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Effective use of private investigators by attorneys

BY STANLEY S. ARKIN AND SEAN R. O'BRIEN

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You cannot effectively manage almost any case, or business, let alone a country, without what is broadly called intelligence. Intelligence consists of learning and seeking facts about those with whom you have to deal or fight, and then analyzing what the "facts" may mean.

Intelligence frequently translates into leverage and informs successful strategies. Decisions that are not informed by good intelligence can lead to disaster. These observations are true in the public sector: The Central Intelligence Agency, one of America's premier collectors of intelligence in foreign lands, uses immense resources to secure intelligence, and even it has encountered the repercussions of intelligence failures, most recently concerning Iraq. They are also true for the private sector, where the use of private intelligence firms has led to great successes but also in several notable examples to severe negative consequences for those involved.

The use of a private intelligence firm can be an enormously valuable fact-finding and strategic resource. Such firms are used, for example, to obtain information about potential business partners or investments, and to obtain intelligence concerning the political or regulatory climate in foreign countries. In the litigation context, private investigators are at times invaluable in locating witnesses and other sources of evidence, investigating financial crimes and fraud, and in obtaining information in foreign countries where discovery rules may not permit the same scope of inquiry as in the United States. The use of private intelligence firms is prevalent in criminal investigations, where the vast resources available to the government frequently create an enormous informational disadvantage to the subject of the investigation.

However, several recent events highlight the pitfalls that may be encountered in using private investigators in the private sector. A private investigator that is not supervised properly by counsel can create a public relations nightmare and expose lawyers to a host of criminal and ethical charges. Last year, Hewlett Packard's former chief ethics counsel was indicted in the wake of allegations that he hired a private investigator who engaged in illegal pretexting to obtain the telephone records of various HP board members. Although the court ultimately dismissed the criminal charges, the lawyer and others, including HP's General Counsel and its CEO, lost their jobs. HP paid \$14.5 million to settle charges by the California Attorney General's Office, and endured months of bad press. In another incident, California

prosecutors indicted attorney Terry Christensen on charges that he hired Anthony Pellicano, the now-notorious private investigator, to wiretap telephone conversations between the ex-wife of one of Mr. Christensen's clients and her attorney. Mr. Christensen has pleaded not guilty and is currently awaiting trial.

Such problems are generally the product of ignorance or disregard of the applicable law, unreliable investigators, or a failure of supervision by counsel. Below we analyze some of the recent issues raised concerning private investigations, and then we suggest some "fundamental" rules of the road" to reduce your exposure to such problems.

Regulation of Methods

Several investigative techniques are regulated, at least to some degree, by statute and by the courts. The HP scandal brought much public attention to a practice known as "pretexting," in which the investigator misrepresents his or her identity or purpose to obtain information. Since then, various states and the federal government have clarified legal prohibitions on the use of pretexting to obtain telephone records. Other laws exist to prohibit defined forms of pretexting. Under the federal Gramm-Leach-Bliley Act, for example, it is illegal to use false statements to obtain customer information from a financial institution or from a customer of a financial institution, or to ask another to do so.

Ethical rules may also come into play if an investigation involves some form of deception. In New York; for example, DR 1-102(a)(4) provides that "a lawyer or law firm shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation," and under DR 7-102(a)(5), a lawyer may not "knowingly make a false statement of law or fact." Both of these rules apply to agents retained by attorneys. Moreover, to the extent the investigator may interact with representatives of an opposing party, DR 7-104(a)(1) prohibits lawyers and their representatives from communicating with a represented party about the subject of the representation.

Despite the apparent breadth of these ethical rules, courts in New York and elsewhere have approved of a degree of deception by private investigators under what the courts have deemed to be "socially or economically desirable circumstances". In *Apple Corps Limited v. Int'l Collectors Society*, 15 FSupp.2d 456 (D.N.J. 1998), for example, the court considered whether plaintiff's counsel violated New Jersey's ethical rules in an investigation of alleged trademark infringement. During the investigation, plaintiff's law firm and its investigators con-

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Please consider attending the European Regional Meeting in Amsterdam on 9-10 May. If you have not booked please do so. It would be very nice to see our US members use their Air Miles as they did in Paris last year. We have members coming from - Spain, Austria, Germany, Belgium, France, The Netherlands, Portugal, UK, Romania, Norway and Malta. What a fine networking opportunity - come and join us.

