



## PICA ABM In Sacramento



This year's ABM was a huge success. With the installation of the new board, the cooperation of BSIS and the support from our members and vendors we will see PICA take things to the next level.

### Professional Investigators of California P.I.C.A.

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James J. Kitt - Editor  
picapub@northstarlegal.com

Ken Shigut - President - PICA  
ken@shorelinepi.com

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### President's Message

By: Ken Shigut

### PICA'S FIRST ANNUAL BUSINESS MEETING & SEMINAR

PICA's First Annual Business Meeting on Friday, February 28, 2003 and Saturday, March 1, 2003, was a resounding success! If you missed it you really missed not only an informative and enjoyable event, but a watershed point in PICA's evolution.



Outgoing President and Founding Member  
David Herrera

The venue, the Hilton Arden West in Sacramento, was a class act with excellent customer service and tastefully prepared food.

The vendors, Merlin (Information Services), Digital Aerospace Solutions (Case Management Software), Los Angeles Helicopters (Aerial Photography), Diverse Publications (Investigating Personal Injury Accidents) and Prepaid Legal Services, offered a wide variety of services and discounts to attending members.



Chief of BSIS Steven V. Giorgi

The speakers were many and varied. We began the event on Friday evening with full course dinner and Chief Steven Giorgi speaking on the current affairs involving the Bureau, Bureau man power and budgetary constraints, privacy legislation and tips on how to aid the Bureau when reporting suspected unlicensed activity.



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(Ben) Benjamin  
R. Harroll  
PI 7085  
Founder/  
Curator  
[www.pimuseum.com](http://www.pimuseum.com)  
(619)-239-6991

The P.I. Museum  
was founded in  
1978 and  
operates on the  
generosity of  
other Private  
Investigators,  
Interested  
Parties and Mr.  
Harroll's  
personal  
interest and  
financing.

**"Were there any P.I.s involved in the Smart Case?"** was a question posted "the pigroup" Mr. Gabler's reply is the basis of this article. Permission has been given by Mr. Gabler to reprint his post. Mr. Gabler is a Private Investigator in the state of Utah.

Comments for Mr. Gabler can be sent to the Editor at: [picapub@northstadelegal.com](mailto:picapub@northstadelegal.com).  
The short answer is no, there were no P.I.s hired by the Smart family. I volunteered my services, met with the family on several occasions, and reported some critical leads to the family and police.

The family had been intimidated into not hiring a P.I. by the SLCPD. They were told that hiring a P.I. could endanger the investigation, and that bringing a P.I. in on the case could demotivate the police that were helping them. I was contacted by the SLCPD and threatened with arrest if I interfered with their investigation. The SLCPD had received information from me regarding a handy man that was disgruntled with the Smarts.

I have solved kidnapping cases that the SLCPD failed to solve for over ten years. The SLCPD officers that spoke to me claimed not to be aware of these cases, but that claim lacked credibility. I continued to provide counsel to the Smart family after the threats from SLCPD, but did not actively investigate the case.

Rather than go public with this information, I am confident that the SLCPD's incompetence will be obvious to even the most casual observer. Regards, **-Todd Gabler-**

P.I. Hero Tom Gabler:

What if...what if a Licensed Private Investigator HAD been involved in the Smart case? Perhaps even more than one of them? Maybe some donated efforts coordinated under our PICA leadership? Unfortunately now we will never know the answers due to views, decisions, and circumstances the P.I. Heroes have shared with all of us this morning.

Am I alone in believing that events might have moved more swiftly with P.I. involvement? I'm now embarrassed to learn that a prime suspect was openly seen by many people in San Diego County and, amazingly, was even briefly jailed here recently. Wouldn't P.I.'s have helped with all of this?

Your comments had absolutely NOTHING to do with the day-to-day

ways and means we all must search for and which allow us to do our work. They had EVERYTHING to do with the real story of what we all do. Especially as to how we have done the work we do daily from the earliest beginnings of our professional roots. "Roots" that we and others must now learn before we can ever go forward and achieve the earned and rightful position in each of our own communities. We must go out and "re-earn" this position every day despite such wasteful, wrong-headed and self-defeating handicaps. It's astounding that we keep doing it.

