com/investigations/civil-investigations>

<sup>23</sup> [https://www.law.cornell.edu/wex/beyond\\_a\\_reasonable\\_doubt](https://www.law.cornell.edu/wex/beyond_a_reasonable_doubt)

Before leaving the topic of burden of proof, the matter of Cardinal George Pell should be mentioned. Cardinal George Pell was convicted of pedophilia, incarcerated, and subsequently released from prison.<sup>24</sup> Cardinal Pell had been sentenced to six years in prison “based on the testimony of a man who said Pell sexually assaulted him and a fellow choirboy at a Melbourne cathedral in the 1990’s.”<sup>25</sup> The High Court of Australia overturned the lower court’s conviction since there was a “significant possibility that an innocent person has been convicted because the evidence did not establish guilt to the requisite standard of proof.”<sup>26</sup> As reported by the Washington Post: “In a summary of their decision, the High Court judges did not question the honesty of Pell's accuser. Rather, they said evidence from other witnesses should have raised reasonable doubt about Pell's guilt. The High Court judges opined that the lower-court judges, in rejecting Pell's earlier appeal, had ‘failed to engage with the question of whether there remained a reasonable possibility that the offending behavior had not taken place, such that there ought to have been a reasonable doubt as to the applicant's guilt.’”<sup>18</sup> While this was not a decision made in a United States Court, the reasoning is based on a similar legal system and could likely be adopted by any US court reviewing a trial based on an investigation with the same inadequacies present in the AOB Report.

Since the AOB Report bases its findings on an incorrect legal standard for the burden of proof, its conclusion that it is more likely than not that Yogi Bhanjan engaged in the alleged conduct cannot be considered conclusive at all. The invalid investigation provided by AOB could give readers who are not versed in the legal system the impression that AOB’s findings can be given the weight of a professional investigation and that the findings are true according to the legally required burden of proof. This investigation cannot state that its findings are true since it does not use the required standard of proof to come to its conclusions.

**It was necessary for Yogi Bhanjan’s interest to have been represented in order to provide information about the specific allegations to the investigation**

The CRT stated that a deceased person cannot be represented, which is not an accurate statement. It is a common occurrence that the interests of an accused, whether living or dead, need to be represented in an investigation about the person’s behavior during his lifetime. This is so the investigators and ultimately the decision-makers can hear his side of the story. The person or the person’s representative is given detailed information about the accusations so that they can present information to the investigators. This is a required part of any investigation. Refusing to permit anyone to represent Yogi Bhanjan’s interests and by refusing to notify anyone of the specific allegations that the AOB had received (as opposed to the information presented by some people on social media), AOB did not perform a meaningful and reliable investigation. Without consideration of the defendant’s version of the events, it is impossible to come to any conclusion about the

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<sup>24</sup> [https://www.washingtonpost.com/world/asia\\_pacific/cardinal-george-pell-wins-appeal-against-sexual-abuse-conviction-will-be-released-from-prison/2020/04/06/eb6f41c8-748a-11ea-ad9b-254ec99993bc\\_story.html](https://www.washingtonpost.com/world/asia_pacific/cardinal-george-pell-wins-appeal-against-sexual-abuse-conviction-will-be-released-from-prison/2020/04/06/eb6f41c8-748a-11ea-ad9b-254ec99993bc_story.html)

<sup>25</sup> Ibid.

<sup>26</sup> Ibid.

validity of the accusers' allegations.

### **Similar reports from multiple accusers is not persuasive**

The AOB Report based its "findings" on the fact that it received similar accusations of sexual misconduct from multiple accusers; however, this reliance on the consistency of the reports must be weighed against the fact that the accusers and many witnesses knew each other and may have discussed the statements they made to the investigators prior to being interviewed. In light of this circumstance, the credibility of the accusers' and witness' statements must be evaluated against a determination of the facts as presented by a representative of Yogi Bhajan in order to compile a fact-based investigative report.

### **Investigators cannot keep accuser and witness identities completely anonymous**

AOB told accusers and witnesses that their identities would remain confidential and anonymous. By making that a condition of the investigation, AOB prevented itself from conducting a legitimate investigation. With the condition of anonymity, the interviewers could not ask anyone anything about an accuser or a witness because in order to do so, they would have to disclose the identity of the accuser or witness. This completely defeats the fact-finding process as it renders it impossible to determine the veracity of the statements made to the interviewers.

