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REPORT



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7 Interesting Times



13 Psychological Autopsy



17 Security News



25 The Future of Pretexting



Taking Care of Business

Hit the Hill



Page 8
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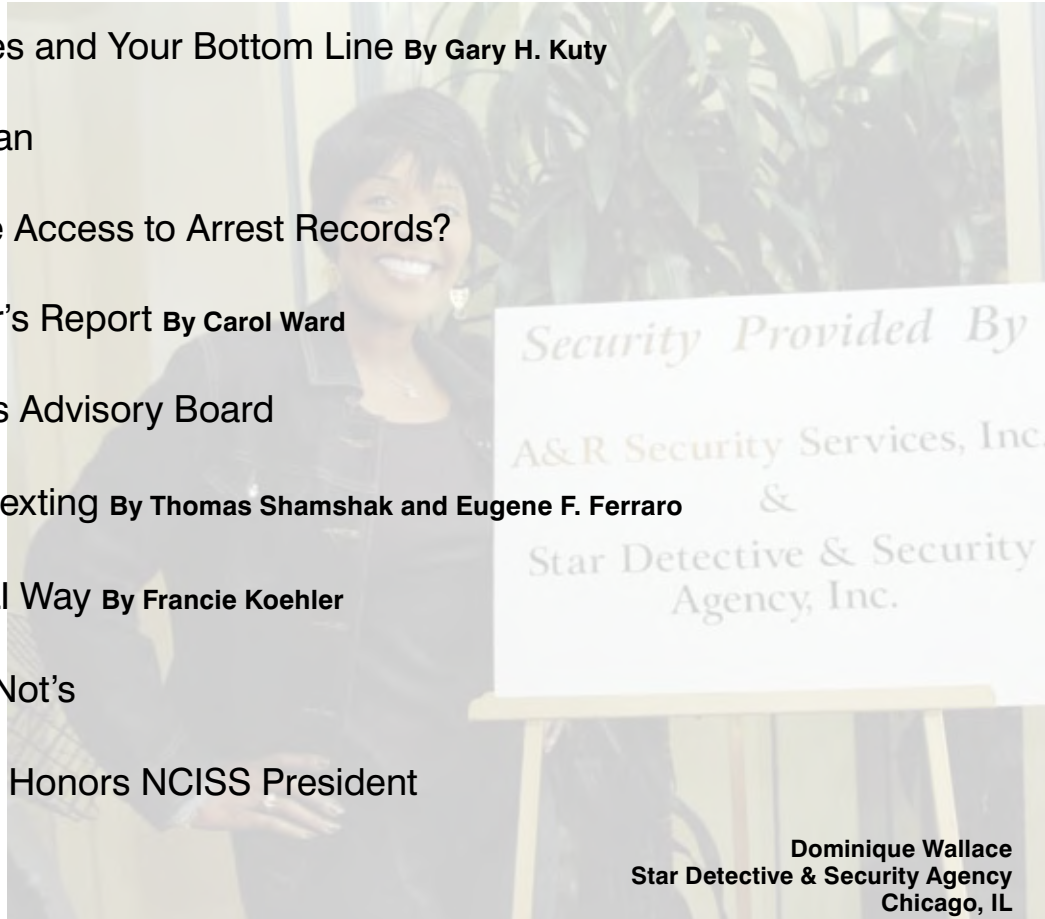
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CONTENTS

FALL 2010

- 7** These Interesting Times **By Eugene F. Ferraro, CPP, CFE, PCI, SPHR**
- 8** “May You Live in Interesting Times”
- 9** An Uncertain Time **By Jimmie Mesis and Larry Sabbath**
- 12** Working Overtime for You! **By Eddy McClain, Legislative Fundraising Chair**
- 13** The Psychological Autopsy **By Dean A. Beers, CLI**
- 16** The Equivocal Death Investigation
- 17** Marketing vs. Sales and Your Bottom Line **By Gary H. Kutty**
- 18** Your Marketing Plan
- 18** Editorial: No More Access to Arrest Records?
- 19** Executive Director’s Report **By Carol Ward**
- 24** State Associations Advisory Board
- 25** The Future of Pretexting **By Thomas Shamshak and Eugene F. Ferraro**
- 27** Lobbying the CALI Way **By Francie Koehler**
- 28** The Do’s and Do Not’s
- 29** ASIS International Honors NCISS President



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<i>Merlin</i>	3
<i>Brownyard Programs</i>	6
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<i>Shawver</i>	16
<i>PI Mag/Gear</i>	21

<i>Constanza Insurance</i>	23
<i>Insurance TEK</i>	29
<i>CALI</i>	30
<i>AMIS Insurance</i>	31
<i>IRB Search</i>	32

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These Interesting Times

By Eugene F. Ferraro, CPP, CFE, PCI, SPHR

While the origin and meaning of the proverb, *May You Live in Interesting Times* may be in question, we indeed live in interesting times. Short of experiencing the horrors of war, most Americans have never experienced a time of greater uncertainty and fear. War, unemployment, a sagging economy, and budget deficits at almost every level of government have challenged our conventional view of the American dream and the path to prosperity and peace. Combined with an elusive political ethic and a widespread disrespect for the rule of law, many of us have become cynics. The mood is both frightful and dangerous.

