



# The International Councillor

Newsletter of the Council of International Investigators



May 16, 2005

Issue #5

## Letter from the President

Dear Members:

As spring approaches we are reminded of the upcoming meetings of our association. In the past we held mid year meetings, but this year our focus will be on one meeting, our Annual General Meeting near Lisbon. Membership has and continues to be the backbone of any association. Discussion was held at the 50th AGM of the "The Then and The Now" of our industry. We have many young business owners and leaders emerging into this field and those are the ones we would like to tap into future leadership roles. Many of us have completed assignments within the organization and can certainly offer our wisdom to those coming forth.

In the last few months I have had the opportunity to meet some of the newer investigators to the profession in my area of the United States. These include younger investigators as well as recent retirees from law enforcement and corporate positions. It is such a pleasure to see the energy and enthusiasm they bring to this field. We welcome such members into our association.

It is my understanding that many members contact our Secretary in California and/or Administrative office in Seattle asking that information be sent to prospective members. We need to continually follow through with our requests and suggestions.

### The International Councillor Staff

Editor:

Jimmy Gahan

Assistant Editors:

Lois Colley

Sheila Kalastree

Please do not hesitate to contact my office or those of our regional directors and officers within CII for any assistance regarding membership or other issues of concern. ■

Sincerely,

Joan M. Beach

## Mexico 2005: Fighting Crime should be Fox's Top Priority

by Jack Devine

In the last six months of 2004, we witnessed ordinary Mexicans taking action – both peacefully and violently – in response to the lack of security and rising kidnapping and crime rates in Mexico. In June, an estimated 250,000 people marched on the Zócalo in a peaceful demonstration against public insecurity, urging the government to address the crime wave in the capital city. In November, an angry mob attacked and lynched two police officers in San Juan Ixtayopan, a poor area of Mexico City, in a gruesome display of outrage over rumors of police collusion in the kidnapping of school children. If it was not clear in June, it should be clear now that the general Mexican public is fed up with the kidnappings and violent criminal activity.

While Mexicans should not be resorting to vigilante style justice, they do have good reason to be concerned. A report by the Inter-American Development Bank indicated that there were at least 15,000 reported kidnappings in Mexico from 1992 to 2002, second only to Colombia which has been suffering from an internal conflict for over 40 years and is home to three U.S. government-designated foreign terrorist organizations. These kidnapping numbers are likely much

## See Page 5 for the latest AGM 2005 info!

higher, as many Mexico observers estimate that 75% of crimes in Mexico go unrecorded due to the lack of response by law enforcement officials or the fear of retribution and police collusion. The Foreign Policy Centre in England has drawn the same conclusions, recently ranking Mexico the number two "kidnapping hotspot" in the world after Colombia.

Kidnappings in Latin America have long been associated with political upheaval – from the disappearances of thousands of Argentines by the ruling military juntas in the 1970s to the kidnapping of Colombian presi-

## In This Issue:

Eavesdropping with Cellular Technology	Page 2
What's the Deal with Digital?	Page 3
Licensing Requirements for Out-Of-State Investigations	Page 6
Deepak Kumar Autobiography: The Investigator	Page 8
How to Check Someone's Background—Orlando News	Page 8
Letter to the Editor	Page 9
China Private Detective Association Banned	Page 10
Federal P.I. Licensing?	Page 10
Digital Water Marks Thieves	Page 10
No Clear Picture: The Status of Privacy Law and Surveillance in Canada	Page 11
Barton: Safeguards Against Identity Theft Inadequate	Page 15
Member News	Page 17
Gossip	Page 17
Working Draft of CII Bylaws	Page 19

dential candidate Ingrid Betancourt by the FARC in 2002. Now, however, kidnappings in Latin America are not just political. Instead, kidnapping for ransom has become a profitable “business line” for criminal elements who target individuals for their real or perceived wealth. Kidnappers in Mexico now prey regularly upon the middle and lower classes in addition to the wealthy using highly organized and often brutal tactics. Kidnappings and violent street crime have become institutionalized in many ways and, as a November 2004 report “Fostering Regional Development by Securing the Hemispheric Investment Climate” by the Council of the Americas notes, these criminal activities are beginning to take a toll on foreign direct investment and economic development in the region.

Public security appears to be deteriorating within the larger Latin American cities, but the problem is particularly acute in Mexico. As a result, private companies and citizens in Mexico are spending a lot of money to mitigate and manage security risks – hiring security details, conducting thorough threat assessments and security analyses, purchasing kidnap for ransom insurance (now commonly known as “K&R” insurance), and implementing crisis management plans. But, ultimately, the Mexican government must take the lead in increasing public security, meting out justice, and providing a hospitable environment for continuing economic growth, trade, and investment.

Following the San Juan Ixtayopan lynching in November, Mexican President Vicente Fox Quesada fired the Mexico City Public Security Secretary and the Federal Police Commissioner for their agencies’ failure to respond to the attack. He also ordered a restructuring of the government’s public security ministry to strengthen the capacity, efficiency, and morale of its law enforcement officers needed to respond to the growing crime and insecurity. These were important steps, and President Fox should build on this momentum to reverse the trends of kidnapping and violent crime in Mexico. Too often over the last two years, there have been ill-conceived security initiatives lacking in suffi-

cient follow-through and having little effect. For example, many of the recommendations made by former New York Mayor Rudolph Giuliani were criticized for not resonating in the Mexican context while others have gone unfulfilled.

With public opinion on his side, President Fox should make fighting crime and insecurity in Mexico his number one priority in 2005. In the coming months (and before the 2006 election cycle begins in earnest), the Fox government still has the opportunity to reform Mexico’s historically corrupt and ineffective police and judiciary by [taking the following steps]:

**1) Set up robust but streamlined law enforcement programs.** The government must restructure and organize law enforcement agencies so there are clear chains of command and separate units are working together not overlapping one another in jurisdiction or working at cross-purposes.

**2) Enhance information sharing among law enforcement agencies.** The government must enhance its mechanisms for sharing actionable intelligence so law enforcement officials can identify, track, and dismantle groups associated with kidnappings, the illegal drug trade, money laundering, migrant smuggling, and other criminal activities.

**3) Make officials accountable.** To counter endemic corruption and inefficiency among law enforcement agencies, officials at all levels should be subject to vigorous vetting, training, and standardized review processes. Rank and remuneration should be commensurate with good work while penalties and/or dismissal should result from improper behavior.

**4) Enact real judicial reform.** President Fox should work with lawmakers to pass the legislation necessary to revamp the judicial system so that it is better equipped to investigate crimes and ensure that individuals arrested are dealt with fairly and expeditiously.

**5) Demonstrate strong political resolve.** President Fox must send clear, strong messages to the Mexican people by words as well as actions. Reform must come from the top down, lauded at the highest levels of gov-

ernment through a highly visible public relations campaign.

Unfortunately, President Fox cannot do it alone. While the Fox administration is largely responsible for enacting public security reform throughout the country, opposition lawmakers and local officials, like Mexico City’s Mayor Andres Manuel Lopez Obrador, are also responsible. Congressional lawmakers should consider shelving other priorities to tackle the issue affecting all Mexicans – be they in the PRI, the PAN, or the PRD. Rather than eschewing concerns about rising crime rates or mistaking peaceful demonstrations for political machinations, Mayor Lopez Obrador should consider playing more of a role in supporting federal initiatives.

Mexico’s integration with the United States and Canada through NAFTA in 1994 ushered in economic expansion, and its emergence from one-party rule in 2000 made democratic reform a reality, but to continue moving forward, Mexico must address its public security problems now. ■

*CII Member Jack Devine, a former senior CIA official is President of The Arkin Group, a New York-based international consulting firm specializing in strategic business intelligence, political risk analysis, and crisis management.*

## Eavesdropping with Cellular Technology

by **James M. Atkinson**

Ever wonder if your cell phone distributor can track your whereabouts? If your cell phone has a E911 function or 911 location compatibility then yes, the phone can be used to track your movements even though the phone has not actually dialed 911. In the case where the phone uses GPS to do perform this function, the accuracy is to within just a few meters. And if the phone does not move and has a clear view of the sky the location can be computed to within less than three feet. In other words, you can be tracked walking around inside your own office. Most phones DO NOT have a GPS feature in them, but the salesmen pushing

the product will misrepresent their goods to push the product claiming the Cellular E911 feature uses the GPS constellation.

If the E911 function (provided via both your phone and service provider) is a passive location function then the phone is simply relaying back a "ping" with signal strength and antenna sectors that provides a very rough-triangulation. This is very good if your lost out in the woods or in a car accident where searchers can narrow down your location within a few thousand feet. >If the service uses an active location function then your position can be resolved to only a few hundred feet, but you are going to need to have a phone that is capable of this feature, a cellular service provider that can support it, and an E911 dispatcher that knows how to use the system (most do not).

A good example is what Nextel has been doing for years. With an older Nextel phone the company (Nextel) can visually track a customers movements around a city, and could until recently determine where the customer was to within just a few city blocks. This was performed by always having the Nextel handset talking to the base station, and the base station always knowing the

propagation delay between the phone and the base, and in turn knowing the distance between the two. If a second base station some distance away also "pinged" the handset, then a rough location of the customer could be determined. As Nextel added more base stations, the greater the resolution increased as the data stream could be serviced by a multitude of base stations. Nextel has since added an actual GPS receiver to some of their phones, and allowed a remote interface from the phones operating system to the GPS segment to permit the position of the phone to be determined by the customer, even though the CDMA/TDMA data stream produces this already.

All TDMA and CDMA require extraordinary efforts to maintain time slots and time slot management, and as such requires the time delay between the base station and the remote to be known. This is what the cellular E911 system is based on, and the secret about how it works.

Not only can the government track someone's movements with a cell phone, but an eavesdropper can sit outside most federal buildings in Washington DC and "watch" federal employees who use Nextels (with no GPS capability) walk around inside their offices. If twenty of them are attending a meeting in the conference room, the eavesdropper can not only tell WHO is in the room, but who is setting next to whom, who is standing up, and who is sitting down. The eavesdropper can then "open mic" one of the phones and listen in on the conversations, or place the phone in a voice logging mode to record the conversation for retrieval at a later date. Nextel added the actual GPS receiver after they realized that knew about location feature of their phones and wanted access to it, but Nextel did not want to give up the secrets and access to the innards of their own network. Nothing would make a group of FBI or TSA folks more nervous than to know that a foreign spy can track their every move and every meeting simply because they use Nextels for their day to day operations with little concern for privacy or security.

The TDMA type of phone are most vulnerable to this kind of tracking and manipulation,

but there are similar things that can be done to CDMA or GSM phones as well. Don't turn your cell phone on (or even attach a battery) unless you want someone to know where you are located, and don't talk about things on your cell phone that you would prefer to keep private.

As far as the legalities go -- we will leave those questions to an attorney. ■

*Jim Atkinson of Granite Island Group can be reached at:  
jmatk@tscm.com  
(978) 546-3803  
http://www.tscm.com*

## What's The Deal With Digital?

*The following is in response to a question posed by CII member Tom Herder regarding admissibility standards for digital evidence.*

*Special thanks to CII member Phil Peart for arranging for permission for reprint of Mr. Henning's comments.*

### **Larry Henning Senior VP SIU Investigations, MJM:**

"There have been no successful legal attacks to digital video or photos that I am aware of. There was much discussion within the insurance industry in the early 90's when digital first became widely available, however the industry implemented the use of digital photos across the board in the claim handling process, and continues to use digital evidence. The admissibility of digital evidence follows the same testimony standards and scrutiny of other evidence and 35 mm photos and analog video. The person who took the digital photo and/or video would take the witness stand and answer the following basic questions:

- Are you the individual that took this photograph (video)?
  
- Does the image shown here (pointing to the photo and/or video) accurately and fairly represent the scene (image, item, etc) of what you saw that day?
  
- Have there been any changes, modifi-

**CII**  
**50<sup>th</sup> ANIVERSARY COIN**



*Cost of coin:*

\$10.00 plus \$1.50 (shipping and handling) for US members

\$10.00 plus \$2.00 (shipping and handling) for overseas members.

Send check or money order to:  
Investigative Services, Inc  
Attn: Robert Dudash  
PO Box 45143  
Omaha, NE 68145

If you have questions please email Robert Dudash at [isipi@msn.com](mailto:isipi@msn.com)

cations, or alterations to this image that you are aware of?

Typically the attorney will also ask questions regarding type of equipment, camera settings, conditions of the photographic environment (weather, indoors, outdoors, lighting, etc.)" ■

*Next is an excerpt from Larry Henning's "white paper" on Legal Issues of Surveillance and Privacy*

So you've completed your surveillance and you've made sure not to invade anyone's privacy. You have digital video and still images that reveal the plaintiff is not nearly as injured as he claims. It should be an open-and-shut case for your client, and with your success, you're all but guaranteed repeat business. But before you get a bruise patting yourself on the back, there are some things you should know about digital images in the courtroom. You are going to want to protect your credibility and integrity both inside and outside of the courtroom.

Digital photographic and video equipment has grown increasingly affordable in the past few years. The benefits of such equipment are enormous. It eliminates the costs and delays in film developing. Most cameras allow for immediate viewing of the photograph so that you might see if the picture needs to be re-shot. Pictures can be touched up (note not altered) by means of cropping, changing contrast, sharpening or softening the image, as well as other cosmetic touches. But with these benefits come problems.

