



INTELLENET NEWSLETTER

MARCH 2010

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Carino's Corner

*James P. Carino, Jr., CPP, VSM
Executive Director*

Spring 2010 promises to be an active and productive season for Intellenet. Festivities get started at the PI Magazine/TALI sponsored World Investigators Conference 2010 (www.2010wic.com) 10-13 March 2010 in Dallas TX with Intellenet both exhibiting and hosting a Mixer.

Our own conference (www.intellenetagm.com) is a bit earlier this year with Super Bowl champs New Orleans our location in what promises to be our best attended Annual Conference yet, during the period 24-28 March.

From 14-16 April we will again be exhibiting, this time at a very dynamic IAAR (International Association of Asset Recovery)

(www.iaaronline.org) conference in Miami Beach. Intellenet and IAAR are forging a relationship to tie

these two prestigious groups closely together. IAAR specializes in providing training and networking for the global community in public and private sector that traces and recovers assets wrongfully held by others. Forensic accountants, investigators, intelligence and investigative analysts, and attorneys operate as a team in nearly every asset recovery case.

Both WIC (14 presenters) and IAAR (2 presenters) Conferences will be well represented with Intellenet members on the Program Agenda.

Each of these is a key important and significant conference. All three offer outstanding education and networking opportunities. Time and funds may make it difficult to attend all three (2 of 3 isn't bad!). Why not check out the websites and

determine which one(s) might be best for your professional and business development? Each is open to all and none requires membership to attend.

Know Your Fellow Members

Barry W. Ryan
INA-INC
Harrisburg, PA



Barry is a graduate of the University of Notre Dame, Class of 1962. He is a former Special Agent of the FBI, having been assigned to offices in Jacksonville, Tampa, and Coca Beach, Florida. After leaving the Bureau he became Security Director in the telephone industry for GTE and later world-wide Security Director of Spalding, the sporting goods company. In the late 1970's Barry bought a Sonitrol Security Systems franchise for Harrisburg, Pennsylvania, and developed it into the largest security company in the area. After selling it to a competitor in 1986, he focused on a smaller off-shoot business of private investigative and security consulting services. That business, Information Network Associates, Inc. (INA) has become a premier investigative and security consulting business serving local and national businesses, including Fortune 500 companies.

Barry was a charter member and the first president of the Pennsylvania Association of Licensed Investigators (PALI). He is a member of several professional and other organizations, including his present tenure as President of the Notre Dame Club of Harrisburg. In his spare time, Barry enjoys golfing and is extensively involved in a number of charitable organizations, including the establishment of a local Free Health Care Center. He can be reached at bryan@ina-inc.com.

New Members

Nichole Bocra, Infinity Investigative Solutions, Arlington, Virginia; **Robert and Karen Lee Pertuso**, RK International, Inc, Grosse Pointe Farms, Michigan; **Syed Ahsan Zawar Naqvi**, San & Associates, Lahore, Punjab, Pakistan; **Ed Spicer**, Ocean States Investigative Group, LLC, Beverly,

Massachusetts; **Elford John**, IRM Solutions, Inc., Barbados/Trinidad; **Bill Vincent**, VTS Investigations, LLC, Chicago, Illinois; **John Folino**, J & R Folino, LLC, Lake George, New York.

Members in the News

following Intellenet members were conference speakers: **Brian Ingram**, Waxahachie, Texas; **Kevin Ripa**, Calgary, Alberta, Canada; **Michele Stuart**, Gilbert, Arizona; **Jimmie Mesis**, Freehold, New Jersey; **Larry Ross**, Washington, DC; **Steve Rambam**, Brooklyn, New York; **Michael Newman**, San Diego, California; **Harvey Morse**, Daytona Beach, Florida; **Bill Blake**, Littleton, Colorado; **Reggie Montgomery**, Allendale, New Jersey; **Don Johnson**, Bloomington, Indiana, and **Rashid Ali Malik**, Karachi, Pakistan. **Jim Whitaker**, Cincinnati, Ohio, has accepted full-time employment as Security Director for a Trauma One Hospital and has moved to the Intellenet Supplemental Support List.

Special Assistant Appointment

Barbara Thompson, West Chester, Pennsylvania, has been appointed as a non-voting member of the Intellenet Board of Directors with the title of Special Assistant. She will assume some of the duties previously performed by the late **Brad Penny** and assist in overseeing the planning for Continuity of Operations and Succession Planning.

Private Investigation—Success or Failure as a Business

Intellenet is putting together a book to be published within the next year with a title tentatively assigned as above. The concept of the book is to publish it in two parts. Part I would discuss the business management and organization of a private investigation business. Part II would consist of specialized investigative techniques necessary to pursue a niche within the general private investigation field.

The copyright and royalties would be the property of Intellenet. Intellenet members are encouraged to participate in this endeavor by submitting chapters for either part of the book. Members can also use the chapters they author to supplement their résumé qualifications. Many members

already have the basics for a chapter through expansion of presentations made at various conferences and seminars.

Several Intellenet members have volunteered to author a chapter. If you are willing to be an author or need additional information, please advise Bill Blake at 303-683-3327 or billblake2@aol.com to identify your area of interest so we have a diversity of information and not a lot of duplication.

Arson—Lesson Learned

Dick Pedersen

Pedersen & Associates, LLC

Leesburg, Virginia

Once upon a time I was an ATF agent in the Washington, D.C., area. My expertise was international arms and explosive investigations with the day by day guns and drugs stuff thrown in to keep the bean counters and management happy. I later became one of them (Internal Auditor) and came to understand most of their rationale. ATF was also charged with jurisdiction over arson crimes. These incidents had to meet a threshold, i.e., at least a loss of well over a million dollars or a sensational or newsworthy event such as a series of church fires. I choose not to go down the arson road as a few of my comrades did, riding to fire scenes with fire departments to get experience and certified, along with months of study. Although I did acquire quite a bit of knowledge by exposure to all hands callouts to sift through scenes, conduct witness interviews, participating in office chatter and training sessions. One callout in particular was a valuable lesson for me and others involved in the investigation and, I hope, helps our members in both their professional and personal lives.