Americans however, are resilient. Throughout our history, we have confronted challenges with pride and perseverance. And while I am faithful, I believe the future will remain challenging and difficult. As business owners and practitioners, the members of NCISS have unfortunately become accustomed to many of these challenges. By the very letter of our organization's bylaws we are called to "develop and encourage the practice of high standards of personal and professional conduct" and "assist

others in the common endeavor to advance and promote the investigation and security industry." The nobleness of this charter reveals our purpose and defines our character. Yet, not all of our colleagues have risen to the occasion.

It is well established that *bad facts make bad law*. Time and again, we have witnessed practitioners or their organizations abuse their authority, over-step ethical boundaries, or disobey the rule of law. For their recklessness they have faced the wrath of an angry public. Reflexively, in almost every instance, our well-intended lawmakers hastily crafted new laws and regulations to prevent a recurrence. The effort to protect the unprotected and shield individual privacy rights has moved beyond our shores and has become a global movement—and members of the investigation and security profession are in part to blame. Ironically, it was often in the spirit

of protecting individual rights or in the name of justice, well-meaning practitioners (or sometimes mere fools) of our professions forsake common sense and our collective ethos.

Historically it has been their actions which have precipitated many of the regulatory and legislative challenges the members of NCISS face today. What frustrates us is that the misbehavior of a few has given rise to the encumbrances imposed on the rest of us. Thus, it is easy to blame the fool, the advocate or lawmaker. However, to some degree it has been our failure to educate the public and lawmakers, to police our own, and to build a professional brand that has significantly contributed to our dilemma. We have what marketing professionals call an *image problem*. Sadly, that image once formed is hard to change.

So while we have little control over the economy and the direc-



Past president Mike Duffy, right, swears in Gene as NCISS president during the Chicago conference on April 24, 2010.

tion of our society, to a very significant degree we control our image. I say we change course and take control of that image now. Let's cast aside those silly logos that flaunt footprints, magnifying glasses and tacky little tag lines; let's put aside indifference and resist casual business attire when formal business attire is more appropriate; let's think twice before we say something dopy to a journalist or demonstrate our savvy research skills to an all too eager television reporter hoping to make us look like a lawbreaker; and let's never again utter the ridiculous or make promises we cannot possibly fulfill. Let's treat all those with whom we deal with respect and dignity.

Let's use this year's Hit the Hill event to show our countrymen and our lawmakers who we really are and the importance of our mission. In every way, let's galvanize the image we deserve. Let's one and all go to Washington and let our collective voice be loudly heard. Let's use this opportunity to build and better our image; to work together to change the way the public, the privacy advocates and our lawmakers think of us and our profession. Let's make it clear our work is integral to the functioning of our system of justice, the safety of our society and our freedom. Let's go to Washington and show our pride and let these interesting times be ours! ❖

A highly regarded investigator and security consultant, Gene Ferraro is CEO of Business Controls, Inc., Greenwood Village, Colorado (www.BusinessControls.com, www.MySafeWorkplace.com).

“May You Live in Interesting Times”



The Yale Book of Quotations credits the phrase to the American Society of International Law Proceedings vol. 33 (1939). According to Wikipedia, The Yale Book of Quotations also states that “No authentic Chinese saying to this effect has ever been found.” See http://en.wikipedia.org/wiki/May_you_live_in_interesting_times (found on July 31, 2010). Further web research deems the phrase a “fake” Chinese blessing; that is, it was never uttered by Confucius, anyone else in China or an anonymous Celt, as some have speculated.



Hit the Hill 2010

If you have not yet registered for the NCISS 2010 Hit the Hill event, it's not too late. See the details in this issue, and go online at www.NCISS.org or call 800.445.8408 to register today.

The NCISS “Hit the Hill” meetings are critical in order to make sure our views are fresh in the minds of Congress before they adjourn for the year.



By Jimmie Mesis and Larry Sabbath

Congress returns from its summer recess to an uncertain schedule in this election year. Many major initiatives of the Obama Administration have been left on the table as members of Congress remain nervous about the election, with all House members and a third of the Senate on the ballot.

Given the public’s anti-incumbent attitude this year, it is even more likely that Congress will attempt to adjourn for the year in early October as many members of Congress are worried about the election. Major issues are expected to be pushed back until what promises to be a very active “lame duck” session after the election. The NCISS “Hit the Hill” meetings are critical in order to make sure our views are fresh in the minds of Congress before they adjourn for the year.