The underlying "purpose" of the P.I. Museum is to do just that! Help Legislators, Media, LEO's & Citizens become more informed about P.I.'s and the work we do every day to make life better for our clients, the community & even our country. In other words, to be an active partner in working to serve our citizen clients, justice and the rule of law.

Historically you can go back as far as you are willing to dig for examples. Some of my favorites are the following:

Francois Eugene Vidocq (1775-1857): believed by many to be the 1st Private Eye having hung his shingle out January 3rd, 1834 in Paris, France. His contributions to the early developing sciences of detection were amazing. He is still so well recognized for his brilliance that there are now 72 specially invited "seats" (one for every year he lived) for members of the Vidocq Society [www.vidocq.org](http://www.vidocq.org). They take on unsolved murder cases and relentlessly pursue them.

This group serves us all year in and year out; who knows?



*Continued from page 1*

Our out-going President, David Herrera, convened our First Annual Business Meeting and provided background as to the formation of PICA and the investigators originally involved. The PICA Bylaws were unanimously ratified by all present members,



followed by BSIS Chief Giorgi swearing in the new PICA Board of Directors.

At that point of the evening, David Herrera was gracious in his handing over of the gavel to myself, after which we wound up the evening with our raffle prize drawings. A special thanks goes to new Northern District Director Jim Kitt and his wife, Deirdre Kraft, for the beautifully arranged gift baskets and the transporting of the raffle prizes to Sacramento.

On Saturday morning, after a complete all-you-can-eat breakfast buffet, we had our first seminar, which consisted of a panel discussion and questions

and answers session with BSIS Chief Steven Giorgi, BSIS Deputy Chief



Incoming President, Ken Shigut Addressing the attendees

Sherri Moffet-Bell and Consumer Affairs Attorney Gary Duke. All questions asked were answered there and then with no excuses or responses from the BSIS panel members such as, "We'll get back to you on that."

That was the purpose of having the highest ranking and most knowledgeable representatives of the

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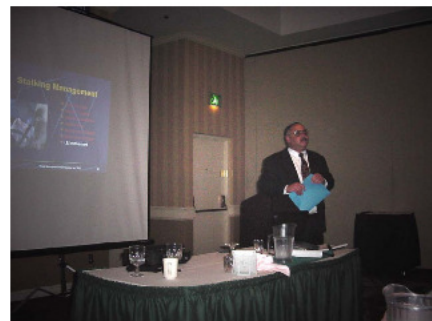
(Left to Right) Gary Dukes, Steve Giorgi, Sherri Moffet-Bell

Bureau available, so that our members could ask any possible Bureau or legal related question and receive an immediate response "from the horse's mouth", so to speak.

Following the BSIS Roundtable and Q&A Session, member

Bob Kirschner provided a very realistic "gut check" style presentation the issue

of Threat Management in the workplace. With the aid of a power point presentation, quotations from actually threatening letters and antidotes from Bob's past experiences in this field, his



R.J. Kirschner of Threat Management and Protection Inc.

presentation made for a truly sobering experience.

Our next speaker, Jack Murray, flew in that Saturday from Dallas, Texas and provided an anecdotal seminar of tips on how to Market your P.I. Business. With over 27 years experience as a successful Private Investigator and business owner, Jack offered tips that have proven successful for himself as well as other successful Private Investigators.

Additionally, Jack offered his latest book, "Marketing and Management Maximizer for your Investigation Agency" at a discount as well as several other publications of his on the topics of

conducting personal injury investigations, photography for the personal injury investigator and tips on legal testimony.

After a full course lunch that was also included in the cost of the seminar, Rick Albee provided an entertaining seminar on Computer Forensics aided by an informative power point presentation. Rick gave us the skinny on the chances for a successful email address break as





J.W. Jack Murray Jr.

well as explained the nuances of how information is stored on a hard drive and the fact that most "deleted" files are anything but deleted.

Recognition and a special thanks goes to member Ann Heckman and her soon to be daughter-in-law, Kristen Skobba, for the digital video photography they volunteered to take conducted to memorialize this event from start to finish.



Rick Albee of Data Chasers Inc.

You are never quite sure how things will turn out when you begin working on such a major program, combined with the fact that it was the first major event that the majority of us who worked on it had put together.