A large fabricator of wooden trusses used for home and commercial construction burned to the ground early one summer evening. The plant, located in rural Virginia, had been a family operation for more than twenty years, growing in size along with the housing boon in northern Virginia. Sizeable in scope, it covered many acres with the basic construction of sheet metal fabricated walls and roofing supported by wood trusses. It was also a significant employer for the area, employing probably thirty or more workers and a small fleet of trucks and forklifts to move raw materials and ship out the finished product. Essentially, the logs came in one side and after going through huge saws and other machines, they left the other in

finished cross members, trusses and stud wall sections all made to order. You can imagine all the sawdust. I know you're not surprised the place went up.

I arrived with a team of about six agents on a hot summer day. The lead guy was an arson expert and I would soon learn why. The plant was set down in a depression or small valley and, standing higher on a parallel road, I could see acres of twisted metal roofing lying flat on the ground beneath me. All the wooden supports and trusses burned, leaving the sheet metal sides and roofing to cover the entire scene, a sea of sheet metal. It was going to be tough getting in there. We had thick coveralls and, of course, helmets, gloves and glasses to protect us from the sharp edges. Walking around the scene was very difficult. To me it looked impossible; I was overwhelmed by the disaster with no idea of what the plan of attack would be.

About eight years ago, the owners built a more modern plant themselves as the general contractor with contract labor. They commissioned architectural work and turned the dozens of pages of plans and drawings into a fine production plant. Then we were told the plant had burned down in the same fashion two years ago. The cause then was unknown, maybe a spark or a careless cigarette, who knew. The insurance company paid the loss and the plant was rebuilt by the owners exactly as it was from their previous plans.

I followed our lead arson investigator through the rubble--burned large table saws, band saws, joiner machines. The agent remarked that the electrical draw from those machines had to be huge. We located the main breaker boxes lying in the rubble where a building side edge was and could see the metal conduit pipes heading outward. As he worked his way along the many yards of metal looking under and along the edges he found an electrical conduit pipe that was strapped against the inside eaves of the building. He traced a particular pipe that was about one inch in diameter until he found where it had burned thru in several spots. The summer temperature in the eaves had to be well into the mid 100's. Coupled with a huge electrical draw and conduit that was too small, the pipe burned through and ignited nearby wood supports and framing the metal roof rested upon.

Of course, the tragedy is they exactly replicated their initial failed plan. They felt so confident in their ability to do the work themselves they did not

have an electrical contractor install the conduit to take the load plus the heat. I learned a lot that day.

Testimonial

The following was received by Jim Carino from one of the Intellenet initiative clients: "Many thanks to Intellenet, your agent, and you for yet again, a job very well done! I appreciate the professional service and friendship more than you realize. It is a privilege and pleasure to work with you and yours."

**Council of Europe Conference on
Human Rights and Terrorism
Malaga, Spain, October 8, 2009**
Richard Horowitz, Esq
New York, New York

Let me begin by saying that we all want the same thing, which is to save lives without departing from our values in the process. As the opening speaker of the second session, though, I paid close attention to the deliberations of the first session and recognized that no one mentioned terrorism. The topic of our seminar is not human rights; it is human rights and terrorism, and since no one spoke about the terrorism this morning I'll compensate for that. After all, the name of this session is "Current Counter-Terrorist Framework at the National and International Level." How can we discuss a counter-terrorist framework if we do not talk about the terrorist threat we face?

As such, I wish to make the following points.

First, I disagree with the name of this morning's session: "Human Rights at the Core of Counter-Terrorism." It is not. At the core of counter-terrorism is keeping people alive and safe; human rights are one of numerous considerations in carrying out this policy but it is not its core.

An American court, in my opinion, displayed a similarly mistaken view in 1997:

The PFLP [Popular Front for the Liberation of Palestine] is an international organization with ties to Palestine, and which the district court concluded is engaged in a wide range of lawful activities, including the provision of

"education, day care, health care, and social security, as well as cultural activities, publications, and political organizing." The government avers that the PFLP is an international terrorist and communist organization, but does not dispute the district court's finding that the organization conducts lawful activities.

Is the PFLP a social welfare organization with a military wing or a terrorist organization that takes care of the social welfare of its people? This sort of question is not new - its nature can be traced back to Plato and Aristotle - essence versus characteristics. Is terrorism the essence of the PFLP or one of its characteristics? Many people will disagree along political and ideological lines in analyzing a specific group but I think on reflection one should agree that saving lives is at the core of counterterrorism.

Second, the main threat we face, that of Islamic terrorism, is also not new. Extreme statements made by Islamic terrorists last month are no different than statements made by their ideological predecessor's in the last millennium. The world did not change on 9/11 as is often said; rather, people unaccustomed to thinking about this threat were now confronted with an aspect of the world they had heretofore neglected. You all have the article I published in 1999 entitled *The International Problem of Islamic Terrorism*. It was simply a compilation of news items from the world press from January to June, 1999. I was not the only one who recognized this problem before 9/11.

This is the name hearing before the U.S. House Subcommittee on Europe and the Middle East: *Islamic Fundamentalism and Islamic Radicalism*, held in July 1985.

An important news item from the *BBC* –

The 16-hour siege on a Pan Am jet in Pakistan has come to a bloody end, with at least 17 people dead. Four gunmen, who boarded the Bombay to New York flight at Karachi Airport disguised as security guards, opened fire on the 390 hostages at 2130 local time.

Some passengers were able to escape the carnage down one of the plane's emergency chutes, but it is thought to have been at least 10 minutes before Pakistani commandos reached the jet.

Businessman Mohammed Amin said he heard one hijacker tell another: "The moment of the Last Jihad has arrived. If we are all killed we will all be martyrs."

This BBC report is dated September 5, 1986.

Third, to understand the threat we have to recognize that Islamic and Arab terrorism are the only real forms of international terrorism. Other situations commonly referred to as international terrorism are in reality *domestic terrorism occurring in a foreign country*. The Shining Path in Peru, the IRA in North Ireland, the ETA in Spain, the Tamil Tigers in Sri Lanka, the FARC in Colombia, Baader-Meinhof in Germany, and so on – do not plan or execute attacks in foreign countries unrelated to the conflict, or in the international arena. Examples otherwise are the exception that proves the rule.

It can be argued that international terrorism began with Arab hijacking of international flights in the 1960s. The U.S. State Department's Office of the Historian published a history of its Office for Combating Terrorism, dated March 1984, explaining that the "historical antecedent" to this office was that "on September 25, 1972, 20 days after the terrorist attack on Olympic athletes at Munich, President Nixon established the Cabinet Committee to Combat Terrorism."

