



# The International Councillor

Newsletter of the Council of International Investigators



June 2006

Issue 3



1st Vice President  
Bert Falbaum

## Our 2006 AGM Co-Host, Bert Falbaum

The 1st Vice President of the Council of International Investigators and a member of CII since 1988, Bertram S. Falbaum, "Bert", will be co-hosting the 2006 Annual General Meeting in Singapore with Ponno Kalastree of Singapore, and is our incoming CII President.

Bert is President of Investigative Dynamics, Inc., which he founded in 1989. Having completed his military service as an electronics technician in the US Air Force, Bert traces his professional career back to 1958 in Beverly Hills, California when he worked as a private investigator for one year. In 1961, after completed degrees in Police Science and Police Science and Administration, he returned to his chosen profession, but this time with the federal government. His entry into the public sector was with the Customs Service as a Customs Enforcement Officer,

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## CII Annual General Meeting 2006 August 14-19, Singapore

*Crossing International Borders: The Global Convergence of Security & Investigations*  
Event Registration Form

Registration Fees:      Members: \$US 385.00      Spouse/Guest: \$US 350.00      \*We will contact you regarding payment and event scheduling.

### Registration Fee Includes:

- ◆ Welcome Reception
- ◆ 2 Day Conference or Spouse Program
- ◆ AGM Meeting or Spouse Program
- ◆ Professional Networking Tour and Banquet Dinner

Orchard Inn Hotel: Contact Ms. Portia Low, Sales Manager, Tel: (65)6734-7766 Fax: (65) 6733-5482  
E-mail: [Portia.low@orchardHotel.com.sg](mailto:Portia.low@orchardHotel.com.sg)

Name:

# of Guests:

Lodging Y  N

E-mail:

Fax #:

Phone #:

Your hosts: Bert Falbaum and Kalastree & Associates Pte Ltd

E-mail: [kalastree@mainguard-intl.com.sg](mailto:kalastree@mainguard-intl.com.sg)

# The Global Convergence of Security and Investigations



**Orchard Hotel, Singapore**

*“Crossing International Boundaries: The Global Convergence of Security and Investigations”* is the theme for the Council of International Investigators 2006 Annual General Meeting scheduled to be held from August 14<sup>th</sup> to 19<sup>th</sup> in Singapore. Set as an exchange of ideas between senior decision makers, investigators and risk management professionals from Asia and the West this year’s conference will be held at the Orchard Hotel Singapore. The Orchard Hotel is located in the heart of Singapore’s premier entertainment, dining and shopping experience, Orchard Road.

Many exciting events have been planned around the two day conference scheduled for the 17<sup>th</sup> and 18<sup>th</sup> of August. Beginning with a day of golf on Monday, the 14<sup>th</sup>, the Welcome Reception on Tuesday, the 15<sup>th</sup> and ending with a trip to the island of Sentosa on the 19<sup>th</sup> attendees will have various opportunities to network, rekindle friendships, exchange ideas and experience the beauty and heritage of Singapore.

Spouses and guests will have the opportunity to explore Singapore’s culture in the various “ethnic towns”, shop in the



**AGM 2006**  
**Singapore**

heartlands, or partake in the ultimate pampering experience of the local spas.

Hosted by Ponno Kalastree, of Kalastree & Associates PTE LTD and the Security Association Singapore this year’s Annual Meeting promises to be one of the most memorable yet!



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# Understanding emerging markets in Asia

By Deepak Kumar Saxena



The 52<sup>nd</sup> Conference of CII is going to be held in Singapore, which came into existence in the 1300AD. It is one of the countries of the Asian sub-continent and is comprised of more than 4 billion people (i.e. sharing 61% of global population) living next to a continent of ancient civilizations, like Chinese, Indus valley (India), Ainu (Japan), Korea and Mesopotamia;

while Singapore is a country comprised of Malay (Malaysian) and Chinese, by and large.

In other words, Singapore is one of the most disciplined countries, a society strictly governed by rules and regulations, while the rest of non-oil Asia is a hub of terrorism, poor law and order, ethnic and communal clashes, a source of money laundering and drug trafficking etc. Singapore is one of the most beautiful and well planned countries based on modern amenities while, apart from the oil countries and major cities, everything else is a hodgepodge, which is due to the explosion of population. But this population growth is bread and butter to the security and detective agencies and it will give them substantial wealth in the coming years.

The most important emerging markets are China and India, while India is going to overtake China in terms of population growth by 2010. Both countries are eager to develop their economic infrastructure and the entire globe is rushing towards these two countries because they think these countries are a major consumer market. In terms of GDP growth both the countries are hanging around 8% to 9%.

In China, the investigation business is illegal but in the name of business investigation it is legal and

that is mainly based on market research. There are no rules & regulation for the agencies. As per some reports, annual turnover of this business is US\$13,30,00,000 and it is increasing at the rate of 20% per year, while in India there are 15,000 security agencies and they have employed more than 5 million guards for security purpose. In recent years the government has introduced a bill and security agencies are guided by these rules, while for investigation business a similar bill is coming very soon. In Singapore there are about 200 agencies who employing 20,000 guards. Everywhere in Asia, the agencies use the words "investigation" and "detection", but they are mainly doing the

business of security guards.

For security agencies rules and regulations exist in different shapes in every country, but such rules and regulations are quite flexible or governed by company laws, rules & regulations.

In Asian countries there are no fixed laws for privacy except in Singapore and oil rich nations. Although privacy acts exist in different they are mostly ineffective and people, as well as state machineries, are more concerned with their bread and butter compared to

compliance of privacy acts.

Due to the lack of privacy acts, investigating agencies can work freely and the investigation business will have a fantastic global market in such countries because foreign investment companies and other agencies will require information about local companies while local companies will require information about investment companies.

Investment from any corner of the world is welcomed by the Asians including Guard business because it will give employment opportunities to their people and help the poor countries to share the burden of policing.



## Card of Thanks

My thanks for the donations made to the St John Alderney Ambulance Service in memory of Gerd and my thanks to all those who sent personal condolences to me and tributes to Gerd.

*Sincerely, Ruth.*

## In the News

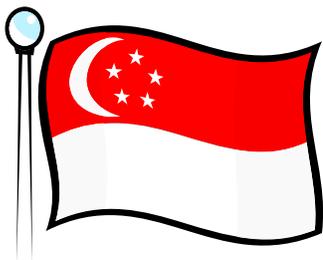
One of our newest members, Warren Sonne, was recently interviewed on the Fox News Channel concerning the Boston Coed who was killed in New York City. If you are interested in seeing his interview, it can be viewed on his website <http://www.thenypi.com/>.