An event like this may appear smooth and fluid but I can assure you that until the very end, we were all holding our breath.

We had over fifty members at the Friday dinner and Business Meeting as well as the Saturday seminars. That is a whopping 25% percent of our membership! Most attending members were from the Southern California area.

To our pleasant surprise, eight investigators became new PICA members at this event!

All of you who became PICA Members by the close of Saturday's seminar, will forever be identified as "Charter PICA Members". From here on out all new members will have regular member status.

I want, again, to wholeheartedly thank David Boykoff, Anne Marie Batesole and Mary Dobson, for without them there is no way PICA's first Annual Conference would have been half the success.

I want to also personally thank all members who took the time to attend and participate in this event. I met many of you and was able to put a face to the members I had only known via email or the telephone. All of you who took the time to share with me your thoughts and ideas on PICA's future and it's

possibilities I want to personally thank and inform you that your suggestions have been noted.

I look forward to working with and meeting more of our members as this 2003 term unfolds.

Remember, we do not have an Executive Director who is paid six figures at PICA. We are all volunteers and full time PI's. We need your help and volunteered time to make the fastest growing PI association in America a continued success.

-Ken Shigut-



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Frank Ritter Personal Injury Manual



L.A. Aerial Photography



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A Special Guest arrived on Saturday. Pictured with Chief Giorgi (Right) is the Chief's Father Henry Giorgi



Continued on Page 6

## "Field Notes"

*From the Editor*

Greetings,

Well the ABM is over and as you can see it was indeed a smashing success. Not that I would rather failure, however, the success of the event and the friendships built dumped a workload the size of the east coast storm on the staff of the PICA Investigative Reporter. Did I say Staff? OK, yes... Me.

There is a good deal of information jammed into this issue, and unfortunately I was unable to accomplish some things I had hoped to by printing. First of all, you will notice that we really did have a "Bang up" affair (as they say across the pond). However, the people who are responsible for putting it all together did not get proper recognition in this issue. I will include a tribute to these individuals in the next issue. Watch out folks... I WILL get photos. In fact I already have some, but have already paid the blackmail money to keep them out of the public eye.

The people who work tirelessly to bring this event to reality are the same ones who devote an enormous amount of time to this association, sometimes to the detriment of their own business. I have to tell you, looking at the amount of sacrifice that these members and some non-members have put in; we are hoping that they don't burn out. Where would our association be then? It's good to see some of the new board members stepping up to the plate and getting involved in their areas of expertise. For now, I think we will be able to carry PICA to the next level. The deal is that each and every member is responsible for how this association operates. You

*Continued from page 3*

The P.I. Museum had donated to it, by Mr. Vincent "Vinny" Parco of Intercontinental Investigations, Inc. New York, a priceless four-volume set of Vidocq's "Memoirs" printed in England as the 1st printing in English back in 1828-1829. These four volumes detail his life's work from early-troubled youth through a long period heading the French Surete. These leather bound gold embossed books are yet another treasure. They help form and define our rich and collective history. They are a true historical "artifact" of our very long service both to our clients and, indeed, the world we all must live in. A world now made very different due to 9-11.

Allan Pinkerton: In 1850 he began his groundbreaking U.S. business success story. Lincoln would NOT have been our President during the Civil War had it not been for Allan! You see he was working undercover trying to find out who was disrupting the railroads back in 1861 when he made the discovery of an assassination plot. Yes! Lincoln was to be killed while being taken via a simple horse and buggy to Washington, D.C. from Philadelphia, PA for the swearing in ceremony. Instead, Pinkerton saw that a different outcome resulted by secretly having Lincoln and his group make the trip aboard a train under assumed names. Interesting thing is that many people discounted this true story as nothing but Private Eye ego and sales tactics by Pinkerton. This went on for 7 yrs. 'til 1868. Then Pinkerton put together a leather bound book containing the actual declarations of Lincoln and other well known people in business or politics.

One of these actual books (not many were produced/few survive) is in the P.I. Museum [www.pimuseum.com](http://www.pimuseum.com). It

was found and purchased over eBay for \$64.00 incl. shipping! If this isn't an example of the important work P.I.'s do then I don't know what is. How many children/adults know this?