But before taking its summer recess, Congress began considering privacy measures that could impact the investigative and security industries. They are described here:

HR-5777 “The Best Practices Act”

Representative Bobby Rush (D-IL) introduced a massive privacy bill in late July that would require notice and consent for the collection and use of some personal information. Congressman Rush chairs the powerful Subcommittee on Commerce, Trade & Consumer Protection. He held a hearing on his bill as well as a draft proposal by Congressman Rick Boucher (D-VA). These measures are largely a response to privacy concerns about the collection of information about Internet users and some practices at Google and Facebook. But NCISS is very concerned that these bills are overbroad and could have a severe impact on private investigators. Two other subcommittees



also scheduled hearings on online privacy issues prior to the August recess. Members of the Senate Commerce Committee are also considering introducing legislation similar to HR 5777 in order to regulate online advertising. NCISS is actively communicating with the relevant members of Congress in order to protect the interests of its members.

S-30/HR-1258 “The Truth in Caller ID Act”

These bills prohibits telephone “spoofing” of caller ID’s, and they have passed both houses of con-



Jimmie Mesis works to protect the interests of NCISS on Capital Hill.

The legislation would prohibit video surveillance in homes where there is an expectation of privacy.

gress. NCISS prefers the specific language of S-30, which makes clear that only those uses of spoofing that cause harm should be limited. NCISS has met with both committee staff and the counsel to Senate sponsor Bill Nelson (D-FL). Senator Nelson is urging that the bill only apply to harmful uses of spoofing. As we go to press, the bills have not been reconciled.

S-3214 “The Surreptitious Video Surveillanc Act”

Senator Arlen Specter (D-PA) introduced this bill following a Pennsylvania school district’s alleged access of video images from webcams on laptop computers in students’ homes. The legislation would prohibit video surveillance in homes where there is an expectation of privacy. NCISS Legislative Chair Jimmie Mesis suggested to Senator Specter’s staff that the bill be modified to specifically limit the scope of the legislation. His suggestion to limit coverage of the bill has been accepted. NCISS member Stuart Drobny was instrumental in obtaining Senator Specter’s agreement. The bill has yet to be considered in the Senate Judiciary

Committee.

HR-3149 “The Equal Employment for All Act”

This bill would prevent employers from using credit reports for employment purposes. A hearing was held recently in the Subcommittee on Financial Institutions and Consumer Credit. NCISS advocate Larry Sabbath provided material and discussed the issue with several staff members prior to the hearing. We remain very concerned about the legislation. It is very popular among some members of congress because many of their constituents have fallen behind in paying bills due to the recession. NCISS has joined with a group of business leaders to oppose the bill. The coalition has asked the House Financial Services Committee not to consider the bill.

HR-4173 “The Dodd-Frank Wall Street Reform and Consumer Protection Act”

This major financial reform



Larry Sabbath addresses NCISS members during the Chicago conference in April.



“Lobbying the CALI Way”

Be sure to read the article by Francie Koehler, “Lobbying the CALI Way,” in this issue. She provides a “bulletpoint” view on effective lobbying campaigns and techniques, as fostered by the California Association of Licensed Investigators. You will find some valuable tips to use when we “Hit the Hill.”

bill has been signed into law by President Obama. NCISS opposed a provision in the House version of the bill which would have provided the Federal Trade Commission with an enhanced ability to issue rules and regulations. It was dropped by the conference committee that met to reconcile different versions of the bill passed by the House and Senate. However, the bill does establish a new Bureau of Consumer Financial Protection. This new Bureau could issue rules that would affect NCISS members. These rules will be largely enforced by the Federal Trade Commission, but in some instances enforcement will be done by the new agency. After the bill is finally adopted, the FTC and new Bureau will determine how enforcement will proceed. Many of the details of how the statute will be carried out remain uncertain, as Congress left a great deal of discretion to the agencies. These details will be determined by the regulatory process. NCISS will examine

proposed rules very carefully and will file “public comments” to protect the interests of the profession.

HR-5300 “The Fairness and Accuracy in Employment Background Checks Act of 2010”

This legislation is intended to provide more accurate information to the Federal Bureau of Investigation’s criminal history database. It requires the US Attorney General to attempt to assure that records are up to date. SCOLA Chairman Vince Ruffolo is concerned about a provision which would drop arrest records after 12 months when no disposition of the arrest can be determined. This is problematic for state regulators who issue guard, private investigator and weapons permits. Unless amended, a great deal of information may be dropped from the database because many arrests aren’t resolved prior to 12 months. The International Association of Investigative and Security Regulators (IASIR)

adopted a resolution expressing its concern with the bill. The resolution was presented by the security industry representative on the Board. It was suggested by Legislative Advocate Larry Sabbath, working through the SCOLA coalition. ❖

Working Overtime

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Your Support is Needed!



By Eddy McClain, Legislative Fundraising Chair

It seems like Congress is working overtime to keep NCISS on our toes, and we are working overtime in response. Within recent weeks NCISS has fought efforts to restrict the use of surveillance, ban the use of credit checks, and outlaw spoofing. So far, these efforts have been effective. Senator Feinstein's amendment to ban the use of credit checks for employment purposes was stopped in the Senate during consideration of financial reform legislation. Senator Specter (D-PA) has agreed to clarify that the "Surreptitious Video Surveillance" legislation, S-3214, would apply only in private areas of a home. And Senate sponsors of spoofing legislation are insisting that the bill restrict only "harmful" uses of spoofing.