If the AOB reporters had been familiar with the legal system, they would have known that anonymity can be preserved by making the release of the names conditional. AOB could have informed the accusers and the witnesses that the names would not be disclosed in any public document and would only be used by the investigators to complete their investigation. Or, AOB could have told the accusers and witnesses that their names would not be included in the AOB Report. Usually accusers are identified numerically as Accuser #1, or Witness #2 in reports and trial transcripts. The person would then have a choice as to whether they wanted to accept the condition or refrain from making an accusation. However, no accuser or witness would have the option of remaining anonymous and still making the accusation.

The idea is to have an objective analysis of the claims and defenses presented to the decision makers by the investigators. This helps avoid decisions being made because witnesses based their testimony on knowing the accuser and believing what they say as a result of their relationship. Simply knowing a defendant, accuser or a witness is not itself disqualifying. When picking a jury, if the Judge or prospective juror knows the defendant or a witness and states that they will believe the person before hearing any evidence, they are automatically recused from being involved as a juror or decision maker. Here, for example, if any member of the CRT or SSSC publicly states that they know any of the accusers, have talked to them and believe what they say before any investigation is started or finished, they would also be unable to participate in the investigative process or the ultimate decision as to whether to accept the AOB Report.

## **Investigative Reports must contain all relevant information received during the investigation.**

The purpose of the AOB report is to give the SSSC Board all relevant information regarding the matter that is being investigated. Investigators are bound by strict ethical standards not to censor information from the decision-maker in order to support one side or the other. The AOB Report does not address the statements and documents that were raised by other concerned community members and given to AOB as outlined in the responsive bogusreport.com which provides specific information that refutes the claims of the accusers and witnesses, and raises issues of the credibility of accusers and witnesses that had made public statements. The authors of the AOB Report should have, at the least, made reference to the opposing statements in order to provide a complete picture to the SSSC Board, so it could consider what impact, if any, the opposing statements might make in reaching its decision regarding each specific accusation. If this had been a true investigation, AOB would have attempted to determine the credibility of each conflicting statement in order to present a complete analysis of the facts surrounding the allegations against Yogi Bhajan. The fact that none of the conflicting information was contained in the AOB Report raises serious concerns about the objectivity or bias of the “investigators.”

It is most important to disclose the conflicting details so the SSSC Board can make a determination of credibility. What is the evidence sufficient to draw a conclusion? What is the relevant information that is available to them? This cannot be considered an investigative report without the disclosure of all the evidence. Based on the AOB Report, this writer cannot provide any opinion with respect to whether Yogi Bhajan is guilty of the alleged conduct, because no evidence other than the statements of the accusers and witnesses is presented to support such a conclusion one way or the other. It is not possible to determine whether the findings of the AOB Report are reliable.

### **Additional factors making the AOB Report unreliable**

The AOB Report states that all of the information developed from victim and witness interviews was provided voluntarily. This fact undermines the ability to evaluate the credibility of the statements that were collected since no involuntary information was developed. Also, it is not stated in the AOB Report that interviewees were promised a payment of \$1,200 of therapy to anyone who asked for it,<sup>27</sup> which would affect the reliability of the statements of the victims and witnesses who may have offered their testimony solely to obtain the therapeutic services.

By and large, the factors that are reported to have been used to assess credibility<sup>28</sup> comport with standards employed by professional investigators. Items 1) through 4), 8) and 9) are proper factors to be considered when assessing a witness' credibility because they consider the witness' proximity to the event and other provable factors from independent sources assumed to be fact-based. Unfortunately, the AOB Report includes only this statement, but not the facts that underlie the assessment. The SSSC Board needs to know

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<sup>27</sup> <https://www.lamag.com/citythinkblog/yogi-bhajan/>

<sup>28</sup> AOB Report, Section 6.2 Assessments of Credibility, p. 17

what those facts were so as to be able to formulate its own assessment of credibility. However, factors 5) “whether they are sincere, i.e. whether they honestly relate the affair fully as they know it, without any purpose or desire to deceive, or suppress or add to the truth; and 6) whether or not they have a reputation for having a character for truthfulness,” are subject to the perception of the interviewer rather than a fact-finding exercise, and are not properly included in an investigation. How much weight were factors 5) and 6) given in the credibility assessments? This information should have been included in the investigative report.