Mexican/American War: both countries used Private Eyes during this critical time in our border history. This is an area that I've begun to delve into through my Mexican associates and hope to one day report the actual names and other details of this little known era of P.I. History.

Mike Newman (2003): Mike's company is Tactical Inv's. and he is right here in San Diego. Mike and a few other hero P.I.'s did the grunt work (along with a law professor and his students) that resulted in several innocent prison "death row" inmates being found innocent & freed. That's justice!

P.I.'s in Your Town: Across the U.S.A. and the World there are many more of these unsung "heroes". Maybe not as well known... yet still making life, liberty and the pursuit of happiness possible for their clients and their community. Yet the local media generally perpetuates only the classic stereotypes that we have all disowned; it's simply not us! We are responsible for educating the media with facts.

It is our right, our duty and, very clearly, our professional responsibility to find and expose these facts and the truth that they make manifest for all to see, appreciate and honor. Only then will we be treated the way we have long earned the right to be treated... with respect and access to information that will allow us to be even more productive.

Soooo, who was the 1st P.I. in your town? What major cases turned on



the work of one of your local P.I.'s? When was licensing instituted in your State? Who was the guy or gal who got license number "1"? Finding out can be a lot of fun. I spent the Monday following our successful PICA AGM & SEMINARS in Sacramento with BSIS's own Historian (by default) Noreene Dekoning. Noreene explained that CA P.I. licensing all started in 1915 under the Detective License Bureau established August 11, 1915 and overseen by the state Board of Prison Directors. License number "1" is still a mystery to me but the holder of license number "2" in 1941-1942 was The Wm. J. Burns International Detective Agency, Inc. F.H. Tharp. The named holders of P.I. license numbers "3", "5" and "15" are still around serving clients as well and I'll share more about these firms and much more in future stories.

Can I "deputize" you? Will you keep an eye and an ear out for more about whom we are? Just imagine what might be possible if most Private Eyes would do only that much? With the Internet it is possible for each P.I. to contribute his or her own "grain of sand" towards our collective history until the picture is clear for the world to see, learn from and finally come to fully appreciate.

April 7, 2003 is PICA's very 1st Legislative Day and I invite the volunteers to deliver copies of this reply to our fellow P.I.'s to every legislator they are able to visit. Perhaps even suggest that they take a look at [www.pimuseum.com](http://www.pimuseum.com).

Thank you both for stirring my emotions and thoughts over morning coffee... you've energized me for yet another day.  
Fraternal Best Wishes, Ben

## Half The Business Is Getting The Business!

By Jack W. Murray, MBA, CLI, CFE, CCDI

**T**hose of you who attended the terrific seminar in Sacramento last month, now that I firmly believe that marketing and merchandising your services is an integral part of being in business, no matter what that business is.

You can be the greatest investigator in the world, or at least the second greatest, but if you don't get clients and cases, you'll go broke and ultimately go out of business.

There are basically three ways to help your business to grow: 1. Get new clients 2. Raise your rates. 3. Sell more services, or new services, to the clients you already have.

The first two are pretty obvious and may or may not, be dictated by market conditions. We will explore both of those topics in future columns, but this issue we are going to be talking about selling new services to your existing clients.

This really requires a close examination of how well your current clients are utilizing your services. Are there services that you do well that your client never uses? Have you ever asked them about this? Do they even know you have these services available?

Our agency has just done a mailing to all of our existing clients, outlining our capabilities for checking out witness backgrounds, both theirs and the oppositions. This includes expert witnesses. This is certainly not a new service, but we know for a fact that some of our clients are using other people to perform this task and part of the reason for that is that we have never

asked for their business, except in cases where we are doing accident investigation or reconstruction.

The truth is that not every case that comes into a firm needs our expert services, but virtually every case could use our background checking capabilities. We do vehicular crime cases for a large number of criminal defense attorneys but the background service can be utilized in almost all of their criminal defense cases.

In the very near future we are going to be doing a mailing on forensic accounting. We have an associate Robyn Jones, who is a CPA and a CFE and we use her on white collar crime and fraud cases. But, she could also be an invaluable tool for high dollar divorce cases or due diligence. While the particular attorney that we currently work for in a firm might not do the latter type cases, there are other attorneys in their firms that do, and the current attorney/client is an excellent entre to the others.