All of these issues came to a head during the past few months,

and our Washington advocate has been actively engaged in the effort. Our successes are part of the NCISS team approach that involves a coordinated effort among the leadership, the legislative committee and members-at-large. Everyone came through when our advocate Larry Sabbath called for members to contact their senators. And NCISS members have used important personal relationships to help make the fight.

But the battle goes on. Each of these issues may arise again, so we can't rest on our laurels. In fact, just as the Senate was abandoning efforts to limit credit checks as part of the financial reform, the House Financial Institutions and Consumer Credit Subcommittee held a hearing on the same issue, and the chairman said he supports HR-3149, which also would ban the use of credit checks.

We need your support to keep up these efforts. It's unfortunate, but we need the financial resources to carry out the battles in Washington. Please support these efforts with your contribution to the NCISS Legislative Fund (see the sidebar for those who have already given this year). Your support is critical to our success in protecting your business interests. ❖

The Psychological Autopsy

By Dean A. Beers, CLI

A psychological autopsy is most often referenced in relation to an equivocal death investigation, which is, simply stated, making clear the circumstances of a death. For professional investigators, would it be fair to say that the vast majority of our cases are equivocal and that we are making clear the circumstances of an incident? This is done by careful analysis of police reports, evidence, witness statements, and all other forms of information that are provided to us, together with our own investigation. We are fact finders – hoping the truth is out there somewhere. The truth is usually a gray area sandwiched between the information of two opposing sides from which we must sift out the facts and determine a few of our own. This is accomplished through professional hard work and know-how.

In a criminal defense case, for example, we are tasked with reviewing the discovery evidence, developing the investigative strategy, conducting the investigation, and potentially mitigating the case for the purposes of plea negotiations and sentencing. You may from time to time win the good fight and unequivocally prove innocence or win exoneration of a wrongfully convicted person. In civil investigations of personal injury and negligence, we will find ourselves applying different strategies.

However, there is one aspect of

criminal defense investigation common to a wrongful death investigation for a plaintiff or insurance defense attorney in the civil arena: the psychology autopsy.

The psychological autopsy is best described as looking into a person's mind and lifestyle to determine why and how he or she died. We are often looking for the probability of a person being susceptible to influence by other persons, life circumstances, and their environment. For example, the application of the psychological autopsy in probate cases is self-explanatory, in that it assists with determining the mental state of a person at the time of death or when a will or other legal document was executed.

Psychology is the study of the mind and the word autopsy is derived from the Latin “to see with one's own eyes.” Isn't that what we do as investigators? The psychological autopsy is not exclusive to death investigations. A modified

process can be used to assess witnesses and parties to a civil action.

The Psychological Autopsy Interview

As part of the process we may develop a theory as to what did or did not happen. Our investigative process is fluid enough to accept when our theory is wrong and forge ahead when it is correct. We are not actually trying to prove a theory, but instead prove or disprove individual facts or elements of the theory. In the context of a



“The psychological autopsy is best described as looking into a person's mind and lifestyle to determine why and how he or she died.”



“In the context of a criminal charge or civil complaint, we are either proving or disproving the elements of the allegations or charges. . .”

criminal charge or civil complaint, we are either proving or disproving the elements of the allegations or charges brought forth. One example would be anticipating line-of-sight or lighting conditions when investigating a death or serious injury that resulted from a motor vehicle collision. Your investigation simply continues from element to element, proving or disproving an element. Your investigation may return to the beginning, take an unexpected turn or forge ahead. Rest assured, it will almost never

stop where you initially expected it. For starters, consider integrating the following factors into your interview questions regarding the history of a decedent or, as we have noted, any other subject:

Subject’s History of Personal, Family and Social Relationships...

- Involvement in similar incidents, events, or roles;
- Similar behavior patterns;
- History of violence, substance abuse, mental health disor-

ders, or other non-conforming behavior;

- Hospitalization or treatment for mental health disorders or substance abuse;
- History of transient or hypermobile lifestyle;
- History of impulsiveness or false bravado;
- Medical history that includes periods of amnesia, traumatic brain injury, or similar impairment due to history of substance abuse, or medications;

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- Low self-esteem, elevated self-negativity or poor social adjustment; and
- Inordinately elevated tolerance -- or intolerance -- to behavior similar to the elements of the civil or criminal allegations.

This list is an adaptation and is certainly not all inclusive. We use many of these to test the credibility of involved persons, the information they have related, or the information contained in reports and records. Some of these traits are seen when we “meet” the subject (dead or alive), are told to us by the subject or another person, are found in any number of records, or learned through other investigative means. The key point is to ask the questions or find the information that will answer the questions on this list. Include those that you might add based upon your own experiences and case specifics.