## Recognizing Singapore's face to the world



Contributed by Trish Dehmel

For 140 years (1819-1959), the Union Jack flew over Singapore. Then, on 3 December 1959, the National Flag, an important symbol of independence, was unveiled at the installation of the new Head of State, the Yang di-Pertuan Negara. Also unveiled that day were the State Crest and the National Anthem. The flag was conceived and created by a committee headed by the then Deputy Prime Minister, Dr Toh Chin Chye.



The Flag consists of two horizontal halves, red above white. Red symbolizes universal brotherhood and equality of men; white, purity and virtue. In the upper left corner, a white crescent moon and five white stars form a circle. The crescent moon represents a young nation on the rise. The five stars stand for Singapore's ideals of democracy, peace, progress, justice and equality.

The National Coat of Arms or State Crest consists of a shield with a white crescent moon and five white stars against a red background. Red symbolizes universal brotherhood and equality of men; white, purity and virtue.



The five stars represent the ideals of democracy, peace, progress, justice and equality. Supporting the shield are a lion on the left and a tiger on the right. The lion represents Singapore and the tiger represents the island's historical links with Malaysia. Below the shield is a banner inscribed with the Republic's motto, "Majulah Singapura" ("Onward Singapore"). The Coat of Arms or State Crest was unveiled on 3 December 1959 together with the National Flag and the National Anthem at the installation of the Yang di-Pertuan Negara at the City Hall steps.

### The Lion Symbol

According to 13th century Malay Annals, a prince spotted a creature he believed was a lion and named the island "Singa-pura" (Lion City)--from which Singapore was derived.

The Lion Symbol was launched in 1986 as an alternative national symbol. The National Flag and State Crest have legal restrictions that prevent their commercial use. The Lion Symbol was chosen as a logo that best captures the characteristics of Singapore's reputation as the Lion City.

The lion symbolizes courage, strength and excellence. It is in red against a white background--the colours of the National Flag. The five partings of the lion's mane represent the five ideals embodied in the five stars of the flag--democracy, peace, progress, justice and equality. The lion's purposeful bearing symbolizes the nation's single-minded resolve to face challenges and overcome obstacles.

## CII Senior Member Allan Ferguson dies in La Jolla

Bill Eden reports that our friend and Senior member Al Ferguson passed away 1 June 2006 at the VA Hospital in La Jolla. Al had been hospitalized there for the past year while being treated for several various ailments. CII President Jay Groob remarked, "Having had the pleasure of working with Al, (most frequently he worked for me on one of the Boston Priest Abuse cases), I too am very sorry to learn of his passing. Al was a very good man and a professional investigator. He will be missed. This has truly been a very long year for all of us at CII. We send our condolences to his family."

Bill Elliott noted, "Both Debbie and I were saddened to learn of the passing of Allan Ferguson. Allan was always one of the mediating voices in the Council. While Scorpion35@juno.com will forever more be quiet on the Council listserve I am sure that he is providing guidance from above. May he rest in peace."

Marlene Ponder wrote, "Al was one of the true professionals in our industry and a very nice person. I hadn't been in touch with Al for several years, but I have many fond memories of him, including the time we gave a seminar together at a CALI Conference, I believe in Ventura many years ago."

On learning of Allan's death Derek Nally said, "I have just learned of the death

of my old and trusted friend Al Ferguson. We had many a friendly joust in our day. Farewell Allan and may you rest in peace."

### Condolences

**Bruce Wilson, father of Daniel J. Wilson, 1984 President and Chairman of the Board of CII, passed away in April.**

**Our thoughts are with Bruce during this difficult time. Bruce can be reached at: 2769 Fitzgerald Rd., Simi Valley, California 93065 USA**

**(805) 522-6027**

**E-Mail: [bwilson@simivalley.org](mailto:bwilson@simivalley.org)**

## Is he a sugar-coated bitter pill ?

# Pre-employment verifications a necessity in post 911 world

By Pawanjit Ahluwalia

Some people may not subscribe to the prescient view of employees' thorough scrutiny prior to hiring, thereby choosing to scramble the process of appointment and rubbing aside the suggested course of precautions. In India pre-employment screening had never been taken seriously by Indian businesses. It was viewed as an expense. However, the fact remains that the employee rated high at the time of interview does not suddenly turn to Mephistopheles, Bashi-bazouk or avaricious. He was already a cantankerous, unreliable and incriminating individual attired well in the cloak of gentleman and clandestinely pursuing his illegitimate designs. It was truly the employer who lacked clairvoyance.

In Bangalore ( South India), recently, one David Edmundson, CEO of US consumer electronics retail giant Radio Shack was eased out when on scrutiny, his resume was found with embellished, exaggerated and false entries pertaining to his academic pursuits. Faking resumes is not uncommon in the Indian IT industry also. There have been instances where unscrupulous independent Human Resource (HR) outfits act in collusion with job seekers to improve their candidates' chances of getting absorbed with renowned and established corporate groups and subsequently grabbing a good chunk of commission.

One of India's corporate giant, WIPRO, filed police complaints against a few such HR outfits, besides sacking the services of employees who had fudged their resumes. The action taken by WIPRO has largely been appreciated by the contemporary corporate houses.

Screening of lower level personnel is too of vital importance. Just last month a senior manager at Deutsche Bank had hired one Ganesh Mukhiya as security guard at his residence at Greater Kailash-II, New Delhi, for nine months. One fine morning, the employer asked his sentry to fill-up a police verification form. This scared him off, because he had a criminal background and had undergone a six-month jail term for a burglary. Mukhiya, who had already made the duplicate keys of the almirah, where the valuables were kept, now planned to eliminate the couple. Luckily, his conspirator Ravi discussed the plan with a

common friend, not knowing that he was a police informer. The friend called up DCP (South) and Mukhiya was arrested. The drawback in this case was that the antecedents of the security guard were not checked before the appointment.