Best wishes. Alan Marr

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tacted the defendant and posed as consumers attempting to purchase infringing products. Interpreting a rule similar to New York's DR 1-102(a)(4), the court found that the rule prohibiting deceit by an attorney "does not apply to misrepresentations solely as to identity or purpose and solely for evidence gathering purposes." As the court observed, "[t]he prevailing understanding in the legal profession is that a public or private lawyer's use of an undercover investigator to detect ongoing violations of the law is not ethically proscribed, especially where it would be difficult to discover the violations by other means." The court reached a similar result in *Gidatex, S.r.L. v. Campaniello Imports, Ltd.*, 82 F.Supp.2d 119 (S.D.N.Y.1999).

There, the court found that DR 1-102(a)(4)'s prohibition against attorney misrepresentations did not prohibit attorneys from hiring investigators to pose as consumers, as this was "an accepted investigative technique, not a misrepresentation." Both courts also rejected the argument that the attorney's conduct violated the "no contact" rule. The court in *Gidatex* noted that the investigators "did not interview the sales clerks or trick them into making statements they otherwise would not have made," but simply "recorded the normal business routine in the [defendant's] showroom and warehouse." By comparison, in *Midwest Motor Sports u. Arctic Cat Sales, Ina*, 347 E3d 693 (8th Cir.~ 2003), the U.S. Court of Appeals for the Eighth Circuit found that plaintiff's counsel violated the "no contact" rule by hiring an investigator who secretly recorded conversations with the president and owner of a represented party, as well as with a salesman, about the subject of pending litigation. As a sanction, the court excluded all evidence obtained as a result of the recordings:

In May 2007, the New York County Lawyers' Association expressly recognized and approved of the holdings in *Apple* and *Gidatex*. In its Formal Opinion No. 737, issued May 23, 2007, The NYCLA expressed its opinion that "dissemblance" by attorneys was ethically permissible in a "small number of exceptional circumstances," including investigations of civil rights and intellectual property rights violations. While the opinion is needlessly restrictive (why, for example, should investigations of intellectual property violations be more deserving of protection than, for example, a due diligence investigation?) it at least acknowledges the leeway courts have afforded attorneys who use investigators in good faith and without outright deception in order to obtain information.

Another area that has come under increased scrutiny in recent years is the surreptitious interception of communications. The Federal Wiretap Statute and many state wiretap laws patterned after that statute prohibit the "interception" of wire, brat and electronic communications, including telephone and e-mail communications, without the consent of at least one of the parties to the communication. Courts generally have limited the statutes to prohibit only the interception of communications contemporaneously with their transmission. Anthony Pei-licano was indicted on violations of, among other things, conspiracy to

intercept wire communications, in violation of the federal wiretapping statute, 18U.S.C. §2511(1)(a).

Some states have wiretap laws that are stricter than the federal statute. In New Hampshire, for example, a wiretap is unlawful without the consent of all parties to the communication. New York penal law prohibits "eavesdropping," which means the unauthorized wiretapping, mechanical overhearing of a conversation, or intercepting or accessing of electronic communications without the consent of at least one of the parties to the conversation. The prohibition on "accessing of electronic communications" appears to prohibit accessing of stored e-mails, which goes beyond the prohibitions in the federal statute. Any evidence obtained as a result of eavesdropping is inadmissible in court: Eavesdropping is a class E felony. On the other hand, there is nothing illegal about using an investigator simply to "overhear," without technological intervention, an in-person conversation between individuals of interest.

In this era of home computers and e-mail, another practice that has received attention is the monitoring of communications through computers. A number of "spyware" programs are now available that, for example, enable a user to capture every keystroke made on a computer, or to take intermittent snapshots of a computer screen. While many simply assume that there is no legal impediment to the use of such programs, their legality has been the subject of much discussion and a growing number of court decisions.