In the 1980's, National Geographic was criticized when it was revealed that it had altered a photograph of the Pyramids for their cover. They were able to change the angle at which the photo was taken so that two pyramids could fit on the cover at once. In the 1984 presidential debates, ABC altered the video coverage of Walter Mondale and President Reagan to make them appear to have better postures. Tom Hanks convincingly shook hands with President Kennedy in "Forrest Gump". George Lucas, in "Star Wars Episode One" used a technique where

he could change the direction in which his human actors were looking. Digital alteration of digital photos is easily done with relatively inexpensive software. For about \$100, anyone with a PC can change pictures. Whether the change is convincing or not is a different matter, but the means are there and a plaintiff's attorney can grab hold of this argument to try and counter your photographic evidence. For instance, William Sloan Coats and Gabriel Ramsey recently published an article in Practical Litigator advising litigators to "make every effort to emphasize the potential for misuse..." when digital photographs are offered into evidence.

Currently, the Federal Rules of Evidence treat digital images in the same manner as their traditional counterparts. Unless admitted by stipulation by both parties, the party offering the photo for evidence must be able to present testimony as to its relevance and authenticity of representation of the scene. Federal Rule of Evidence § 1001 and many state rules of evidence require that 1) the witness is familiar with the scene in the picture; 2) The witness provides a basis for familiarity; 3) The witness recognizes the scene in the picture; 4) The picture is a fair, accurate, and true representation of the scene. This is based upon the idea that a photograph is a representation of oral testimony. As a result, the private investigator will be asked to testify about what was seen when the photograph or video was taken. Therefore, it is important that the investigator remain impartial and unbiased. This applies primarily to the post-surveillance report which is available to the plaintiff through discovery. If there is evidence that a private investigator is biased, the plaintiff's attorney can use it against the defendant in the trial. In terms of state rules of evidence, many states use the Federal Rules of Evidence as the basis for their state rules, with some variation.

Courts have acknowledged the benefits associated with digital photography. These courts allow for certain digital enhancements of forensic evidence with the condition that the original is offered as well. This practice is most often occurs with photographs of fingerprints in order to make the fingerprint more

visible in the picture. As early as 1998, Division 1 of the Appellate Court of Washington State recognized in *State v. Hayden* that digital enhancement of forensic photographs is a scientifically valid and accepted practice. In the years since the decision, courts in other states have accepted the reasoning put forth in *Hayden*.

In terms of use in the private sector, the practice of digital enhancement, as opposed to alteration, could help in low-light situations or perhaps digital cropping of a photograph to rid the scene of extraneous and possibly distracting elements.

So what are some things that the private investigator can do to ensure the evidence he collects will be admitted? Steven Staggs, a forensic photography instructor, suggests:

- Save the photograph in its original format and under the filename the digital camera assigns to it.
- Instead of using floppy drives or hard drives, put the digital evidence on a writeable CD, not a re-writeable CD. This way the photograph cannot be altered once stored on this disk. If you prefer that others have access to the photographs you can save it on the hard drive or network drive in a password-protected folder with read-only access. Keep a record of who has the password. The fewer people who have access, the harder it is for plaintiff's counsel to suggest wrongdoing in production of the image.
- Some programs allow for "digital watermarking" to ensure authenticity. While the initial investment in the software to do this might be high, it is worth the price to safeguard your evidence and professional reputation.
- If any alterations are made to the file, such as light enhancement, be sure to save the original file. Some courts will require the file and corresponding testimony as to the process by which the photograph was enhanced.
- Most digital cameras can Date and Time stamp files. Set your camera to do this. Keep in mind that anyone challenging the evidence can suggest the camera's calendar and clock were altered prior to taking the picture. If videotaping,

include a shot of something with a date on it like a newspaper in a distribution box or on the newsstand.

These strategies will not completely insulate your evidence from a challenge, but they will make the plaintiff's attorney's job that much more difficult. Be warned, plaintiff's attorneys are trying to formulate ways in which to successfully challenge digital photo and video. For the time being, all it means is that the investigator will have to be diligent in safeguarding his evidence. As with most technology, the law is unable to keep pace with the innovation. Each jurisdiction has its own rules of evidence, and while states try to model their rules on the Federal Rules of Evidence, there are differences. Additionally, the various circuits of the Federal Courts may develop standards for digital imagery that vary from the other circuits. It is always best to check with counsel with expertise in this specialized field if you have any questions. ■

*Mr. Henning can be reached at  
lhenning@mjminc.com*

#### Francis D. "Frank" Ritter:

"Digital photography is not only sweeping the nation, but it seems to be taking the investigative industry by storm as well. I have attended numerous seminars in which the fantastic ability of digital photography to capture exactly what is needed was touted by investigators of immense talent and ability.

Is it possible that so many investigators who both use and tout digital could be making a major error? Could they actually be doing more harm than good to the cause of their clients? Could the use of this relatively new format actually be a burden or even, perish the thought, a strategic blunder to use? How would that be possible with something that most investigators consider to be a major boon to the industry?

Two major features stand out with digital photography and its relationship with the

investigative industry. First, the pictures can be manipulated. Not only can the subject's features be altered, but they can actually be changed, deleted or added to. Second, when the picture is taken, if the photographer doesn't like it, the disk can be backed up and the picture retaken right over the first, or it can be ignored and a voluminous number of pictures

## CII AGM Conference '05

### HOST:

Roy Whitehouse, WIS International  
+351.289.369180  
<http://www.c112.org>

### DATES:

Tuesday September 6 through  
Saturday September 10 2005

### LOCATION:

Cascais, Lisbon (24 miles from central Lisbon)

### AIRPORT:

Lisbon Airport is the national airport and the closest to Cascais. It is served by most major airlines from around the world. Taxi from airport will cost around €30.

### HOTEL:

Hotel Baia  
Av. Marginal, 2754-509  
Cascais, Lisbon, Portugal.  
+351.21. 483  
[reserves@hotel.baia.com](mailto:reserves@hotel.baia.com)  
Hotel Baia faces Cascais Bay with fabulous views over the Atlantic Ocean. The hotel is a first-choice property due to its location in the center of Cascais.

### CONFERENCE RATES: (euros)

Members—€395  
Guest—€355  
Non-Members—€435  
Seminars only (includes lunch)—€120  
Gala dinner only—€95

### ADVERTISING RATES:

The advertising request form is available at  
<http://www.c112.org>

can be taken until one suits the photographer's purpose. It is these two features that may cause more problems than they cure.

Proponents of the manipulation feature of digital photography state that this is not a problem because it is easy enough for experts to prove that the photograph was not tampered with or altered in any fashion. This is true. However, what is really being said is that the attorney for whom the photographs were

taken can hire an expert to authenticate them. This expert will have to be paid to ascertain that the pictures were not altered, and then paid again to be a witness in either a deposition or trial, or both.

If the opposition does not stipulate to admitting the photographs into evidence, then the photographer may have to take the witness stand. Perhaps the questions might go something like this:

Q: Did you take these photographs?  
A. Yes.

Q. Did you use a digital camera?  
A. Yes.

Q. Have you ever altered photographs you had taken, just to see what the camera is capable of doing? You know, put your child's head on the dog? That sort of thing?  
A. Yes. (If you say "No," even if true, the jury probably won't believe you).

Q. Did you alter any of these photographs?  
A. No, I did not.

Q. But you have the ability to do it, don't you?  
A. Yes, but I didn't alter them.

Q. But you could have if you had wanted to, couldn't you?

Now, imagine it is time for the opposition attorney's final summation to the jury. There the attorney is, standing in front of the jury box and holding up the digital photograph that is most damaging to his or her side of the case. The attorney could say something like this:

"Ladies and gentlemen, you heard the investigator state that he did not alter this photograph. However, you also heard him say that he possessed both the means and the ability to alter it if he so desired. Furthermore, because he is working for the other side in this case, he definitely had the motive to alter this photograph. I believe he did alter it, and I trust that you also believe he altered it."

Now, is digital photography really a convenience to this investigator's attorney?

Does the investigator's attorney really need this kind of grief? Perhaps the jury will believe the investigator, and perhaps they won't, but the attorney can not let the case hang on a "perhaps." The attorney is forced into a position of having to prove to the jury that the photographs were not altered. Proponents of digital say the same thing can be said about standard film, but this is not true. The investigator normally does not have the means or ability to alter both the photographs and their negatives. This is especially true if the investigator never develops the photographs, but sends them to a professional developing company.

The second problem with the use of digital photography is the ability to take literally hundreds of photographs to get the few that best show your side of the case. In some states, like California, copies of all photographs taken by the investigator have to be turned over to the opposition in civil cases. In other states, like Florida, only copies of those photographs that are going to be used have to be given to the other side. Either way it could pose quite a problem for the case.

At an investigator convention one of the seminar speakers told the audience that they could keep taking photographs of the subject, adjusting the color, etc., until the photographer got exactly what was wanted. Mind you, the speaker didn't say take the pictures until the photograph looked exactly like the object being photographed. The speaker said, however, that the photographer could testify that the photograph was an "accurate representation" of the object. What this speaker was actually doing was setting up his side of the case for at least an embarrassment, and possibly even a disaster, and was covering it with a word game.

Let's go back to the courtroom and listen to the questioning of the investigator:

Q. How many photographs did you give your attorney?

A. Twenty four.

Q. How many photographs did you actually take?

A. Seventy five.

Q. Why did you take so many?

Can you see that this is the loaded gun question? No matter how the investigator answers it, he or she is going to lose. As soon as the investigator took more photographs than were turned over, the impression was given that the only reason all those other photographs were taken was so that the investigator could get a photograph that best served the investigator's side of the case. A good attorney can have a field day with this by making the investigator look bad . . . just by implying that the deck is being intentionally stacked.

Actually, that is what the proponents of digital photography are saying to do. Take as many photographs as are needed to get the very best results, but then only turn over the very best and keep quiet about the rest. I suggest that this is a little weak in the ethics department in those states that allow copies of only the photographs that are going to be used to be turned over to the opposition, and possibly illegal in those states in which a copy of every photograph taken must be turned over.

There is an unfortunate trend becoming more prevalent in our court system. Many attorneys are accepting their opposition's photographs at face value, rather than challenging their validity. I believe this to be a major error, since the advent of computer technology allows for the easy alteration of photographs. Digitally remove a low hanging branch and the stop sign can now be seen; enhance the painted letters of a barely visible "STOP" painted on the street and it now appears to be a recently painted word. The list of possible changes to photographs that can alter the outcome of trials is virtually endless.

Some attorneys seem to like digital photographs because the photographs can be transmitted to them over the Internet. In those instances, I suggest that the investigator scan in the developed photographs that were taken on film and then send the scanned pictures. This will get the photographs to the attorneys in digital form, yet allow the investigator to retain the original film photographs and negatives as backups to the scanned photographs,

thus providing readily available proof that the photographs digitally transmitted to the attorney were not altered.

A new tool that appears to be a great help, but turns out to cause more work for the attorney, and requires the attorney to spend more money to prove the validity of the tool, is not a good tool to use. New is not always better . . . sometimes it is just a new toy and should remain with the other toys, never seeing the light of day as a professional tool.

I strongly encourage professional investigators discuss the problems that can arise when digital photography is used in legal matters that could go to trial with the hiring attorney or insurance carrier. After hearing an honest presentation of both the pros and cons of digital photography, they may well opt not to allow the investigator to use it. Remember, the investigator is part of the team headed by the attorney, therefore, it is always best to let the attorney make the decision rather than the investigator cause the attorney added expense or even place the attorney's case in jeopardy." ■

*Francis D. "Frank" Ritter can be reached at  
Pibuc1@aol.com.*

## Licensing Requirements for Out-Of-State Investigations

by **Bob Fenech**

There has been a lot of discussion on the topic of out of state investigations and its legality. If you ask 10 people you will get 10 variations on what you can and cannot do as it relates to out of state investigations by a private investigator. This article is to inform you as an investigator of what is out there as far as doing investigations out of state. Because as investigators, if you stay in the business long enough you will inevitably get a case that will take you out of state.

Every state is different. Some states have

strict regulatory laws that govern their private investigator's act and some states do not have a licensing requirement. The following is an experience which opened my eyes to the issue of licensure with respect to "out of state" investigations:

After twenty-three years in the public sector, the past eight years in the private domain has been an eye-opener. One thing I learned real quick coming into the private sector after 23 years as a police officer, there are more codes than just a penal code and a vehicle code. In California to be precise there are 29 different codes.

In 1997 I had the opportunity to conduct an investigation in another state. Thanks to other more highly skilled and experienced investigators, I was under the impression that in order to do an investigation in another state you would need a license in that venue.