In the year 2004, in Delhi alone as many as 18 senior citizens were murdered by domestic helps, whose verification had not been done. Prominent among them was the case of Lt. General (Retd) Harnam Singh Seth and wife Roop, who were killed by the domestic help. If we see the other side of the coin, we will find that police being overstretched with their other commitments and VIP duties, are lax in carrying out the antecedents verification on time. ( In India the Police insist on getting house help

verified through them only). In the first half of the year 2004, as many as 5753 house help verification forms were sent, out of which verification for only 502 had come back. Back ground check by private investigators is the answer to such a lapse. The recently passed, 'The Private Security Agencies (Regulation) Act, 2005, has mandatory condition inserted in it for pre-employment screening of all security personnel to be engaged by the agencies. The time bound limit of 90 days for accomplishing the job has also been mentioned therein.

In one way, the employer is too liable for a wrong done by the employee if no verification was done prior to engagement. In the field of criminology, the study of 'role of

victim' is a recent phenomenon. Mendelssohn seems to be the pioneer to identify the concept of 'role of victim in crime', which he termed as 'penal-couple'. Thenceforth, many other scholars undertook the analysis of this relationship. Professor Vom Hentig's study on this subject, "The Criminal and His Victim" was published in 1948. In his study, "The Victim Offender Relationship", published in April 1968, Schutz writes that the concept of aggressor is not always guilty, and the victim can often be regarded as stimulating agent to the receptive criminal behaviour of offender. It is therefore crystal clear that the employers not choosing to go for pre-employment screening are the complementary partners to crime, if committed by the employees during the course of employment.



# INDIA - A report on the current state of security

By *Pawanjit S. Ahluwalia, C.I.I.*

Our intelligence is based on factual information derived from on-the-ground intelligence sources throughout India.

## An Overview

In the last six months, the overall law and order situation in the country continues to remain by and large satisfactory. However, the internal security situation in certain parts of the country was characterized by varied and highlighted challenges, posed by foreign sponsored, mercenary backed terrorism of diabolical nature in Jammu and Kashmir, insurgency driven, sometimes, ethnic related violence in the North East, ideology clad Left Wing extremism in Andhra Pradesh, Bihar, Orissa, Chatisgargh, Madhya Pradesh, and Maharashtra. There



The flag of India

were instances of private armies in Bihar unleashing caste wars leading to cold blooded killings of innocents, with a view to abet communal passions. India has been

facing a scourge of terrorism for the last two decades. Unfortunately, in the name of religion, terrorism is spreading its tentacles in the form of "Jihad". Recently, terrorism exported from the Kashmir Valley to the major metropolis of Delhi and Bombay. However, with the increased pressure and effectiveness of government security forces and neutralization of a number of terrorists, the area of interest of these elements is gradually shifting to the Southern and Central States of India.

The greatest threat to India's internal security is from the rise of extremism propagated by agencies across its borders. The spread of Kashmir militancy into the hinterland, the Naxalite movement, the demographic morphing of India's North East States by illegal immigrants from Bangladesh, an increase in organized crime, the deterioration of the urban police force, and estrangement of the public from the police due to police cruelties are issues which impact the internal security situation. The attack on the Indian Institute of Science, Bangalore and the bomb blasts in Mumbai's Gateway of India, in Delhi markets, religious sites in Varanasi and the public transport system, highlights the prevailing internal secu-

rity situation in the country.

## Threats Perceived

Major internal security threats that are likely to affect foreign visitors are:

- Militancy in Jammu and Kashmir.
- Terrorism in Jammu and Kashmir and the hinterland.
- Insurgency and Militancy in the North East.
- Naxalite Movement in the South and East Central India.

- Communal disorders.
- Crimes against foreigners.

In the immediate future, the threats are likely to manifest in any of the following manners:

- Bomb attacks in high-density commercial areas to inflict maximum casualties and create fear psychosis;
- The terrorist groups are likely to shift their focus to the southern/central states where security consciousness is low and where they have a Muslim population base.
- Target high-value individuals.
- Target religious sites to create communal disturbances.
- Target public transport systems to exploit their vulnerability and highlight the ineffectiveness of the law agencies and the government.
- Operations by Naxalite groups and insurgents in the Southern/ East Central States.
- Communal disturbances.
- Crimes

## Areas of Instability

### Jammu and Kashmir - Militancy and Terrorism

The overall security scenario in Jammu and Kashmir has shown improvement. Militant activities in the valley have reduced considerably due to the proactive security forces, reduced local support, and stabilized political situation. The security forces have remained vigilant and in high-alert, keeping a close watch on the situation and launching sustained operations against the terrorists and subversive elements. However, in some security operations collateral damage and death of innocent civilians has taken place. These incidents have been rigorously exploited by encouraging local population to stage rallies in support of the subversive elements.

Because of the heightened security vigilance, high rate of attrition and reduced local support in the Kashmir Valley, some terrorist groups have become active in the hinterland of India. In recent years, there have been random terrorist bombing incidents in various parts of India. These bomb blasts have occurred on public transportation such as trains and buses, in markets and religious sites, resulting in the

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# INDIA - A report on the current state of security

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death or injuries of innocent people. Bomb blasts in Delhi, Mumbai, and Varanasi, and the killing of a scientist in Bangalore are some of the recent incidents.

What is worth noting is that foreigners were not specifically targeted or injured in any of these attacks. However, in the past foreigners have been killed or injured during acts of indiscriminate violence. Anti-western terrorist groups, some of which are on the U.S. government's list of foreign terrorists, are believed to be active in India. Therefore, U.S. citizens should exercise particular vigilance when visiting tourist sites or attending public events throughout India, in particular the region of Kashmir, where they are particularly visible, vulnerable, and definitely at risk.

## North East States - Insurgency/ Militancy

India inherited militancy in Nagaland at the time of Independence. The tentacles of militancy spread to the other states in the North East at different times in the post independence period. Over the years, to a large extent, the Government has been able to control the insurgency in this region. However, in certain areas, acts of militancy keep occurring. Incidents of extortion, kidnapping, and murders keep taking place occasionally. These are, however, directed towards the law agencies, government officials, and wealthy section of the society.

Sporadic incidents of violence by ethnic insurgent groups, including bombing of buses and trains, have occurred in the recent past in parts of Assam, Manipur, Nagaland, Tripura, and Meghalaya. While U.S. citizens/ foreigners have not been targeted specifically, visitors are cautioned not to travel to these regions, and if they have to do so then they should restrict their travel to cities only.