Moreover, U.S. law, for example, defines international terrorism as follows: "The term 'international terrorism' means terrorism involving citizens or the territory of more than one country." This is the definition used by the State Department in its well-known *Country Reports* and *Patterns of Global Terrorism*. This definition can hardly distinguish between true international terrorism and a domestic attack in a foreign country where citizens of another country happened to be killed.

International hijackings, the Munich Olympics attack, and the attacks in recent years by Islamic terrorists in, for example, New York, London, Madrid, Mumbai, Delhi, Bali, Mombasa, Algiers, Djerba, Kenya and Tanzania, Riyadh, Jakarta, Casablanca, Istanbul, and Amman, the murder of

Theo van Gogh in Amsterdam and the *fatwa* calling for the death of Salman Rushdie clearly indicate a different objective, strategy, and mind-set than the aforementioned terrorist groups from various countries.

Fourth, concern and hesitancy about using the phrase "Islamic terrorism" hampers an understanding of the threat. No one hesitates using the word *mujahidin*, yet this word which is the plural of the word *mujahid*, contains the letters "j," "h," and "d." It and the word *jihad* have the same root. The letter "m" as a prefix indicates "he who does" – a *mujahid* is he who does *jihad*, or a Jihadi in English. Similarly, a *mufti* is he who makes a *fatwa*.

We refer to Hamas, Hezbollah, and al-Qaeda because those are the names in Arabic that these groups call themselves. We call the group the Islamic Jihad because it is the translation of what they call themselves – *al-Jihad al-Islami*.

Is there a Western prejudice against Muslims, a conviction that Muslim morality is so feeble that using the wrong language may push them towards radicalism, which would then be our fault? If radical Muslims use the words Jihad and Islam to describe themselves, why the concern that our doing so will radicalize mainstream Muslims?

Fifth, to a great extent it is the West's conviction to liberal, democratic values that fuels Islamic terrorists, who are on a mission to insure that the world runs according to Allah's will. Islamic terrorists cannot and do not reconcile Allah's will with Western liberty and freedom.

In his 2003 State of the Union speech President Bush said "Americans are a free people, who know that freedom is the right of every person and the future of every nation. The liberty we prize is not America's gift to the world; it is God's gift to humanity." From President Bush's 2006 State of the Union speech: "Liberty is the future of every nation in the Middle East, because liberty is the right and hope of all humanity."

A Western leader invoking God to support liberty in the Middle East, claiming it to be "God's gift to humanity"?

President Bush is not alone. From John F. Kennedy's inaugural address in 1961:

[The] same revolutionary beliefs for which our forebears fought are still at issue around the globe—the belief that the rights of man come not from the generosity of the state, but from the hand of God . . . Let every nation know, whether it wishes us well or ill, that we shall pay any price, bear any burden, meet any hardship, support any friend, oppose any foe, in order to assure the survival and the success of liberty.

And so, my fellow Americans: ask not what your country can do for you—ask what you can do for your country. My fellow citizens of the world: ask not what America will do for you, but what together we can do for the freedom of man.

Finally, whether you are citizens of America or citizens of the world, ask of us the same high standards of strength and sacrifice which we ask of you. . . . Let us go forth to lead the land we love, asking His blessing and His help, but knowing that here on earth God's work must truly be our own.

A Conservative republican and a liberal Democratic president, 40 years apart, publicly proclaim that the United States is on a mission from God to spread liberty and freedom – a direct challenge to whether the liberal West or radical Islam will rule the world.

Sixth, human rights, which is the Council of Europe's mission, is not a universally agreed-upon concept. Read Sayyid Qutb's *Social Justice in Islam*, first published in Arabic in 1949, for an understanding of human rights and social justice different than our Western understanding.

Excerpts from the 1990 Cairo Declaration on Human Rights in Islam:

Wishing to contribute to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah;

Article 2 (a) Life is a God-given gift and the right to life is guaranteed to

every human being. It is the duty of individuals, societies and states to protect this right from any violation, and it is prohibited to take away life except for a Shari'ah-prescribed reason.

(d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'ah-prescribed reason.

Article 7

(b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shari'ah.

Article 16

Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical production and the right to protect the moral and material interests stemming therefrom, provided that such production is not contrary to the principles of Shari'ah.

Article 19

(d) There shall be no crime or punishment except as provided for in the Shari'ah.

Article 22 (a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.

Article 24

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

Article 25

The Islamic Shari'ah is the only source of reference for the

explanation or clarification to any of the articles of this Declaration.

When comparing the 1990 Cairo Declaration on Human Rights and the 1950 European Convention on Human Rights, it is not difficult to see that the Cairo Declaration's provisions that are subject to Sharia parallel the European Conventions' provisions that are "subject only to such limitations as are prescribed by law" or similar language.

I do not know what the drafters of the Cairo Declaration had in mind when they referred to Sharia but I do know what today's Islamic terrorists consider a Sharia dominated world to be, and there is no need to emphasize the difference between their world view and that of the West.

An April 19, 2009 *New York Times* article entitled "Secure Enough to Sin, Baghdad Returns to Its Old Ways" begins with the sentence "Vice is making a comeback in this city once famous for 1,001 varieties of it." Since the fall of the Taliban, men in Kabul can shave their beards, girls have gone back to school, and people can buy music and DVDs, all prohibited under Taliban rule.

And so we see that Bin Laden and the Taliban are correct; the spread of Western liberal culture and values are a threat to their interpretation and application of Islam, and they believe they are on a mission from Allah to fight to the death to stop it. This is the terrorist threat we face; one that affects international security with transnational consequences. It certainly deserves appropriate analysis and discussion, particularly in the context of human rights.

Richard Horowitz is an attorney concentrating in corporate, international, and security matters. He served in the Israeli Defense Forces for six years and holds a private investigator's license. His website is www.rhesq.com.

ListServ Etiquette
Bill Blake
Blake and Associates, Inc.
Littleton, Colorado

I realize that we are in a business requiring the use of investigative skills. However, some of the best kept secrets appear on the ListServ as e-mails. The subjects of some ListServ messages require an extra portion of work that confuses those of us who are lazy and not all-knowing mind readers. When I

see an e-mail with the subject shown only as "request for assistance", I, along with many others, routinely engage the lazy mode and hit the delete button. It is to everyone's benefit to follow a few simple rules to increase response to your requests.