One day in June 1997, I received a call from an attorney I perform investigations for on a regular basis. I will refer to this attorney as "Vince" (in order to protect the innocent). Vince proceeded to state "Bob, I want to talk to you about an investigation." Vince continued, "This investigation will take you to the state of Arizona." We agreed to meet at Vince's office the following day. Upon arriving at Vince's office, he "ran" the case down to me. It was a murder case involving his (our) client. Vince instructed me that I would need to go to state of Arizona to interview potential witnesses. I explained that it was my impression that I needed to 1) Obtain a license in that state or 2) Hire a private investigator in that state and work under his license. Vince was adamant. He told me that I didn't need to hire another investigator and that I didn't need a license to go into another state to interview people in what would be a two day investigation. As a good investigator, I didn't argue with Vince. However, after leaving Vince's office I pondered the investigation and decided I was going to hire an investigator in Arizona anyway. If nothing else, he would be familiar with the area and could show me where to go. Upon arriving back at my office, I called the

regulatory agency in Arizona and inquired about what I would need to do a two day investigation in their state. The regulatory agency advised that I could not come into their state to work, even if it was for one day.



CII Member Bob Fenech

The representative advised that I need to obtain a PI license. Upon inquiring about whether I would be able to hire another PI in Arizona and work off their license, she said only if he performed the investigation. I called an investigator in Arizona and he picked me up at the airport. He was familiar with the area I was to cover. We did six interviews, in six different locations in town. The last stop was the police department. The investigation went well, so well that it only lasted one day. I was back in San Francisco that night. Still puzzled about the out of state investigation I did some research; whereupon I located the following opinion written by James K. Jesse - Jesse and Jesse, Attorneys at Law:

#### **Legal Authority of a Licensed Detective Crossing State Lines**

It is clear the law states that if an individual, partnership or corporation is going to hold himself or itself out for hire in an area or field that requires licensing in a state, a license is required. The law is also equally clear that if an individual partnership ;or corporation should be licensed in one state and have to go to another state to complete the task or job for which they or it was hired, they can do so provided they do not hold themselves or itself out for hire in the foreign state, and that they are performing tasks for the initial employer who hired them.

The law is also clear that a single transaction or one-time occurrence need not require

a license in a state in most instances. It is well established that single transactions in another state are normally not subject to license regulation. As noted, where the profession being licensed is of an expertise nature, then there are certain prohibitions against that individual performing his or her profession in another state without licensing. The critical area, though, appears to be where the individual is hired in Indiana, because he or she holds themselves out for hire in that state, and is licensed in that state, then on behalf of a client he or she may go into the state of Michigan, Illinois or anywhere else to perform his or her investigation. If, while in another state, he or she held themselves out for hire as a detective, then that would be improper and not be allowed.

There are numerous instances where single transactions were held to be allowed in the annotation: License-Single Transaction of American Law Reports, Annotated, 93 A.L.R. 2d in particular, accountants hired in one state, who had to conduct an audit in another state for a client, were held not to have to have a license in the state which the audit was conducted. The key, again, was the fact that they were hired in the state for which they were licensed, and they were conducting their business of auditing in another state. Also, architects, for the most part, have been allowed to go into another state provided they did not hold themselves out for hire in the other state. In the same vein, an attorney licensed in one state may go to another state to take a depositions, interview witnesses, and conduct his regular business provided he does not practice before the Court in that state.

In conclusion, it would appear that a private detective agency or private detective may go beyond the state lines in which he/she is licensed, provided he/she does not hold himself for hire in the other state or states. The critical test appears to be whether or not he/she is seeking business in another jurisdiction. If business is being sought, then the individual falls within the licensing requirements of that state. On the other hand, if he is hired in one state and of

necessity must conduct his business in another state in order to satisfy his employment, then that is legal and acceptable. The law clearly allows the performance of a private detective's business in another state under circumstances outlined above. The answer, therefore, is that a detective may go beyond those state lines as a part of his investigation. To prohibit the crossing of state lines would be to deny interstate commerce.

There is case law that relates to different occupations going to another state to do business. The case law can be looked up in any major law library. The sections you want to look for are, Annotated, 93 A.L.R. 2d KF 132 A5. It starts on page 93 and ends on page 120. The law though not specifically citing private investigators, it talks about professions that have licenses such as, accountants and architects to cite a few.

The American Law Report speaks of a person who is regularly licensed and engaged in a business or profession is usually excused from licensing requirements, through application of the "single or isolated transaction" rule, where he/she has acted temporarily at a place other than where he normally conducts his business or profession.

Some states, Nevada to be specific has strict laws on the books that state under any circumstance you cannot conduct any type of investigation without a license. For example, if you need to do a fifteen minute interview on case that originated in California the Nevada law states you must have a license in Nevada. If you conduct an investigation in Nevada without a license this is a misdemeanor. It seems the lobbying committee on behalf of the private investigators has done a good job to protect their interests.

### Reciprocity

The investigator when going across state lines should be aware of different reciprocal agreements between states. States through legislative efforts have agreements for crossing state lines. California Association of Licensed Investigators (C.A.L.I.) in recent years through the efforts of the legislative

committee has a standing agreement with four states, Louisiana, Georgia, Florida and Oregon. Check with your states association to learn about agreements you have with different states.

In California Business & Professions Code 7520.5 reads: The director may authorize a licensed private investigator from another state to continue in this state for 60 days an investigation that originated in the state which is the location of the private investigator's principal place of business if that state provides reciprocal authority for California's licensees. The private investigator shall notify the department in writing upon entering the state for the purpose of continuing an investigation and shall be subject to all provisions of California's PI Act. For the purposes of this section, "originated" means investigatory activities conducted subsequent to an agreement to conduct an investigation.

### Conclusion

No one wants to be the test case for crossing state lines as a private investigator. Although you may win your case in court the amount of money and time it will cost you would be enormous.

This articles purpose is to inform the investigator what he/she is up against when doing investigations in other states. The best thing the investigator can do when going to another state is contact the regulatory agency that governs that state and ask what their law requires. ■

*Bob Fenech can be reached at  
pacgold@aol.com*

## Deepak Kumar Autobiography: The Investigator

By **F.M. Bhatti**

The author in his book autobiography, The Investigator uses his investigative skills to provide his readers with a fascinating inside view of the wheeling and dealing that goes on at all branches of government, business, and religious institutions. This is not pop journal-

ism, but a serious endeavor to reveal how these institutions skirt the truth and dabble in corruption to ultimately fail the people they are meant to serve. Kumar's book is his autobiographical account of his own investigations into 16 different case histories taking place in the world's largest democracy. The investigations involve lawyers, judges, and politicians and their involvement in the corporate world, elections, strikes, even piracy, and much more. The author exposes how agencies work, and how his own detection is carried out to uncover the truth. His experiences give the reader insight into his foreign desk adventures and his fact-finding pursuit of missing links in unsolved criminal cases. He exposes communal and religious myths, the twists and turns of politics, corruption in high places, and the secrecy that pervades high offices. The full revelation of a large variety of events serves as a guide on how to go about investigative reporting.

This book has an unusual style. It read like a good mystery novel but is actually real experiences based on hard facts. Each topic is presented as a documentary, and the author's integrity and honesty are evident as he talks to his readers about his investigations. Highly recommended indeed. ■

Deepak Prakashan Delhi, 2004, pp.83

US \$10

dks\_009@hotmail.com

*Dr. F.M. Bhatti  
Retired Director, Research & Resources  
Formerly ILEA, LONDON (UK)*

## How to Check Someone's Background

ORLANDO, FL. We've all been told: Beware of strangers. But we rely on them, whether to work in our yards, on the exteriors of our homes or -- in Sue Weaver's case -- to clean the ducts inside. It cost Weaver her life because the stranger she let in was a twice-convicted rapist, out of jail a matter of months.

Jeff Hefling is now serving life for



Weaver's murder and two other rapes, while his employer, Burdines, settled with Weaver's family for \$9 million, in part because it never did a background check that would have revealed Hefling's priors. And they're not alone.

"Your loved ones are at absolute total risk," said Orlando attorney John Overchuck, who negotiated the settlement with Burdines for the Weaver family. He said candidates for



background checks include "anybody that comes to your house, works in your house, watches your children."

Had Rose Conners checked out lawn worker Ken Lott, she would have learned he was a convicted armed robber and, perhaps, not hired him. Lott's now on death row for Conner's murder.

Charles Rahn, owner of A Very Private Eye, says about 25 percent of the "dates, mates and nannies" he checks out have something negative in their past. "There's a lot of criminals out there, ex-cons and scam artists out there in the market place," said Rahn, "to prey upon you, to use you, to rob your house, to steal. There are sexual predators out there to assault your children." So how can you try to check the backgrounds of people you may begin associating with? ■

For around \$150 Rahn and other private investigators can do a thorough, professional multi-state search.

*This story was broadcast on local channel 6 in Orlando Florida, on March 7, 2005.*

## Letter to the Editor

Dear Editor and Friends,

It seems that over the past month or so every day brings another story about how the big data brokers are failing to protect their data from the wrong hands. Their malfeasance then falls on the private investigators. I believe that these problems are born out of a failure to understand the difference from data and information. The real professional investigator knows that personal data has little or no intrinsic value until applied to solve a problem, then it becomes information. By understanding that difference, the professional is able to utilize the data for a purpose, justify the dissemination, and is able to protect that commodity from misuse. The data sellers, for the most part, don't have a clue and that's why they continually get burned, sell to the wrong people, or try and sell it to the general public at Sam's Club. For them the data is just something to sell regardless of the purpose. The privacy advocates then use identity theft as a red herring (an old private investigator phrase - pre database) for a larger agenda.

We all need to make sure that both collectively and individually we are not part of the problem by carefully disseminating information and by carefully screening our clients. We also need to be part of the solution by intelligently arguing our position and supporting those that are leading the fight and protecting all of our businesses.. The following is a NCISS release that does just that:

**FOR IMMEDIATE RELEASE:**

**FROM:** National Council of Investigation and Security Services

**DATA Breaches Require Targeted Response**

Recent developments following breaches at data brokers and financial institutions have led to calls for immediate regulatory and legislative action. Private investigators agree that regulatory and/or legislative mandates for timely notification of breaches are an appropriate response. We support Senator Feinstein's bill, S 115 "Notification of Risk to Personal Data Act". The recent disclosures have also led data providers to renew and upgrade their vetting of clients, including private inves-

tigators, who require the data. The National Council of Investigation and Security Services (NCISS) agrees that data providers should do appropriate due diligence to assure that information is used only for legitimate purposes.

### **Legislative Responses Should be Focused**

Investigators are extremely concerned that in the current atmosphere public officials will be pressured to create an overbroad regulatory scheme that will be harmful to the court system and commerce. And ironically, some of the suggestions being made would be counter-productive to the goal of fighting identity theft and other frauds. Statutory solutions should focus on securing personal data, not restricting its use by legitimate entities.

The National Council of Investigation and Security Services (NCISS) has learned from experience that the best of legislative and regulatory intentions can lead to harmful unintended consequences. The 1996 amendments to the Fair Credit Reporting Act ultimately led to an unanticipated requirement that employees suspected of theft be notified when an employer retained third parties to investigate the theft. It took years before Congress was able to remedy that error with passage of the Fair and Accurate Credit Transactions Act (FACTA).

Privacy groups have been using the public's legitimate concern over the recent breaches to push a far broader agenda. Their suggestions would result in limiting the ability of businesses to verify the identity of customers, to conduct background checks, and collect debt. If barriers are erected to prevent legitimate business from accessing identifying information about an individual, then the identity thieves will have an easier time. If one can't confirm a Social Security number or other unique identifier, then the ID thief will have an easier time claiming to be Bob Jones.

### **Private Investigators Use Data for the Public Good**

Private investigators use data from brokers to facilitate justice. We use the data to locate witnesses, find heirs, locate lost children, obtain child support, and detect fraud. Police authorities do not have adequate resources to solve ID theft cases, and many victims end up using private investigators. If the services investigators use to solve these cases are restricted, we'll not be able to serve clients as effectively and an additional burden will be placed on public authorities.

### **Recent Legislation**

Congress has not been idle in recent years with regard to identity theft and personal information. FACTA, which includes many provisions affecting identity theft, was enacted only last Congress. In addition, more severe penalties for ID theft were imposed with enactment of the Identity Theft Penalty Enhancement Act. The impact of

these statutes is only now being felt. Congress should gauge the success of these measures before acting to broadly limit access to information that is so essential to commerce.

Bruce H. Hulme, Chairman  
NCISS Investigations Legislative Committee  
914.767.0625  
specialinvestigations@worldnet.att.net

If you haven't already sent a 2005 contribution, PLEASE send SOMETHING today. Any amount helps. We need the \$100, \$500 and \$1,000 donations, but whatever amount you can only give your profession needs it now. NCISS fights for everyone in our industry, all 50,000 of us, not just members.

Time is critical, You may FAX your donations to NCISS at 410-388-9746. Include your name, address and phone number along with Visa, MasterCard or AmEx number and expiration date. Alternatively, mail your financial contribution to:  
NCISS Legislative Fund - 7501 Sparrows Point Blvd., Baltimore MD 21219. ■

Steve Kirby  
Chicago, Illinois  
USA

## China Private Detective Association Banned

On June 6, a spokesperson for the Shenyang Civil Affairs Bureau in Northeast China's Liaoning Province said: "Without the permission of the Ministry of Civil Affairs, the China Private Detective Association (in preparation) has been banned according to the law." ■

To see the full article, browse to this link:  
[http://www.chinadaily.com.cn/english/doc/2004-06/11/content\\_338606.htm](http://www.chinadaily.com.cn/english/doc/2004-06/11/content_338606.htm)

## Federal P.I. Licensing?

by Larry Ross

I wish I had an answer rather than being a naysayer. There are number of problems with the federal license.