## Southern and Central States - Naxalite Movement

After terrorism and militancy in Jammu and Kashmir and insurgency in the North East States, the next great challenge to peace and security in the country is the Naxalite movement. Andhra Pradesh, Bihar, West Bengal, Chattisgarh, Madhya Pradesh, to an extent Maharashtra, and Orissa are affected by this movement. This left-wing extremist violence is directed at the Government and the wealthy upper class landlords. It flourishes in the remote tribal areas of these states, where the law and order agencies cannot effectively reach out. These extremist groups have been able to exploit populist and emotive issues in some states to destabilize the Indian polity. The tension generated by ethnic, linguistic, and

parochial groups impinges on the internal security and poses problems. Activities by these groups are likely to continue in the near future especially in Andhra Pradesh and Chattisgarh. Naxalites do not pose a direct threat to foreigners at this point of time; however, collateral damage cannot be ruled out. Visit to these remote areas should be avoided.

## Communal Disturbances

The religious fabric of the country is woven by peaceful co-existence, accommodation, and reciprocal respect. For centuries, this fabric has withstood vicious onslaughts by the forces of fanaticism, hatred, and intolerance. However, anti-social elements with vested interests occasionally exploit small communal incidents to incite the communal atmosphere.

These incidents, at a point of time, get politicized and flare into major communal. The most typical form of communal disorder or riot based on ethnic cleavages is between Hindus and Muslims, although some of these disturbances also occur between different castes or linguistic groups.

Most of the incidents start as neighborhood squabbles of little significance, but rapidly escalate into mob looting and burning, street fighting, and violent intervention by the police or paramilitary forces. There is no set pattern or frequency and they are, therefore, difficult to predict. Continuous monitoring is required to identify the region and timing where communal disturbances can occur.

Foreigners may become targets of communal disturbances, if they are involved in any missionary activity. It would be advisable for foreigners traveling to India to ascertain and identify regions where there is a likelihood of communal disturbances and avoid traveling in that region.

## Threats and Crime in Metropolitan Cities Hyderabad, Bangalore, and Chennai

The southern region has been comparatively peaceful compared to the other parts of the country. However, this situation is gradually changing, which is reflected in the recent terrorist attack resulting in the killing of a scientist in Bangalore. Police action in other parts of the country and arrests of terror operatives and seizure of documents, has clearly established the growing influence and interest of terrorist groups in this region especially in the cities of Hyderabad and Bangalore. Fortunately,



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Chennai has not experienced terrorist activities.

The terrorist activities in Bangalore and Hyderabad would be directed at the IT industry, where they would have the maximum impact. Symbols of economic progress in Bangalore and Hyderabad, the two tech cities, have hit the radar of terrorists as targets that will cause damage to the economy of the country and draw attention to their cause. The possibility of terrorist activities in the future cannot be ruled out; however, the frequency and intensity of these activities in the immediate future are likely to be low.

The terrorists fortunately have as yet not targeted Chennai. Crimes are prevalent though fewer than in Bangalore and Hyderabad. The sentiments and sensibilities of Muslims in India have been greatly hurt by the Danish and Norwegian papers carrying the caricatures of their Prophet. There have been agitations in a number of cities; however, the cities in the South, as of now, have not experienced these agitations.

Bangalore, Hyderabad, and Chennai continue to be reasonably safe places for living and conducting business. The people are friendly and helpful and even today it is reasonably

safe to move around the city late at night. There have been no major crimes against foreigners and it would be reasonable to assume that the terrorists are not targeting foreigners. However, collateral damage cannot be ruled out.

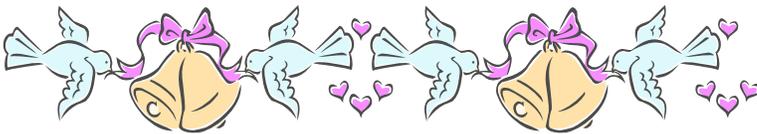
Petty crimes cannot be ruled out; therefore, it would be prudent to take precautions as one would when visiting a new place. Crime analysis given is relevant to all the metropolitan cities in India.

### Mumbai

Mumbai is a sprawling city and is considered the hub of commercial activity. Commerce determined Mumbai's history. As India's largest trading port, it has long served as the country's gateway: open and welcoming to foreigners, and offering the promise of opportunity to fortune seekers from the country's hinterland.

Today, Mumbai has the buzz of a city on the move. It is the base for India's leading companies, such as Reliance, Tata, Air India, and its largest banks and financial institutions, such as ICICI Bank, Housing Development and Finance Corporation and Life Insurance Corporation. The Bombay Stock Exchange, which moved from open-outcry to computerized trading in 1995, and the National Stock Exchange, which opened in 1994 are India's top trading floors. The textile industry has given way to the new economy of financial services, call centers and other business process outsourcing services, information technology, and entertainment companies. A construction boom has created a new skyline of shopping malls, hotels, and office complexes. As the city's cheerleaders position Mumbai for Asian-tiger status, three concerns override all others: the groaning infrastructure, lack of space, and a chronic housing shortage.

Mumbai is a cosmopolitan city with a fairly large Muslim population. High level of commercialization, large volumes of financial transactions, the teeming population, sprawling slums, and the flourishing crime mafia provide excellent opportunities to terrorists and criminals. Mumbai has had, in the recent past, a series of bomb blasts and intelligence reports indicate that the terrorists are still fairly active in the city though dormant at present. Terrorists have not targeted foreigners specifically; however, there is always a risk of collateral damage. Mumbai is a reasonably safe city to visit and conduct business, but foreign visitors are more vulnerable to criminal activity and necessary precautions as given out in the recommendations need to be observed.



**Robert and Eva Kresson (member and spouse) attended a recent CII social evening in Washington, DC . Eva Szigethy, MD, Ph.D. and CII member, Robert "Bob" Kresson of Empire Investigations in Pittsburgh, PA. were married in February this year. We congratulate them and send them our best wishes.**

# Surveillance Through Residential Windows

*Milner v. Manufacturers Life Insurance*, [2005] B.C.J. No. 2632 (B.C.S.C.)

By Norman Groot

Cynthia Louise Milner claimed to be entitled to long-term disability benefits pursuant to a policy of insurance with Manulife Financial Insurance Company. Manulife claimed that Milner was not totally disabled within the meaning of the policy and thus is not entitled to benefits.