Evaluation of Information

The next component concerns the information you have gathered. Does the information fit and tie together, or are differences present -- minimally contrasting to vastly contrasting -- to the incident? Next, how does your newly developed personal history profile correspond to the incident or allegations? Is this person a strong or weak component of the case, supportive or detrimental? I have broken down the evaluation of the information gathered during the psychological autopsy on the following scale:

0. Apathy
1. Weak and Detrimental
2. Strong but Detrimental
3. Average Baseline
4. Weak but Supportive
5. Strong and Supportive

Let’s not forget the gray area: Nothing is really black and white, although your subject may see

-- or have seen -- things that way. You need to understand why and if there are any influences to this mindset. The gray area can often be found in relation to the time period of the incident in general. If information components remain consistent, regardless of where they lie on the scale above, then you know who or what you are dealing with. If the components are out of character or change at the time of the incident, and especially if they revert back to post-incident characteristics, then you have a potential client, victim, or witness objectivity issue. Objectivity does not equate, or negate, truthfulness. In the case of witnesses, they may feel they are being honest but are in fact either patently or latently influenced by a person or related events, or both. In essence, their objectivity has become subjective.

Conclusion

The psychological autopsy is a guide to help determine if the person we are contacting, or whose records -- or life -- we are examining or analyzing, is being patently or latently influenced, how that may affect their observations and statements, and ultimately how that influences the ongoing investigation.

Individually the evidence, reports, interviews, and scene investigation may be consistent. When taken as a whole by each individual’s involvement and contribution, our investigation should reveal information and characteristics that vary from “Strong and Supporting” to “Weak and Detrimental.” As professional investigators we have a duty to make a fair and accurate assessment of the person and the information brought to our attention. ❖



Dean Beer’s new book is a comprehensive look at preparing for civil and criminal cases.

© 2010 Dean A. Beers, CLI (beersda@Forensic-Investigators.com) is with Forensic Investigators of Colorado, LLC (www.Forensic-Investigators.com) in Larimer County, Colorado. Dean is a Certified Medicolegal Death Investigator and former deputy coroner. This article is excerpted from his book, *Practical Methods for Legal Investigations Concepts and Protocols in Civil and Criminal Cases*, published by CRC Press and due out in January 2011.

Subject Risk Assessment

In a criminal investigation, a law enforcement officer may investigate only to the point of establishing probable cause for an affidavit. Many investigators have told me they conclude interviews in 15 minutes -- especially if they are only recording and not taking notes. I tend to be puzzled by this, mainly because I'm always looking ahead. Some questions I always ask myself:

- Will I be able to contact this witness again?
- Can I get information for mitigation?
- Do I know enough about them to validate or invalidate statements they make?

In a criminal defense investigation, a witness may have contacted us from a newspaper ad or were referred to us by another witness. More information is needed from these interviews. If the witness is from

a police report you should allocate sufficient time to that interview to access what the witness knows about the victim, a suspect, or anything related to the case. During these interviews, the psychological autopsy will begin to take shape -- of not only the decedent, but the witness as well as others.

In situations like these you can apply the concepts of the psychological autopsy:

- What makes this person tick?
- Do they see any wrong in your client or the subject -- why?
- Do they see no wrong in your client or subject -- why?
- Do they have subtle or latent biases?
- What is your interaction like? ♦



The Equivocal Death Investigation

Before beginning the psychological autopsy, it is necessary to break down the equivocal death investigation into components and subcomponents. The original components would include, for example, information on:

- Scene
- Victim
- Location
- Environment
- Suspect

Each of these would then be broken down into common sub-components; photographs, video, reports, trace evidence, etc.

Reviewing each component and applicable information will bring the investigation into focus and reveal the areas that need attention. You will begin to see opportunities to support a legal theory of the case, to prepare your client for any issues, and how to strengthen the case for depositions and settlement conferences. ♦

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Marketing vs. Sales and Your Bottom Line