First, it is unlikely that Congress would want to usurp the rights of the states that already have a licensing bureaucracy. Moreover, this is not an administration that is looking around for more businesses to regulate.

Second, and more importantly, Congress would have to place the bureaucracy that would oversee the federal license in some agency. With our luck we could wind up in the FTC.

Wherever Congress would place authority to issue regulations controlling our conduct would be objected to by a substantial number of investigators. It probably would have to be some subdivision of Homeland Security. It would be acceptable to me to have our licensing controlled by the Secret Service but that might not be our decision to make and might not be the choice other PIs.

We are fiercely independent business people. If we "played well with others" we would be part of larger organizations. It is going extremely difficult to put together a majority for anything. I frequently see the word "political" used as a pejorative on these listservs. I am pessimistic that it can be accomplished, but the only hope I can see for us is self-regulation. No one is going to be completely happy with the outcome but if we don't "hang together ..."

My suggestion would be to put together a "council of presidents" comprised of our elder statesman. They would put together a common code of ethics. Each organization that agreed to the common code would become part of a consortium that would lobby Congress on the consortium's behalf to treat the members of the consortium with professional respect.

A benefit would be that no PI would be required to join an organization to which he/she did not already belong. Of course, we would have some angry PIs who would not want to

belong any organization and who would feel abandoned by the members of the consortium.

The council of the presidents would be faced with an enormous job of obtaining agreement on a common code of ethics with an enforcement method that has teeth. Then they would have to meet the objections of the third parties and hammer out compromises. ■

Larry Ross is President of Ross Financial Services, Inc., in Washington, DC. He can be reached at +202.237.1001, [LRoss@RFSinc.com](mailto:LRoss@RFSinc.com), or <http://www.RFSinc.com>

## Digital Water Marks Thieves

by Robert Andrews

CARDIFF, Wales -- Crooked criminal hearts may have fluttered and skipped a beat Monday when some of Britain's most notorious thieves opened a valentine from an unwelcome secret admirer -- one of London's top female police chiefs.

But the greeting -- in which Chief Superintendent Vicki Marr wrote "thinking of you and what you do" -- was not so much an amorous expression to the underworld as part of a sting designed to catch hard-core burglars using new chemical microdot crime-fighting technology.

SmartWater is a clear liquid containing microscopic particles encoded with a unique forensic signature that, when found coated on stolen property, provides a precise trace back to the owner and, when detected on a suspect, can conclusively implicate a felon.

Likened to giving household items and vehicles a DNA of their own, the fluid is credited with helping cut burglary in Britain to a 10-year low, with some cities reporting drops of up to 85 percent.

A decade in the making, SmartWater is the name for a suite of forensic coding products. The first, Instant, is a property-marking fluid that, when brushed on items like office

equipment or motorcycles, tags them with millions of tiny fragments, each etched with a unique SIN (SmartWater identification number) that is registered with the owner's details on a national police database and is invisible until illuminated by police officers using ultraviolet light.

A second product, the Tracer, achieves a similar goal by varying the blend of chemical agents used in the liquid to produce one of a claimed 10 billion one-off binary sequences, encoded in fluid combinations themselves.

SmartWater CEO Phil Cleary, a retired senior detective, hit upon the idea after watching burglars he had apprehended walk free from court due to lack of evidence.

"It was born out of my frustration at arresting villains you knew full well had stolen property, but not being able to prove it," he said.

"Just catching someone with hot goods, or a police officer's gut belief a suspect is guilty, are not enough to secure a conviction -- so we turned to science."

Cleary is reluctant to discuss "trade secret" details of a product he has patented, but he concedes that, together with chemist brother Mike, he has developed "a mathematical model that allows us to generate millions of chemical signatures" -- an identifier he boasts is "better than DNA."

But more than property can get tagged. In spray form, the fluid marks intruders with a similarly unique code that, when viewed under UV in a police cell, makes a red-faced burglar glow with fluorescent green and yellow blotches. The resemblance to Swamp Thing and the forensic signature found on his body are telltale signs the suspect has been up to no good at a coded property.

"It's practically impossible for a criminal to remove; it stays on skin and clothing for months," Cleary added. "If a villain had stolen a watch, they might try to scrape off the fluid -- but they would have to remove every last speck, which is unlikely."

"Sometimes burglars who know they are tagged with the liquid scrub themselves so hard behind the ears to get it off, police arresting them end up having to take them into hospital for skin complaints. But we don't

have much sympathy for them."

Law enforcers are confident SmartWater can help improve Britain's mixed fortunes on combating burglary. Nationwide, instances of the crime have fallen by 42 percent since 1997, but the proportion of those resulting in convictions has also halved, from 27 percent to just 13 percent. So, while SmartWater is available commercially with a monthly subscription, many police forces are issuing free kits to vulnerable households in crime hot spots, hoping it can help put away more perps.

The microdot tech could prove invaluable in a courtroom, but it is also an effective deterrent. Most burglaries happen because criminals know there is little chance of being arrested during a break-in, according to U.K. government data (.pdf). But posters and stickers displayed in SmartWater-coded cities and homes warn off would-be crooks.

Word on the criminal grapevine, say police, is that anyone stealing from a coded home is likely to leave the crime scene having pilfered an indelible binary sequence that will lead only to jail time; it's not worth the risk.

Marr sent her valentine -- reading "roses are red, violets are blue, when SmartWater's activated, it's over for you" -- to known criminals in Croydon, London, reinforcing the message in what Cleary said amounts to "psychological warfare" against burglars.

"Since we started using it in Croydon, burglaries are down by 27 percent," said Sgt. Phil Webb of the Metropolitan Police, which started testing the product in the region in late 2003 and has given 2,000 packs to citizens.

"It puts the fear back into the criminal -- we know who they are, and we will use every new tool and technology at our disposal to bring them to book."

Other forces using SmartWater have reported burglary reductions of up to 65 percent, while Cleary said England's West Yorkshire force was due to announce a decrease of 85 percent after testing the product in the northern town of Halifax.

Graham Gooch, a criminal investigations tutor at the University of Central Lancashire and a former detective of 30 years, said the product is the market leader, advancing

crime-fighting efforts.

"Now, if a suspect caught with a stolen VCR turns green, they can't claim they got it from some bloke down the pub," he said. ■

*This article originally appeared at <http://www.wired.com/news/technology/0,1282,66595,00.html> on February 15, 2005 at*

## No Clear Picture: The Status of Privacy Law and Surveillance in Canada

by Norman Groot

In Canada, the general consensus is that a common law tort for invasion of privacy has never existed, and at best, the concept can be characterized as a developing tort.

On the evidence side, surveillance evidence with respect to insurance cases has been held to be admissible as long as the disclosure rules prescribed by Rules of Civil Procedure are complied with, and the evidence is relevant and reliable.

This paper discusses some of the more recent developments in the law with respect to surveillance undertaken in personal injury cases in light of the Personal Information Protection and Electronics Document Act (PIPEDA), and what is required today by private investigators to conduct surveillance on behalf of insurers.

### Surveillance and Privacy Law Before PIPEDA

Back in 1998, a civil action was brought against a private investigation company wherein the plaintiff sought damages for invasion of privacy, breach of the Charter, breach of the Criminal Code and Newfoundland's Privacy Act: see *Druken v. RG Fewer & Associates Inc.*, [1998] N.J. No. 312 (T.D.).

With respect to the application of the Charter, the court held the following:

I must be satisfied that the defendant's actions and production of a video surveillance tape reflect Charter values. Were the production of the videotape at issue before

me, then it would be incumbent that I embark on a balancing of the privacy interest of the plaintiff against the right of the defense to fully defend its case in litigation and to have equal benefit of the law bearing in mind the overall goal of the trial process is to discover the truth.

The production of the particular videotape being the subject matter of this litigation, as a trial exhibit, is not before me. This is an action for damages based on the plaintiff's allegation of invasion of her privacy interest. As will be seen later, the Private Investigation and Security Services Act and Privacy Act address the issues of the plaintiff's and the defendant's rights in these circumstances...

The defendant's videotaping of the plaintiff was by virtue of a contract with two insurance companies. The plaintiff had made claim for compensation in respect of personal injuries sustained by her. The companies engaged the defendants to conduct video surveillance presumably to test the truth of the defendant's position pertaining to

the extent of her injuries. The courts have recognized surveillance as a legitimate tool in defense of personal injury claims: Young v. Dawe (1995), 127 Nfld. & P.E.I.R. 272 (Nfld. S.C.T.D.), Outerbridge v. Whelan, 1994 St. J. No. 3479....

Approaching this fact situation in this manner I conclude the plaintiff has failed to establish the actions of the defendants are inconsistent with Charter values...the issue as to whether or not the actions of the defendants amounted to any invasion of privacy is dealt with hereafter.

The court also rejected the notion of creating a tort of invasion of privacy for breaching privacy provisions contained in the Criminal Code of Canada. The court held:

The plaintiff also requests this court determine whether or not the Criminal Code, Part IV (Invasion of Privacy) and Part XV (Special Procedure and Powers) apply to regulate, control and authorize the use of video surveillance in Canada. It is the plaintiff's position that any videotaping contrary to these provisions constitutes an invasion of privacy. I

have no problem concluding that the Criminal Code provisions apply to video surveillance and videotaping for purposes set forth therein by agents of the state. However, I cannot conclude, on the basis of the case law provided, that these provisions are intended to cover videotaping by a non-governmental agency under private contract.

Finally, the court rejected Ms. Druken's argument that the investigators had breached Newfoundland's Privacy Act, which has created the tort of invasion of privacy to fill a void in the common law. The court conducted a balance of interest analysis similar to that with respect to Charter values. The court held:

Any activities of the investigative agency and its agents must adhere to the spirit of Charter values. The Charter values referred to are those of the right of individuals to privacy as set forth in Sections 7 and 8 on the one hand, and the right of the insurance companies, through their agents, in this instance the private investigators, to obtain information to enable them to properly defend actions in which they are involved thereby engaging

## **"DCI" Detectiv-Consulting-International GmbH**

Managing Director: Juergen Fritz Hebach

Member of BID, CII, WAD

**Klinnerweg 69** founded 1978

**D-13509 Berlin**

☎ **+49-1714107411**

✉ **+49-(0)30-433 53 31**

### ***YOUR FAST SOURCE IN EUROPE!***

- ✓ **debtor, employer and place of residence search**
  - ✓ **documentation by audio, digital photos and video**
  - ✓ **investigation of insurance fraud**
  - ✓ **verifications about individuals and firms**
  - ✓ **international inheritance and missing persons**
  - ✓ **search services, due diligence, East-Europe, GUS & Baltic services**
  - ✓ **worldwide special assignments to acquire**
  - ✓ **evidence for civil and criminal cases**
- questions by fax and e-mail will be answered on the same day**

**E-Mail: [hebach@fritz-cii-wad-berlin.de](mailto:hebach@fritz-cii-wad-berlin.de)**

**Internet: <http://www.fritz-cii-wad-berlin.de>**

Section 15(1) of the Charter. Sections 3(1), 3(2), and 5(1)(b)(c) of the Privacy Act recognize and reflect the two foregoing Charter values.

What it basically comes down to is...the balancing of interest of [the] litigants and what is reasonable in the circumstances. It is clear that invasion of privacy in civil litigation is a recognized right in certain circumstances. Arguably, production of psychiatric records is far more invasive than visual recording of publicly exhibited behaviors as in the case of the plaintiff herein. Likewise, medical assessments by defendant experts, particularly in the first instance, would seemingly be more invasive than visual observations...

Insofar as video surveillance is concerned, and its relation to the Privacy Act, there is little distinction between a videotaping and a private investigator giving sworn testimony as to his own observations of an individual's actions where such actions are clearly in the public view.

As to the actions of the investigators, there is no question they believed they had the right to conduct such surveillance and historically this right has not been questioned. Our Courts have recognized surveillance as a legitimate tool in defense of personal injury claims.

### **PIPEDA**

Most of you know by now that the federal private sector privacy legislation, the Personal Information Protection and Electronics Documents Act (PIPEDA), which was passed by Parliament in 2000, came into force with respect to federally regulated industries effective January 1, 2001 and came into force with respect to provincially regulated industries effective January 1, 2004.

Most of you also know that the general principle under PIPEDA is that if information about an individual is to be exchanged for commercial purposes or, as part of a commercial transaction, then the consent of the individual is required.

There are a number of reasons why Parliament passed this legislation; a discussion

of which is beyond the scope of this paper. Suffice to say, the fear amongst many defence counsel was that the unfortunate side effect of this legislation was that it would prohibit what has been the stock in trade of private investigators since the beginning of time – obtaining from various sources and reporting to their clients the personal information of the subject of an investigation on a without notice basis.

### **Application of PIPEDA to Litigation and Surveillance: Ferenczy v. MCI Medical**

Ferenczy v. MCI Medical Clinics, [2004] O.J. No. 1775 was the first case in Ontario where the courts were required to determine if PIPEDA would have any impact on the admissibility of surveillance evidence for the defence.