The authors state that they attempted to present both sides of the case regarding Yogi Bhajan by including statements as to his character and behaviors. unrelated to the allegations of sexual abuse.<sup>29</sup> The AOB Report claims that they had heard from all sides in the investigation, going to some length to describe what they had received from people defending Yogi Bhajan. As the authors of the AOB Report themselves pointed out, and as referenced in this Review, what they received was of no real value in conducting an investigation.

Yogi Bhajan’s supporters’ perceptions of his character and behavior are irrelevant to an investigation as to whether he engaged in sexual assault and/or unethical behavior. This discussion in the AOB Report serves to distract from the analysis of whether or not the events took place. Whether he had the ability to read auras and whether he tried to save everyone (pp.20-21), whether he devoted special attention to uplifting women (p.21) was a Saturn teacher (p.22), whether he was a tireless worker (p. 23), revered for his teachings (p.24), is not relevant to the determination of the facts of the allegations. The summary of Yogi Bhajan’s characteristics and behaviors does not prove (using any burden of proof) whether he engaged in the sexual and ethical misconduct or not.<sup>30</sup>

The authors explain in the section **Generalized Refutations Based on the Motives of the Reporters** that the “explanations [of the supporters of Yogi Bhajan, who do not believe that the alleged conduct occurred] often took the form of speculations suggesting that Reporters had experienced trauma in relationships with family members or others and, in turn, they were mistakenly projecting those past traumas on to Yogi Bhajan.” That is, the authors admit that the statements of refutation are based on speculation, and that the speculation does not derive from a professional psychologist or any other professional expert trained to interpret human behavior. Further, most of the statements of refutation were directed at the Reporters as a group and not as individuals. This group profiling does not belong in an investigative report, and certainly is not probative of any determination as to whether Yogi Bhajan engaged in the alleged conduct. Fortunately, the AOB authors chose to ignore the generalized refutations, which begs the question why was it included at all, and focused only on the refutations that were “evidence-based,” although the nature of that evidence is not disclosed. (p. 27). It is also unclear why the statements in the section **Supporters’ Refutations Based on Lack of Knowledge of Any Misconduct by Yogi Bhajan** (p.28) are included in the report. The authors themselves state that these comments

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<sup>29</sup> While these characters and behaviors may be essential to support the faith of the members, Yogi Bhajan might have displayed these characters and behaviors and still engaged in sexual and unethical conduct described in the allegations. They have no probative value in an investigation.

<sup>30</sup> AOB Report, Section 7.1.1 Reports About Yogi Bhajan’s Characteristics and Behavior (p. 19)

serve no value in a determination of whether the alleged conduct occurred; therefore, at best they serve to distract the reader from an evaluation of the investigation and at worst they bias the reader in one direction or another with respect to the allegations against Yogi Bhajan.

The AOB Report cannot be designated an investigative report. Based on its process and analysis, it is more properly a “survey”. An investigative report is based purely on facts. A fact is a statement that can be proven to be true. An opinion is an expression of feelings that cannot be proven. An opinion may very well be true if it is based on facts; however, there may or may not be a way to prove it.

The AOB Report is based on statements by the accusers that were not proven by supporting, fact-based evidence or documentation or independent investigation or any corroboration of the accuser’s statements. The report also contains many opinions about Yogi Bhajan. The opinions may be true, but since an investigative report is primarily a fact-finding report, the findings put forth in the AOB Report which are based almost entirely on the opinions of the accusers and others renders it not investigative in nature. As a result of this fact/opinion dichotomy, the AOB Report can at best be described only as a “survey.”

The authors purport to analyze the results of the interviews by individuals reported in the sections titled **Allegations of Sexual Battery and Sexual Abuse, Physical Injury During Sex with Yogi Bhajan, or Unwanted Touching of Intimate Parts**, all of which are criminal acts. In the analysis AOB reports conflicting details regarding the incidents that took place but none the less, using the incorrect “more likely than not” burden of proof, they conclude that Yogi Bhajan “raped three women and that he directed one woman to have anal sex with a young man,” and that “we have sufficient evidence to conclude it is more likely than not that Yogi Bhajan injured eight women during sex with them,” and “after weighing all the relevant information available to us, we have sufficient evidence to conclude that it is more likely than not that Yogi Bhajan engaged in touching of intimate parts.”