The principal issue was the credibility of Milner with respect to her subjective complaints that have led to a diagnosis of her suffering from chronic fatigue syndrome. Milner also claimed for aggravated damages for breach of her privacy and that of her family as a result of video surveillance carried out at the request of Manulife.

Milner is 45 years of age, married with three children. Her employment history was in nursing. Her husband, David and two oldest children, Andrea aged 18 and Ryan aged 16, gave evidence on her behalf. They testified about the degree to which the fatigue they say she constantly displays has impacted upon and changed her life as well as theirs.

Milner had a physically active lifestyle with sporadic involvement in a number of sports such as cycling, swimming, cross-country skiing, wind surfing, scuba diving and ice-skating. Since November 2001, she has done very little of anything in the way of physical activity and, she says, she has little energy to do household chores, cooking or working outside the home.

Manulife caused surveillance to be carried out on Milner and, incidentally, on members of her family in November 2002, April and October 2003 and April 2005. As an important pre-requisite to this surveillance, Milner has undergone a number of tests at the requests both of her own counsel and those of Manulife – tests which diagnose a causation for Milner's symptoms.

Evidence from four private investigators called by Manulife and certain video surveillance put into evidence by Manulife described and illustrated Milner moving in an apparently normal fashion during such activities as walking, standing and sitting at sporting events involving her children, holding the child of a friend, and shopping.

Not long before the commencement of this trial, Milner, together with her daughter, Andrea, got an opportunity to view the video surveillance taken on behalf of Manulife. One portion of the video, taken with a camera using a magnifying zoom lens, was of Milner, Andrea and a friend of Andrea in the dining room of the Milner home with the curtains open and a light on in the room.

At one point Andrea Milner is seen to take off her upper outer garment apparently in the process of trying on a Halloween costume. Milner claims to have been very shocked at this intrusion of the privacy of her and her family, particularly the photograph of her daughter. She stated that she was also upset by some other video footage taken of her sons playing soccer in the street when she was not present.

The Court's analysis of Milner's complaint is summarized as follows: Section 1 of the *Privacy Act*, R.S.B.C. 1996, c. 373, states: It is a tort, actionable without proof of damage, for a person, wilfully and without a claim of right, to violate the privacy of another.

Whether a person's privacy has been violated is dependent upon the particular facts of each case (see *Davis v. McArthur*, [1971] 2 W.W.R. 142 (B.C.C.A.)). In *Getejanc v. Brentwood*

*College Assn.* (2001), 6 C.C.L.T. (3d) 261, 2001 BCSC 822 at para. 16, the Court held that the analysis requires two questions to be answered: was the plaintiff entitled to privacy and, if so, did the defendant breach the plaintiff's privacy?

The location of the subject of the surveillance is the key to determining whether a person's expectation of privacy is reasonable. Therefore, a person's expectation of privacy would be highest in one's home. As stated in *Brentwood College* at para.18, [a] person's entitlement to privacy is highest where the expectation of privacy would be greatest: see *Silber v. British Columbia Television Broadcasting System Ltd.* (1985), 25 D.L.R. (4th) 345 (B.C.S.C.).

Conversely, there is no reasonable expectation of privacy for actions taking place in public. In *Druken v. R.G. Fewer and Associates Inc.* (1998), 171 Nfld. & P.E.I.R. 312, 58 C.R.R. (2d) 106, the Newfoundland court considered legislation very similar to British Columbia's when determining whether the videotape surveillance of the plaintiff in public constituted a violation of her privacy. The Court held that there is no reasonable expectation to privacy in public.

Even if actions take place on private property, the circumstances may suggest that there is not a reasonable expectation of privacy. This is what happened in *Silber v. British Columbia Television*. In that case, a news crew taped an altercation between the plaintiff and the reporter on the private parking lot of the plaintiff. Although the plaintiff was on private property, it was in full view of any passersby and therefore there was no reasonable expectation of privacy.

These principles are just general guidelines; there remains a high degree of discretion for a trial judge to determine what is a



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## News from Region 5

By Bill Lowrance

My name is Bill Lowrance, new Regional Director (RD), Region 5. Last November my good friend, Nancy Barber of San Francisco, asked me to take on the roll of RD, Region 5 (Southeast), CII. I accepted. How can one say “no” to Nancy? Well, you cannot. I proudly accepted, and I set about learning what the role of a CII Regional Director is. Did you know there are 25 RDs covering geographic areas from Canada to New Zealand? RDs are appointed for two year terms and we have varied duties including writing reports about membership and activities in the region. In 2004, Robert Dudash, RD Region 7 (Central), Omaha, NE, wrote a great article about the duties of Regional Directors. The article is at <http://www.cii2.org/members/articles/0001.shtml>. This article should be required reading for new RDs. One of the primary duties of the RD is to recruit new members and to vet membership applications. In addition, RDs should keep up with legislation in the various states that may affect our profession.

Region 5 consists of eleven states.: Alabama, Delaware, District of Columbia, Florida, Georgia, Kentucky, Maryland, North Carolina, South Carolina, Virginia and West Virginia.

CII membership in Region 5 is as follows: Alabama – 0; Delaware - 0; District of Columbia – 2; Florida – 11; Georgia – 1; Kentucky – 0; Maryland – 4; North Carolina – 1; South Carolina – 1; Virginia – 11; and West Virginia – 0

As you can see, we need serious recruiting efforts in Alabama, Delaware, Kentucky and West Virginia. Region 5 is fortunate to have welcomed four new members in the last few months. Since last November 2005, **Benjamin Dinolt** (DC), **Ron Troutman** (MD), **Tanya DeGenova** (VA) and **Bill Marshall** (VA) joined our membership.

New member **Tanya DeGenova** attended the Conference in Portugal last year and immediately applied for membership in CII. She enjoyed meeting investigators from all over the world, and especially enjoyed the meeting place. She became a member last fall and during that time moved her company from Boston to VA. During a recent trip to Hong Kong, she did “the right thing” and recruited a new member who agreed, with Jay Groob’s approval, to moderate the intellectual property segment at the AGM in Singapore. Region 5 needs more recruiters like Tanya. Congratulations, Tanya, and thank you.