(1) Put in the subject line an indicator of what you are requesting, such as "Need New York driver license check". This gives the reader an indication of what you want and where the information may be—this also tells California members that the message is probably not of interest to them.

(2) Let us know who you are and how you can be contacted. Some requests come from "Pete" with a non-descriptive e-mail address, leading to comments such as "who's this guy?" You should always include your complete name and contact information in the signature block of your message.

(3) Nicknames may be known to some people who have been around Intellenet for a period of time, such as "Computer Whiz", but unknown to our newer members. "Computer Whiz's" notoriety can be more worldwide when there is a connection to a real name.

Workplace Violence: A Research-Based Approach
Chris Meisenhalder, MBA
Executive Director
Andrews International Consulting and Investigations

While violence overall has been studied for many years, the specific study of workplace violence is relatively recent. Much of what we believe about workplace violence is a result of the limited exposure to it on the news, leading to common misconceptions, such as the belief that workplace violence is predominately physical aggression. When studying workplace violence, there are two areas that merit attention: The first is accurate research-based facts about physical aggression in the workplace and the second is consideration of a cooperative relationship between HR and corporate security in prevention of workplace violence and reaction to nonphysical workplace violence incidents.

Who perpetrates workplace violence?

Studies show no gender or age differences in the profiles of perpetrators or victims of workplace

violence. However, there is evidence to show that the perpetrator and victim are most likely to be of the same race and to spend a significant amount of time working together. There is limited evidence for lower socioeconomic level being linked to aggression against a supervisor.

Personality factors of workplace violence perpetrators seem to have little predictive value when compared to management behaviors and quality of work experiences involved in incidents, which have a significantly higher predictive value. Reviews suggest that a focus on training managers and supervisors in effective leadership skills and interpersonal communications would be a more successful method of prevention than an exclusive focus on employee screening methods.

Workplace violence is target specific and not random or unpredictable. Aggression can be perpetrated by an external source, such as an employee's personal relationship; or internal.

1. Internal – range of misconduct among co-workers at their place of employment which may be preventable by proactive involvement from a policy and awareness perspective
2. External – incidents that take place in or around the workplace but are committed by outside threats which must be approached as a more traditional security threat

What are causes and who are victims of workplace violence?

Layoffs and employee terminations have long been considered a primary instigation of workplace violence. Research shows that the termination of employment itself is not the cause; however, termination may act as the catalyst for violence triggered by perceived injustice.

Studies differ in their assessment of whether hierarchical status in the corporation has any effect on victimization. There are, however, organizational factors that have been found to increase workplace victimization: role clarity, higher workloads, and task fragmentation. Weak leadership has also been shown in areas of increased victimization, resultant of situations of workplace conflicts that go unresolved or leadership failing to establish policy for acceptable and unacceptable patterns of interaction.

Conversely, highly authoritarian or bureaucratic leadership styles also are more likely to result in victimization episodes.

Research has also shown that people who have low emotional stability are more likely to be victimized in the workplace; however, they are also more likely to perceive others' actions as hostile and are more likely to selectively remember the negative rather than the positive interactions with others.

Protecting employees from verbal aggression and bullying behaviors has not been an area of concern for security personnel in the past; however, this has become a new concern for corporations and should be paid attention to, as verbal abuse is also a method of workplace violence and potentially leads to physical threat.

What is the effect of workplace violence?

Victimization in the workplace, whether actual or perceived, has a ripple effect, negatively affecting the individual's relationships outside the workplace and potentially leading to aggressive situations outside of work as well. Private interpersonal aggression can become aggression at the workplace, becoming a security issue. Individuals who are victimized at work tend to see retaliatory aggression as a legitimate action. While physical or fatal harm is the most serious of workplace violence effects, workers who feel victimized may also respond with dysfunctional resistance, such as poor quality work, absences, and victimizing others. No matter what the vehicle for workplace violence, the costs of workplace victimization are high – affecting employee morale, production, safety and the liability of the corporation.

What is the best way to prevent and respond to workplace violence?

Corporate security is most often assigned the role of responding to workplace violence, but prevention should begin in the HR department, with cooperation and open communication between security management and workforce management, as well as effective leadership training of managers and supervisors. Notification to corporate security of high risk incidents of victimization could be a preventive step, in addition to the notification of high risk interpersonal violence. Developing a corporate protocol, in which supervisors and employees notify corporate security of any incidents of violence, or threats of violence, also

facilitates prevention. Finding a way to enact policies that reflect effective, research-based prevention strategies may be a difficult task, but an important one that will result in a more secure environment for all employees and save the corporation cost and repercussions in the long run.

Sources:

- Aquino, Karl, Thau, Stefan. 2009. Workplace Victimization: Aggression from the Target's Perspective. Annual Review of Psychology, 60: 717-741.
- Barling, Julian, Dupre, Kathryne, Kelloway, E. Kevin. 2009. Predicting Workplace Aggression and Violence. Annual Review of Psychology 60: 671-692.

***Investigators Strut Your Stuff in
Employment Claims Investigations!***

*S. Beville May, Esquire
Prevent Claims, LLC
Exton, Pennsylvania*

(Ms. May will be contributing a quarterly column to the Newsletter)

Outside investigators conducting employment claims investigations should be aware that their actions are on center stage and should strut their stuff accordingly.

Companies that have internal complaints of employment claims are obliged to undertake a prompt and thorough investigation of the charges. Such claims might include sexual harassment, discrimination, unequal pay, disability or other employment claims. Most companies' policies and procedures call for such inquiries, and legal requirements make them all but mandatory.

In-house counsel, Human Resources (HR) professionals, or impartial outside investigators all could be called upon to conduct such investigations. Companies are not, however, likely to retain their usual outside counsel for such investigations as those attorneys would then become fact witnesses in any subsequent proceedings. This makes it unlikely that the outside attorney could handle any litigation that later arises.

Often companies are reluctant to use their in-house attorneys or Human Resources professionals because the complainant might feel such investigators are biased or engaged in a company cover up. Similarly, the complainant might allege that people in these positions are implicated in the claim. In-house attorneys and HR folks are also often reluctant to become fact witnesses although that might become unavoidable depending on how the complaint and investigation unfurl. Additionally, an investigation can become very time consuming, taking counsel and human resources away from their core responsibilities. Hence, the need for an impartial outside investigator.