In this case, the plaintiff alleged she suffered from certain physical limitations as a result of a physician's negligence. During the plaintiff's cross examination, the defence sought to impeach the plaintiff with surveillance evidence it had obtained in January 2004; that is, after the coming into effect of PIPEDA against provincially regulated industries such as private investigations, insurance and health care providers. It is noteworthy that the defence disclosed the existence of the video in their affidavit of documents, but maintained privilege over the document. The court held that as such, the video could only be used for impeachment purposes. The court further held that the facts contained in the video were relevant, as the plaintiff had denied in cross-examination the very facts contained on the video; i.e.: holding a hairbrush and a cup of coffee. The court held the video did not become relevant until she made those denials.

Plaintiff's counsel then took the position that the taking of the video by a private investigator and its subsequent disclosure to counsel for the defendant was in breach of the disclosure rules contained in PIPEDA, and that the video's disclosure to the court would be a further breach. More particularly, the plaintiff argued the video was taken in the course of a commercial activity (the private investigator was retained by the physician's

association), and that PIPEDA prohibits the collection, use or disclosure of personal information without consent in such circumstances.

The court made a number of rulings to support its position that the surveillance evidence was admissible:

1. PIPEDA does not contain any provisions with respect to the admissibility of evidence. The remedies available under PIPEDA are to make a complaint to the federal privacy commissioner, and / or to commence an application in the federal courts.
2. The evidence at issue was relevant, reliable, and its probative value exceeded its prejudicial effect. As such, the evidence was prima facie admissible – the test is the same in both criminal and civil cases: R. v. Morris, [1983] 2 S.C.R. 190.
3. This was not a case involving state action, and accordingly the Charter has no applicability. That said, Charter values must be considered in determining if the admission of the evidence would make the trial unfair. As the plaintiff had the opportunity to respond and explain the surveillance evidence, and had the opportunity to bring reply evidence, the trial was not unfair.
4. While the term "commercial activity" is broadly defined in PIPEDA, it does not apply to situations where a person is seeking to obtain information to defend an action.
5. The use of an agent such as a private investigator to collect information on behalf of a litigant does not make the act of collecting information any more of a commercial activity than if the defendant had collected the information him or herself.
6. If the court was wrong with respect to (4) and (5), then there was an implied consent given to collect the information. Any person who commences an action implicitly consents to a defendant of that action to collect information about him or her that is relevant to the action. In this case, the plaintiff put her physical well being in issue in her pleadings. Accordingly, the plaintiff gave consent to the defendant to collect information with respect to her physical well being that was publicly available.
7. If the court was wrong with respect to (6), then the collection and use of the information by the agent of the defendant does not require the consent of the

plaintiff as it was collected in a situation where to request consent would compromise the accuracy of the information provided, and where the information collected and used related to a contravention of a law, that being the common law tort of negligence and fraud (s.7 (1) (b) and s.7 (2)(d)). The court further held that once the information was collected in such circumstances, it could than be disclosed by way of court order (s.7(3)(c)) or by rule of law (s.7(3) (i)).

**PIPEDA and the Concept of Agency**

Back in June 2003, George Radwanski, the past Privacy Commissioner of Canada, gave a speech to the Private Investigators Association of British Columbia. At this time, private investigators nationally were organizing to apply to Industry Canada for the investigative body designation. It was believed that the investigative body designation would allow them to disclose to their clients information they collected and used where there were grounds to believe information related to a breach of a contract or a contravention

of a law. Mr. Radwanski was against the idea Industry Canada would ever award private investigators this designation. He thought that an industry such as private investigators would abuse such a designation, and use it as a means of sidestepping the intent of the legislation.

In this speech, Mr. Radwanski conceded that it would be rare that private investigators would obtain the consent of persons whose information they were collecting, using or disclosing. Mr. Radwanski, however, claimed he had a solution for the private investigators. He stated that since private investigators were agents of their clients, the disclosure of the evidence they collected to their clients was, for the purposes of PIPEDA, a “use.”

Mr. Radwanski compared the activities of private investigators to banks that outsourced the printing of cheques. Mr. Radwanski stated that banks collect information on their clients, and then “transfer” their client’s information to their contract printing company. This “transfer” is a “use” of the information, as opposed to a “disclosure.” Likewise the dis-

closure of information collected by private investigators to their clients was a “transfer,” or a “use.”

The problem with this logic, of course, is that in the bank scenario, the banks are receiving back on cheques the same information they sent out. The bank’s clients consent to this. Private investigators, meanwhile, may receive some information from their client to commence an investigation. But the idea is that the quantity of information they disclose back to their client significantly exceeds what they were given to start of with. Further, as indicated by Mr. Radwanski himself, individuals are not prone to give private investigators the same consent they would give to their bank to print them cheques.

Reference is made to Mr. Radwanski’s speech for one reason. The court in Ferency made reference to the agency concept. However, in Ferency, the court first found that the action of a defendant retaining a private investigator to collect information as his or her agent was not a commer-

**The International Councillor Ad Rates**

Full Page			Quarter Page		
Plan A	1 ad	\$225US	Plan I	1 ad	\$100US
Plan B	3 ads	\$600US	Plan J	3 ads	\$250US
Plan C	6 ads	\$1000US	Plan K	6 ads	\$425US
Plan D	12 ads	\$1600US	Plan L	12 ads	\$800US
Half Page			Business Card		
Plan E	1 ad	\$125US	Plan M	1 ad	\$50US
Plan F	3 ads	\$325US	Plan N	3 ads	\$125US
Plan G	6 ads	\$600US	Plan O	6 ads	\$200US
Plan H	12 ads	\$1050US	Plan P	12 ads	\$350US

Limit—one advertisement per electronic issue.

**International Councillor Advertising Contract**

We agree to purchase advertisement type (A, B, C, etc.) \_\_\_\_\_ for insertion into the International Councillor for a fee of \$\_\_\_\_\_ which is enclosed in full and based upon published rates. Note: Except for business cards (which will be scanned), we require camera-ready ads. Visa or MasterCard payments and certified, registered or personal checks (to be drawn on US Banks) should be made payable to CII and submitted with your ad to CII Headquarters at 2150 N. 107th Street, Suite 205, Seattle, Washington USA 98133-9009. For additional information, contact the CII headquarters via email at: information@cii2.org or by phone at 1-206-361-8889.

The submitting company’s name and contact information is (please print or type):

Member’s name: \_\_\_\_\_

Company’s name \_\_\_\_\_

Street Address, City, State, Province, Country and Postal code \_\_\_\_\_

Company Phone # and Country Code: \_\_\_\_\_

Note: For Credit Card payment, be sure to include the following additional information: Circle One: Visa or MasterCard

Card Number: \_\_\_\_\_

Expiration Date: \_\_\_\_\_

Please remember to mail this with your finished advertisement.

cial activity as contemplated by PIPEDA. In other words, the court made no reference to this idea of “transfer” or agency as a stand-alone reason why the concept of “disclosure” was not relevant in the circumstances.

### **Further Developments With Respect to Private Investigators: Investigative Bodies**

A further issue with respect to Ferency is worthy of mention. At the time of this surveillance, January 2004, private investigators had not yet been designated by Industry Canada as “investigative bodies.” The investigative body designation was awarded to private investigators, as well as independent adjusters, in March 2004. I was very involved in this application process. At the time, the pronouncements of Mr. Radwanski were in doubt as a result of Industry Canada’s Regulatory Impact Analysis Statement (RIAS) with respect to investigative bodies and the application of PIPEDA released in 2000. The position taken by Industry Canada in its RIAS was considered critical to the private investigation industry as the federal court in *Englander v. Telus Communications Inc.*, [2003] F.C.J. No. 975 had held that in cases of first instance, the court should find the intent of the legislation (PIPEDA) from the government’s RIAS.

The RIAS with respect to PIPEDA and investigative bodies contains the following statements:

PIPEDA establishes rules to govern the collection, use and disclosure of personal information by organizations in the course of commercial activity. The legislation requires an organization, which discloses personal information to obtain the individual’s consent in most circumstances.

Increasingly, many fraud investigations are initially launched by private sector organizations by way of an independent, non-governmental investigative body.

Paragraph 7(3)(d) allows an organization to disclose personal information, without the consent of the individual, to the appropriate private sector investigative body in order to conduct the preliminary investigation. The disclosure is circumscribed as it must be a

reasonable disclosure related to the breaches of agreements or contraventions of the law.

Paragraph 7(3)(h.2) allows an investigative body to disclose personal information back to the client organization on whose behalf it is conducting the investigation. Paragraph 7(3)(h.2) completes the exception provided in paragraph 7(1)(b) for collection without consent.

Collection alone would be of limited use... unless the information could be disclosed to the parties that need the information... Without paragraph 7(3)(h.2), the information flow could only go in one direction – from the organization to the investigative body. The investigative body would be unable to disclose the results of its investigation back to the client organization without consent.

There are no alternatives to deal with the collection, use and disclosure of this information without consent.

What should be noted from the RIAS is that there is no mention of the agency concept as eluded to in Ferency. It is further noted that it does not appear that the court in Ferency had the benefit of reviewing the RIAS. Accordingly, if the court’s application of the term “commercial activity” and implied consent are found one day to be in error, than it is unlikely the court’s reference to non-consensual collection and use will prevail.

### **Conclusions**

A very good review of the status of law on privacy can be found in the judgment of Clackson J. in *Amalgamated Transit Union Local No. 569 v. City of Edmonton*, [2004] A.J. No. 419 (Q.B.). This action pertained to a review of an arbitration wherein the admissibility of surveillance evidence was at issue. In this case, the learned judge provided a review of a number of decisions of the Supreme Court of Canada on privacy issues, showing how the court had moved from the concept of right to privacy that of a reasonable expectation of privacy.

The views of the court in the City of Edmonton should, in my view, be incorporated in the application and interpretation of PIPEDA. Currently the federal privacy commissioner’s office is looking to right to privacy orientated

labour arbitration awards for guidance on setting policy with respect to surveillance. While these decisions can not be ignored, for the time being, as it applies to surveillance in the insurance context, reference should be made to how the court in Ferency applied the concept of “commercial activity” with regards to PIPEDA, the argument of implied consent, and the investigative body status of private investigators as prescribed in PIPEDA’s regulations. ■

*Norman Groot is a commercial and insurance litigation associate at McCague Peacock LLP  
416-869-7839 (b) 416-860-0003 (f)  
ngroot@mwpb.com .*

*Norman is also the author of Canadian Law and Private Investigations, available from <http://www.irwinlaw.com> .*

## **Barton: Safeguards Against Identity Theft Inadequate**

March 10, 2005  
Committee on Energy and Commerce  
Joe Barton, Chairman

WASHINGTON - Not long ago, your Social Security number was between you and the government and nobody else. Nowadays, everybody seems to have your number, and that knowledge is the open door through which identity thieves can steal both your money and your reputation.

“I just think it’s fundamentally wrong. And in the Internet age, it’s dangerous,” said U.S. Rep. Joe Barton, chairman of the House Energy and Commerce Committee.

The recent surge in cases where private databases were pillaged by crooks who carted away personal information on thousands of ordinary citizens has attracted the attention of Barton, R-Texas, and his committee.

The Lexis-Nexis group, a major compiler of legal and consumer information, said on Tuesday that private information, including the Social Security numbers, names and addresses of 30,000 people, may have fallen

into the hands of intruders. This news comes after another major data broker, Choice-Point, announced last month that it inadvertently sold the records of 145,000 individuals to thieves.

"Under current law these companies have a legal right to package information and do almost anything they want with it," Barton said. "I personally see no socially redeeming value in anyone having the right to give away and sell my personal information unless I approve it."

The House Energy and Commerce Committee has scheduled a hearing for Tuesday, March 15 to discuss these issues.

The Subcommittee on Consumer Trade and Consumer Protection will examine the current public policy regulating the industry and consider whether Additional legislation is necessary. ■

## Member News

### New Applicants for Publication

Diarmuid Hurley  
Sullivan Miranda, S.C.  
Metepec, Mex, Mexico

### New Members

Igor Tymofeyev, ASII  
Detectiv-Consulting-International GmbH  
Berlin, GERMANY  
49-30-433-4689



Can you name these people?

Tawni Tyndall, QII  
On the QT  
Granada Hills, CA USA  
www.on-the-qt.com  
818-414-2059

William Lowrance, CII  
Information Insights, Inc.  
McLean, VA USA  
www.informationinsightsinc.com

703-538-6042

Zhong Liu, QII  
Shen Zhen Factuality Consulting  
ShenZhen, Guang Dong Province CHINA  
www.pi-detective.com  
86-755-8393 6642

### Pending—Review Sec

Robert Artus  
Artus Group Investigative Services  
New Haven, CT, USA

Gard Westbye  
Oslo Private Etterforskningsbyra (OPE)  
Oslo, , NORWAY

Oleg Yefimchuk  
Center of Business Projects  
Kiev, , UKRAINE

### Pending—Awaiting RD Report

Brianna DuffyPer Mar Security  
Davenport, IA, USA

Phillip Hatziz  
Chicago Detective Agency  
Athens, 10310, GREECE

Armando Stavole  
I.C.A. - International Consulting Agency  
Rimini, RN, ITALY

### Application Inactive

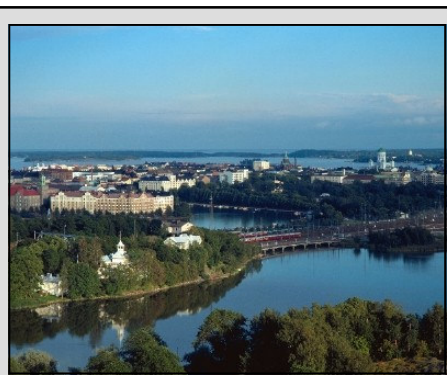
Jennifer Lambert  
Indianapolis, IN, USA  
■

## Gossip

Negotiations between "The Yanks" and "The PODs" are scheduled to commence in Ireland between May 17-23 concerning placement of the ball in 2005. Lois Colley, representing the Yanks, will be traveling to Ireland to meet with Derek Nally and the PODs in an effort to resolve many issues surrounding the now infamous P.O.D. ball. Complaints were registered following the 2005 AGM silent auction concerning the "antics" used by "The PODs" to communicate with one another. Sources tell us "the Yanks" are demanding the issue of "hand signals" be addressed. One source, asking not to be identified, report the planning committee for the 2005 AGM in Cascais, Portugal have increased security in response to rumors that Nally and Jimmy

Gahan are planning to abscond with the ball. Reporters on U.S. turf claim Steve and Jim Kirby were overheard demanding a table for three at a five star restaurant in Chicago in April. Apparently the third chair was reserved for the ball. The men were later observed engaged in conversation with it.