But you'll never get that business unless they know you can do the job for them. Nor will you get it if you don't ask for the business.

My Granddaddy told me a story about the preacher who died and went to Heaven. He asked God why he never won the lottery. The Preacher explained that he had promised he would use the money to spread God's word and to do good deeds, and even though he prayed every night to win, he never won a dollar. God's explanation was pretty simple..."Give me a break....you never bought a ticket"

*Jack Murray is a Licensed PI in Texas. He has written several text for the Investigative industry and we hear there is a new one on the horizon. Stay Tuned!*

# INVESTIGATING SEXUAL HARASSMENT CLAIMS

Written by:  
Deirdre M. Kraft  
Attorney at Law

In investigation sexual harassment claims, there are numerous elements that must be explored. In order to build the case that your client will need, your investigation and personal interviews with the employees, supervisors, and witnesses should look for the legal elements as well as trying to determine whether there is a real case here, or just a revenge vendetta.

## 1) GET THE COMPANY'S WRITTEN SEXUAL HARASSMENT POLICY

What is the policy? Who wrote it and when was it written? Inquire as to the manner in which it was handed out. Was each employee required to sign an acknowledgement of having received and read it? There should always be a specific procedure for an employee to follow if they feel they have been the victim of sexual harassment. This gives you a road map of who to interview and where to check to see if that procedure was followed.

## 2) DETERMINE INTERVIEWEE'S DEFINITION OF HARASSMENT

Nearly everyone in business today knows that physical actions like unwanted touching or grabbing done by any employee to another employee is going to leave the employer open to claims of sexual harassment or hostile work environment. However, so can

things like constant staring or "leering", comments about an individual's body, and even dirty jokes. When interviewing each party, determine their definition of sexual harassment, or what qualifies as a hostile workplace to them. It will give you a better idea whether this is a frivolous claim, or whether there were occurrences that are legally actionable. Even if none of their stories match, you may be able to determine if the victim is exaggerating, or is not likely to have any supportive witnesses.

## 3) FIND OUT HOW MUCH THE EMPLOYER KNEW ABOUT IT

The legal standard for what happened in the workplace is what the employer knew or should have known. Determine whether the employer or supervisors turned a blind eye to a problem that the other employees clearly knew about. It is the employer who is legally responsible for upholding the acceptable standards regarding both sexual harassment and hostile work environment, and for making certain that all employees do the same. Ask whether any of the employees ever said anything in a supervisory position, or witnesses anyone else doing so.

## 4) WATCH FOR OTHER SIGNS OF A HOSTILE WORK ENVIRONMENT

Pornographic or sexualized posters, pictures, calendars and comics hanging up in the workplace is a clear indication of employer insensitivity (and sheer stupidity, in this day and age). The offensive material does not have to be aimed at the offended person in order to qualify them to make their own claim; they merely have to have seen it and been offended by it. If the workplace has been cleaned in anticipation of the

investigation and the material it is already gone, find out where it was physically located, which may tell you who would likely have seen it and not just heard about it being there. For those who did see it, inquire whether, and to what degree, they felt offended by having done so. Also, find out who took the offending material down, and when they did so.

## 5) SOME SITUATIONS INVOLVE PROBLEM CUSTOMERS

You may be called upon to investigate a claim involving customers who continually harassed the employees and a boss who did nothing to stop it. Employers can be held liable for the sexually harassing behavior of customers if they fail to protect their employees from it. Along with interviewing the employees, employees may be able to guide you to regular customers who may have witnessed the actions, or to surveillance videos of the actual events. Check the date/time stamps on credit card receipts, or match amounts between checks written and time/date stamps on cash register receipts, to determine who may have been present at the time that the events occurred. If you are investigating this harassment while it is still ongoing, consider setting up video surveillance. When an employee is the target, odds are excellent that they know about it, the sudden appearance of "security cameras" will, of course, make them behave like angels, but customers don't think that way. It would likely never occur to them that the new cameras were placed there for anything except security, and they will likely not alter their behavior one iota even with new cameras in place.