Companies often proffer their investigations into workplace complaints as a defense to any later lawsuits. To do so, they show that their investigations were impartial, prompt and thorough. Being able to show that they used an outside expert investigator, schooled in the particular nuances of workplace employment claims investigations, can go a long way to proving that the investigation should shield the company from liability.

Because your investigation will be used in defense of the company, you must be scrupulously careful to document your approach and the investigative steps you take. Likewise, your investigation must be prompt and thorough. Tension often arises between the need for speed and the need to be thorough, and it's a high wire balancing act to achieve both goals.

Steps to take include:

- Outlining your investigation before moving forward
- Identifying key witnesses as well as secondary witnesses
- Sending out a letter to witnesses describing your process
- Making sure your letter prohibits retaliation against any witnesses
- Identifying and obtaining relevant documents and web-based information
- Identifying and obtaining any electronic evidence
- Interviewing witnesses and possibly using a court reporter for reliability
- Dating your notes/testimony
- Identifying any third party experts you might need
- Writing a detailed, annotated Investigative Report

Assume that everything you do will be discoverable and that you will be a witness for the purpose of deposition and trial because you likely will be. You are the company's bulwark against charges that it did not respond adequately to a workplace complaint. In a nutshell, strut yourself as an investigator and showcase your expert talents since your investigation will receive keen scrutiny in any later lawsuit.

When Does Surveillance Become Stalking?

Colleen Collins

*Highlands Investigations & Legal Services, Inc.
Denver, Colorado*

Surveillance is a critical skill for any private investigator (PI). In our investigative agency, over half our cases, from criminal defense to personal injury, require some degree of surveillance. For PIs who specialize in insurance or infidelity investigations, surveillance can be the bulk of their work.

Sometimes the issue arises of when legal, permitted surveillance crosses the line into stalking. A rule of thumb is to analyze one's motive for conducting surveillance. If the performed surveillance serves a purpose for obtaining information that PIs usually obtain, courts will generally uphold rigorous surveillance.

Below are two separate case examples, the first where a state court found that a PI's actions were stalking, the second where a state court found that the PI's surveillance was in the course of legitimate investigative activities.

New Hampshire Supreme Court Case: PI Found to Be a Stalker

In the state of New Hampshire, one variety of stalking is when there is repeated, unwanted contact between a protected person (with a restraining order) and the restrained person (or their agent). There is an exception to this type of stalking in those instances for "conduct that is necessary for a legitimate purpose." This encompasses "legitimate" domestic relations surveillance to prevent child support fraud or to uncover bad living conditions for children. However, a PI learned the hard way it does not

cover "leaning on your ex" according to *Miller v. Blackden* 913 A. 2d 742 (NH Sup. Ct. 2007).

A New Hampshire woman convinced the state court that her ex-boyfriend hired a private investigator, also his personal friend, to stalk her. In the history between the woman and her ex, he'd broken into her home several months after breaking up with her and a few months before hiring the investigator to follow her.

The PI followed the woman on 6 occasions in a 24-hour period. During this time, she claimed he parked outside her home at night with his vehicle lights off, followed her the next morning to her son's school, drove past her at the school while "staring her down" as she dropped off her child, and drove past her again when she picked up her son later that afternoon. It seems the PI sealed his fate that same day when he followed the woman to the courthouse and waited for her as she filled out the court paperwork for a restraining order against him.

At the hearing, the PI cited private investigator privilege and refused to tell the court why he had been following the woman. The court found it significant that there was a history of illegal activity on the ex-boyfriend's part and concluded the PI's conduct caused "a reasonable person to fear for their safety." All of this compelled the New Hampshire Supreme Court to confirm that stalking had taken place and that the PI could not claim his "conduct had a legitimate purpose."

This case teaches us that a private investigator must:

1. Have a legitimate purpose for surveillance
2. Conduct it in such a way that he/she does not strike fear into the heart of a subject who has been recently victimized
3. Look carefully at a client's motives for conducting a surveillance.

The next example is a court upholding a PI's rigorous surveillance activities:

Michigan Supreme Court Case: PI Absolved of Stalking Accusation

A few years ago, an individual in Michigan sued a PI firm for a violation of the Michigan stalking law

for actions the investigators took during an insurance surveillance (Nastal v. Henderson 471 Mich. 712, 619 N.W.2d 1 2005).

The PI firm fought the case all the way to the Michigan Supreme Court, which agreed with the PI firm that "surveillance by private investigators contributes to the goal of obtaining information and amounts to conduct that serves a legitimate purpose. Even though plaintiff observed the investigators following him more than once, this is not a violation of the stalking law." (In summary, the Michigan Supreme Court dismissed the lawsuit outright and never allowed it to the stage where a trial was held.)

Stalking Laws

The legal definition for stalking varies across jurisdictions. State laws differ regarding victim fear, emotional and/or physical distress, and intent of the stalker. Some states require that the victim was in fear of the stalker; others require only that the stalking behavior might cause a reasonable person to experience fear. Add to this that states vary on what level of fear is required. In our state, Colorado, it is a felony to repeatedly follow someone (who is protected by court order) and cause them "severe emotional distress." Interstate stalking is defined by federal law.

To play it safe, conduct surveillances that recognize and respect others' privacy rights and personal boundaries, and are conducted for the sole purpose of gathering evidence. Like the Eagles song "On the Border," a PI needs to stay on the border, "walkin" the line.

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Five Essential Elements of Business Recovery

In the current business environment, the old adage "time is money" applies now more than ever. So what happens when everyday operations are disrupted? According to the U.S. Labor Department, more than 40 percent of all companies that experience a disaster never reopen—and more than 25 percent of those that do reopen after a disaster occurs will close down for good within two years. But even if your company doesn't go through a major disaster, chances are high that it will experience the negative consequences of unplanned outages that make business as usual impossible.

The problem is amplified in challenging economic times, says Warren Sirota, a segment executive with IBM Business Continuity and Resiliency Services. "If the business is already suffering from lower revenue because of the economy and a significant outage occurs, the impact can be much more dramatic than during good times," he says.

Downtime quickly becomes revenue loss.