A librarian from Bunclody, County Wexford, Ireland, speaking only on the condition of anonymity, claims persons later identified as Nally and Gahan entered the library on March 3 disguised as French businessmen. These as yet unidentified men proceeded to engage the librarian in researching how to affix a rugby ball to a Maltese Falcon. Nally and Gahan deny involvement but local authorities reported having located a "false" mustache in Nally's garbage later that same week. President Beach, in issuing her monthly statement, referred to the situation as "out of hand" and has asked for both sides to relinquish their "egos" and stop the feuding for the good of the council. Irish sources advise that Nally is still in counseling concerning his remorse over kicking the ball out of Ireland. His counselor was quoted as saying "It may be years before Nally and The PODs come to terms with what they have lost." ■



Helsinki, Iceland, proposed site of AGM 2006.



## Committee Appointments From 2004—2005

President Beach has announced the following committee appointments:

### Audit and Finance Committee

Bert Falbaum—Chair (Arizona USA)  
Jack Burke (Illinois USA)  
Rod Webb (Australia)  
Robert Kaszynski (Maine USA)

### Editor of the International Councillor

Lois Colley—Co-Chair (Ohio USA)  
Jimmy Gahan—Co-Chair (Ireland)

### Legislative Committee

Jay Groob—Chair (Massachusetts USA)  
Steve Kirby (Illinois USA)  
Steve Bibler (Michigan USA)  
Deb Aylward (Virginia USA)

### Membership Committee

Bert Falbaum—Chair (Arizona USA)  
Fred Dehmel (Canada)  
Robert Dudash (Nebraska USA)  
Garry White (Canada)

### Public Relations Committee (Includes Internet Committee)

Lois Colley—Chair (Ohio USA)  
Jack Devine (New York USA)  
Don Johnson (Indiana USA)  
Kevin Ripa (Canada)  
Rod Webb (Australia)  
Fred Dehmel (Canada)

### Nominating Committee

Alan Marr—Chair (England)  
Joan M. Beach (Virginia USA)  
Nancy Barber (California USA)  
James Kerins (Maryland USA)

### International Investigator of the Year Award

Brian King—Chair (Canada)  
Jay Groob (Massachusetts USA)  
Thomas Herder (Minnesota USA)  
Juergen Hebach (Germany)

### MSA Committee

Joan M. Beach—Chair (Virginia USA)  
Nancy Barber (California USA)  
Reginald Montgomery (New Jersey USA)  
William Nye (Iowa USA)

### Strategic Planning Committee

Alan Marr—Chair (England)  
Fred Dehmel (Canada)  
James Kerins (Maryland USA)

### Standing Education Committee

Jay Groob—Chair (Massachusetts)  
Joan M. Beach (Virginia USA)  
All Board Members

### Malcolm Thomson Award

Alan Marr—Chair (England)  
Joan M. Beach (Virginia USA)  
Nancy Barber (California USA)  
Ponno Kalastree (Singapore)

### Parliamentary Committee

Bert Falbaum—Chair (Arizona USA)  
Larry Ross (Washington, D.C. USA)  
Larry Miller (Michigan USA)  
Gerd Hoffmann, Sr. (Channel Islands)

### 2005 Annual General Committee

Jay Groob—Chair (Massachusetts)  
Roy Whitehouse (Portugal)  
Brian King (Canada)  
Derek Nally (Ireland)

### 2006 Annual General Committee

Bert Falbaum—Chair (Arizona USA)  
Jouni Heikkinen (Finland)  
Juergen Hebach (Germany)  
Goolam Monsoor (France)

### Historian Committee

James Kirby—Chair (Illinois USA)  
Ben Harroll (California USA)  
Walter Atwood (South Carolina USA)



## CII Officers and Board Members

### Officers:

#### President: Joan M Beach

Virginia, USA  
joanmbeach@aol.com  
703.359.8084

#### Chairman: Alan J. Marr

London, ENGLAND  
Alan-marr@jigsaw-services.demon.co.uk  
44.1932.875224

#### Vice Chair: James P. Kerins III

Pennsylvania, USA  
jkerins@ichonline.com  
610.760.0350

#### First Vice President: Jay L. Groob

Massachusetts, USA  
aisprvti@aol.com  
617.232.4728

#### Acting Second Vice President:

##### Bertram Falbaum

Arizona, USA  
bertfalbaum@cs.com  
520.751.1615

#### Third Vice President:

##### Bertram S. Falbaum

Arizona, USA  
520.751.1615  
bertfalbaum@cs.com

#### Secretary: Nancy S. Barber

California, USA  
415.334.0856  
Nickbk@aol.com

#### Treasurer: James R. "Jim" Kirby

Illinois, USA  
630.941.1700  
jkirby@kirbyinvestigations.com

## Board Members:

### Rod Webb

MWA Corporate Security Management  
Perth, Australia  
61.893221877  
rtw@mwacorporate.com.au

### John T. "Jack" Burke

Jack Burke & Associates, Ltd.  
Chicago, IL USA  
312.372.5500  
burkeassc1@sbcglobal.net

### Frederick J. "Fred" Dehmel

CSI Investigations  
Halifax, Nova Scotia, CANADA  
888.818.5251  
fdehmel@csilimited.com

### John J. "Jack" Devine

The Arkin Group, LLC  
New York, NY 10022, USA  
212.333.0204  
jackdevine@thearkinggroup.com

### Jouni E. Heikkinen

Academic Investigations Ltd  
Helsinki FINLAND  
358.9.662001  
academic@welho.com

### K. Haja Mohideen

Global Security Networx  
Singapore SINGAPORE  
65.63422025  
globalz@pacific.net.sg

### Reginald J. Montgomery

RJ Montgomery Associates  
Allendale, NJ USA  
201.327.3301  
reggie@njinvestigator.com

### Hermann Kaminski

IWA Group  
Hamburg GERMANY  
49.180.5356262  
kaimnski@iwagroup.de

### Gerd H. Hoffmann

GH Hoffmann Senior Ltd  
Alderney CHANNEL ISLANDS  
44.0.1481.822464  
g\_h\_hoffmann@cwgsy.net

### Jurgen F. "Fritz" Hebach

Detectiv-Consuting-International  
Berlin GERMANY  
hebach@fritz-CII-wad-berlin.de

### Lois E. Colley

Due Diligence  
Ohio & South Carolina, USA  
888.310.6660  
lec@colleypi.com

### Ponnosamy "Ponno" Kalastree

Mainguard Security Services (S) Pte Ltd  
Singapore 199588  
65.62965881  
p.kalastree@mainguard-intl.com.sg



## BYLAWS OF THE COUNCIL OF INTERNATIONAL INVESTIGATORS

### ARTICLE I - NAME AND PURPOSE

SECTION 1. The Name of the Council shall be the COUNCIL OF INTERNATIONAL INVESTIGATORS, INC. and in all non-contractual matters may be known as COUNCIL OF INTERNATIONAL INVESTIGATORS or C.I.I.

The purposes for which the corporation is formed are:

To encourage a greater association between the owners and operators of private investigator companies and agencies or security professionals; disseminate information relating to the proper and appropriate standard practices to enhance the profession; to elevate the standards of the profession to create a greater respect for the profession by ethical and sincere dealings among its members and with the public; and by educational processes, to develop an ever increasing awareness of the necessity for the value of the services rendered to the communities which our members serve.

### ARTICLE II - EMBLEM

SECTION 1. The official emblem of the Council may be used by members in good standing on stationery, **on their websites**, and on advertising matter for the purpose of identifying members of the Council.

### ARTICLE III - MEMBERSHIP

SECTION 1. There shall be six (6) classes of membership: (1) Certified Member; (2) Qualified Member; (3) Senior Member; (4) Associate Member; (5) Affiliate Member; (6) Honorary Member.

SECTION 2. Any individual, in a firm, partnership or corporation engaged in the profession of private investigation, private patrol operation, security professional, or similar profession shall be eligible for membership in the Council by agreeing to and complying with these Bylaws and the Rules & Regulations or as same may be amended or altered. Membership shall not be granted to an individual whose principal occupation is in one of the following: Debt Collection, Auto Repossession, Service of Process, Marital Investigations or Transportation of Currency.

SECTION 3. CERTIFIED MEMBERSHIP shall be granted to an individual who complies with the provisions of Section 2, has been so engaged for a minimum of five years, and has been a principal of his/her organization for at least three years, whether consecutive or not. Certified members shall have the right to attend meetings, participate in proceedings, serve on committees and perform duties as assigned. Certified members shall have the right to vote and hold office. Certified Membership status shall be granted to a maximum of two (2) persons in any one firm, but only one (1) of who whom may hold elected office at any one time.

SECTION 4. QUALIFIED MEMBERSHIP shall be granted to a principal of a company meeting all criteria of a Certified Member except that he/she has they have not operated their own business for a period of three years. Qualified membership shall be granted to a maximum of two (2) persons in any one firm. They shall have the right to attend meetings, participate in proceedings, serve on committees and perform duties as assigned, but shall have no right to vote or hold office.

SECTION 5. ASSOCIATE MEMBERS shall be those members individuals who have been recommended and sponsored by a Certified Member. The Board shall review their application and they shall remain as Associate Members as long as sponsorship continues. Associate Membership shall be restricted to the spouse of, or any employee of a Certified Member or the spouse of a deceased member. They shall have the right to attend meetings, participate in proceedings, serve on committees and perform duties as assigned, but shall have no right to vote or hold office. The Board at the Mid-Year Meeting shall review Associate Memberships **annually**.

SECTION 6. AFFILIATE MEMBERS shall be recommended for membership in the Council by a Certified member. An Affiliate Member may come from an industry which furnishes materials or a service to any of the businesses outlined in Article III, Section 2 or an Affiliate Member may be any person empowered by position within a corporation or company to initiate, supervise, or contract for an investigation. Affiliate Mmembers shall have the right to attend meetings, participate in proceedings, serve on committees and perform duties as assigned, but shall have no right to vote or hold office. An Affiliate Members shall hold Affiliate Membership at the pleasure of the Certified Member who recommended them and who may terminate said membership upon notice to the Council Secretary and approval of the Executive Board at which time membership shall cease. An Affiliate Member's membership shall also cease forthwith if the Affiliate Member ceases to be in an industry as described above

or leaves their his/her empowered position within a corporation or company.

SECTION 7. A SENIOR MEMBER shall have been a Certified Member for a period of not less than ten years and who has been retired from the active profession. Application for Senior Membership must be in writing and must be and whose written request to become a Senior Member is approved by a two-thirds vote of the Executive Board. A Senior Member shall not be eligible for nomination or election to any office other than as Director on the Executive Board, but shall be entitled to vote at all meetings of members. Senior Membership may also be granted to any member who has maintained continuous membership for ten years and is over the age of 69 or any past president who has maintained continuous membership for over ten years.

SECTION 8. HONORARY MEMBERS: The Executive Board may from time to time confer Hhonoratory Mmembership upon any individual who has performed some particular service for the Council or who has in some way performed matters of importance for law enforcement or on behalf of the progress of criminal or civil investigation. Any individual so honored shall have the right to attend meetings, participate in proceedings, serve on committees and perform duties as assigned, but shall have no right to vote or hold office.

SECTION 9. All members in the Council must meet the following requirements:

- Shall be of high moral character and no criminal charges undisclosed;
- Shall be of good financial standing;
- Shall be licensed or registered in their jurisdiction when required.

SECTION 10. All requests for membership in the Council must be made in writing, filed with the Council Secretary, and reviewed approved by the Executive Board.

SECTION 11. Upon the proper filing of an application and non-refundable application fee, the C.I.I. Headquarters shall announce submit the name of the applicant for inclusion in the next edition of the "International Councilor" to the members in order that all members have an opportunity to submit objections regarding any applicant for membership. Any member's objection to any applicant shall be in writing, signed by the member and filed with the Secretary within thirty (30) days of announcement of the application.. If the application is processed prior to publication, then acceptance of membership shall be subject to no objections. If an objection is received the member shall be suspended subject to the next Board Meeting, when it will be reviewed. [See Article XIII, Section 6.]