A number of courts have considered whether screenshot and key-stroke capturing-programs "intercept" e-mail communications for purposes of the statutes. In a 2005 decision by a Florida state appeals court, *O'Brien v. O'Brien*, the court considered whether a wife violated Florida's equivalent of the Federal Wiretap Act by installing a "Spector" spyware program on her husband's computer. The program took intermittent snapshots of the computer screen, thereby capturing instant messages, chat-room conversations and e-mails between the husband and another woman. The wife argued that the Spector program did not violate the statute because it did not "intercept" communications contemporaneously with transmission. The court disagreed, holding that the screenshots amounted to "contemporaneous interception" of the communications. Earlier this year, a federal district court in Ohio adopted the *O'Brien* court's reasoning in a decision under the Federal Wiretap Act. The rationale of these decisions is complicated, but most simply, the courts appeared reluctant to apply what they considered to be an overly narrow definition of "intercept."

Stored communications on a shared computer may enjoy less protection. In *White v. White*, for example, a New Jersey court found that a wife did not violate the New Jersey wiretap statute, also modeled after the federal statute, by retrieving her husband's e-mails from the hard drive of the family computer. The court found that such access was effective

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Beryl Doreen Marr

3 February 1922- 6 March 2008

My mother Beryl passed away after a short illness on 6th March and a celebration of her life and a cremation was held on 14th March in Poole, Dorset, UK. She leaves her husband Len, my sister Susan and myself together with six grandchildren and six great grandchildren. She enjoyed meeting CII members in both Chang Mai, Thailand and Kinsale, Ireland. She loved visiting far away places and talking to people from all over the world. In her last days she was comforted by the many messages sent by members. Thank you all for your kindness and thanks to Tom Davies who represented CII at the celebration of her life.

-Alan Marr

Klaus Willi Jaekel

JAEKEL, Klaus Willi- Peacefully, after a courageous battle, with his family by his side, at St. Joseph's Hospital, Hamilton, on Monday, March 10, 2008, at the age of 75. Dearly loved husband of Shirley. Loving father of Charles and his wife Jolie of Michigan and Martin and his wife Rose of St. Catharines. Cherished grandfather of Ashlyn, McKenna, Matthew and Amyrn. Also missed by brother-in-law Thomas (Betty), nephew Alan, niece Susan (Ray) and their daughter Alysha all of Vancouver, and loving cousins George (Darlene) and their children Robyn, Ian and Erin, and cousin Valerie (Keith) and their children Jarred, Sierra, and cousin Vanessa, all of Hamilton, and cousin Charles (Vivian) of New Brunswick. Special thanks to Dr. Young and the nurses on the 4th floor of Juravinski Innovation Tower at St. Joseph's Hospital, and St. Elizabeth's Health Care and Support worker Elizabeth Travis. Klaus worked in the car sales industry for over 40 years. Visitation at STONEHOUSE-WHITCOMB Funeral Home, 11 Mountain Street, Grimsby (905-945-2755) on Friday from 3-5 and 7-9 p.m. A Funeral Service will take place at St. Andrew's Anglican Church, 156 Main Street West, Grimsby on Saturday, March 15, 2008 at 11 a.m. Cremation to take place. If desired, in lieu of flowers, expressions of sympathy to the Canadian Cancer Society or St. Joseph's Hospital would be sincerely appreciated by the family.

First winner in AGM Trivia Game

Jim Carino of Pennsylvania, USA had the winning correct answer to the first Trivia Question in Jack and Alana Burke's game in support of the 2008 Halifax AGM. Jim's correct answer is OKLAHOMA and it was received on my handheld showing that he indeed sent it to ciimembers@googlegroups.com. Congratulations Jim, **your special gift is claimable at this year's AGM in Halifax**. See you then.

The state of **Oklahoma's citizens spend more per capita for private investigative services that any other USA states' citizens**. [The source is the U.S. Census Bureau.]

At 8:51 PM CST, a mere six minutes later, I received the runner-up correct answer from member **Chris Macolini of Buenos Aires, AR**. For being at his keyboard so late at night, AR time 11:51PM, Chris will receive a **special constellation gift** from Alana and I in Halifax at the 2008 AGM. Looking forward to paying up in August.

Tell the group Jim & Chris what tipped you off. Sooner than later some cowboys were bound to solve the mystery, hey *Guys 'n Gals?* Thanks for playing the quiz.

-Jack Burke



To all my friends in the CII Family, I send a hearty thank you for the lovely bouquet of flowers in a basket that you sent me. My right total knee replacement surgery went very well, and I'm home, having therapy and planning to learn how to jump skyscrapers and kick seventy yard punts. Seriously, it's wonderful to be able to walk without pain and resume a normal active life again. I really miss you all and plan to go to a CII meeting when I can arrange it. Warmest greetings from sunny California to all. Wish you all a belated Happy New Year.

