

INTELLENET NEWS

June 2007

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Carino's Corner

The San Antonio Intellenet seminar is now history and it was a great event. Our co-hosts Cathy & Sam Castorani and Gay & Jerry Adams planned and delivered a social and professional program to the total delight of the 100 plus attendees. In a word, the speaker program was top drawer with the social events showcasing the best of "San Antone" and its environs. Kevin Ripa in his all day optional (free) computer forensic seminar served as a fantastic kick-off to the seminar much to the educational pleasure of the 78 attendees.

Planning for the 2008 Seminar in Sorrento, Italy is almost complete and will include pre and post seminar activities. More on this shortly, Kevin again put together our seminar website. Save the dates (4-8 June 2008) and help us celebrate our 25th Anniversary.

A pre-event will be 2-3 days in Rome (see Rome with Sandra—our social planner for Italy). Those participating will travel by bus to Sorrento. Our travel guru Suzanne Drumm is also planning some interesting pre and post seminar cruises/tours. We are pulling out all the stops to make our 25th a truly memorable one. Our social activities will include Capri and Pompeii. So, keep the dates open and available and be part of what should be a memorable extravaganza. Of course our professional presentations will add to this great occasion!

For those of you curious about future venues, Hawaii and Ireland were the choices of the attendees for 2009 and 2010, respectively.

*It was so hot I seen a cow lying on her back
giving herself a shower.*

Homer Haynes

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Know Your Fellow Members



Nancy Poss-Hatch
Helios Investigations, Inc.
Santa Ana, California

A native of California, she has a BA in Chemistry and a MA in Anthropology. Between these studies, she worked as an international journalist. She began as an undercover investigator, who identified a drug ring operating in an electronics firm with several drug-related deaths. She then did insurance and corporate civil investigations, and became licensed in 1979. She has actively promoted the importance of professional ethics. She is a member of CALI, CII and INTELNET. She was awarded CII International Investigator of the Year 1997, and received an award from INC Magazine. She served on a special committee of PI's to revise the California State Licensing exams. She is still active as an investigator, specializes in Maritime cases (involving shipwrecks, mutinies and crimes on the high seas). She is fluent in Spanish and English. She is on the Intellenet Board of Directors. Her

hobbies are traveling with her husband, Sidney Hatchl; writing poetry and screen plays, and enjoying her children and grandchildren.

Don't Get Burned by Travel Fraud *Chain, Younger, Cohn & Stiles*

The business of fraudulent travel schemes has grown exponentially in the last several years. Americans have suffered losses in the billions as a result of vacation package scams. As you prepare for your summer vacation, here are some guidelines to help you avoid becoming a victim of travel fraud.

One of the keys to avoiding travel fraud is to be cautious when choosing your travel provider. Recent marketing tactics have made efforts to take choice out of the consumer's hands, which leaves the consumer vulnerable from the start. Using unsolicited faxes, junk mail, and telemarketing recordings that offer "too good to be true" deals, or award the consumer "Free Vacations," the scam artists create an immediacy which can trap the unaware consumer. This manner of booking travel can be filled with numerous pitfalls including hidden fees, bait and switch tactics, or real estate sales pitches.

In order to avoid this initial possibility of fraud, it is recommended you deal with a travel agent who is reliable and accessible. The state of California recently passed a law which requires sellers of travel in the state to register with the Attorney General's Office. You can see if your travel agent has complied with the registration here: <http://ag.ca.gov/travel>.

To further research your travel agent, you should also see if their business has a reliability report with the Better Business Bureau's website: www.bbb.org.

The next phase of avoiding travel fraud involves examining the details of the vacation package itself. The most important action you can take to avoid potential vacation disaster is to get the offer in writing before you commit. Pay attention to details such as cancellation and refund policies. Make note of details such as specific

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accommodations, limitations on stay, or “black-out” dates. The consumer should avoid making any payments toward the package if any of these terms are missing, vague, or, unacceptable. If any changes are necessary, ensure you obtain written proof of those modifications.

To minimize the chance of fraud, consumers should stay away from any vacation seller that requires any advance payment without a written contract, or high pressure sales calls that can only be done by telephone. This can leave the consumer unable to enforce any promises that may have been made verbally in order to close the sale. The consumer should also be aware requesting payment by phone may actually be only a means of identity theft. It's best to avoid giving any personal information over the phone.

Once you have the offer in writing, the consumer should contact and verify all reservations, accommodations, and facilities separately, independent of the travel agent. Confirm your reservation with the airline, cruise line, car rental agencies, and hotels/resorts. You should also research your accommodations through the internet to ensure they meet both what was promised and your expectations. You may also use the opportunity to find out if the rate your travel seller is providing you is competitive to what it would cost to make those arrangements independently.

If you are seeking a refund from a California based travel seller, The Travel Consumer Restitution Corporation is designed to process these claims. You can visit their website here: <http://www.tcrcinfo.com/index.html>.

Any air travel related complaints can be filed with the Aviation Consumer Protection Division which you can access here: <http://airconsumer.ost.dot.gov/problems.htm>.

If you have disputes regarding a Cruise Line you can contact the Federal Maritime Commission at their website here: <http://www.fmc.gov/bureaus/secretary/DisputesinvolvingaCruiseLine.asp>.

Chain Younger Newsletter, May 24, 2007
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Utilizing Third Party Investigators in Workplace Investigations

Historically, conventional workplace misconduct investigations have been handled by an organization's Human Resource Department, Internal Security, or General Counsel. However, increasingly, organizations are recognizing that in many cases, the most effective investigations are those that are conducted by impartial third parties. Why? Over the years there have been a variety of challenges to organizations, both by employees and through litigation alike, premised upon their ability, and in some cases, willingness to be completely objective in their business and investigative processes. When considering whether or not to utilize a third party it is important to take into consideration four elements.

First, impartiality and objectivity: ensuring that the outside firm has no stake in the outcome and can direct the investigation with no preconceived notions. Second, perception of neutrality; that is, often times employees believe that the investigator is biased and pro-management. Frequently, this perception occurs when the investigator is a member of management, or the organization's general counsel. While the outside investigator is retained by the organization, the effective investigator will be able to portray a necessary element of neutrality and fairness that management and its counsel cannot. Third, professionalism and experience: outside firms that specialize in workplace investigations will likely have significantly more expertise than either an in-house staff member or an outside attorney who does not specialize in employment law.

In addition, it is critical to ensure that the outside firm is knowledgeable of the workplace and can use his knowledge of the workplace to draw out the facts of the case. Lastly, statement of seriousness: when organizations bring in an outside firm to conduct an investigation, it demonstrates the serious nature of the issue(s) at hand and communicates to those individuals involved that the organization is taking the matter very seriously. In addition to the aforementioned, the Equal Employment Opportunity Commission (EEOC) has issued its Enforcement Guidance:

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Vicarious Employer Liability for Unlawful Harassment by Supervisors, which spells out specific guidelines related to the necessary skill sets of the individual who conduct the investigation, and the necessary objectivity that the investigator has regarding the collection and consideration of the relevant facts. The next time your organization has workplace misconduct issues arise, weigh the pros and cons of conducting the investigation internally versus externally, and consider utilizing an independent third party, which specializes in conducting workplace investigations.

Tip: When considering utilizing a third party, make sure to research the firm and be sure to request references. Credible firms will be able to provide references!