By Gary H. Kuty

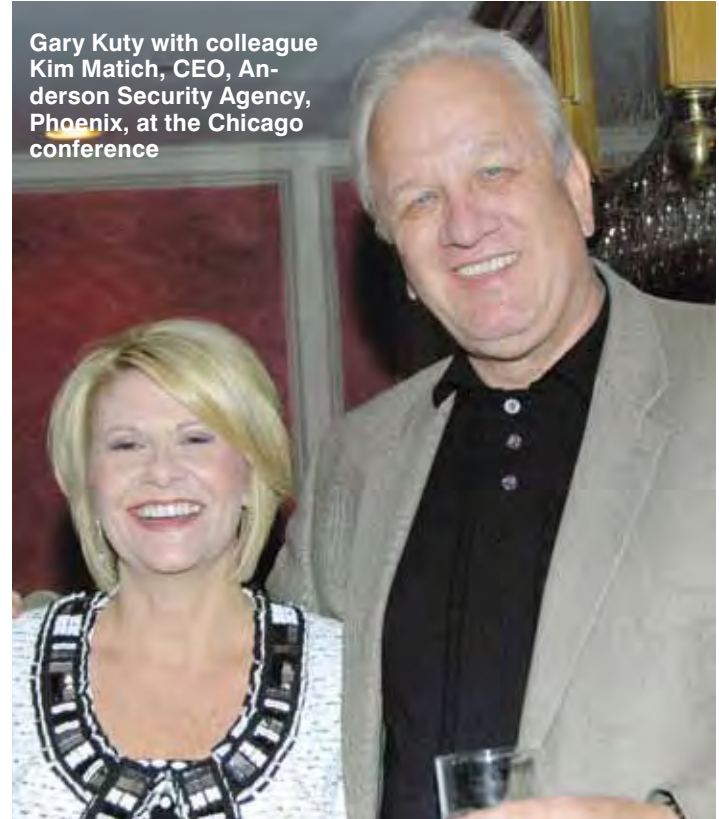
Many security agency owners and managers are confused with the terms marketing and sales. In fact, often times both terms are intertwined to appear to have the same meaning. In order to successfully market your security agency, it is imperative that a major difference between these two terms is known. Marketing, quite simply, is how an agency communicates to its prospects that they are an active participant in the marketplace. Sales, on the other hand, are ways in which the agency actively engages in selling its services once the marketplace is aware of their presence.

How does marketing impact your bottom line? Very simply, without marketing there will be no sales. Your targeted market prospects, whether vertical or geographical, cannot buy from you if they don't know you exist. Therefore, it is essential you develop

How does marketing impact your bottom line? Very simply, without marketing there will be no sales.

a marketing plan. Whether you are a one or two person agency or you have multiple sales personnel, your marketing plan must maximize the potential to increase your bottom line in the future.

The question remains, how does marketing impact your bottom line? A well thought out marketing plan is the blueprint for success in most agencies. Instead of a "hit or miss" plan that can result in lost sales opportunities, a formal marketing plan is the road map for those tasked with selling your agency's services. It is developed in consideration of the capabilities your agency has for implementation, as well as provides clear objectives to those working with the plan, while providing meaningful and measurable feedback. All of these may improve your bottom line



Gary Kuty with colleague Kim Matich, CEO, Anderson Security Agency, Phoenix, at the Chicago conference

by developing new sales opportunities as a result of the marketing plan. How do you market your agency? Yellow pages, media, and trade associations are examples of marketing efforts, but not all are worth the investment. A plan for the sake of plan will leave you unsatisfied and disappointed if poorly devised. Every service and product needs to have a different market approach in order to be successful.

Do you have a plan? Is it specific to your industry or profession? Does it meet the criteria outlined above? If you answered "yes" to each question, you are either currently successful or on your way to future success. If you answered "no," it's time to get your decision makers together and develop or reconstruct your current plan(s) to meet the needs of your services and products. Take the time to do it right; your bottom line depends on it. ♦

Gary H. Kuty is CEO of Kuty & Associates, LLC, Dayton, Ohio and a past president of NCISS. As a 35 year veteran of the contract security profession, Gary specializes in providing marketing and sales consulting to security and investigative agencies. Visit his web site at www.kutyassociates.com.



Your Marketing Plan

A marketing plan can be very simple, but it needs to meet certain criteria:

- Determine your target markets and objectives
- Formalize your plan into a written document
- Goals should be realistic, measurable, yet not easily obtainable
- Those executing the plan must be held accountable
- The plan needs to have senior management oversight
- The plan should be routinely audited for effectiveness ❖

Editorial

No More Access to Arrest Records???



SCOLA Goes on Record About Dangerous Background Check Bill

By now most of us are aware of the “Fairness and Accuracy in Employment Background Checks Act of 2010.” The House bill (HR5300) has a provision that, if passed, would eliminate access to arrest records for background screening purposes, if the disposition of the case was unknown after one year from the date of arrest. The bill is covered in the legislative summary in this issue of The Report.

In an article in the online security publication, SecurityInfoWatch.com, Larry Sabbath, who represents Security Companies

Organized for Legislative Action, is



quoted:

“We’re concerned that criminal histories would no longer be accurate. If there is an arrest and the trial doesn’t take place for more than a year or they don’t get the information back from the states for more than a year, it just gets dropped out as I read the bill. We don’t think that is a logical way to handle things and it would mean that the regulatory authorities who decide, for example, who should get a license as a security officer or a private investigator or who should be able to obtain a weapons permit, might not have knowledge that someone was pending trial for a felony.”

Larry is, of course, NCISS’ legislative advocate in Washington. NCISS is a member of SCOLA and

supports the position that database information, including the FBI’s, should be accurate. However, the background check provision presents problems, especially for those who regulate professional licensing and provide background screening services.

ASIS International’s vice president of government affairs and public policy, Jack Lichtenstein, is also quoted in the article:

“We’ve looked at the bill. We don’t see it moving very quickly, if at all. We are keeping an eye on it. We are extremely supportive of these other organizations and we feel very much the same way they do.” ❖

The SecurityInfoWatch article was authored by assistant editor Joel Griffin on July 22, 2010.