Even though a crippling outage is almost certain to hit most companies someday, many executives running midsized organizations adopt an "it won't happen here" attitude. They would be wise to think again. A business may not be located on the coast where hurricanes strike, but power outages can still occur. According to Infonetics Research, most companies suffer between 300 to 1,000 hours of downtime a year.

"Resilience is the ability to take a blow and keep on going." Wildfires may not be prevalent where a business operates, but no company is exempt from the risk of a building fire. And while Mother Nature is responsible for many outages, downtime can also be caused by air conditioning failures, coffee machine malfunctions, bursting pipes, human error, insects, roof cave-ins and vandalism.

No matter the cause of a disaster, the accompanying costs quickly add up. In some industries, says Infonetics Research, downtime costs can equal up to 16 percent of revenue. And according to the analysis firm Meta Group, every hour of downtime carries an hourly cost of more than \$200 for every employee on staff.

Unfortunately, many routine security and business continuity precautions are of little help once disaster strikes. For example, a high-availability

server system is a great investment for protection against many types of outages. Yet if all of its components are located in the same area as the cause of an outage, it too will go down.

Understanding business recovery essentials.

"Avoiding lost sales is the most significant benefit of having a good recovery plan," says Sirota, who suggests that understanding the importance of the five essential elements of business recovery can help midsized businesses stay afloat amid outages large and small. These five areas, he says, make up the most important parts of operating a business: people, facilities, information, networks and technologies. Planning for inevitable disruptions requires an understanding of the essentials of each of these five elements:

Keep people busy with business as usual.

Planning for employees, business partners and customers makes up the most critical aspect of business recovery planning, Sirota says. Depending on the nature of the outage, you may need to figure out how and where people can continue working. For a brief period of time, everyone may need to work remotely, but you'll need to have these contingency plans ready, along with automatic notification to tell employees to work at home.

Make accommodations for facilities.

Facilities make up an important part of business recovery planning. According to the U.S. National Fire Protection Agency, 35 percent of businesses that experience a major fire are out of business within three years. So, if having everyone work at home is not the best option for your business, recovery vendors can provide interim workplaces such as prefabricated mobile offices or buildings designed specifically for use in times of crisis.

Secure information before the storm hits.

Data can make or break a business. According to the U.S. National Archives and Records Administration, 80 percent of companies without well-conceived data protection and recovery strategies go out of business within two years of a major disaster.

Backup tape and storage testing services can help ensure that critical data will be available after a major outage. Ideally, says IBM's Sirota, backups should be performed offsite, preferably at a facility far away from everyday operations. "The best way to protect the information for a small business is to use a remote data backup facility, which actually transmits the data either overnight or at scheduled times to a remote site where it is stored."

Prepare alternate networking routes.

Can you keep networks open—or restore them quickly? What happens if you don't have local area network (LAN) or wide area network (WAN) connectivity for an extended period of time? Or phone connections and e-mail? In the worst-case scenario, your business may not have access to any of these vital services.

LAN and WAN contingency plans can include services such as remote data access so critical information can be managed and administered from any location. A failover system for e-mail is also highly recommended by Sirota, who notes that keeping in touch with partners and customers can make all the difference in remaining in business. These solutions can be activated in seconds, but keep in mind that these systems need to be in place *prior* to an outage.

Keep technology up-to-date and aligned with recovery plans.

Keep tabs on how technology is applied within your organization. This can be as simple as making sure a security patch has been correctly applied. Otherwise, recovery plans can be easily derailed when new software and hardware is added or upgraded without testing the potential consequences of changes to business technology. That's why experts like Sirota recommend routine system checkups, as well as longer-term business continuity and resilience planning services. "Resilience is the ability to take a blow and keep on going," he says.

Regular checkups provide the best results.

Sirota suggests that business recovery plans be tested annually. "Plans go out of date very quickly," he says. "Exercise your plan once a year. People find that's when they realize what they really need to do to improve their plans."

Many of these activities are best done with the assistance of an outside specialist company, Sirota explains, "A small business doesn't have the staff and the in-depth expertise available to do a full-blown plan." He adds. "Obviously they have some people responsible for their IT infrastructure, but typically those people are focused on the day-to-day operations and not all the ins and outs of what could happen in a disaster scenario." But when the ins and outs of continuity planning are taken seriously, midsized businesses can bank on being competitive—which beats flirting with disaster when it comes to the inevitable periods of unexpected downtime.

Protect Your Identity

An attorney recently became the victim of identity theft and made the following suggestions to his co-workers:

1. Do not sign the back of your credit cards. Instead, put "Photo ID Required."
2. When you are writing checks to pay on your credit card accounts, DO NOT put the complete account number on the "For" line. Instead, just put the last four numbers. The credit card company knows the rest of the number, and anyone who might be handling your check as it passes through all the check processing channels won't have access to it.
3. Place your work phone number on your checks instead of your home phone. If you have a PO Box use that instead of your home address. If you do not have a PO Box, use your work address. Never have your Social Security number printed on your checks.
4. Place the contents of your wallet on a photocopy machine. Do both sides of each license, credit card, etc. You will know what you had in your wallet and all of the account numbers and phone numbers to call and cancel. Carry a photocopy of your passport when traveling abroad.
5. Cancel your credit cards immediately.
6. File a police report immediately in the jurisdiction where your credit cards were stolen. This proves to credit providers you were diligent, and this is a first step toward an investigation.

7. Call the three national credit reporting organizations immediately to place a fraud alert on your name and also call the Social Security fraud line number.

Important numbers to remember:

Equifax: 1-800-525-6285

Experian (formerly TRW): 1-888-397-3742

Trans Union: 1-800-680-7289

Social Security Administration Fraud Line: 1-800-269-0271

Within a week this attorney became aware that the thieves ordered an expensive monthly cell phone package, applied for a Visa credit card, had a credit line approved to buy a computer, received a PIN number from Department of Motor Vehicles to change his driving record information online, and more.

Health Care Reform Effort Prompts Crackdown on Medicare

Fraud

Joseph D. Ziegler

When President Barack Obama took office in January 2009, he named Health Care reform as a central priority for his administration, declaring his commitment to working with Congress to pass comprehensive reforms in order to guarantee high-quality, affordable health care for all Americans, while at the same time controlling soaring health care costs. One part of the effort to expand health care coverage and reduce its costs has been a crackdown on Medicare fraud, estimated to cost taxpayers roughly 60 billion dollars per year.