Business Control, Inc., Littleton, CO Newsletter, Volume 7, Issue 4, reprinted with permission

Security & Safety Tips for Visitors to Mexico City

Tom Cseh

Control-Risks Group (Mexico)

Mexico City, Mexico

1. Only drink bottled water when dining out. Tap water in most first class hotels is potable, but ask at reception desk if in doubt.
2. Eat food at roadside or sidewalk stands at your own risk. Amoebic dysentery, E.coli and Salmonella bacterial infections and even cholera are common food-related debilitating and, in some cases, life threatening diseases in Mexico City.
3. Usually at the end of the dry season (March – May and sometimes into early June), the Mexican Health Secretariat may issue food poisoning warnings involving consumption of seafood. Bottom line—if you don't personally know the freshness of the catch or its refrigeration history—eat fish and shellfish (including shrimp) at your own risk.
4. Do not hail a taxi on the street—ever! Use the hotel taxi service, a taxi stand (“sito de taxi”) service or get the restaurant maitre d’ or staff to get one for you.

5. Do not conduct meetings outside the office or hotel with persons unknown, especially when the meeting is requested by the latter at a place of their choosing.

6. Wear no flashy or expensive jewelry—even if fake or fantasy. The common street criminals in Mexico City are usually stoned on drugs or alcohol—helps keep their nerve up and makes them more dangerous and unpredictable. Make yourself a less interesting, visible and desirable target.

7. Only use ATMs in the hotel or inside a shopping mall, and never one facing onto the street. Do not walk straight out onto the street after using it. Criminals often have surveillance on ATM's and watch for the first person to enter the street right after accessing the machines. You can now draw up to \$5,000 pesos (about USD\$455.00) in one daily transaction, so the criminals automatically assume they may have hit the jackpot when they zero in on someone they've seen just use the machine.

8. If walking out and about the town and someone unknown approaches and asks you a question, for example: **¿Tiene la hora?** What time is it? or **¿Sabe donde esta...)** (Can you tell me where is...(or how to get to)...? **Look them briefly in the eye; ignore them completely or give them a brusque “no!; and keep walking away from them—fast!** These types of questions are common ruses to momentarily distract an unwary person while the assailant (or his partner—and there's almost always more than one of them) pulls a knife or gun in front of or behind the victim.

9. **“Splash & Grab”** pickpockets are back in fashion. When walking in a shopping mall or just out on the street watch out for anyone signaling to you that you have just been splashed from behind (or in front) with a mustard or ketchup-like gooey or runny liquid substance, especially when they offer to help clean you off in a nearby public restroom. While one or two persons may be enthusiastically helping clean your clothes, one of them will attempt to lift your wallet or purse or even just “fish” a couple of credit cards or cash out. Don't let anyone touch your clothing or get inside

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your “inner perimeter” and just move on as quickly as possible and clean yourself off later.

10. **For Men Only:** Avoid unknown or **shady “night spots.”** They are typically used by **express kidnappers** to zero in on unsuspecting male customers. Female “escorts” (“shills” if you will) are often used to entrap male customers in these areas. Drugged drinks to subdue victims are not uncommon.

11. **For Everyone:** If you intent to personally drive a rental or company vehicle while visiting Mexico City, please consider the following recommendations:

a. Obtain a **Guia Roji for “Cuidad de Mexico”** an up-to-date detailed map book of the city available in almost any bookstore and **Sanborns** stores in particular. Using the Guia Roji, plot out all routes in advance and consider some alternate routes. Look for the small arrows on some roadways which indicate that the street might be one-way.

b. Ask someone in the hotel, usually the concierge, vehicle rental agency or someone in the office you are visiting for clear directions on how to get where you want to **before** you actually leave. Get the address in writing and carry it with you, along with the phone number of the place if available. Do not top in mid-travel to ask directions, even if you do get lost. Go to a gas station or a taxi stand and ask or new directions. **Do not seek assistance from the police.**

c. While traveling, be extremely vigilant around intersections with traffic lights, stop signs and speed bumps (“topes”) for persons who might be waiting to assault you. Do not permit the windshield washer boys (and sometimes girls) to wash your windows. Do not argue with them either; look them briefly in the eye and merely wave them away with an index finger wag. Keep you eyes open for persons approaching from behind or along side the vehicle and watch their hands to see if they are carrying weapons or are hidden. Be prepared to take evasive driving action to get out of a potential ambush situation.

d. Leave sufficient space between your car and the vehicle in front of you that you can always see the rear tires of that vehicle touching the pavement. This will usually give you enough space to maneuver around that vehicle. Consider using the median strip even with a curb of up to even 12-18 inches high to escape. Turning your front wheels to 45 degree angle and exerting maximum acceleration should be sufficient to jump the curb and continue over the median strip. Look between the trees or post or other obstacles while traversing the median strip—the vehicle always goes where the eyes of the driver are looking! Even if your tire ruptures, keep driving—the vehicle will continue to run on its wheel rims until you finally brake to stop. **Keep driving until you are well out of harm’s way!**

e. If someone hits your vehicle from behind, look in the rearview mirror or physically turn your head around to see who is in the vehicle behind you before getting out of your car to check the damage. If the operator of the other car is a woman or man driving alone, it may just be an innocent accident. However, if you cannot clearly see the vehicle or who is in it, do not get out of your vehicle—and keep moving. If you see two men or more in the vehicle, do not get out of your vehicle—and keep moving. Do not stop until you are in a safe area with lots of people around and in a well-lighted are if at night. Hitting a vehicle from behind is a common trick of carjackers and express kidnappers to immobilize their victim just long enough to take control of the situation. If there is any real damage to the rental vehicle because of the collision, just report it to the rental company as a “hit and run.”

f. Always drive with all the car doors closed and locked and all windows up and locked. When the car is stopped in traffic at any location do not offer money to beggars on the street no matter how pleading they are. Look them briefly in the eye and then ignore them. Use the index finger wag if they persist. **Do not engage anyone approaching your car on the street in conversation—ever!**

g. Do not drive around with laptops, briefcases, purses, packages or other valuable items clearly visible on the seats of the vehicle. A

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common street crime in Mexico City is the typical “smash and grab” (“cristalazo”), where the criminal will break the window of the car to steal whatever he can get his hands on. Do not bother to physically chase the criminal if this happens to you! He will always have an escape route planned and may have accomplices available to impede a successful pursuit. **Better to store all valuable items in the trunk.**

h. If stopped by the police:

i. Do not leave the vehicle.
ii. Do not turn off the motor.
iii. Try to identify the uniform, badge and name of the policeman and make a note.

iv. Do not unlock your doors or windows and only lower the window no more than two inches if necessary because you have difficulty in hearing what the policeman has to say.

v. Even if you speak Spanish fluently, it is often better to feign ignorance and speak another language.

vi. Do not turn over any personal identification or vehicle documents to the policeman. Show them to him through the window glass only.

vii. **Be courteous, but firm** while trying to ascertain the nature of the stop. Do not accept the policeman’s offer of a handshake and do not make insulting remarks to him either, no matter how angry or upset you are about the stop.

Note: it is a separate offense to insult a public official acting in the line of his or her duty.

viii. Use a mobile phone to contact someone—even if faking it—and pretend to or actually call your embassy, office or family or company lawyer and advise them that you are being stopped by a policeman for some unknown reason. If this is a bogus traffic stop on some fabricated or fictitious traffic violation, the police will usually back off if they see the person they stopped is contacting someone in authority.