SECTION 12. When an application is tabled for any reason, it can only be tabled only twice. Subsequent to that the applicant will be advised that their his/her application has been denied.

SECTION 13. Any member in good standing may resign from membership effective upon filing a resignation in writing with the President. However, the resignation of a member shall not become effective while formal charges are pending against that member in accordance with the procedures elsewhere provided herein.

SECTION 14. MEMBERSHIP OBLIGATION: Each member of the Council agrees to be bound by the Constitution, these By-laws, the Rules & Regulations and any amendments thereto, and to be bound by the lawful actions voted by the Executive Board or voting members.

SECTION 15. MEMBER LIABILITY: No member of the Council of International Investigators, Inc. shall be personally or otherwise liable for any debts and/or obligations of the Council.

SECTION 16. INDEMNITY: To the fullest extent permitted by law, the Council shall indemnify and hold harmless any and all past, present or future Board Members and Officers, as identified and defined in these Bylaws, and in its discretion and in accordance with all international laws from all liabilities, expenses, fees reasonably incurred in connection with any and all claims, demands, causes of action and other legal proceeding to which they may be subjected by reason of any alleged or actual action or inaction in the performance of the duties of such Board Member, or Agent on behalf of the Council.

#### **ARTICLE IV - OFFICERS**

SECTION 1. The Officers of the Council shall consist of an elected President, a First Vice President, a Second Vice President, a Third Vice President, a Secretary and a Treasurer.

SECTION 2. The Third Vice President shall be elected from the Certified Members of the Council in good standing. The Third Vice President shall naturally progress to the office of the President.

SECTION 3. The Secretary and the Treasurer shall be elected by a two-thirds vote of the Executive Board.

SECTION 4. The term of office for the Officers of the Council shall be one year.

## **ARTICLE V - DUTIES OF OFFICERS**

### **SECTION 1. PRESIDENT**

The duties of the President shall be the chief executive officer of the Council. The President shall preside at all meetings of the Council, other than Board Meetings, deciding all questions of order and preserving order and decorum at these meetings. The President shall exercise general supervision over the business affairs, interest and welfare of the Council in accordance with its purposes and objectives.

The President shall appoint all standing committees and such special committees, as he/she deems necessary, acting as ex officio member of each committee.

The President shall appoint a Sergeant at Arms and Election Tellers.

The President shall appoint an Audit and Finance Committee.

The President shall call special meetings of the Executive Board upon the written request of five members thereof, which specified the reason that meeting is to be called, and he/she shall call special meetings of the Council at the written request of twenty-five percent of the Certified and Senior Members thereof, which specified the reasons for that meeting.

The President shall sign all Membership Certificates together with the Secretary

With Board approval, the President shall appoint a Certified Public Accountant, or any other qualified person, to audit the books, records, invoices, bank accounts, insurance bonds and all other financial matters of the Council, prior to the Annual General Meeting. The report of that accountant or other qualified person and the Audit Committee shall be presented to the membership at the Annual General Meeting.

The President shall appoint the Editor of the INTERNATIONAL COUNCILLOR subject to approval of the Executive Board.

The President shall perform such other duties as are incidental to the office of President. The President may assign such of his/her duties, as he/she deems necessary and appropriate to the First, Second, and Third Vice Presidents of the Council.

The President shall be reimbursed for reasonable expenses incurred on behalf of the Council in the performance of his/her official duties. These expenses are subject to approval of the Board.

The President of the Council shall make a report to the membership of the Council of the respective activities of the Council at each Annual General Meeting.

### **SECTION 2. VICE PRESIDENT**

The duties of the First, Second and Third Vice President shall be to assist the President in the performance of his/her duties and to perform any and all duties specifically delegated to them by the President.

In the event of the death, resignation, removal, suspension or incapacity of the President, the Vice Presidents, in their numerical order, shall assume and exercise the duties of the President for the un-expired unexpired portion of the term.

The First Vice President shall be designated as President Elect at the Mid-Year Executive Board Meeting by the Executive Board no later than April 15th.

The First Vice President will serve as Chairman of the Legislative Committee. This committee will be responsible for the rules and regulations governing the Council. Any changes, or ideas for change, will be submitted to the First Vice President for consideration by the committee and then for presentation to the Board and/or Annual General Meeting of the membership.

The Second Vice President will serve as Annual General Conference Chairman. He/She will perform as liaison with the conference organizers and will report to the Board with regard to his/her plans for the conference. He/She will be responsible for organization of the conference that occurs when he/she is elevated to the position of First Vice President. It is expected that he/she will assume responsibility for this during his/her term of office as Third Vice President.

The Third Vice President will be responsible for membership and shall assist the Second Vice President in the organization of the Annual General Meeting.

### **SECTION 3. SECRETARY AND TREASURER**

The duties of the Secretary and Treasurer shall be as described in the Rules & Regulations.

### **SECTION 4. ATTENDANCE AT MEETINGS**

The attendance of all Officers at Annual General Meetings and other scheduled Board Meetings shall be compulsory unless the Executive Board excuses the Officer. Acceptable excuses for missing a Board Meeting are: a) family matters, b) subpoenas, c) ill health and d) business pressures. One unexcused absence from a scheduled Annual or Mid-Year Meeting may be deemed sufficient to be removed from elected office by a two-thirds vote of those Board Members in attendance at that meeting. If an Officer misses two meetings in a row, or two consecutive electronic votes, he/she could be removed from Office.

## SECTION 5. VACANCIES IN OFFICE

A vacancy created in any Office between Annual General Meetings shall be filled by a Certified Member for the unexpired term of office by a majority vote of the Executive Board. The vote may be taken by a poll of members of the Executive Board through correspondence by the Chairman of the Board. All members of the Executive Board shall be given the opportunity to submit nominee(s) for the vacancy.

## SECTION 6. CORRESPONDANCE CORRESPONDENCE

Any Officer, Executive Board Member or Member sending an official communication on official letterhead shall submit one copy to the C.I.I. Headquarters at the time the original communication is sent.

## **ARTICLE VI - APPOINTMENTS AND COMMITTEES**

SECTION 1. The President shall designate a Chairman for each of the following Standing Committees and Special Committees as approved by the Executive Board except as may otherwise be specified in the Bylaws.

SECTION 2. The Standing Committees of the Council shall be as follows:

LEGISLATIVE COMMITTEE, which shall aid members in matters pertaining to new legislation and amendments to existing laws. It shall investigate the advisability of adopting any proposed changes to the Bylaws of the Council and report its recommendations thereon to the Executive Board and to the membership at the Annual General Meeting.

MEMBERSHIP COMMITTEE, which shall have charge of all matters pertaining to membership in the Council. It shall endeavor to secure suitable new members and shall introduce new members when present at the meetings. It shall investigate those applicants who appear qualified for membership and report its findings to the Executive Board for final action.

PUBLIC RELATIONS COMMITTEE, which shall keep the public informed of the Council's activities and shall assist the Secretary by writing articles for the INTERNATIONAL COUNCILLOR.

NOMINATING COMMITTEE, which shall receive all nominations for officers of the Council and follow the procedure as outlined in Regulations. The Nominating Committee shall consist of the Secretary, President and Chairman of the Board.

AUDIT COMMITTEE, which shall consist of the Third Vice President and two members to be appointed by the President. The duties of this committee shall be the auditing of all receipts and disbursements of the Council and to make recommendations, reference the financial condition and any moneymaking projects of the Council.

INTERNATIONAL INVESTIGATOR OF THE YEAR AWARD COMMITTEE, which shall determine the winner of that award each year.

### HISTORY OF THE INTERNATIONAL INVESTIGATOR OF THE YEAR AWARD

At the Council's Annual Meeting held in Edinburgh, Scotland in October 1976, the President of the Association of British Investigators at the time, Zena Scott Archer, personally delivered a silver loving cup to the Council with the request by the A.B.I. that it be presented each year to a Council member who best exemplifies the high professional and moral standards of the Council.

Each year at the Annual Meeting, a Certified Member of the Council of International Investigators is honored as the "International Investigator of the Year." Any person may make nominations during the year and election is by a majority vote taken during the meeting and after the reading of the nominations and supporting documentation.

Since the recipient must surrender the trophy at the end of the year, another award was initiated to remain the personal possession of each annual recipient. This award is known as the "Keith Rogers Memorial Plaque." It honors one of the respected original founders of our Council, Keith M. Rogers, now deceased.

The Council will be forever grateful to the Association of British Investigators for what has become an extremely proud tradition in our Council.

MERITORIOUS SERVICE AWARD COMMITTEE, which shall consist of the President, Secretary, Executive Regional Director and two (2) members from the general membership of the Council. The two (2) Council Members from the general membership must be either Certified or Senior Members in good standing. The MSA Award honors meritorious service to the Council of International Investigators, to the security and/or investigative industry, or to the community in general by a member of the Council. The MSA Award may be given annually to any member of the Council in order to recognize outstanding achievement and/or contribution.

STANDING EDUCATION COMMITTEE, which shall consist of the Board of Directors, the President and the First Vice President.

STRATEGIC PLAN COMMITTEE, which shall consist of the Chairman and two members of the Board.

MALCOLM W. THOMSON, CII MEMORIAL AWARD COMMITTEE, which shall determine the winner of the award each year. This Committee will include the Chairman of the Board, President, Secretary, Executive Regional Director, and one Board member.

SECTION 3. The Chairman of each Standing and Special Committee shall make a report to the membership at the Annual Gen-

eral Meeting, and a copy of that report shall be submitted to the Secretary.

SECTION 4. There shall be a Conference Committee appointed by the Board, which shall be responsible for the selection and administration of the Annual General Meeting and the Mid-Year Meeting, and a copy of that report shall be submitted to the Secretary.

## **ARTICLE VII - EXECUTIVE BOARD**

SECTION 1. The Executive Board shall consist of twelve members plus the immediate Past President who may serve for one year as an ex officio member of the Board with full Board privileges. The current President, First Vice President, Second Vice President, Third Vice President, Secretary and Treasurer shall also serve as Board members.

SECTION 2. The Executive Board shall elect the Chairman and Vice Chairman at the first Board meeting immediately following the Annual General Meeting. The Chairman will be one of the twelve Board members or the Past President in his/her capacity as an ex officio member of the Board.

SECTION 3. The term of office for elected Directors of the Executive Board shall be three years. The unexpired term of any Director, which becomes vacant, shall be filled by any Certified or Senior Member upon majority by vote of the Executive Board.

SECTION 4. The Executive Board shall hold a regular Annual Board Meeting immediately following the regular Annual General Meeting and Seminars of the Council, and a Mid-Year Board Meeting.

SECTION 5. The President or Chairman of the Executive Board may call special meetings of the Executive Board. Correspondence including electronic communications between the Chairman of the Board and the members thereof shall be regarded as a meeting provided that a poll is taken by mail upon any questions submitted by such correspondence and the result made known to the Board Members by the Chairman. For the purposes of this subsection, correspondence will consist of communications via mail, facsimile, or e-mail format. Two-thirds of the members of the Executive Board must consent in writing or electronic means prior to any action being taken with respect to such matters if there is no special meeting. In keeping with legal requirements, any action taken by mail, facsimile, or electronic format must be unanimous with all Board members voting.

SECTION 6. The Chairman of the Executive Board shall preside at all meetings of the Executive Board. In case of any equality of votes, the Chairman, in addition to his/her original vote, shall have a second or casting vote. In the absence of the Chairman the Vice-Chairman will preside.

SECTION 7. Eight members shall constitute a quorum at any regular meeting or special meeting of the Executive Board. A majority of that quorum shall be sufficient to transact business properly before such meeting unless otherwise provided herein. The special requirements for special meetings by mail, facsimile, or electronic format are noted in Section 5.

SECTION 8. The Executive Board shall perform all duties as set forth in the Constitution, Bylaws and the Rules & Regulations and such other duties as are normally incidental to the Executive Board.

SECTION 9. The Executive Board shall be empowered to make rules & regulation governing the standards of professional conduct of Council members. Violations of such rules & regulations shall constitute grounds for disciplinary action pursuant to the Bylaws and the Rules & Regulations.

SECTION 10. All matters pertaining to the activities and management of the Council shall be submitted to the Executive Board unless otherwise provided for in the Bylaws.

SECTION 11. The Executive Board shall not approve any budget nor shall it incur any debts in excess of the anticipated annual revenues of the Council for any year unless a special fund to provide for such excess, and the revenues necessary to meet same, is established by the Executive Board and ratified at a regular or special meeting of the Council by a majority vote of all Certified and Senior Members present and voting at the meeting.

SECTION 12. Officers of the Council shall serve without compensation and no member shall become an employee unless approved by a two-thirds vote of the Certified and Senior Members at the Annual General Meeting.

SECTION 13. The attendance of all Executive Board Members at Annual General Meetings and other scheduled Board meetings shall be compulsory, unless the absence is excused by the Executive Board. Acceptable excuses for missing a Board Meeting are a) family matters, b) subpoenas, c) ill health and d) business pressures. One unexcused absence from a scheduled Annual Meet-

ing shall be sufficient reason for removal from the Board by two-thirds vote of those Board members in attendance at that meeting. If a Director misses two meetings of the Executive Board in a row, he/she could be removed from the Board.