A typical Medicare fraud scheme relies on stolen information, including medical insurance data and Social Security numbers, which criminals use to bill Medicare for medicine, equipment or treatment never prescribed or never provided. It is an easy crime to commit because, by law, Medicare must send out payments within a very short time period. With the government program paying for medical treatment, equipment and prescriptions for 45 million seniors and the disabled, there is little time for questioning suspicious claims. To collect the money, conspirators simply set up shell billing companies. By the time the authorities begin to investigate, the fraudsters have closed up shop in one place and opened up in another. Medicare fraud is so easy and so lucrative, in fact, that it has

replaced narcotics trafficking as the biggest criminal enterprise in Florida.

In response to the fraud epidemic, and to prove its seriousness about reducing health care costs, the Obama administration created a multi-agency Medicare Fraud Task Force and a cabinet-level task force known as the Health Care Fraud Prevention and Enforcement Action Team (HEAT) in 2009. In addition, the administration continued to rely on the work of Medicare fraud strike forces in hotspots such as Miami, Houston, Los Angeles, Detroit, Brooklyn, Tampa and Baton Rouge. Since the first strike force office opened in Miami in March 2007, it has indicted over 460 individuals and organizations for allegedly billing Medicare for more than one billion dollars in fraudulent claims.

Still, a glance at recent Special Interest Person (SIP) additions to Dow Jones Watch list will reveal that the fraud fighters face an uphill battle. For example, Ihosvany Marquez (1271525), the operator of several purported medical clinics in Miami-Dade County, Florida, was arraigned on January 4, 2010, on an indictment charging him with filing 55 million dollars in bogus Medicare claims. Authorities alleged that Marquez used some of the approximately 21.5 million dollars Medicare paid out for those claims to buy diamond jewelry, horses and a fleet of luxury cars, including Lamborghinis, Bentleys, a Ferrari and eight Mercedes-Benzes.

Meanwhile, in December 2009, Fred E. Dweck, a doctor from Hollywood, Florida, was one of 15 Miami-Dade County residents indicted in connection with collecting over 20 million dollars from Medicare based on fraudulent claims.

Haiti Earthquake Claims: Lessons Learned from the Tsunami
Bill Marshall
Veritas Intelligence
Fairfax, Virginia

Insurance companies may face a raft of death claims as a result of the horrific loss of life in Haiti following the powerful earthquake in the country on January 12, 2010. In seeking to validate these claims, insurance companies may be wise to take a page from the experience garnered in the aftermath of the tsunami that struck the Indian Ocean region on December 26, 2004, resulting in the deaths of an estimated 200,000-300,000

people in Indonesia, Sri Lanka, Thailand, India and other nearby countries.

The recording of deaths in Haiti has always been somewhat rudimentary, and the ability of investigators to authenticate them a challenge, even in the best of circumstances. Even prior to last month's earthquake, Haiti had long suffered from the worst poverty in the Western Hemisphere, sloppy official record-keeping, rampant official corruption, overcrowded cemeteries, and even "temporary" gravesites, from which bodies are removed to make room for new occupants. Infrastructure is decrepit, with electricity often sporadic and medical care is generally abysmal. At Veritas we have had experiences of doctors who had treated insureds whose deaths we were investigating in Haiti tell us that they did not keep records of their patients' medical histories. Photocopiers and fax machines are rare, even in "professional" settings like medical and government offices; telephone connectivity is haphazard. These conditions were existent even prior to the quake.

To illustrate the level of modernity prevalent in Haitian government agencies, whenever we request a copy of a death certificate from the deaths registry in Port-au-Prince, the clerks literally hand-wrote a new death certificate, as they did not have functioning photocopying machines. Imagine then the conditions following a magnitude seven earthquake striking the country, in which residential and commercial structures were not built to anything approaching modern standards, and certainly not to withstand such a powerful quake. Buried beneath the resulting rubble were an estimated 100,000-200,000 bodies, crushed by tons of falling concrete. As rescuers attempted to save survivors and bury the dead before infectious diseases could spread, little time could be spent identifying the dead, let alone adhering to official niceties such as recording their names in death registries, holding funerals or even notifying families.

With daytime temperatures in the tropical nation typically reaching the mid-80s, decomposition followed quickly. Mass graves were dug and bodies deposited in them by the truckload, with bulldozers covering them over with earth.

The 2004 Indian Ocean tsunami was the nearest contemporary natural disaster equivalent to the Haiti earthquake in terms of loss of life. While

many of those who died in the tsunami were washed out to sea, and their bodies never recovered, the victims in Haiti were effectively "washed" into the ground, given the need to bury them as quickly as possible. In neither case could efficient and consistent identification of corpses occur.

Insurance companies, when faced with death claims following the tsunami, thus elected to simply pay death claims they received without requiring the proof-of death documents normally required for the issuance of an insurance death benefit. Many insurance companies created a simplified claim form for victims of the tsunami and dispensed with the investigations they will often undertake to authenticate a death. Typically, a death certificate issued by any government authority was sufficient proof-of-death, along with the simplified claim form, to claim a death benefit. Many companies also dispensed with the need for the claimant to produce the original life insurance policy, which may have been washed away in the tsunami. Some insurance companies also established a designated help desk in the affected areas to assist claimants specifically with tsunami-related claims.

Life insurance penetration in the countries impacted by the tsunami was fairly low, and policy amounts generally small, so life insurance companies' exposure in the affected area was relatively minimal. Insurance organizations estimated that the largest claim exposure would result from the deaths of visiting Western tourists in the area, and particularly Europeans, rather than indigenous people. Total life insurance claims resulting from the tsunami were estimated to be several hundred million dollars (as compared with roughly \$1 billion in life claims resulting from the approximate 3,000 deaths on 9/11).