Notes: (1) A driver using a mobile phone while the vehicle is in motion is committing a traffic violation in Mexico. (2) Do not automatically offer to pay a bribe to get out of a legitimate or fabricated traffic violation. Lately, both the policeman soliciting as well

as the driver paying the bribe have been arrested by the municipal authorities trying to crack down on the corrupt policemen and their “victims” who keep trying to pay their way out of a violation—bogus or legitimate.

ix. Be ready to drive away when the policeman indicates that you may do so.

i. Use valet parking services at restaurants and hotels and make sure you get a legitimate receipt from the attendant before handing over the keys. **Also ensure your house or office keys are not on the key chain or ring you give to the attendant.** Remove all valuable items from the vehicle, including CD’s, cassettes and loose change.

j. Avoid using side street parking if you do not know the neighborhood. The criminals are now coming to the better parts of town looking for cars to steal and victims to rob. If you are confronted by a carjacking situation and the criminal has a gun or knife in your face or at close proximity to your body, **do not resist**; turn the vehicle and its keys over immediately and wait for the criminals to drive away before you attempt to leave the area. Try to avoid going with them at all costs.

k. If you believe you are being followed by another vehicle, you may consider using your mobile phone and looking back at the suspect vehicle to see if that will throw them off. Do not stop your vehicle for any reason until you are at a safe location, such as the hotel, office, shopping mall or restaurant and making sure that there are lots of other people around and in a well-lit area if at night. **However, if someone is in obvious pursuit, this would be the one exception to the rule about never looking to the police for assistance.** If being pursued aggressively, stop the first police patrol vehicle or policeman you see and report the incident. They might not do anything to detain the suspect vehicle, but the suspect vehicle will almost always break off the pursuit. You may then proceed to your original destination, but be on the lookout for the same suspicious vehicle or others and, if encountered, take similar evasive measures. Once safe at the hotel or office, report the incident to your host

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company security manager or supervisor immediately.

Partying in San Antonio
Another Successful Event
Robert A. Dudash, CFE

I would like to provide you with some details about our recently completed INTELLENET San Antonio Conference, May 17-19, 2007; actually for some it was May 16-19, 2007 as we had an opportunity to attend a free one day computer training seminar.

The individuals who volunteered to host the conference in San Antonio, Jerry and Gay Adams, Austin, Texas and Sam and Cathy Castorani, Keller, Texas (near Fort Worth) did a super job. What is more interesting is that neither Jerry and Gay nor Sam and Cathy live in San Antonio and had to travel significant distances when coordinating the set-up in San Antonio. Their efforts were, in a word, "Superlative." By now most of you should know that Gay Adams has been battling cancer for some time now and she was there at the check-in desk and attended quite a few of the functions - she looked great. Thanks Gay for all you did, especially since you had a lot to deal with at the same time - we shall keep you and Jerry in our thoughts and prayers.

The day prior to the official start of the conference, member Kevin Ripa, last year's host in Calgary, Alberta, offered to provide an his eight hour Computer Security and Configuration Training at no cost and also provided the attendees his book on the same subject at no cost - there were a total of 78 attendees to his class. Great job Kevin - what a display of professionalism!

I am and have been your Continuing Education Coordinator for many years now and I must tell you that Jerry Adams has set the bar to a new level for lining up some of the best speakers we have ever had at our seminars. The speakers were very professional; their presentations were dynamic and very interesting. It is very obvious that Jerry is well established in the local law enforcement community and to have this caliber of presenters, at no cost to INTELLENET, was

indicative of his ability to go to any length to ensure we were treated to the best! Thanks Jerry.

We had great food and some interesting local sights. For our first night, we had a welcome reception at the Marriott Plaza where we had a great Mexican buffet and were also treated to music by an all female Mariachi band. The next day, we visited the Nimitz Museum of the Pacific War in Fredericksburg and had a great lunch at Hondo's. We then went on to the Trois Estate in Enchanted Rock, Texas where we walked the grounds of this very interesting complex and then were treated to dinner in a very interesting setting. Our last night was spent at the Texas Cultures Institute where we were once again treated to some great food. Thanks Sam and Cathy!

If you have previously attended the annual seminars, you know that there is a lot of interfacing or networking and this time was no exception. We had a total of around 15 first time attendees and several new members who had the opportunity to meet other attendees and to make new friends. Then there were those long time members who attended for the first time and it was great to finally put a face with either that voice on the telephone or a long time e-mailer.

Both Brenda and I had a great time, seeing long time friends and meeting new attendees who we hope will develop into a continuing friendship. A tremendous amount of time was devoted to this conference and it is obvious their efforts paid great dividends. We had members from Canada, England, Mexico and all the way from Australia and the Philippines and I'm sure they would do it again....

During a break in our seminar sessions, our Executive Director, Jim Carino, honored Bruce Hulme for his tireless efforts at working all those political issues impacting our profession by appointing him as a Life Member. The INTELLENET home page (intellenetwork.org) has a listing of all of the INTELLENET Life Members. Great job Bruce and thanks for your personal sacrifices to continue to fight to retain our access to needed information we must have to do our jobs. So that's a wrap and now it's on to Sorrento, Italy where we celebrate INTELLENET'S 25th Anniversary. The dates you

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need to write down are June 4-8, 2008. See you there!!!!

Remember this number as it is significant: 25-50-75! More to come.....

Question For Our Members

At one of the 2007 Intellenet Seminar functions, one of the buses became stuck in the sand of a temporary parking lot. After much huffing and puffing, along with way too much supervision from non-participants, one of our valued members was able to get the bus back on the road through application of highly skilled supervisory techniques and a liberal application of Texas ingenuity. Can you guess who this valued Intellenet member happened to be? If not, contact Geezer for the details.

Bill Asher looking for coins to pay his seminar fees.



***"Did you hear about Tammy? She had triplets and two weeks later she had twins."
"That's impossible! How did it happen?"
"One of the triplets got lost."***

Cathy Castorani trying to get attendees registered while being "assisted" by Jerry Adams, formally known as Stud Muffin, now known as Geezer



Is this an armadillo egg?



Congratulations

At the annual meeting of the Intellenet Board of Directors Peter Psarouthakis, EWI & Associates, Inc, Chelsea, MI, was elected to the Intellenet Board of Directors to replace the late John Belrose.

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Which one is Robert Dudash?



Frustrating the Pickpocket Artist

*Larry Ross
Ross Financial Services, Inc.
Washington, DC*

I keep my money and my credit cards in separate wallets. That makes it tough for pickpockets to get both.

In addition, I put a comb, with the tines facing up, in the folds of the wallet that contains the cash. The tines would catch in my pocket making it difficult for the pickpocket to get the wallet without my knowing about the effort. (The only time that I was successfully pickpocketed was when I was putting two small children on the subway in a city with which they were not familiar. I couldn't turn around until I was on the train with them. By then my wallet was gone.)

A better practice, which I don't follow, is to add an obsolete credit card to the wallet that contains the cash. That practice is suggested to confuse a robber who is looking for both cash and credit cards.

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Contract Investigators Needed

Due to our rapid growth, Kroll Government Services is seeking individuals throughout the U.S.

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to conduct background investigations on a contractual basis in support of national security for our Office of Personnel Management (OPM) and Customs and Border Protection (CBP)/Immigration and Customs Enforcement (ICE) contracts.

Primary duties include conducting background investigations for the purpose of determining employment suitability of persons needing access to sensitive or classified U.S. Government information. Investigators conduct face-to-face interviews with the subject, his/her neighbors, coworkers, friends and family, as well as performing record searches at police agencies, courthouses, educational/financial institutions and medical/mental health facilities. Investigators then report all information obtained in a clear and concise report.

Investigators work from their own home, and are assigned cases within 100 miles of their home. Contractors must be available at least 20 hours per week for Kroll assignments and may not hold a full-time position with another employer. In addition to pay for work completed, mileage, tolls, parking and other case-related expenses are reimbursed by Kroll. Due to its contractual nature, this position does not offer benefits. Candidates must be a U.S. citizen and must either have an active security clearance, or the ability to obtain a clearance. Other requirements differ by position.

For more information about our current openings, or to apply, please visit the careers page of the Kroll website, www.kroll.com, and search for keyword "contract investigator".