### Georgia

By Tim Huhn, Lawrenceville, GA

There has been a wave of real estate acquisitions through misrepresentations and/or false information throughout Georgia and metro Atlanta. Fannie Mae reported in 2005 that several areas in Atlanta ranked in the

top ten for mortgage fraud. Mortgage fraud is a national, major problem for lenders and investors, and the losses due to mortgage fraud are estimated to be in the billions. Not only is this a problem in the United States, but it is also a growing problem in Europe. Most mortgage frauds present challenges in identifying the individuals in a case. Usually there are several conspirators who put together the fraud. Finding and sifting through all the real estate paperwork can be daunting. Law enforcement has placed significant effort in the Atlanta area to address this problem, but their resources are limited.

As a new member of less than 1 year I have found the CII to be a good source of competent and professional investigators on a worldwide basis. Every member who did work for our firm was ethical and efficient in the matters handled.

A new law in Georgia provides that anyone who engages in private detective business without property licensing is committing a felony and subject to fine and/or imprisonment—not less than two years or more than five and not less than \$500 nor more than \$1000 fine. Georgia is committed to enforcing higher standards for the private investigation business.

### District of Columbia

Most issues affecting our profession roll out of Congress on a daily basis. Luckily, NCISS and others follow the issues and respond when Congress needs information. Lately, the acquisition of cell phone records by “information brokers” has stirred public interest. Verizon and other telephone carriers have sued some “information brokers” to stop the “pretexting practice” of obtaining someone’s cell phone records. Congress came up with H.R. 4943, the Prevention of Fraudulent Access to Phone Records Act and H.R. 4709, the Telephone Records and Privacy Protection Act of 2006 (*HR 4709*). *So far nothing has been finalized. The Senate has similar legislation.* The U.S. House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations is having a hearing on June 21, 2006 concerning Internet data brokers obtaining private records. You can watch this hearing over the Web, 10 a.m. EST--[Committee on Energy and Commerce](#).

### Delaware

An interesting case was heard recently by the U.S. Circuit Court of Appeals (3<sup>rd</sup> Circuit) on Delaware's law which refuses to allow out-of-state residents access to public documents. Delaware’s Freedom of Information Act (FOIA) requires Delaware residency to obtain public documents under the FOIA. Last year the U.S. District

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## News from Region 5

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Court in Delaware found that the restriction was unconstitutional. This case will be precedent-setting since there is almost no case law on the subject. There are 11 other states that have similar legislation.

### Maryland

The Maryland Court of Appeals has decided that most identifying information about victims and witnesses, including their names, will not be made available online in certain court cases.

The new rule addresses the concerns that access to personal information on the Internet could be harmful to victims and witnesses.

The courts have been struggling with the issue for years as more court records are available online. Laws were introduced in Maryland this year that would have amended the Public Information Act to block remote access to victim and witness information. The court, by amending the Court Rules, sidetracked the legislation.

### South Carolina

Walter Atwood, Columbia, SC, advises he was in DC recently and visited with Joan Beach. Walter's wife, Betty, has been ill since January and is recovering. Walter will miss the AGM in Singapore, but will be with members in spirit. Walter is going to the Michigan State chapter meeting of the National Association Civilian Conservation Corps Alumni. He is President of the association, and the major annual meeting will be in Dallas, Texas, September 26-30, 2006.

### Virginia

Two years ago the Virginia Supreme Court formed a Privacy Task Force (Committee) to consider the public's access to all Virginia court records. The Committee wants to revise court rules to provide a balance between public access to Virginia court records and the privacy of information in the records. The Committee has prepared four drafts of rules for public access to court records. The fourth draft was considered at a Committee meeting May 25, 2006. The committee will recommend changes to Virginia's court rules to define and to limit public access to court records.

The Committee does not have open, public meetings but representatives from the Reporters Committee for Freedom of the Press and the Virginia Coalition for Open Government (VCOG) have attended past meetings and have submitted comments to proposed

draft rules.

Under the proposed rules personal information such as social security numbers, dates of birth, information on children and financial information would be restricted.

**Joan Beach**, Fairfax, VA, reported that CII members, guests and friends gathered at the Old Ebbitt Grill in Washington, D.C. on March 14, 2006 to honor visiting former CII Chairman Chris Brogan of London, England. CII members included Joan M. Beach, CII Chairman, John Sexton and Tanya DeGenova of Virginia; Larry Ross and Benjamin Dinolt of Washington, D.C., recent new members William "Bill" Marshall of Virginia and Ron Troutman of Maryland, honeymooners Robert "Bob" and Eva Kresson of Pennsylvania, Jay Groob, CII President of Massachusetts, guests Ed and Sue Leary, Mary Selley, Sharon Spates of Virginia, Samuel Blackstone of Maryland.

Joan's grandson, L. Nicholas Burt, just completed his Virginia Private investigator's coursework and will be employed full time this summer as an investigator in Joan's firm. He will continue his college education in the fall. Many may remember Nick from the 50th AGM held in Alexandria.

Deborah Aylward, Falls Church, VA, is bidding Virginia a fond farewell and shifting her professional focus to the Live-free or Die State of New Hampshire. Newly licensed and open for business in the Granite State, Deborah is an active member of the New Hampshire League of Investigators.



**L to R:** CII President Jay Groob, Boston, Larry Ross, D.C., and Chris Brogan, former Chairman/President, London at a recent CII gathering in Virginia.

## CII—New Applicants

**Jungnam Chi**  
Providers Korea  
Seoul, , Korea

**Kunwar Singh**  
Lancers Network Limited  
New Delhi, Delhi, India

**David Wasser**  
The Wasser Agency, Inc.  
Miami, FL, USA

**David Williams**  
DCW & Associates  
Huntington Beach, CA, USA



**New CII member Jim Carino and Robert Dudash, listen intently at the Calgary Intelnet Meeting. Check out Robert's greetings from Nebraska and his new "wheels" on page 15.**

## CII—New Members

**Brianna Duffy Lane, A.S.I.I.**  
Per Mar Security  
Davenport, IA USA  
563-326-6292

**D. Jayne McElfresh, C.I.I.**  
JMC Investigations, LLC  
Phoenix, AZ USA  
602-840-7770

**Kevin Fucich, C.I.I.**  
Kevin P. Fucich, LLC  
New Orleans, LA USA  
504-616-8851

**Ronald Troutman, C.I.I.**  
R.P. Troutman & Associates, Inc.  
Baltimore, MD USA  
www.troutmanpi.com  
410-452-8864

**Sheila Ponnosamy, C.I.I.**  
Mainguard International (s) Pte Ltd  
Singapore,  
www.mainguard-intl.com.sg  
65-62965881

## News from Japan

*By Sumic Hiroshima CII Japan*

Investigative licenses were given to six companies in 1911 in Japan, and at first the licenses were only good for conducting business investigations. The Teikoku Private Detective Agency was established in 1916 and this year we celebrate 80 years in the business.