Similarly, life claims exposure in Haiti is not likely to be high, relative to what one would expect should such a calamity strike a developed country. As it was, life insurance companies limited their policy issuance in Haiti due to a lengthy history of insurance fraud associated with the country. Additionally, few of the country's populace can afford life insurance. Some insurance companies have been proactive in advising clients in Haiti of their intention to expedite insurance claim processing there. Aetna announced on January 14th that it would expedite life insurance claim processing and extend deadlines for submitting

claims, though made no mention that it would accept simplified claim forms, reduce its proof-of-death requirements, or forego claim investigations. The goodwill generated by insurance companies responding to such tragedies as the 2004 tsunami and Haiti earthquake with humane and expeditious life claims processing may pay its own dividends, particularly when the insurance companies' exposure in such markets is relatively small. The number of foreign fatalities occurring in Haiti, the people whose presence there was primarily for missionary and humanitarian purposes, is likely to be significantly less than the number of foreigners who died in the tsunami, given the tourist attractions in the areas impacted by that disaster.

Therefore, total foreign deaths, where the most life insurance exposure will likely arise, will probably also be significantly less in Haiti than in the region impacted by the tsunami.



At the invitation of the U.S. Department of Justice, Investigative & Security Professionals for Legislative Action board member Nicole Bocra and government affairs director Bruce Hulme participated in the National Symposium on Criminal Defense held February 18-19 in Washington, D.C. The symposium was organized to correct deficiencies presently existing in the legal representation of the indigent, which has been documented by the American Bar Association and others to be "a system that lacks fundamental fairness and places poor persons at constant risk of wrongful convictions."

More than 45 years have passed since the *Gideon* decision of the U.S. Supreme Court and decades since it extended to juveniles the right to counsel. The symposium had some 140 presenters and more than 800 attendees, who took part in five plenary sessions and 37 workshops. The event provided an overview of the advances and setbacks in implementing the Sixth Amendment right to counsel in America over the past decade. An effort was made to find solutions to the current crisis in indigent defense through litigation and legislation. A disparate group of concerned individuals and organizations gathered to present their views--

judges, prosecutors, public defenders, defense attorneys, law school academics, forensic organizations, policy and advocacy groups, and ISPLA, representing investigative professionals. Panelists expressed concerns with areas of criminal defense, particularly those affecting the indigent and wrongly accused.

ISPLA members include some of the most experienced defense investigators in the U.S. and have assisted Intellenet, and other professional associations on federal regulatory and legislative affairs. ISPLA welcomed the opportunity to provide input on behalf of the profession to many of the participants present, calling attention to the important role played by investigators as an integral part of the criminal justice system.

Attorney General Eric H. Holder, Jr. was the keynote speaker. Several Assistant Attorneys General and one Associate Attorney General, all heads of important divisions, were also speakers during the symposium. They were:

- Assistant Attorney General Laurie O. Robinson – Office of Justice Programs
- Assistant Attorney General Thomas E. Perez - Civil Rights Division
- Assistant Attorney General Lanny A. Breuer – Criminal Division
- Associate Attorney General Thomas J. Perrelli – Civil Division’s Federal Programs Branch

Other high ranking Department of Justice speakers or panelists included Duren Banks, Chief of Prosecution and Adjudication Statistics Unit; Kristina Rose, Acting Director of National Institute of Justice (NIJ); Michael G. Sheppo, Director of Investigative and Forensic Services of NIJ; and Edwin Zedlewski, Director of the International Center of NIJ.

Nicole Bocra, also an Intellenet member, and an expert in her own right on aspects of investigative technologies, was afforded the opportunity to discuss the latest trends in pretrial and post conviction DNA, impression evidence, and other investigative technologies such as GPS, fingerprints, cell phones and video. Technical presenters in various areas of expertise included attorney Barry Scheck of The Innocence Project;

Lisa Kreiger-Norman, U.S. Army Criminal Investigation Laboratory; Randall Murch, Associate Director, Research Program Development, Virginia Tech Center for Technology, Security, and Policy; Professor Paul C. Gianelli, Case Western Reserve University; Michael Fields, Bureau Chief, Dallas County, Texas, District Attorney’s Office of Conviction Integrity; Gary Perkinson, Agent in Charge, Special Investigations Unit, Oklahoma State Bureau of Investigation; and Miles Brissette, an assistant criminal district attorney, Tarrant County, Texas, and former Testing and Certifications Chair for the IACP Digital Video Systems Minimum Performance Specifications for In-Car Video and member of NIJ’s Sensors and Surveillance Technology Technical Working Group and Multimedia Evidence Systems Standards panel.

The interaction between science, technology, law, and criminal justice has produced as many questions as advances in evidence analysis. In reviewing the most cutting-edge investigative technologies, experts demand commensurate standards, admissibility, and other criminal case issues.

The symposium discussed the controversial 2009 National Academy of Sciences (NAS) report recommendations to create an independent agency and to separate crime labs from law enforcement. Even before the NAS report, actual innocence cases resulted in more than 240 exonerations through post-conviction DNA analysis by testing evidence either not tested at the time of trial or analyzed using less discriminating technology. Crime scene samples once thought to be unsuitable for testing now yield DNA profiles. Courts may weigh the probative value of DNA evidence in determining whether to grant a motion requesting post-conviction relief.

Bruce Hulme, ISPLA’s director of government affairs and Intellenet’s legislative liaison, in his conversations with representatives of indigent defense groups, cited his personal experience as court-appointed investigator in federal capital cases and assured them that the resources of ISPLA and the other professional investigative associations working with us can be of invaluable assistance in addressing the issues associated with indigent defense.

He met with leaders of the National Legal Aid and Defender Association (NLDA), National Association of Criminal Defense Lawyers, The Constitution

Project, National Juvenile Defender Center, National Juvenile Defender Center, National Criminal Justice Association (NCJA), The Innocence Project, Brennan Center for Justice, Southern Center for Civil Rights, Juvenile Justice Clinic of Georgetown University Law Center, Children's Justice Clinic of Rutgers School of Law, American Bar Association Death Penalty Representation Project, American Civil Liberties Union (ACLU), The Ford Foundation, Equal Justice Works and the Campaign for Justice.

ISPLA has been hard at work forging alliances with like-minded stakeholders on specific issues affecting professional investigators and their clients. The National Symposium on Indigent Defense brought together a wide range of organizations to address and seek solutions to an important problem. No one organization can do it alone! The same holds true when responding to ill-conceived federal and state regulations and legislation. This event is but one example of the areas of interest and work undertaken by ISPLA in just one year of our existence. We are proactive in responding to critical issues.

I urge you to take a few moments to visit www.ISPLA.org and join our organization. It may be done on-line if you like. Review the accomplishments listed.