Proper Use of the Polygraph

Recently, according to a newspaper report, a professional athlete was involved in an altercation at 3:00 AM and was arrested for assault. A team executive made the statement that they wanted the truth and suggested a polygraph examination. The executive also stated "If he flunked the test, he would not be with us." The athlete took the polygraph examination and was found to be telling the truth.

Several days later, in a local newspaper article, several lawyers suggested that the team executive should not have had the polygraph examination administered, citing provisions of the Employee Polygraph Protection Act of 1988.

The following outlines the basic provisions of the Act as listed in DOL Fact Sheet #36:

The Department of Labor administers and enforces the Employee Polygraph Protection Act of 1988 (the Act) through the Wage and Hour Division of the Employment Standards Administration. The Act generally prevents employers engaged in interstate commerce from using lie detector tests either for pre-employment screening or during the course of employment, with certain exemptions. The Act, signed by the President on June 27, 1988, became effective on December 27, 1988.

Under the Act, the Secretary of Labor is directed to distribute a notice of the Act's protections, to issue rules and regulations, and to enforce the provisions of the Act. The Act empowers the Secretary of Labor to bring injunctive actions in U.S. district courts to restrain violations, and to assess civil money penalties up to \$10,000 against employers who violate any provision of the Act. Employers are required to post notices summarizing the protections of the Act in their places of work.

Definitions

A lie detector includes a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator or similar device (whether mechanical or electrical) used to render a diagnostic opinion as to the honesty or dishonesty of an individual.

A polygraph means an instrument that records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory and electrodermal patterns as minimum instrumentation standards and is used to render a diagnostic opinion as to the honesty or dishonesty of as individual.

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Prohibitions

An employer shall not:

Require, request, suggest or cause an employee or prospective employee to take or submit to any lie detector test.

Use, accept, refer to, or inquire about the results of any lie detector test of an employee or prospective employee.

Discharge, discipline, discriminate against, deny employment or promotion, or threaten to take any such action against an employee or prospective employee for refusal to take a test, on the basis of the results of a test, for filing a complaint, for testifying in any proceeding or for exercising any rights afforded by the Act.

Exemptions

Federal, state and local governments are excluded. In addition, lie detector tests administered by the Federal Government to employees of Federal contractors engaged in national security intelligence or counterintelligence functions are exempt. The Act also includes limited exemptions where **polygraph** tests (but no other lie detector tests) may be administered in the private sector, subject to certain restrictions:

To employees who are reasonably suspected of involvement in a workplace incident that results in economic loss to the employer and who had access to the property that is the subject of an investigation; and

To prospective employees of armored car, security alarm, and security guard firms who protect facilities, materials or operations affecting health or safety, national security, or currency and other like instruments; and

To prospective employees of pharmaceutical and other firms authorized to manufacture, distribute, or dispense controlled substances who will have direct access to

such controlled substances, as well as current employee who had access to persons or property that are the subject of an ongoing investigation.

Qualifications of examiners

An examiner is required to have a valid and current license if required by a State in which the test is to be conducted, and must maintain a minimum of \$50,000 bond or professional liability coverage.

Employee/prospective employee rights

An employee or prospective employee must be given a written notice explaining the employee's or prospective employee's rights and the limitations imposed, such as prohibited areas of questioning and restriction on the use of test results. Among other rights, an employee or prospective employee may refuse to take a test, terminate a test at any time, or decline to take a test if he/she suffers from a medical condition. The results of a test alone cannot be disclosed to anyone other than the employer or employee/prospective employee without their consent or, pursuant to court order, to a court, government agency, arbitrator or mediator.

Under the exemption for ongoing investigations of work place incidents involving economic loss, a written or verbal statement must be provided to the employee prior to the polygraph test which explains the specific incident or activity being investigated and the basis for the employer's reasonable suspicion that the employee was involved in such incident or activity.

Where polygraph examinations are permitted under the Act, they are subject to strict standards concerning the conduct of the test, including the pre-test, testing and post-test phases of the examination.

Civil actions may be brought by an employee or prospective employee in Federal or State court against employers who violate the Act for legal or equitable relief, such as employment reinstatement, promotion, and payment of lost

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wages and benefits. The action must be brought within 3 years of the date of the alleged violation.

For more information, get in touch with the nearest office of the Wage and Hour Division, listed in most telephone directories under U.S. Government, Department of Labor.

*U.S. Department of Labor, Frances Perkins Building,
200 Constitution Avenue NW, Washington, DC 20210
1-866-4-USWAGE*

Investigation Industry in China

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Although it is 2007 and we are well into the new millennium, private investigation in China has not yet caught up with the current time. In China, the law states that only the Chinese government can legally conduct investigation in the country. Despite this law, there are numerous individuals and companies who have met the needs of the ever-growing demand for private investigators in China. This need has developed as the result of China's changes in criminal punishment, management of personal identification information, and economic atmosphere.

In 1949, when China's current government was first established, private investigation by civilians was forbidden. At the time, there was not a demand for investigators because China had an extremely low crime rate, due to a high punishment system. The Chinese government had strict identification procedure that provided the government with maximum information about their citizens. China had two documents that identified each person. The first document was a household record that contained family information such as marital status, education level, and date of birth for all family members. Both the family and the government had a copy of this record. The second document was a file that contained an individual's educational, occupational, and criminal record. Only the government was privy to this document. Government laws secured personal information by

granting limited access to the public for these documents.

During this time, the government was not only in control of all personal information, it also owned all companies. There were no private companies and no foreign investor allowed in China. Therefore, information about individuals or companies was more accurate than today. This was due to the government's strict management over information and the inability to forge government documents. However, as the Chinese government changed its economic policies, the demand for private investigator grew.

In 1978, China introduced its Open Door Policy, which allowed foreign investors to enter the Chinese market. Since then, China underwent a massive economic boom. Recently China joined the World Trade Organization, which has encouraged foreign enterprises to penetrate the Chinese market. As the economic situation changed, the government's control over information and company management dissipated. The increase in economic growth was matched with an increase in criminal activity. The need for private investigation was apparent within only a few years after the introduction of the Open Door Policy. By 1982, the first private Investigation firm appeared in China. However, the Chinese government did not, and since has not, officially issued a license for private investigative service.

Today in China, personal and sensitive information is no longer independently gathered and maintained by the government. Some important information remains under the government's supervision; however, by-and-large personal and company information is available to the public. In China, almost everything can be forged, from graduation certificate to company registration document to bank papers. False information has flooded the market. Some individuals have relied on fabricating information in order to earn a living. In recent years, the occurrence of these crimes has escalated. When these crimes happen the victims are required, under Chinese law, to report them to the police immediately. The police are then expected to take full control of the case and thoroughly investigate the situation. Though the expectations of both the victim and the police are

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clear, it is evident that the police do not have the manpower, time, or technology to solve all of the cases. Therefore, there is a large market for private investigators.

The most common investigative service request, for both companies and individuals, is the background check. Though there is a high demand for services, the quality of private investigators is inconsistent because the field does not require licensure or have ethical and quality standards. The majority of private investigators in China are unable to match the quality that investigators in Western countries are able to provide. However, the development of licensure and quality standards for private investigators in China is currently underway. By the beginning of 2008, the Chinese government plans to pass a new law that will issue licenses to private security companies. This law will also include licensing for private investigators. After the introduction of this law, hopefully the development of organization for private investigators will soon develop. These laws and organizations will help to create quality investigative services for both local and foreign investors.