Nancy Poss-Hatchl

CII-New Applicants

Jon Douglas McDowall
 Fraud Resource Group, LLC
 Bettendorf, Iowa, USA
www.fraudresourcegroup.com

Mark James MacDaniel
 Connecticut Investigative Services
 Shelton, Connecticut, USA
www.ctinvestitiveservices.com

Kenneth Stephen Springer
 Corporate Resolutions Inc
 New York, NY, USA
www.corporateresolutions.com

Changxu Li
 China United Intellectual Property Protection Centre
 Beijing, China
www.cuippe.com

Ed Denman, San Antonio, Texas
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Chris Macolini, Buenos Aires, Argentina
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Proprietors Sylvie and Martin Ruiz Salvador have taken a beautifully preserved wooden house, painted it bright yellow with white and red accents, and divided it into an utterly charming and sophisticated restaurant where locally sourced, carefully prepared ingredients meet French technique and Spanish influences.

A hearty but delicate terrine layers ham hock with Portobello mushrooms like striated marble, all wrapped in Savoy cabbage. Baby squid are stuffed to bursting with saffron risotto and served with an expressionist slash of squid ink sauce. Dark chocolate fondant is paired with a playful white chocolate milkshake. If you attend the conference early or stay late, you can even book one of the cozy rooms upstairs and experience several days of culinary de-

lights. Call 902-640-2121 for reservations during your outing in Lunenburg. The restaurant is located at 53 Montague Street, Lunenburg, NS, or email at contact@fleurdesel.net. See their website at www.fleurdesel.net.

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 98133-9009 USA or
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tively authorized where the wife retrieved the e-mails from the shared family computer and did not, for example, use the husband's password without authorization.

Rules of the Road

An investigation should be driven by three major objectives: (i) effective gathering of the desired information; (ii) compliance with the law; and (iii) control of the information obtained. In order to achieve these objectives, it is essential that lawyers using investigators be familiar with their capabilities, the legal limitations on their tactics, and the nature of the information they can legally access both in the United States and abroad. The effective use of investigators requires skillful management, strategic thinking, and regular interaction between attorneys and investigators. Without these components, attorneys unnecessarily risk that the investigator may unintentionally compromise the case, or worse, may engage in illegal conduct to, achieve the client's goals.

Below, we highlight critical considerations for attorneys who employ private investigators.

Hire an Ethical Investigator

Ensure that the investigator will acquire information only through legal means. Avoid investigators, with unreliable or fuzzy reputations, or that are not forthcoming in answering questions regarding data collection methods. "You don't want to know" is not an acceptable response to such an inquiry.

Checking references is always a good idea. In addition, hire an investigator that is qualified for the proposed investigation. The skills, services and sophistication of private intelligence firms vary dramatically. For example, a firm may be focused domestically or regionally. It may be specialized in particular investigative methods. It may concentrate on domestic relations matters, or focus primarily on complex corporate transactions and issues. Many private intelligence firms also rely on investigators with specialized skills and experience in field work and "human intelligence" collection methods.

Whatever the nature of the information pursued or the specialties of the investigators hired, attorneys must keep in mind that private intelligence firms do not have access to any "secret weapons" that would allow them to obtain information not otherwise legally accessible. Yet it is also true that certain firms know particular areas of commerce or have better relationships than others.

Supervise the Investigation

All too many times the user of investigative services believes that a "head in the sand" approach is the best way to avoid fallout from an investigator's improprieties. That strategy rarely works. It is vital that counsel clearly communicate the goals of the investigation, retain substantial control over the investigation, engage in constant and close communications with the investigator, and know what methods the investigator is employing throughout the investigation. Counsel should not assume that their investigators know "the law", par-

ticularly where sensitive areas such as electronic surveillance is proposed. Lawyers who assume that they are better off not knowing exactly what the investigator is doing, just in case its conduct turns out to be less than above board, are not properly protecting the interests of the client. In a recent report, one attorney described his approach as: "I don't want to know that stuff.... just want the results." This is a mindless approach. Counsel should review any state and federal laws, that may affect the permissibility of an investigator's methods. A qualified private intelligence firm should be familiar with most applicable laws and act accordingly, but an attorney should not assume that an investigator will be fully aware of applicable laws and other considerations concerning, for example, potential privilege issues or restrictions on communications with a represented party. Attorneys must be prepared to provide guidance about what is permissible, who can be contacted, and what types of information can be used and potentially shared.