Welcome New Members

By Carol Ward



Please extend a hearty welcome to these new members, who have joined since we last published The Report. A reminder to everyone: Please check your listing on our web page, www.nciss.org, to make sure there are no errors. In case you find one, let me know at nciss@comcast.net. Thanks!

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INTERNATIONAL...

- CII - Council of International Investigators
- WAD - World Association of Detectives

Thank You, Jim & Barbara



Barbara Burr and Jim Carino at the SAAB meeting during the Chicago conference.

The next SAAB meeting will be in Washington, DC, at the Hit the Hill event. If you plan on attending contact SAAB's new chairman Gary Brummond, rodblytheinv@aol.com or secretary Barbara Burr, BRBIQ@aol.com. All of us in NCISS and SAAB send our heartfelt thanks to Jim Carino for his many years of dedi-

cated service as SAAB chair; and, of course, thank you to Barbara for continuing as secretary. If you would like a copy of the minutes of the last SAAB meeting in Chicago during the 2010 conference, contact Barbara. ❖

The Future of Pretexting

By Thomas Shamshak and Eugene F. Ferraro

Using a plausible but false assertion to conceal one's true purpose or intent has been an acceptable method of investigation for investigators for more than 100 years. Not until a small group of contractors working for Hewlett-Packard misused this valuable tool in 2006, did lawmakers or anyone else even take notice of it. Since then, privacy advocates, the media and others have demanded that the practice be outlawed and those who use it be punished.

Organizations such as the National Council of Investigation and Security Services and state associations around the country, however, recognize that pretexting is invaluable to investigators in both the public and private sector and have fought to defend this tool and prevent its ban. On the other hand, the popular media and the nation's news agencies have taken a position which opposes this effort. Even ASIS International surprised us when it disclosed in a short article in its 3rd Quarter, 2007 ASISPAC newsletter the following, "Pretexting is described as the use of false, fraudulent, or fictitious information in order to gather personal information during investigations (emphasis added)." Any ethical investigator knows pretexting is not about gathering personal information; it is about gathering information which is often unavailable by other means. But by incorrectly defining this important investigative tool as this article did, the professional reputation of all lawfully practicing investigators was potentially damaged. Furthermore, all professional investigators know that the gathering of personal information by false or fraudulent means under most circumstances is in fact unlawful. Fraud is theft by deception and experienced, law abiding investigators would not commit theft or fraud to further an investigation. To do otherwise would be unethical, and, well, unlawful.

The most recent edition of Black's Law Dictionary defines pretext as an "Ostensible reason or motive assigned or assumed as a color or cover for the real reason or motive; false appearance, pretense." While



"...rational thinkers recognize pretexting has many legitimate uses."



the Federal Trade Commission's website states that pretexting is against the law when used to obtain personal information in order to commit a crime, rational thinkers recognize pretexting has many legitimate uses. Even the International Association of Security and Investigative Regulators, whose stated purpose is "enhancing public safety by promoting professionalism in the private security industry through effective regulation" has acknowledged that pretexting is a legitimate investigative tool. In fact, most covert investigations use pretexts at some level. Whether an organization uses private sector investigators or its own employees to conduct a workplace undercover investigation, to investigate criminals counterfeiting its products, or seeks to prove malingering by an insurance claimant, pretexts are

necessary in order to gain the confidence of those being investigated and conceal the investigator's true purpose. As most security professionals know, these and other covert investigations can only be successful if the investigators do not reveal their real identity or intent.

The battle is not over. We are likely to see more proposed legislation attacking or limiting the use of pretexting during this or the next session of Congress. As professional investigators and members of NCISS and other associations, we should be prepared. Let's work together and plan ahead. Write your senator and congressman and let them know that our inventory of investigative tools is dwindling. Without legislative protection of the remaining tools we have, we

may soon come to find that pretexting really is, "the use of false, fraudulent, or fictitious information in order to gather personal information during investigations," and those that use it are indeed law-breakers. ❖

© 2010 Permission to use granted to state associations and others with attribution to authors. Thomas Shamsbak (tsbamsbak@aol.com) is a member of the NCISS board of directors and past president of the Licensed Private Detectives Association of Massachusetts. Eugene F. Ferraro, CPP, CFE, PCI, SPHR (eferraro@BusinessControls.com) is president of NCISS.

It's Not Too Late! Join Us! Hit the Hill 2010

NCISS Hit the Hill & Board Meeting

- September 28th through September 30th, 2010
- Washington D.C
- Event Details at www.nciss.org
- Hotel reservations at:

www.WashingtonPlazaHotel.com





Lobbying the CALI Way

By Francie Koehler



Does your association have a legislative program in place? If it doesn't, a valuable member opportunity is being missed. Whether you can afford a person in the position of a legislative advocate is no matter, you can still build an effective program. Every year since 2000, the California Association of Licensed Investigators (CALI) has hosted a "Legislation Day" at the California state capitol. Through this vehicle, California licensed investigators are able to discover the value of meeting elected officials and developing an ongoing and trusting relationship. Oftentimes these relationships may even make a difference on a pending bill. Here are the CALI "bullet points" of legislative advocacy.