Computer Investigations and Forensics

Kevin J. Ripa

*Computer Evidence Recovery, Inc
Calgary, Alberta, Canada*

Almost assuredly the newest and fastest growing field of investigations has to be that of computer investigations and forensics. Every day, computer investigators are called upon to explore computers, and storage media for evidence of crimes and other information, which should come as no surprise. It is estimated that over 80% of all corporate information exists on electronic media. Besides corporate or commercial applications, how much information exists on a personal computer at home? How about every webpage you have ever visited and every picture on every one of those pages? Banking information, logon information to secure sites such as chat, newsgroups, email, personals, back portals to work networks, etc. It doesn't take long to see the possibilities.

The applications for a qualified computer investigator are endless. There is virtually no investigation that is not touched by electronic media in some capacity today. Corporations are getting nervous about what can be done with computer forensics. An international insurance company has recently put out a policy that its adjusters are forbidden to exchange information about investigations, whether between themselves or between them and investigators, over any electronic means other than telephone. Everything that is typed on a computer is left there for later perusal by any forensics investigator that can find the computer.

So how do you go about selecting a forensics investigator? More and more folks are hanging out their shingle after having spent a few bucks on a course. I get asked the question time and again. "Why should we hire you when we have people here locally?" There are four very solid components that a computer investigator or forensic specialist needs to possess. They need to have an absolute understanding of how all the parts of a computer work together to place the data on the screen. They must completely grasp how a hard drive works and how, where, and why data is saved to a hard drive or deleted from a hard drive. Unfortunately, there are large numbers of computer specialists with all kinds of degrees that think they can automatically do this because of their background. This is untrue.

The next component has to be a diverse arsenal of forensic software, hardware, and the intimate knowledge of how to use it. This is an extremely expensive proposition. Considering each piece of software can range from 1200-3000 dollars, and then the training can be another 3000-10,000 above that, it can add up quickly. On top of this, no forensic specialist's toolbox should have only one of the programs that are out there. That would be doing the client a disservice. Each of the major programs has its strengths and weaknesses, and the exigencies of the case will determine which program is best suited. Sadly people with some money and some time to take some classes make up the largest portion of the 'unqualified' group.

The third component is the investigative mindset. Having a solid investigative background will

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obviously make you more effective in this field beside someone that doesn't possess that skill set. The final and probably most important component is the ability to communicate. You could be the best forensic specialist in the world, but if you can't effectively communicate to your client, or more importantly, a judge and/or jury, all of the work is useless.

Interviewing and Obtaining Written Statements and Affidavits

*Douglas O. Crewse, CFE, TCI
Investigative Associates, Inc.
Flower Mound, Texas*

Interviewing is an art. Obtaining a written statement or affidavit from a witness is also an art. But put both of these together and tie them into the investigative process in litigation compounds the necessary for the investigator to be fully informed with the process while keeping an eye toward the overall strategy of the case. This is where the investigator-s experience comes into play in a crucial way. With a complete understanding of the statement taking process, the seasoned investigator is in a position to enhance the litigation process and greatly assist the attorney.

Investigators are empowered with finding facts for their clients. Part of this mission is to obtain written statements or affidavits when the information presented is relevant and compelling in the case at hand. What is compelling is when the investigator conducts the interview and includes in the written statement or affidavit specific areas that greatly assist the attorney involved in the case above and beyond just stating the facts known by the witness.

It goes without saying that any investigator assisting in preparing a written statement or affidavit for a witness must be above reproach. This includes having the witness affirm that the testimony evidence the witness is providing is the truth, the whole truth and nothing but the truth. It is important that it is made clear to the witness that the written statement or affidavit is the statement of the witness in their own words and

must not contain any statement that the witness does not know to be truthful.

Obtaining written statements and affidavits have the following main goals and objectives:

(1) Developing information that is relevant to the case. Developing and extracting information from a witness, whether this information is good, bad or indifferent, allows the attorney to understand the facts as they present themselves in evaluating the case. A complete understanding of the facts that the attorney has to work from may lead to a settlement of the issues rather than long drawn out litigation that is not beneficial to your client's position.

(2) Preservation of the facts of the case. Taking of a witness statement or affidavit preserves the facts in the recollection of the witness as close to the time of the incident as possible. This will help eliminate distorted facts and memory of the witness if the case takes a lengthy course. This record helps reduce the likelihood of the witnesses' memory fading over time.

(3) Impeachment of the Witness. The purpose of obtaining a witness statement or affidavit is also to impeach a potentially hostile witness who may later recant the individual's testimony on the stand or in a sworn deposition that contradicts the acts presented in a written statement of affidavit.

It is advisable that before obtaining a written statement that you seek the advice of the attorney in your case to ensure that a witness statement is warranted. The attorney may advise not to take a written statement or affidavit to avoid having to provide that statement in discovery to the opposing side.

Caution should be taken when obtaining a written statement or affidavit. If the statements or affidavit can not be used in court it may have little or not value other than for internal purposes.

Conversely, if the statement or affidavit is used in court for any reason, the court will usually insist that the entire statement or affidavit be read in its entirety, including any portion of the statement that may not necessarily be favorable to your

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client's position. Normally, the attorney will not be in a position to pick which parts of a written statement or affidavit to present in court.

You should become familiar with the prerequisites of obtaining written statements or affidavits in your jurisdiction. It is imperative that you know and meet the legal requirements in your state.

Remember that the purpose of the statement is not only to determine the facts of the case that are known to the witness, but also to record and document what the witness knows in a formal document.

As mentioned before, what is compelling is when the investigator conducts the interview and includes in the written statement or affidavit specific areas that greatly assist the attorney involved in the case. Knowing the attorney has tools in their arsenal to obtain documents, discovery and answers to questions, the astute investigator can bridge those gaps and make the discovery process much more relevant and material. Part of the attorney's arsenal includes *Written Interrogatories and Request for Production of Documents* to the opposing side.

Written Interrogatories

Written Interrogatories are a set of written questions in a lawsuit where the questions and answers are submitted in written form and answered under oath that are presented to the opposing party as part of the pre-trial discovery process specifically relevant to the lawsuit. This is part of the discovery process where a party to a lawsuit attempts to obtain information prior to trial through demands for production of documents, depositions of parties and potential witnesses, written interrogatories, written request for admissions of fact, examination of the scene and the petitions and motions employed to enforce discovery rights.

Request for Production of Documents

A request for production of documents is made demanding items or documents from the opposing parties that are material and relevant to the issues in question.

Case Example

I was working for the Plaintiff and the Plaintiff's attorney in a complex fraud case where several interviews were conducted. The plaintiff in the civil suit was also attempting to diffuse criminal charges he was innocent of as well as create a situation where the maximum amount of discovery could be pursued with justification for that discovery process. The lawsuit involved the out of state Plaintiff purchasing several Texas properties and the subsequent real estate transactions. Each of the transactions involved Mr. X, an out of state attorney and real estate agent, purportedly sending the Plaintiff, or affiant (the individual providing the affidavit), all the documents that required the affiant's signature and then returning the documents to Mr. X for completion of the transactions. Mrs. Y was the Texas mortgage banker involved in the real estate transactions. The affiant's claim was he signed the documents, did not retain copies of the documents and subsequently returned the documents to Mr. X or Mrs. Y. Later the affiant obtained copies of some of the documents, including the Deeds of Trust, which were filed in the Texas county courthouses in the appropriate jurisdictions. A review of these documents by the Plaintiff was conducted, which perpetuated the affiant's claim that his alleged signatures were forgeries. This fact was subsequently substantiated by a handwriting expert retained by the Plaintiff's attorney. In addition, the affiant claimed that he did not sign releases or any other documents that were obtained in part from the opposing parties.

In the process of interviewing witnesses, it should be in back of every investigator's mind the goals and objectives of the attorney preparing the case. What is even more crucial is the ability of the investigator can greatly enhance the case preparation and create opportunities for the attorney in the attorney's quest for *Written Interrogatories and Request for Production of Documents*.