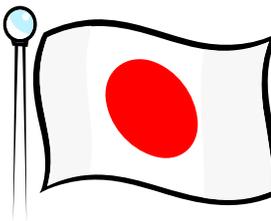
Because there were no legal restrictions of our industry for a long period, corrupt P1 investigators spread. However, regulation was brought forward again on May 19, 2006.

An association of the investigation industry was formed, and as a result, legislation was achieved through the participation of 520 companies. It seems that the investigation industry association in Japan also faces healthy development in the future. We are hoping that the improvement in awareness of the industry and social pressure will continue to help develop our industry. I served as the President of the Tokyo P1 association and the Vice President of another P1 association of a nationwide organization, and it appealed to the government office, especially to the National Police Agency.

The type of private investigations conducted in Japan is varied, however, due diligence, pre-employment screening, background investigations and surveillance are the major tasks undertaken by most PIs. Also we take a large variety of requests from private clients.

Restrictions are very severe on what types of information can be obtained on private individuals, and credit information, which seems to be easily obtained in the United States, cannot be easily acquired in Japan, though there is generally neither racial discrimination nor prejudice in Japan.

For the majority of people in Japan, most don't even recognize what is meant when referring to background or person references of credit checks. I will think that the difference of the information use of Japan and various foreign countries will have a big influence on the economic competition in the future.



## CII New Members

**William Marshall, C.I.I.**  
GlobalSource, LLC  
Fairfax, VA USA  
www.globalsourcellc.com  
703-273-4525

**William Wilkinson, C.I.I.**  
Wilkinson Investigations Ltd  
Calgary, Alberta CANADA  
www.investigationscalgary.com  
403-257-5703

## CII Pending

**Jasjit Ahluwalia**  
Premier Shield Security Services  
Dubia, United Arab Emirates

**Diarmuid Hurley**  
Sullivan Miranda, S.C.  
Metepc, Mex. Mexico

**Christopher Macolini**  
MIC, Inc. Worldwide  
Buenos Aires, Capital Federal Argentina

**Johnson OKEBUKOLA**  
Apt Chambers, Apt Security Consultancy LTD  
Ikeja, Lagos, NIGERIA

**Rituraj Sinha**  
Security & Intelligence Services (India) Ltd  
New Delhi, Delhi INDIA

**Panos Thomadakis**  
MTI Systems Ltd  
Athens, GREECE

**David Williams**  
DCW & Associates  
Huntington Beach, CA USA



### Intelnet “undercover”

Here is a recent photo of Nancy Poss-Hatchl, 1996 President and Chairwoman of CII and her husband Sidney in Calgary. It looks like she is enjoying herself!

### Late breaking news from our AGM Hosts

I trust you have received the CII AGM 2006 (14 to 19 August 2006, Orchard Hotel Singapore) brochures by now. Many of you will be making a decision around this time as to whether your schedule will permit you to attend this event. Registrations are trickling in but there is still room for confirmed participation to assist us in our planning.

I am now looking at our CII Album, selecting some photos of our past events. A nostalgic trip down memory lane for me - and I would urge that if you are undecided, make the decision and send us your registrations.

We are in the process of preparing the Event Handbook, which will include details of CII AGM as well as SECUREX-ASIA 2006. This will be circulated to all members (whether you attend or not), and to conference delegates from the Asian region. We will also send a copy to the overseas embassies in Singapore. Please send us your advertisement bookings as soon as possible so that we can assist you. If you're not attending the CII 2006 AGM, don't miss out on this promotional opportunity for your business.

We have a contracted production team assisting us and they can even develop your advertisement (at good rates) if necessary. As always, sponsorships will be helpful and are most welcome. All sponsorships, in cash or kind will be acknowledged in the event handbook and will also be announced at the conference. Corporate souvenirs can be put in the delegates kit.

It is an exciting time for us as we plan the CII 2006 AGM for you - we warmly welcome you to visit us in Singapore.

-Ponno Kalastree

# Surveillance Through Residential Windows

Continued from page 9

reasonable expectation of privacy in the circumstances. However, it should be noted that section 1(2) of British Columbia's *Privacy Act* requires a person's entitlement to privacy be weighed against the lawful interest of others.

## Was Milner's Privacy Violated?

Although her expectation of privacy may legitimately be higher while in her house, on the night in question the blinds were open and the lights were on. Therefore, anyone could have seen her helping her daughter while just passing by the house. Further, Milner ought to have reasonably known that Manulife was investigating her claim and that it was possible that video surveillance would be used.

Manulife had a lawful interest in conducting surveillance of Milner considering the nature of her claim and the credibility issues her conduct raised. Weighing this lawful interest against what Milner's reasonable expectation of privacy, Milner was not entitled to an expectation of privacy in the circumstances.

## Was the Privacy of Milner's Sons Violated?

The videotape of Milner's sons playing soccer was not a violation of their privacy. They were in a public place at the time and based on the authorities above, particularly *Silber* and *Druken*, they had no reasonable expectation of privacy in the circumstances.

Because I have found that the Milner boys were not entitled to an expectation of privacy when they were playing in the street, it is not necessary to determine if their privacy was violated. **Was the Privacy of Andrea Milner Violated?**

Andrea's entitlement to an expectation of privacy was higher than that of her mother. Although she was in full view of any passer-by, she was nonetheless inside her home while the video was being taken. As mentioned previously, *Brentwood College* suggests that the entitlement to privacy is highest when the expectation is greatest.

Unlike with regards to Milner, Manulife had no lawful interest in videotaping Andrea. Andrea was not the subject of the insurance investigation and therefore it is reasonable for her to expect that she would not be videotaped while in her home, particularly while in a state of partial undress.

Having concluded that Andrea was entitled to a higher degree of privacy than her mother, it must then be determined whether the actions of the private investigator violated her privacy. Section 1(1) requires the violation of privacy to be willful and without a claim of right. The actions of the private investigator were certainly willful as defined by Lambert J.A. in *Hollinsworth v. BCTV* (1998), 59 B.C.L.R. (3d) 121, [1999] 6 W.W.R.

54 (C.A.) as quoted in *Brentwood College*.