Consideration of particular strategies should include the client's tolerance for the risk that an investigation may be compromised or made public. Some investigative tactics, which may seem dicey, are in fact legal; for example, if a subject's trash is not on his or her property, it is lawful to seize the trash and search the items and documents found in it. Attorneys and their clients should consider whether they are comfortable with the potential negative publicity that may result from a report that the client's investigators were caught rifling through another person's garbage.

Investigations Abroad

Lawyers should also be cautious in conducting investigations abroad and, perhaps, more humble about their knowledge of the applicable law. The legal restrictions on obtaining information may differ markedly from those in the United States. In the European Union, for example, privacy laws are stricter than in the United States, and it is difficult to obtain even basic biographical data. Under the EU Directive on the Protection of Personal Data, the subject of an investigation in the EU is provided a number of protections, including the right to be informed anytime his or her personal information is accessed. In Australia an investigator may obtain an individual's criminal record only if the individual signs consent form. At the other end of the spectrum, in Brazil, Colombia, and other parts of Latin America, credit information is commercially available even without the individual's consent.

In much of the developing world, investigators are constrained by a lack of accessible public information. In Brazil, for example, it can be difficult to locate and access public records relating to commercial entities, litigation, vehicle registrations, or property. Because information may not be obtained, as easily abroad, a good-investigative firm with professed international capacity will maintain a robust network of on-the-ground local sources, who use their contacts to obtain information similar to that typically found in public records, as well as more sensitive personal information, such as information about a person's

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reputation. These local sources and contacts often are able to uncover information that is unobtainable from traditional sources.

Keeping It Privileged

Close involvement of an attorney in an investigation has important benefits beyond the legal and strategic ones. Often, of course, it is crucial to the client that the results of the investigation remain privileged. Several courts have found that where the investigator acts as the attorney's agent, the attorney-client privilege will protect communications with the investigator. In *U.S. v. McPartlin*, 595 F.2d 1321 (7th Cir. 1979), for example, the U.S. Court of Appeals for the Seventh Circuit held that the attorney-client privilege applied to statements made by a criminal defendant to an investigator hired by counsel." However, there is contrary authority as well." It is important to remember that an investigation does not become privileged simply because an attorney performs it. Only where the investigation relates to legal services provided by the attorney does there exist an argument that the privilege applies.

The work product doctrine may also protect investigative materials. There is little question that work performed by an investigator in anticipation of litigation at the direction of an attorney is protected work product. As the Supreme Court stated in *United States v. Nobles*, 422 U.S. 225, 238-39 (1975): [The [work product] doctrine is an intensely practical one, grounded in the realities of litigation in our adversary system. One of the realities is that attorneys often must rely on the assistance of investigators and other agents in compilation of material in preparation for trial.

This doctrine is embodied in Rule 26(b)(3) of the Federal Rules of Civil Procedure, which specifically protects work performed in anticipation of litigation by attorneys and their agents or representatives. Similar protections exist under New York CPLR §§3101(c) & 3101(d)(2).

A cautionary note was sounded in *Allied Irish Banks plc v. Bank of America NA*, 240 F.R.D. 96 (S.D.N.Y. 2007), which involved an investigator hired by a bank to report on allegations of trading fraud involving high-level bank managers. The investigator reported directly to the board. At the beginning of the investigation, the investigator hired a law firm to advise the bank in connection with the investigation, and the law firm assisted the investigator in drafting the report. The court found that the attorney-client privilege did not apply to the report and related investigative memoranda because the report "indisputably did not provide legal advice." Moreover, the court found that because the investigator hired the attorney, and not the other way around, the report could not have been privileged as the work of the attorney's "agent." Finally, because the court found that the report would have been produced in essentially the same form for business purposes even absent a threat of litigation, the report did not constitute work product. This case provides a good example of how not to structure an investigation if the goal is to protect the results of the investigation as privileged.