In this case example, the opposing side was providing the court a representation that all documents on the real estate transactions were provided to the buyer of the properties involved and that the signatures were those of the Plaintiff.

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The average investigator will obtain a statement or affidavit that states the following true and correct facts: *Not that this affidavit is a summary of the key points in a lengthy affidavit and is not an example of a full and complete affidavit.*

Average Investigator Affidavit

The average investigator that does not take into account the working tools available to the attorney-client mentioned will miss opportunities to obtain relevant an material statements that would greatly enhance the attorney's ability to aggressively purse various aspects of the case.

This is an example of the taking of Plaintiff's affidavit by an average investigator not fully understanding the litigation process.

"I recall having received various documents from Mr. X and Mrs. Y, but, am unsure as to whether I ever received an actual loan application to complete. If I had received such a loan application, I do not specifically recall filling out the document and do not know to whom I sent the completed document. It is entirely possible that a completed loan application was sent to Mr. X rather than Mrs. Y, because I would often receive paperwork from both of them with addressed return envelopes. I would simply fill the envelope with the materials and then deposit it in the mail."

"I received many documents from Mr. X and mortgage broker Mrs. Y during the final months of 2003, but, do not specifically recall every having signed any closing documents."

"I was informed that the financier was resigning, effective immediately, as property manager and withdrawing as trustee for the land trust due to the discovery that various loan and title documents had been apparently forged."

"I repeatedly placed telephone calls to mortgage broker Mrs. Y to get information and copies of all of the documents concerning my deals. Mrs. Y refused to take any calls and did not return calls in response to my numerous voice mail messages."

"I finally came to Texas and met with Mrs. Y who gave me an envelope, which she represented to

me as containing copies of various documents pertaining to my deals. I opened up the envelope, looked at documents inside, and told Mrs. Y that the signatures appearing on those documents were not my signature."

"Having carefully reviewed the documents in my possession, I can state, without any reservation, that the signatures appearing on the documents pertaining to each specific property were not my signature."

Experienced Investigator

The experienced investigator will obtain a more detailed written statement or affidavit that states the following true and correct facts. The experienced investigator, taking into account the investigative process in litigation, the overall strategy of the case and tools available to the attorney will become invaluable in the litigation process.

This is an example of what the experienced investigator taking Plaintiff's affidavit would look like.

"I recall having received various documents from Mr. X and Mrs. Y, but, am unsure as to whether I ever received an actual loan application to complete. If I had received such a loan application, I do not specifically recall filling out that document and do not know to whom I sent the completed document. It is entirely possible that a completed loan application was sent to Mr. X rather than Mrs. Y, because I would often received paperwork from both of them with addressed return envelopes. I would simply fill the envelope with the materials and then deposit it in the mail."

"In addition, if I had completed and given a loan application to either Mrs. Y or Mr. X, it would have been in my own handwriting and not typed by me as the document reflects. I do not use a typewriter, computer, or work processor. In all honest, I cannot recall whether Mrs. Y ever submitted a typed loan application for me to review and sign. If I had been given such a typed loan application, I would have carefully reviewed it to make sure that all of the information was accurate."

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"As I was giving financial information to Mrs. Y in order to process mortgage loans, I asked for details about the houses to be purchased in my name as a credit investor."

"Mr. X told me that the properties would have to be appraised and those appraisals reviewed and approved by the lender before any of the deals could close. Those remarks made sense to me, and satisfied my concerns."

"I received many documents from Mr. X and mortgage broker Mrs. Y during the final months of 2003, but, do not specially recall ever having signed any closing documents."

"I was informed that the financier was resigning, effective immediately, as property manager and withdrawing as trustee for the land trust due to the discovery that various loan and title documents had been apparently forged."

"I repeatedly placed telephone calls to mortgage broker Mrs. Y to get information and copies of all of the documents concerning my deals. Mrs. Y refused to take my calls and did not return calls in response to my numerous voice mail messages."

"I finally came to Texas and met with Mrs. Y who gave me an envelope, which she represented to me as containing copies of various documents pertaining to my deals. I opened up the envelope, looked at the documents inside, and told Mrs. Y that the signatures appearing on those documents were not my signature. I also told her that I had never traveled to Albany, New York or to anywhere else in that State during December of 2003, so that the notarized documents allegedly signed by me were false."

"Since that time, I have reviewed the various documents given to me by Mrs. Y and discovered that they related to only three of the five properties that I supposedly purchased."

I placed several telephone calls to Mrs. Y for the purpose of asking for copies of documents pertaining to the other two properties, but, was unable to reach her. Instead, I was greeted by her answering machine. In each instance, I left a message for her to return my call. Mrs. Y never

returned my calls and did not produce the requested documents."

"I placed several telephone calls to the realtor who supposedly handled the purchase transactions for the purpose of getting copies of the deal documents. In each instance, I was unable to reach the realtor and left voice mail messages. I never received any return telephone calls from the realtor."

"The information in the Uniform Residential Loan Application is written in someone's hand other than mine. A true and complete copy of this application is marked and attached to this Affidavit. In addition, the signature appearing at page three of this application is not mine. The manner in which the letters are written is not in the style that I use. Moreover, the application states incorrect information about my assets. Specifically, it overstates the value of assets owned by my business, understates the value of my personal property, and incorrectly identifies the motor vehicles I owned."

"The Good Faith Estimate, of which a true and complete copy is marked and attached to this Affidavit, bears a signature that is not mine. In addition, the letters appearing in the last name are placed so close together so as to be virtually illegible and do not even remotely resemble how I write my last name."

"Similarly, the Truth in Lending Disclosure Statement, of which a true and complete copy is marked and attached, does not bear my signature."

"Attached to my Affidavit is a copy of a document entitled 'Servicing Disclosure Statement,' which does not bear my signature."

"Attached to my Affidavit is a copy of a two-page document entitled 'Texas Mortgage Broker/Loan Officer Disclosure.' The letters appearing in the last name are placed so close together so as to be virtually illegible and do not even remotely resemble how I write my last name."

"Attached to my Affidavit is a copy of a single page document entitled 'Borrower's Certification & Authorization.' Here, there is no middle initial. I

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always sign my name with my middle initial. Moreover, the letters are not written in the same way and style as I write those letters."

"Attached to my Affidavit is a copy of a seven-page Texas Real Estate Commission documents, form number 24-5, entitled 'New Home Contract.'" The initials appearing on each page in the space for Buyer are not written as I would have written them. Moreover, the signature appearing on page seven of the document is not mine."

"Attached to my Affidavit is a copy of a single page document purporting to be a Warranty Deed dated December 23, 2003. The letters are not written in the manner that I write those letters. Furthermore, the signature was apparently witnessed by Mr. Z, a purported New York notary public. As previously stated in this Affidavit, I have

never traveled to New York during the month of December 2003 to attend any real estate closings. I did not appear before Mrs. X or anyone by the name of Mr. Z."

"Attached to my Affidavit is a copy of a two-page document, IRS Form 4506 entitled 'Request for Copy or Transcript of Tax Form.' The signature appearing on this form is not mine. There is no middle initial. The letters are not written as I write those letters."

"I was shocked and dismayed to have made the foregoing discovery. While I have my suspicions, I do not know who actually signed my name to all of these instruments. I can state that at no time did I authorize Mrs. Y, Mr. X or any other third person to sign my legal documents on my behalf or as my agent."