Sections 7.4 and 7.5 of the AOB Report<sup>31</sup> provide specific examples of the victims’ statements of inappropriate behavior. This Review does not detail the examples of the AOB Report's noncompliance with standard accepted principles of investigation as it relates to this section since it would be repetitive of opinions already offered. However, it is noted that the incorrect “preponderance of the evidence” burden of proof used to form their conclusions is inappropriate for this description of abusive behaviors and the lack of investigative support renders this discussion irrelevant to a determination as to whether Yogi Bhajan engaged in the alleged conduct.

More than half of the AOB Report is devoted to specific allegations of both criminal and offensive conduct on the part of Yogi Bhajan. A caution is provided to any reader of this report. As human beings, exposure to this much suffering without any objective evidence either to confirm or refute the statements, can lead to an inability to

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<sup>31</sup> (Additional Examples of Inappropriate Behavior by Yogi Bhajan and Analyses) (pp. 46-53)

impartially evaluate the credibility of the “findings.” A true investigative report would present hard evidence upon which the SSSC Board or a reader of the report would be able to form his or her own opinion. Hard evidence would include police reports, hospital reports, independently researched news articles, or other independent evidence that the events took place. It would include a comparison of all the facts provided by witnesses as to times, dates, proximity to the events, and any other factors that would serve to support or refute each witness’ or accuser’s statements. The most that can be concluded from this “investigative report” is that some members of Yogi Bhanjan’s religious organization believe that they suffered the alleged conduct. This is not to conclude that Yogi Bhanjan did or did not engage in the alleged conduct; merely that this report cannot provide findings that are conclusive in any way.

It is beyond the scope of the AOB Report to determine that Yogi Bhanjan created an environment that fostered his allegedly abusive activities.<sup>32</sup> This analysis requires a psychologist’s analysis of the culture of control and the effect it might have on the members. Investigators are not qualified to conclude how a certain environment could affect a community. An expert psychological analysis of the victims and witnesses would be necessary to determine whether each is more or less amenable to external controls and manipulation.

In an attempt to describe generally the “other available information” it used to determine the credibility of the victims and witnesses, the AOB Report included reference to “social media sources,” which were later disclosed to be Facebook, Twitter, and YouTube (p 14). The fact that the investigators gave equal weight to information found or not found from Facebook, Twitter, and YouTube does not comport with professional investigative standards. It is impossible to determine the credibility of the information from these sources, and in many cases to determine who published the information. Social media information may be used in an investigation, but only as a starting point, and it should not be reported absent further investigation into its reliability

### **Conclusion**

As a general rule and as mandated by statute, investigations done by people who do not have the necessary training and experience to be licensed as private investigators should not be used for any purpose. For the many reasons described above, this is especially true of the AOB Report.

Because the AOB Report does not appear to be investigative at all or provide sufficient facts to make any determination, it should not serve to assist anyone in determining whether the alleged behavior by Yogi Bhanjan actually occurred.

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<sup>32</sup> AOB Report, Section 7.6 Environment that Enabled Sexual and Related Misconduct. (p.56)

## APPENDIX A

### Private Investigator Legislation in Pennsylvania, Illinois, California and New Mexico

Full text of the relevant portions of the statutes cited in this Appendix are attached to the commentary, and links to the complete text of the statutes are included in the attachments.

The private detective statutes in the states of Pennsylvania, Illinois, California, and New Mexico were reviewed to determine whether AOB or its employees are licensed and competent to conduct private investigations within those jurisdictions. Pennsylvania and Illinois were chosen since AOB is registered to do business in those states. California and New Mexico were chosen since it is likely that the victims and witnesses were residents of those states. Relevant portions of the Pennsylvania, Illinois, California and New Mexico statutes and links to the full statutes are attached to this document and specific sections of the statutes related to the facts presented herein are highlighted in yellow.

In all of the four above-referenced states, legislation prohibits the preparation of an investigative report unless the investigator is licensed by the regulatory departments designated in the statutes. In most cases, anyone who publishes an “investigative report” who is not properly licensed can be convicted of a misdemeanor and subject to a fine of \$5,000 or greater and up to one year in prison. In Illinois, the Private Detective Act states that it is prohibited for “...any person, firm, corporation, or other legal entity that has not been issued a license by the Department or whose license has been suspended, revoked, or not renewed is hereby declared to be inimical to the public safety and welfare and to constitute a public nuisance.” The Illinois Act states that violations occur when it can be proved that the investigator “engaged in ... (2) professional incompetence as manifested by poor standards of service, (3) engaged in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud, or harm the public, ... (5) performed any services in a grossly negligent manner, regardless of whether actual damage to the public is established.” Similar language is included in the other private investigator legislation in other three states reviewed. The general purpose of private detective or investigator legislation is, among other things, to protect the public from unlicensed investigators since they may be unqualified and cause harm to the citizens of that state.