To help ensure that the investigator's work is protected as

privileged, the investigator should be retained by the attorney, and not by the client. This will formalize and establish that the investigator is working as the agent of the attorney." The retainer letter should make clear that all notes, memoranda, interviews and final reports are privileged and confidential, and that they will not be disclosed absent the attorney's written authorization. Thereafter, the attorney should work closely with the investigator to ensure that the investigation is pursued and prepared "in anticipation of litigation" or in connection with the provision of legal advice by the attorney. It is also not a bad idea to make sure that your retainer agreement specifies that your client is ultimately responsible for such expenses and that the investigative firm understands and does not look to the firm as ultimately responsible."

Conclusion

Qualified investigators can help attorneys acquire information that is critical to litigation and business strategy. Outside the United States, in particular, experienced, on-the-ground investigators can provide an attorney with access to otherwise impenetrable information. An attorney who seeks to use the resources provided by a private intelligence firm to maximum effect should be deeply involved in the investigation and must assume that they will have ultimate responsibility for the manner in which the investigation is conducted. This approach will foster the relationships and expectations necessary to achieve the client's and the attorney's investigative goals.

DR 1-104(d), 22 *N.Y.C.R.R.* §1200.5(d), *DR 1-102(a)(2)*, 22 *N.Y.C.R.R.* §1200.3(a)(2). *N.Y. CPL R §4506. McKinney's Penal Law* §250.05.

"*Computer Crime: Using Spyware Has Advantages and Pitfalls*," Michael Delohery, *New York Law Journal* (July 3, 2007); "*Marital Spying: Computer Wiretapping and Nanny Cams Heat Up Divorce Proceedings*," mesa Baldas, *New York Law Journal* (Nov. 7, 2006); "*Where, Oh Where, Have My Employees Gone Onlne?*," Martin H. Samson, *NYL3* (Sept. 25, 2006).

O'Brien o. O'Brien, 899 So.2d 1133 (Fla. App. 5th Dist. 2005).

18 *U.S.C.* §2511(1) prohibits "interception of a wire, oral or electronic communication. The Stored Communications Act, 18 *U.S.C.* §2701 et. seq. prohibits the accessing of stored electronic communications from an electronic communications service provider.

Potter v. Haulicek, 2007 *WI. 539534* (S.D. Ohio Feb. 14, 2007). But see *United States u. Ropp*, 347 *F.Supp.2d* 831 (C.D. Cal. 2004) (interception of delivered but unread email did not affect interstate or foreign commerce and therefore was not covered by wiretap statute); *U.S. v. Barrio*, 180 *F.Supp.2d* 572-(D.N: J. 2001) (keystroke. detection program .that ceased operating when modem was activated did not violate wiretap statute).

White v White, 344 *N.J. Super.* 211, 781 *A2d* 85 (2001) (also finding that e-mails retrieved from post-transmission stor-

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CII –AGM 2008—Sponsorship/Partnership Opportunities

Refreshment Breaks, Various

- Corporate logo with hyperlink on conference website
- Corporate logo on event program
- Corporate signage at event supplied by Partner
- Corporate logo included on “Partner Thank You” signage

Display, Wednesday & Thursday

- One 6 foot table, draped, for table top display
- Can be a static display or personnel can attend – booth hours will work in conjunction with meeting scheduled breaks, luncheons, etc
- Corporate listing in event program

CII Welcome Reception – Tuesday

- Corporate logo with hyperlink on conference website
- Corporate logo on event program
- Opportunity to welcome attendees
- Corporate signage at event supplied by Partner
- 1/2 page advertisement in the event program; artwork provided by partner in electronic format
- Corporate logo included on “Partner Thank You” signage

Networking Tour -Friday

- Corporate logo with hyperlink on conference website
- Corporate logo on event program
- Opportunity to host each bus with a “contest” etc.
- Corporate display set up Wednesday/Thursday of meetings
- Corporate signage at bus stop, on bus etc., supplied by Partner
- Full page advertisement in the event program; artwork provided by partner in electronic format
- 1 complimentary conference registration
- Corporate logo included on “Partner Thank You” signage

Opening Ceremonies - Wednesday morning

- Corporate logo with hyperlink on conference website
- Corporate logo on event program
- Opportunity to welcome attendees
- Corporate signage at event supplied by Partner
- 1/2 page advertisement in the event program; artwork provided by partner in electronic format
- Corporate logo included on “Partner Thank You” signage

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age were not “intercepted” and were not “stored” communications under the act).