<i>Affidavit Statement</i>	<i>Statement Effect</i>
<p>"...if I had completed and given a loan application to either the mortgage broker or the agent-attorney, it would have been in my own handwriting and not typed by me as the document reflects. I do not use a typewriter, computer, or word processor."</p>	<p>The plaintiff states specific reasons why the documents were not originals and did not bear his signature.</p>
<p>"I received many documents from the agent-attorney and mortgage broker during the final months of 2003, but, do not specifically recall ever having signed any closing documents."</p>	<p>The plaintiff states doubt that the documents did not bear his signature.</p>
<p>"I repeatedly placed telephone calls to the mortgage broker to get information and copies of all of the documents concerning my deals. The mortgage broker refused to take my calls and did not return calls in response to my numerous voice mail messages."</p>	<p>This paragraph documents due diligence on the part of the plaintiff to obtain the documents.</p>
<p>"Since that time, I have reviewed the various documents given to me by the mortgage broker and discovered that they related to only three of the five properties that I supposedly purchased."</p>	<p>This paragraph document due diligence on the part of the plaintiff to obtain all of the documents and the claim that incomplete documents were provided to the plaintiff from the on-set of the real estate transactions.</p>

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<p>"I finally came to Texas and met with the mortgage broker, who gave me an envelope, which she represented to me as containing copies of various documents pertaining to my deals. I opened up the envelope, looked at the documents inside, and told the mortgage broker that the signatures appearing on those documents were not my signature. I also told her that I had never traveled to Albany, New York, or to anywhere else in that state during December 2003 so that the notarized documents allegedly signed by me were false."</p>	<p>This statement documents due diligence on the part of the plaintiff to obtain the documents and that the plaintiff gave notice to the mortgage broker that the documents were forged.</p>
<p>"I placed several telephone calls to the mortgage broker for the purpose of asking for copies of documents pertaining to the other two properties, but, was unable to reach her. Instead, I was greeted by her answering machine. In each instance, I left a message for her to return my call. The mortgage broker never returned my calls and did not produce the requested documents.</p>	<p>This paragraph documents that the mortgage banker involved in the real estate transactions were non-responsive and uncooperative in this matter."</p>
<p>"I placed several telephone calls to the Realtor. Who supposedly handled the purchase transactions, for the purpose of getting copies of the deal documents. In each instance, I was unable to reach the Realtor and left voice-mail messages. I never received any return telephone calls from the Realtor."</p>	<p>This paragraph documents the fact that the Realtor involved in the real estate transactions was non-responsive and uncooperative in this matter.</p>
<p>"Having carefully reviewed the documents in my possession, I can state, without any reservation, that the signatures appearing on the documents pertaining to each specific property were not my signature."</p>	<p>This sentence is the plaintiff's denial that the signatures did not belong to the plaintiff but coupled with references to specific documents enhances the Affidavit.</p>
<p>"The manner in which the letters are written is not in the style that I use. Moreover, the application states incorrect information about my assets. Specifically, it overstates the value of assets owned by my business, understates the value of my personal property, and incorrectly identifies the motor vehicles I owned."</p>	<p>The plaintiff stated specific reasons why the documents did not contain correct information on the documents.</p>
<p>"...the letters appearing in the last name are placed so close together so as to be virtually illegible and do not even remotely resemble how I write my last name."</p>	<p>This sentence details specific references as to why the signatures did not belong to the plaintiff.</p>
<p>"...there is no middle initial. I always sign my name with my middle initial. Moreover, the letters are not written in the same way and style as I write those letters."</p>	<p>This sentence states reasons why the signatures were not written by the plaintiff that could be verified by examining actual documents previously signed by the plaintiff.</p>
<p>"The initials appearing on each page in the space for Buyer are not written as I would have written them.</p>	<p>This statement details specific references as to why the signatures did not belong to the plaintiff.</p>

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<p>"...the signature was apparently witnessed by a purported New York Notary Public. As previously stated in this affidavit, I never traveled to New York during the month of December 2003 to attend any real estate closings. I did not appear before the agent-attorney or the notary public."</p>	<p>This information details specific references as to why the signatures were not those of the plaintiff.</p>
<p>"I do not know who actually signed my name to all of these instruments. I can state that at no time did I authorize the mortgage broker or the agent-attorney, or any other third party, to sign any legal documents on my behalf or as my agent."</p>	<p>This statement closes gaps in the case by explaining that no one was authorized to sign documents for the plaintiff.</p>

Key Points of the Affidavits

The investigator's job is to cover all aspects and issues of the case so as not to leave any qualifiers or loop holes in the witness testimony. For example, an analysis of the affidavit above clearly shows the advantages of understanding the relationship between the investigator's role in litigation and the tools available to the attorney in dealing with discovery.

Based on the affidavit as illustrated in the table, the astute investigator created the opportunity for the attorney-client to effectively petition the court to obtain any and all documents related to the real estate transactions that were reportedly provided in their entirety. The attorney could now aggressively and effectively argue in the request for *Written Interrogatories* and *Request for Production of Documents* that despite the parties' claim that all documents were originally provided, that the situation warranted an exhaustive effort to obtain each and every original document mentioned in the affidavit. This technique also assisted in casting a great amount of doubt in the court's eyes as to the validity and credibility of the Defendant's position, conduct and tactics. The affidavit also documented in detail the Plaintiff's complete denial that any of the documents were signed by him in much greater detail than the first affidavit example above.

This same affidavit also becomes a blueprint for the attorney in preparing questions for this witness and other related witnesses in regards to the same issues. The preparation of these questions would extend to request for admission, depositions and actual courtroom testimony.

By combining the art of interviewing and tying that into the investigative process in litigation creates the necessity for the investigator to be fully informed with the process while keeping an eye toward the overall strategy of the case. Now with a complete understanding of the statement taking process, you as an investigator are in a position to enhance the litigation process and become more valuable to the attorney in the litigation process. *Douglas O. Crewse, CFE, TCI, is the owner of Investigative Associates, Inc., in Flower Mound, Texas. This article was originally published in The Texas Investigator, Volume XI, Issue 4, Winter 2006-07.*

Lies, Damn Lies, and Lawsuits
Larry Ross
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Washington, DC

The purpose of this article is to provide a framework useful in analyzing when a lie, told during the ordinary course of investigative business, might give rise to legal liability. We will be limiting our discussion to civil liability, but the elements of criminal liability are similar, varying mainly in the burden of proof.

Euphemistically Speaking

Most of us don't like to admit that we lie, so we use euphemistic works like "pretext" or "subterfuge" to describe our actions. There really isn't much difference between these two terms, since both involve some sort of overt "false representation" or "misrepresentation."

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The word "pretext" is derived from Latin, its brother, "subterfuge," from French. Unfortunately, "pretexting," the euphemism that we use so frequently, has accumulated some ugly connotations these days. As William Safire wrote recently about pretexting in the *New York Times Magazine*, September 24, 2006:

"...Its origin is in the Latin *texere*, "to weave, to fabricate"; from that came the metaphor "to weave a web of lies" and "to fabricate a story." A pretext can be mild, a mere excuse or "white lie"; it can also be synonymous with *pretense*, rooted in the Latin *tendere*, "to stretch," in this sense meaning "to stretch the truth." No matter how you stretch it, the new participle pretexting has an aura of dishonesty about it."

There has been a great deal of confusion both in the press and in recent congressional hearings about the meaning of the term "pretext." Though "pretext" has sometimes mistakenly been used synonymously with the term "fraudulent misrepresentation," these two terms are definitely not interchangeable where the courts are concerned. Rather than the terms "pretext" or "subterfuge," courts use the terms "misrepresentation" or "deceit" to describe that subdivision of the law of fraud that is based on a false statement. In other words, "The type of interest protected by the law of deceit is the interest in formulating business judgments without being misled by others..."ⁱ

Reality Check

Whatever term we use, the important point to remember is that not every lie is fraudulent. Whether recognized or not, most people use some "pretexting" every day in the normal course of business and social interactions. We all know about white lies used to spare another's feelings. And certainly no one would consider it to be unethical, let alone illegal, to tell the other party in a negotiation that "X" is the final offer when, in fact, other offers will be made if the one on the table is refused. Business people engage in "puffing" or "trade talk." Similarly, our vendors occasionally conduct pretexts to make sure that we are using their services within the limits of our contracts.