SECTION 14 **13**. The Chairman of the Executive Board shall make a report to the membership of the Council on the respective activities of the Executive Board at each Annual General Meeting. Copies of that report shall be filed with the C.I.I. Headquarters and other Officers of the Council at least fifteen days prior to the date of the Annual General Meeting. Any Officer of the Council may make such report, as he/she deems necessary and appropriate to make at the General Meeting of the Council by following the procedure just described.

### **ARTICLE VIII - REGIONAL DIRECTORS**

SECTION 1. The Executive Board shall establish the geographical areas for Regional Directors and shall appoint an Executive Regional Director.

SECTION 2. The term of office for the Executive Regional Director and Regional Directors shall be two years, and they shall be appointed or dismissed by the Executive Board. The Regional Directors shall submit a written report to the Executive Regional Director and Secretary annually. Reports should be submitted prior to the Annual General Meeting and prior to the Mid-Year Meeting.

SECTION 3. A Regional Director may be any Certified or Senior Member in good standing.

### **ARTICLE IX - ELECTIONS**

SECTION 1. The election of Officers and Board Members shall be held at the Annual General Meeting.

SECTION 2. Candidates for office, except for Secretary and Treasurer, shall be nominated by mail. Each nomination shall bear the signature of one Certified Member in good standing and be filed with the Chairman of the Nominating Committee at least sixty days prior to the date of the Annual General Meeting.

SECTION 3. All nominees for the Board of Directors must be Certified or Senior Members in good standing for one year and shall have attended at least one meeting in the last five years prior to the nomination. Candidates may not nominate themselves for office.

SECTION 4. A nominee for the office of Third Vice President, Secretary or Treasurer must have served a minimum of one year on the Executive Board

SECTION 5. There shall be no soliciting for any office or award.

SECTION 6. A nominee shall accept or reject a nomination in writing, filed with the Chairman of the Nominating Committee no later than sixty days prior to the Annual General Meeting. Failure to respond will be considered as rejection. A nominee who is nominated for more than one office shall specify in writing which nomination he/she accepts, which shall automatically reject all other nominations.

SECTION 7. Election procedures are as set forth in Rules & Regulations.

### **ARTICLE X - DUES AND FEES**

SECTION 1. The annual dues for each class of member of the Council shall be set and approved by the Executive Board from time to time.

SECTION 2. Each application for membership shall be accompanied by a non-refundable investigation fee as set and approved by the Executive Board.

SECTION 3. The fiscal year of the Council shall be on a fiscal the calendar year basis.

SECTION 4. No member otherwise entitled to vote in this Council shall be permitted to vote if he/she is delinquent in dues payment.

SECTION 5. Any member of the Council shall be automatically suspended from membership upon becoming delinquent in dues payment for three calendar months. The names of delinquent members shall be announced to the members published in the next INTERNATIONAL COUNCILLOR following one month of delinquency. [See Article XIII, Section 6.]

SECTION 6. The C.I.I. Headquarters shall notify a member of his/her their dues delinquency not later than March 31st, following the annual January 1st dues payment date. If that member has not paid the dues required by the following July 1st, the member shall thereupon be expelled from membership in the Council, and the Secretary shall notify the membership of such expulsion.

## **ARTICLE XI - MEETINGS**

SECTION 1. The Council General Membership shall hold a regular meeting on an annual basis. This meeting is deemed the Annual General Meeting. The Executive Board shall also meet as and when required.

SECTION 2. All meetings of the Council shall be open to the general membership of the Council and any person shall be permitted to attend any meeting except as otherwise provided. The Board shall retire to Executive Session for only the following reasons: to discuss a matter of discipline, membership or in anticipation of litigation.

Beginning with the 1994 Annual General Meeting, aAll Annual General Meetings and Mid-Year Meetings shall be underwritten by the Council. The Treasurer shall establish and maintain separate bank accounts in accordance with the guidelines set forth in the Rules & Regulations. Transfers into or out of the General Fund shall only be made by a two-thirds vote of the Executive Board.

SECTION 3. The C.I.I. Headquarters shall cause to be published in the INTERNATIONAL COUNCILLOR a note setting forth the time and place of an Annual General Meeting to be announced to the members not later than ninety days before the date of that meeting.

SECTION 4. No member will be allowed to participate in any meeting unless the member is in good standing.

SECTION 5. Five percent of the total Certified and Senior Members of the Council in good standing at the time shall constitute a quorum at any regular or special meeting of the Council. A majority of that quorum shall be sufficient to transact business properly before the meeting unless otherwise provided herein.

SECTION 6. The first meeting of the newly constituted Executive Board shall be called immediately following the adjournment of the Annual General Meeting.

SECTION 7. The President or the Chairman of the Executive Board may call special meetings of the Executive Board. Correspondence between the Chairman of the Board and the members thereof on any matters shall be regarded as a meeting, provided a poll is taken by mail or electronic communications upon any question submitted by such communication, and the result made known to the Board members by the Chairman. For the purposes of this subsection, correspondence will consist of communications via mail, facsimile, or e-mail format. Two-thirds of the members of the Executive Board must consent to any action being taken with respect to such matters if there is no special meeting.

SECTION 8. Eight members shall constitute a quorum at any regular meeting or special meeting of the Executive Board. A majority of that quorum shall be sufficient to transact business properly before such meeting unless otherwise provided herein.

## **ARTICLE XII - DISCIPLINE**

### **SECTION 1. FORMAL COMPLAINT**

Any member by following the procedure set forth in Regulations may file a formal complaint against any member for the following reasons:

- Violations of the Constitution, Bylaws, or Rules & Regulations.
- Violations of the Code of Ethics.
- Breach of professional conduct.
- Actions, which could bring discredit on the Council.

Upon receipt of complaint, the Chairman of the Executive Board shall act as Chairman of an Investigating Committee consisting of himself/herself and the three Vice Presidents.

Following investigation, these charges may be rejected, without recourse, by a majority vote of that Committee, or should the Investigating Committee sustain these charges, the matter will then be referred to the Executive Board for final determination. By submission of all documents, exhibits, and a formal finding of fact, all parties



and witnesses shall be notified of the time and date of hearing by the President. Within fifteen days of finding of fact, said notice of the complaint shall be published in the INTERNATIONAL COUNCILLOR announced to the members.

For this purpose, the President of the Council shall be the presiding Officer of the Executive Board. The Chairman of the Executive Board and the three Vice Presidents of the Council shall not participate in the matter when before the Executive Board unless called upon for testimony, and shall have no vote in the final determination of these charges.

Should either the Complainant or the Respondent involved in these charges object to any member of this Investigating Committee or any member of the Executive Board, he/she shall set forth in writing their reasons for such objection and file same with the Secretary to be forwarded to the President. The President may reject or sustain such objection.

In the event the President sustains the objection, three Certified Members' names shall be submitted to the Complainant and the Respondent, each of who shall strike off one name. The remaining member shall then become, pro tem, a member of the Investigating Committee of the Executive Board for purposes of the disposition of these charges.

Hearing of the Investigating Committee and the Executive Board may be by mail unless the Complainant or Respondent requests a personal hearing and files a certified check for it with the Treasurer. This certified check shall be in an amount sufficiently large to pay the actual traveling, board and lodging expense of members of the Investigating Committee or Executive Board, as the case may be, in attending such a hearing. In the event of such hearing, a court reporter shall be hired and the cost shall be shared equally by the Complainant and the Respondent and an advance deposit made by each sufficient in amount to defray this expense.

Where charges have been sustained against a member, that member shall have the right to appeal the decision of the Executive Board at the next special or annual meeting of the membership as the case may be. The Certified and Senior Members in attendance at the meeting may ratify or overrule the decision of the Executive Board by a majority vote

## SECTION 2. COMPLAINT - OTHER

Any member in good standing wishing to have a complaint considered against another member may do so by submitting their grievance in writing to the Chairman of the Investigating Committee. The Board, at its discretion, may refer a complaint to the Investigating Committee. Should the subject of the complaint be a member of the Investigating Committee, the Board will select an alternate Board Member or Officer to serve in his/her stead.

Upon receipt of complaint, the Investigating Committee shall conduct an inquiry as deemed necessary and determine by majority vote, whether said complaint warrants consideration by the Boards.

Should the Investigating Committee sustain the complaint, it shall present the matter at the next Board Meeting. Both the Complainant and the subject of the complaint may be asked to appear at the Board Meeting to give testimony if required.

Should the Investigative Committee decide the complaint is either inadequate or invalid and therefore does not merit further consideration by the Board, it shall notify the Complainant in writing as to the findings of the Committee.

Should Complainant desire to continue to pursue the action the Complainant may file a formal complaint through procedures as outlined in Section 1.

**SECTION 3. CONVICTION** The Executive Board may suspend or expel any member by a two-thirds vote (unless the format of voting requires a unanimous vote) of the Executive Board upon sustaining proof that the member has violated the provisions of Article XII, Section 1, such suspension or expulsion to remain in force and effect pending ratification or rejection by a majority vote of Certified and Senior Members in attendance at the next Annual General Meeting following that suspension or expulsion. Notice of all such actions shall be provided published to the members. in the next edition of the INTERNATIONAL COUNCILLOR.

## SECTION 4. BOARD ACTION

The membership of any member of the Council, including an Officer or member of the Executive Board, may be suspended or expelled by a two-thirds vote (unless the format of voting requires a unanimous vote) of the Executive Board for any violation of the Constitution, Bylaws, Rules & Regulations, or Code of Ethics, whether acting on a formal charge as prescribed in Section 1 or upon a charge sustained as a result of the Investigating Committee's action as set forth in Section 2. That suspension or expulsion shall remain in effect pending ratification or rejection by a two-thirds vote of the Certified and Senior Members in attendance at the next Annual General Meeting following that suspension or expulsion if requested by the member. Notice shall be given to the member of said pending action, then published in the INTERNATIONAL COUNCILLOR after the Board renders the decision.

The action of the Executive Board in determining what is good cause for suspending or removing an Officer from office shall be final provided, however, the decision on removal shall not be made unless and until that Officer has been given a reasonable opportunity to appear at a hearing before the Executive Board or to present his case to the Executive Board

in writing mailed out to the Chairman of the Board by Registered or Certified Mail.

SECTION 5. If an Officer or member of the Executive Board is a party to any proceeding involving charges made by him or against him, he shall be disqualified from participation therein as such officer or member and the President of the Council shall appoint a Certified Member in his place for these proceedings, unless otherwise provided for in these articles.

SECTION 6. Any member expelled from the Council for any reason except non-payment of dues shall not be eligible to reapply.

SECTION 7. Any member of the Council whose membership is terminated for any reason whatsoever, consistent with the By-laws, shall forfeit any and all interest in and to any and all property belonging to the Council and to all other rights, privileges and prerogatives of membership in the Council. In case of expulsion, no dues paid to the Council will be refunded.

### **ARTICLE XIII - PROCEDURE**

SECTION 1. Roberts Revised Rules of Order shall govern the procedure and form of business except where otherwise provided in these Bylaws.

SECTION 2. The Order of Business at meetings shall be as follows:

- Call to order
- Roll call.
- Election of Certified Members.
- Appointment of Special Committees and Sergeant at Arms.
- Reading of minutes of previous meeting.
- Address by President.
- Reports by Vice Presidents.
- Report of Secretary.
- Report of Treasurer
- Report of Chairman of Executive Board.
- Report of Standing Committees.
- Report of Special Committees.
- Unfinished business.
- New business.
- Election of Officers.
- Selection of site for the next Annual General Meeting.
- Matters pertaining to the good of the Council.
- Adjournment.

SECTION 3. Every All members when speaking or offering a motion shall rise in their his/her place, address and be recognized by the presiding officer, giving their name and city, and when finished shall resume their seat. While speaking on a subject, members shall confine themselves to the question under debate, avoiding all personalities personal comments and indecorous language and actions.

SECTION 4. No member of the Council will be permitted to speak more than once on a subject, until all members who desire to speak on the subject have done so and then not unless and until recognized by the presiding officer.

SECTION 5. Any person who is not a member of the Council shall not be admitted to any meeting during a session except by invitation of the presiding officer, approved by a majority vote of the members present.

SECTION 6. All postal mail notices to members shall be sent to by postal mail be sent by mail the address recorded with the C.I.I. Headquarters and the mailing of notices to those addresses shall be regarded as notice to the members, unless otherwise provided for. For electronic notices, transmittal to the electronic address by which the member is subscribed to the C.I.I. listserve, or to the electronic address recorded with the C.I.I. Headquarters shall be regarded as notice to the members. Unless otherwise specified in the Bylaws or the Rules & Regulations, electronic notice shall be deemed sufficient.

### **ARTICLE XIV - INTERPRETATION**

SECTION 1. In all Bylaws and Rules & Regulations of the Council, unless the context otherwise requires, the singular shall include the plural and the plural the singular, the word "persons" shall include firms and corporations and the masculine shall include the feminine. Whenever reference is made in this Bylaw to any statute or section thereof, such reference shall be deemed to

extend and apply to any amendment or re-enactment of such statute or section, as the case may be.

SECTION 2. All prior Bylaws, resolutions, and proceedings of the Council inconsistent herewith are hereby amended, modified and revised in order to give effect to this Bylaw.

Adopted by the Council, June 2001

MSA Award Added August 2001

Election of Secretary & Treasurer, April 2003 **Constitution**