What is Lobbying?

- Form of public policy advocacy.
- Process of educating government officials.
- Communication with elected officials to take action on specific legislation.
- Participation in the democratic process.

What Skills Are Needed?

- A basic understanding of the legislative process.
- Understanding main arguments for and against a bill.
- The ability to communicate effectively.

Legislative Process (similar in most states and the U.S. Capitol)

- Bills move from introduction to the originating house committee (s) and then to the originating house floor. If the bill passes the originating house, it then shifts from the originating house floor to "the other side" and is again assigned to committee (s) where it moves from committee to committee to the "other house" floor. Bills return to originating house for consent when there are modifications in second house. Bills go

to the Governor for signature upon passage of both houses. A bill's outcome can be influenced at each step.

- Experience and feedback from these visits have identified a number of beneficial tips to assist with these meetings. We start with pairing a member with an individual who has lobbied before. Teams of three are the best. Everyone, including people in the legislator's office, is more comfortable when one person doesn't have to carry the conversation.

Your Meeting Objective...

- Develop a relationship.
- Earn trust.
- Be a resource.
- Dispel PI myth promoted by movies and TV.
- Discuss legislative Issues.

Know Your Legislator Before There is a Problem...

- Develop a relationship.
- Earn trust.
- Become a resource for PI-related issues.

Be Ready...

- Dress in business attire
- Bring business cards

Be Professional...

- Always be respectful and polite.
- Make eye contact.
- Be nice to the receptionist and other staffers.
- Staff members often act as gatekeepers and report what they see and hear.
- Staffers research issues and make recommendations.

Always Use Appropriate Title...

- Senator.
- Assembly member or representative.

Don't Go in Cold...

- Learn your legislator's political positions.
- Know your legislator's committees.
- Mention mutual friends, interests, local issues.

If You Don't Know the Answer...

- Get the answer, follow-up, and report back.
- Defer to lobbyist, legislation chair, or president.
- Never, never mislead or lie.



And finally: Never, ever discuss money or political contributions in the Capitol!

Remember to do exactly what you promised in your meeting with your legislator or his or her representative(s). Stay in contact and build on the relationship and earn their trust. Contact their office two to four times per year.

Lobbying is a rewarding and worthwhile experience. You can become a resource for investigation or security related issues. As investigators, we can dispel the myth perpetrated by movies and television. And remember: your one voice really can make a difference! ❖

Francie Koehler is past president and current board chair of NCISS as well as the current legislative chair and past president of the California Association of Licensed Investigators. She is available to assist any association that has a desire to build a successful legislative program. She can be contacted at franciek@pacbell.net.

The Do's and Do Not's

passed. Example: Providing information the legislator then relies on and tells as a fact.

Do Say Thank You: Express your appreciation and get business card for future follow-up.

Do Say Thank You Again: You can't say "Thank You" too often at these times...

- Upon arrival.
- Upon departure.
- For something extra.
- or good measure.

Do Write a Thank You Note:

- Address note to your lawmaker.
- Praise staff, particularly the staff person with whom you met.
- Copy letter to staff member.

Do Not Ever:

- Argue with your Legislator.
- Tell him or her that he or she is wrong
- Set up legislator to be embar-

Do Remember: Effective Written Communication is...

- Accurate
- Brief
- Clear

- Timely
- Followed-up with a telephone call

Do Record Notes of Visit

- Complete legislation visit summary form.
- Give to designated person for follow-up. ❖

Tips When in a Legislator's Office

1. Be Succinct: Prepare to answer, "What is your most important issue this year?"
2. Pay Attention to Subtle Clues: Don't overstay your welcome. Some meetings may last only five minutes.
3. Listen Carefully: If legislator makes a commitment to take action, listen carefully and clarify.❖



ASIS International Honors NCISS President

Gene Ferraro among those to be honored this year with ASIS' Presidential Award of Merit

In a letter dated July 26, ASIS International president Joseph R. (Bob) Granger, CPP notified NCISS president Eugene F. Ferraro, CPP, CFE, PCI, SPHR that he was one of eleven individuals to be honored at this year's annual conference in Dallas on October 13, 2010. Mr. Granger detailed the award in his letter:

"This Presidential Award of Merit is given in recognition of those members that have individually contributed years of dedication and service to our Society. These

individuals are truly outstanding educators and teachers and have given, and continue to give, their time and knowledge to fulfill the primary mission and goal of ASIS International by providing for the needs of the membership through quality educational offerings, thus advancing the security profession worldwide."

Gene, in his own modest way, said this in an email to NCISS colleagues after learning of the award, "This is a pleasant surprise." Gene's friends and colleagues know it's an

award well deserved, considering his long service to the investigative and security professions. Congratulations, Gene. ❖

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