Weighing the Burden

Proving fraud is much more difficult than proving most civil injuries or breaches of contract. There is a stigma attached to the charge of fraud, and civil fraud is viewed as quasi-criminal, with the standard of proof in a civil fraud case lying between the standard for criminal fraud and the standard for most other civil cases.

Civil fraud must be proven by "*clear and convincing evidence*" because the interests involved are deemed to be more substantial than the mere loss of money. This standard is more rigorous than the "preponderance of the evidence" required in a civil case, but less stringent than "beyond a reasonable doubt" necessary in a criminal case where a person's liberty is at stake.ⁱⁱ

Moreover, the party claiming civil fraud must take great care in describing the fraud when filing the initial complaint. Ordinarily, a person bringing a civil complaint merely has to give the other party notice that an injury or a contract breach is claimed. In a case of civil fraud, the fraud must be described in great detail.ⁱⁱⁱ

Elements of Fraud

Unfortunately, there is no bright line that divides fraudulent lies from innocuous white lies. Fraud is an elusive term whose definition can vary from state to state, as well as from case to case. See the sidebar for details on the elements of fraud, but generally speaking, a party claiming to have been defrauded must prove:

1. A false statement;
2. About a material fact
3. Made with the intent to deceive;
4. Upon which the claimant relied; and
5. Which resulted in damages to the claimant.

<p style="text-align: center;"><i>The Elements of Fraud</i></p> <p>1. False Representation: There must be a false statement (misrepresentation).^{iv}</p> <p>Example: <i>If a person with whom I am communicating assumes that Ross Financial Services, Inc. represents Investors or Investment</i></p>

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Services, I don't have any immediate duty to explain the name of my company or the nature of my business. The law requires the other party to use reasonable care in determining facts, so there is nothing fraudulent here.

2. Materiality: A false representation is "material" if the representation would have influenced a reasonable person in the claimant's position. Trivial misstatements, even though false, cannot provide a basis for a lawsuit claiming fraud.^v

Example: A New York buyer wants to purchase a derelict property located next to the expensive office suites that he is building. He does not want to disclose that he has an interest in purchasing the derelict property, fearing that the price would be jacked up unfairly. His representative, claiming to be a Washington, DC buyer, places the call to inquire about the property. It is unlikely that a court would find this representation to be "material: and, thus would not find that a fraud has been committed.

3. Deception: The false representation must be made with the intent to deceive the claimant. The party seeking damages for misrepresentation must have been personally misled, and must have personally relied on the false statement.^{vi}

Example: Business A is interested in determining what financial incentives a county has offered to its competitor, Business B. Telephone contact is made to the county from an individual representing Business A, indicating interest in investing in that county. Since the call is to learn about financial incentives offered, and is made to the county, not to Business B, it is likely that this deception would not be found to be fraudulent. Moreover, the misrepresentation may not even be material.

4. Reliance: The courts are in disagreement over whether a claimant must justify his or her reliance on a false material misrepresentation. For instance, in the District of Columbia, the courts follow the rule that reliance cannot be deemed "reasonable" if minimal investigation would have revealed the truth.^{vii}

Example: The borrower applied for a home mortgage through a lender. That lender referred the application to another lender, and the loan application was denied. The borrower claimed to have been defrauded by the false representation of the original lender indicating that it would be the entity to process the borrower's application. However, the court ruled that if the representation had been material to the borrower...that one lender rather than another process the application...it was the obligation of the borrower to determine the actual facts.

5. Damages: The person to whom a misrepresentation is made must prove that he or she was actually injured as result of the misrepresentation.^{viii}

Example: An investigator pretends to be interested in investing in a suspected Ponzi scheme that is being run by a salesman with no apparent criminal history. The pretext allows the investigator to obtain references from the suspect, and the subsequent investigation identifies co-conspirators, past schemes and criminal investigations, and the fraud unravels. Most courts would find that the salesman—who claims innocence—cannot then prove that he has been damaged by the misrepresentation, since the pretext was used to end the fraud that he was committing.

Conclusion

Obviously, this is far from an exhaustive study of the subdivision of fraud known as misrepresentation or deceit. Moreover, it is not a matter of black or white. Different courts in other jurisdictions could conceivably view the examples above as supporting a finding of fraud, rather than agreeing with the courts in the cases I have cited. Nor do I intend to provide legal advice about how any particular pretext would be viewed by a court or a jury. Welcome to the gray zone.

What I do hope is that this article provides you with a framework against which you can measure a pretext you contemplate using in your practice. Examine the pretext for the elements of a possible fraud case, and consider the difficulties an

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opponent would face in proving that you have committed fraud.

Finally, as Sergeant Phil Esterhaus used to say on *Hill Street Blues*: "Let's be careful out there."

ⁱ *Harper, and James and Gray on Torts, Sec. 7.1* (3rd ed. 2006).

ⁱⁱ *Duncan Noble, Evidence: Burden of Proof, 51 Mich. L. Rev. 991-3* (1953).

ⁱⁱⁱ *Fed. R. Civ. P. 9(b)*.

^{iv} *Bennett Enterprises, Inc. v. Domino's Pizza, Inc. 794 F. Supp. 434* (D. D.C. 1992).

^v *Finley v. Dalton, 164 S.E. 2d 763* (S.C. 1968).

^{vi} *St. Catherine Hosp. v. Rodriguez, 971 P.2d 754, (Kan. 1998)*.

^{vii} *High v. McLean Financial Corp. 659 F. Supp. 1561* (D. D.C. 1987).

^{viii} *Redmond v. Birkel, 933 F. Supp.1* (D. D.C. 1996)

Professional Organizations: Maximizing the Benefits

Regardless of the industry you are in or the career path you have chosen, there are associations and organizations that can help you professionally while benefiting your company.

Before deciding which organizations or associations to join, determine your goals for joining (what do you want to get out of your participation) and see if these goals align with your company goals. Are you looking to simply network and gain new business, learn from others and be educated, provide education and training – or do you really want to make a difference in your profession?

In addition to researching online, most organizations have monthly meetings which you can attend as a guest or for a nominal fee to see if it is a good fit with your goals. You will also have the opportunity to meet current members and ask what they get out of their membership. This one-on-one networking is a great benefit of joining an organization as people are more open to hear about what you do and what your company does. You will uncover opportunities for your own company as well as learn about additional resources, current trends, and other marketplace trends in your industry.

One common mistake people make is joining a professional organization but not participating as an active member. Your membership fees will be wasted if you don't attend regular meetings and seek out ways to become more involved. Your involvement could include joining a planning committee, becoming a board member, or offering your time for speaking engagements. Taking on these additional responsibilities helps your personal credibility and provides awareness of your own company's products or services.

After you've decided which organizations to join, setting an action plan can be beneficial. Schedule the events you plan to attend so they become a priority and not a hassle when your schedule gets busy. Also, if budget permits, see what meetings or events have sponsorship or speaking opportunities. Even if you've been a member of an organization for many years, you should re-evaluate the situation on an annual basis. If you're unable to participate, save your membership fees and rejoin an organization at a later date. Check out your options for professional development and prosper along with your peers!

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Jeff kept asking the pretty young manicurist at the barber shop for a date, but she repeatedly turned him down.

"But why won't you go out with me?" he finally asked.

"Because I'm engaged," replied the girl.

"What difference does that make?," said Jeff. "Ask your boyfriend."

"Why don't you ask him yourself?" she said. "He's shaving you."

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