The private investigator should have known that continuing to videotape Andrea once she had removed her shirt was a violation of her privacy. This is particularly so considering that Milner left the room while Andrea was in a partial state of undress. When this occurred, the private investigator had no claim of right would give rise to an honest belief that he had a legal justification to continue filming Andrea.

The final consideration in determining if Andrea's privacy was violated is the nature, incidence and occasion of the investigator's conduct and the relationship between the parties. The nature of the surveillance in this case was clandestine and utilized a zoom lens. There was no relationship between the investigator and Andrea; the only relationship the investigator had in the circumstances was with Milner. Taking this into consideration, Andrea privacy was violated by the videotape surveillance.

## Damages

Although it has been found that Andrea's privacy was violated, damages can not be directly awarded to her because she is not a party to the action. In the event that such damages could be awarded, in these circumstances \$500 would have been an appropriate amount for the breach of Andrea's privacy.

## Case Comment

This is an important case, not only because it is the first case to rule directly on the practice of surveillance through residential windows from a public place, but also for its implications with respect to PIPEDA complaints. Currently there are complaints to the Office of the Privacy Commissioner dealing with the collection of images of third parties to a surveillance investigation in an insurance litigation context. If the OPC follows this decision as it has with respect to other matters *vis a vis Ferenczy ats MCI Medical Clinics*, than the inadvertent collection of third party images during a insurance surveillance should not result in well founded decision by the OPC. We can only wait and see if the OPC respects this decision of the British Columbia Superior Court.

*Norman Groot is the author of Canadian Law and Private Investigations, (Toronto: Irwin Law Inc., 2001), available at [www.irwinlaw.com](http://www.irwinlaw.com). Norman Groot's law practice is focused on fraud recovery and defending institutions and companies against fraudulent claims, as well as defending investigators against criminal, regulatory, civil and privacy complaints. Norman operates out of the firm McCague Peacock LLP, Suite 2700, PO Box 136, The Exchange Tower, 130 King Street West, Toronto, ON, M5X 1C7 416-869-7839 (b) 416-860-0003 (f) [ngroot@mwpb.com](mailto:ngroot@mwpb.com). Norman Groot's investigation practice is conducted in conjunction with licenced investigation companies.*



## AGM Co-Host, Bert Falbaum

Continued from page 1

Customs Port Investigator and Customs Agent.

From 1966 to 1969, Bert served as a Course Developer/Instructor and Lead Course Developer/Instructor at the Treasury Law Enforcement School in Washington, DC. Following this assignment in 1969 Bert remained in Washington and returned to the Customs Service where he served as a Special Agent-Analyst at Customs Headquarters. While serving with the Customs Service, he earned a Master of Public Administration degree at the Maxwell School, Syracuse University.

In 1979, Bert returned to "hands-on investigations" when he accepted an appointment as Criminal Investigator, Office of Special Investigations, Criminal Division, US Department of Justice, Washington DC.

In 1986 Bert returned to the private sector by accepting a position as vice-president of Investigative Group, Inc. (IGI) in Washington DC. In 1992 he left IGI to launch the development of Investigative Dynamics, Inc. in Tucson, Arizona. During the course of his career, Bert has engaged in leadership positions in many local, national and international professional associations. He currently serves as chapter Vice-Chairman of the American Society for Industrial Security, as member of the Board of Directors of INTELNET, as President of 88-Crime, as board member of the World Investigators Network, as Second Vice-President of the Council of International Investigators and as an Advisory Board Member of the Foundation For Genetic Medicine. In 1999, Bert was appointed as Chairman of the Arizona Private Investigator & Security Guard Hearing Board. He is a published author, as well as having been a speaker and panel member at professional law enforcement and private security conferences and seminars in the United States and abroad.



Linda and Taya Montgomery of Linda Montgomery Investigations in Seattle, Washington look picture perfect at the wedding of Taya to Alex Walkup on April 15<sup>th</sup>. Linda was President of CII in 2000 and hosted the CII AGM in Berlin, Germany along with Jurgen "Fritz" Hebach. Fritz was in attendance at the wedding along with Nancy Barber.

### Nebraska, The Good Life



By: Robert Dudash

Well folks, last month I shared with you a photo of a typical Nebraska rest stop and there was such a positive response this that I thought I would continue to share with you some of the other interesting points of my state. I occasionally have assignments to western Nebraska and it is like a trip into the Old West.

My most recent trip out West resulted in my purchasing a new SUV so the next time I go out West, I can travel in style. I am providing a photo of my new vehicle and I'll bet I am the envy of a lot of people.

Anyway, if you have an interest in visiting Nebraska, we have a lot of other surprises. Best Regards and I shall continue to share the finer points of Nebraska in the coming months.

## CII Sponsors CALI "Leg Day"

The California Association of Licensed Investigator's (CALI) along with CII was proud to sponsor "Leg Day 2006". The effort was an opportunity for members of CALI meet with the California legislators to discuss pending legislation impacting our industry. It also provided a platform to network with other organizations, recruit new members and reacquaint ourselves with old members. We encourage all CII members to seek out these opportunities for the benefit of our members and our industry.

# CII Executive-2006

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<b>2nd Vice President:</b>	James R. "Jim" Kirby	Illinois, USA	630.941.1700	
<b>3rd Vice President:</b>	Fred J. Dehmel	Nova Scotia, Canada	902.450.0697	
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<b>Treasurer:</b>	Rodd Webb	Perth, Australia	61.8.9322.1877	
<b>Executive Regional Director:</b>	Nancy Barber	California, USA	415.334.0856	

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	Maurice C. Amres	Guyana	592.225.6573
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Your photos and articles are needed in order to make this newsletter an informed and entertaining vehicle for CII.

## Upcoming Conferences

*From Robert Dudash*

There will be two conferences in my Region, that I am aware of at this time. One is on July 27-28 and is sponsored by the Iowa Association of Private Investigators. The conference will be held at the Holiday Inn & Suites, West Des Moines, IA. This is an eight hour seminar and four of the speakers will be Jimmie Mesis, Brandon Perron, Rosemarie Mesis and Jane Cracraft. Contact me for specifics if you are interested.

The second conference will be the Texas Association of Licensed Investigators which is scheduled for August 24-26 in San Antonio, TX. For details, see their website which is: [www.2006swsc.com](http://www.2006swsc.com)<<http://www.2006swsc.com/>>