Each statute defines an investigator as “one who for hire, reward, or for any consideration whatsoever, ... [operates] for the purpose of obtaining information with reference to any of the following matters: the identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character, of any person, group of persons, association, organization, society, other groups of persons, partnership, or corporation or the credibility of witnesses or other persons.” California further stipulates, “... ‘primary investigation’ means original and in-depth research and analysis involving multiple sources, including, but not limited to, public records, databases, archives, published and unpublished documents, witnesses, informers, whistleblowers, public officials, and experts, to produce investigative projects.” The

AOB Report engaged in an investigation to determine the habits, conduct, reputation, character and the credibility of Yogi Bhanan as well as the credibility of witnesses or other persons in the spiritual community.

All of the four states indicate that the licensure requirement applies to any individual who secures evidence to be used before any court, board, officer, or *investigating committee*. SSSC formed the Collaborative Response Team (CRT) to be an investigative committee. The California Act defines a private investigator as “any person, acting for the purpose of investigating, obtaining, and reporting to *any employer* information concerning the employer’s employees involving questions of integrity, honesty, breach of rules, or other standards of performance of job duties.” The California Private Detective Act states, “A written report shall not be submitted to a client except by the *licensee*, (emphasis added) ... and the person submitting the report *shall exercise diligence in ascertaining whether or not the facts and information in the report are true and correct*” (emphasis added). These requirements negate the AOB disclaimer that its Report was to be used for internal purposes only, thus implying that it is exempt from generally-accepted investigative standards or compliance with state legislation with respect to the practice of private investigations, The fact that the Report was prepared for internal use and not for trial purposes does not exempt AOB from the licensure requirements.

Regarding qualifications for licensure, an applicant for a private detective or private investigator license must, at a minimum, establish that he or she has been regularly employed for a period of no less than three years as a detective, or has been a member of at least one of the following: the United States government investigative service, or a sheriff, or a member of the State Police, or a member of a city police department at a rank or grade higher than that of patrolman, for a period of no less than three years. Some of the four above-referenced states require an internship with a licensed investigator for more than three years, and the work experience must have taken place within the five years preceding the application for the license. Pennsylvania requires the applicant to present the affidavits of five reputable citizens who have known the applicant for at least five years, certifying that the applicant is honest, of good character, and competent. Illinois has the same work experience requirement as Pennsylvania, and additionally stipulates that the work experience may be full-time employment with an in-house investigative unit in a large corporation (more than 100 employees), in the Armed Forces, or a law-enforcement agency on any level, or a licensed investigator. An educational degree in a criminal justice or related program may partially substitute for the work experience.

In addition to work experience and education, California and New Mexico also require applicants to pass an examination that includes questions related to competence, and also to privacy and professional ethics. The California Act states, “Notwithstanding any other law, experience for purposes of taking the examination for licensure as a private investigator *shall be limited to those activities actually performed in connection with investigations* as defined in Section 7521...” New Mexico also has continuing education requirements.

All of the four states require that the investigators maintain liability insurance or a surety bond (Pennsylvania). California and New Mexico require licensees to have a physical presence within those states. This further reflects the concern of the legislatures that incompetent or fraudulent activities of a private investigator may cause injury to the citizens of the relevant jurisdiction, forcing the clients of the investigator or the subjects of the investigation to sue for damages.

The language and intent of these statutes governing private investigators, as well as statutes in other jurisdictions other than these four, clearly indicate that persons without the requisite work experience, and/or educational training are prohibited from conducting investigations and from providing reports to clients. The states recognize that special training and skills are required in order to conduct competent investigations whether the final reports are provided for trials or for other decision-makers. Investigators are required to comply with the professional standards for legitimate investigations regardless of the final use or the description of the final users. When unlawful investigative reports are published, there is a danger to the safety and welfare of the citizens of the various states. All four states require licensees to have a physical presence within those states.