“Detectives Often Take the Heat if Things Sour,” at www.slcsecurity.com.

See also *People v Marsh*, 59 A.D.2d 623 (al Dept. i977) (investigator's notes of conversations with defendant were protected by attorney-client privilege); *In re Connecticut*, 179 Misc.2d 623 (Sup. Ct. Nassau Co. 1999) (work performed by investigative firm acting as agent of attorneys was protected by attorney client privilege).

11. See *Alexander o. FBI*, 192 F.R.D. 12, 17 (D.D.C. 2000) (“Conversations the attorney has with his investigator are not privileged unless they would reveal a communication of the client because the investigation of facts is not ‘professional legal services.’”)

See *Spectrum Systems Int'l Corp. v. Chem-ical Bank*, 78 N.Y.2d 371, 379-80 (1991).

See *In re Connecticut*, 179 Misc.2d 623 (Sup. Ct. Nassau Co. 1999).

See *Kroll Assocs., Inc. u Sands Brothers & Co., Ltd.*, 8 Misc.3d 1027(A), 2005 Slip. Op. 51318(U) (unless retainer agreement clearly states that only client is responsible for investigation fees, attorney will be liable for payment of such fees).

.*Stanley S. Arkin is the senior partner of Arkin Kaplan Rice. Coauthor Sean O'Brien is a partner of the firm. Sara Welch, an associate at the firm, and Jack Devine (former Chief of Worldwide Operations for the CIA) of the Arkin Group, a private investigation firm, assisted in the preparation of this article.*

Don't forget to submit your corporate and family news for the April issue! If you'd like to be highlighted in our “Member Spotlight” column, submit your story along with a photo. See you in print!

Lunenburg—home of the Bluenose Schooner and the Lunenburg “bump”

The breath-taking Lunenburg waterfront is the home of the world-class Fisheries Museum of the Atlantic. The Museum commemorates the fishing heritage of the Atlantic coast of Canada. Housed in brightly painted red buildings, with floating vessels at wharveside, the Museum offers a host of attractions, a maritime gift shop and restaurant.

Get your sea legs on the schooner Theresa E. Connor and talk with "old salts" who fished the North Atlantic. Gently touch starfish and other marine creatures in the aquarium's fantastic viewing tank. The Museum is filled with exhibits, displays and activities. Help with the launching of a schooner model and feel the thrill of watching a vessel "slide down the ways".

Visit the boat shop - or, spend a bit of time hooking a mat or quilting in the Life in Fishing Communities exhibit. The Ice House Theatre shows films throughout the day.

Canada's most famous schooner, the historic Bluenose, is celebrated in an exhibit that contains the world's largest collection of Bluenose artifacts. The Fishermen's Memorial room is located on the second floor, offering an evocative tribute to those lost at sea from the port of Lunenburg. Plan to complement your visit with a meal or refreshments at the Museum's restaurant, The Old Fish Factory.

If you've never been to sea, the Fisheries Museum of the Atlantic is the place to start. If you have been to sea, this is the place to reacquaint yourself!



The Bluenose Schooner -fastest ship on the sea!

Member Spotlight on Larry Miller

1. Location of your office/s White Lake, MI, USA (near Detroit)
2. How long you have been in business. Was in business for 17 years
3. Anything of interest happening in your region that affects PI's. Can't think of anything but Pete Psarouthakis (CII and boss of MI Council of Private Investigators) would be better source on this.
4. What did you do before you were a PI? 9 years USMC (aircraft mech. Embassy guard (Vienna), air intel, CIA, private security investigator.
5. Do you have an interesting story about a particular case? During a search for a deadbeat dad I located the scumbag in another state using a CII colleague. Later I was citing this case to a high school class and one of the students said "he found my daddy !" Another case involved locating a father a woman client had never met (he was imprison when she was born and mother never mentioned him). End result was father had died shortly before client decided to locate him. Advised client where father was buried and that she had 10 siblings she never knew about.
6. Your hobbies or interests. Reading and travel when possible (have worked and/or played in more than 20 countries)
- 6 Anything else you would like to add. Served many years as CII Regional Director for central USA, keeping members advised of trends in the industry. Was first recipient of the Malcolm Tompson Award.



Larry Miller—or reasonable facsimile thereof!

CII Executive-2007-2008

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