## 6) EMPLOYERS ARE REQUIRED TO TAKE CORRECTIVE ACTION IMMEDIATELY

Employers are required to act the first time that they become aware of a problem, and act in a definitive manner. Their actions must be reasonably calculated to end the harassment or hostile environment. If their first response to the situation does not end it, they are then required to act again, and in a more severe manner. It is important to note and explore the apparent relationship between the employer and the accused. Often, bosses will soft-pedal the discipline for accused employees that they are friends with or for an employee who holds a valuable position in the company. In this case, neither the boss nor the employee is likely to be straight with you about what the discipline actually was. You may have to refer to other employees or written documentation to see if there is any actual evidence of discipline having occurred.

## 7) INVESTIGATING EMPLOYEES WHO HAD A PRIOR RELATIONSHIP WITH EACH OTHER

The desire to break up may not have been mutual. The issue here will be continuing advances by one party toward someone who no longer welcomes those advances. The employee is required to clearly show the no-longer-wanted person that their advances are no longer welcome. Once they have done so, however, if the advances continue, it is supposed to be treated like any other sexual harassment situation, especially if the rejected party is in any way supervising the "rejector", a particularly dangerous situation. Determine in interviews when the two of them were on good terms, when those

good terms appeared to have ended, when people last saw them spending time together on an apparently friendly basis, and whether there were witnesses to the continuing advances.

## 8) INVESTIGATE ATTITUDE CHANGES IN THE EMPLOYEES

Upon feeling harassed or experiencing a hostile work environment situation, some employees will come stampeding in to report it – but you can't ever count on that, especially if the problem is someone in a supervisory position over the potential claimant. Some employees will merely become much quieter, avoid being alone with another employee, or stop eating lunch with the crowd. Ask people if any employee is now avoiding certain people or situations. If there was a problem and the employee refused to tell the employer, or actively hid it from them, it bolsters the employer's argument that they did not have knowledge of the situation.

## 9) ASK WHETHER THE EMPLOYER HAS A POLICY OF REQUESTING A WRITTEN STATEMENT RE: WHY AN EMPLOYEE QUILTS

Some employers (the smart ones) request a written statement from any departing employee as to why they are leaving, and/or do an exit interview. The written statement can be far more telling, as they were probably not sitting at a desk across from their boss when they wrote it. If the employer's case that you are investigating has these policies for departing employees, locate former employees who did submit a statement and ask whether they were encouraged to be totally honest, and whether they were assured confidentiality regarding what they wrote. If the victim has already quit, get a copy of their statement and/or the interview notes. Ask them if they can recall what

they wrote. People who were angry or upset when they wrote something or had an interview often have a very clear memory of what they wrote and the circumstances in which they wrote it. If they seem to have little memory of it, it's worth exploring why not.

Finding answers and gathering information for the above elements is what will make or break the case. If you look in the above information, you have made huge strides toward bringing the case to a valid and legitimate conclusion.

*Deirdre M. Kraft is an attorney practicing family law and civil litigation in the Shasta County, CA. area.*

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# Computer Forensics— When Do You Need It?

by Rick Albee  
of

***DataChasers® Inc.***

If your client has a computer, they need computer forensics. They may not know it; they may dismiss the logic; they may decline the service; but they still need it—every examination that I do emphasizes this truth. The computer has invaded our very existence, become a part of our lives, and is an integral part of almost every case.

Nearly all of my clients are like you—attorneys, practicing in all areas of law. Trial lawyers, civil attorneys, intellectual property, probate, patent, family law, plaintiff or defense—whatever, if your client has a computer it probably plays a role in the proceedings. My task is to best assist you, and to do that I must first create an awareness of being able to satisfy a need.

## MAKING THE DECISION...

The first step in this process is explaining the discipline of computer forensics. This differs from *data recovery*, which is, as the name implies, *recovery* of data after an event affecting the physical data, such as a hard drive crash. Computer forensics goes much further. Computer forensics is a complete computer examination with *analysis* as the ultimate goal.

This means not only recovering deleted files (documents, graphics, etc.), but also searching the slack and unallocated space on the hard drive—places where a plethora of evidence regularly resides.

It is tracing Windows artifacts—those tidbits of data left behind by the operating system—for clues of what the computer has been used for, and, more importantly, knowing how to find the artifacts, and evaluating the value of information. Forensic exams allow the processing of hidden files—files that are not visible or accessible to the user—that contain past usage information. It is reconstructing and analyzing the date codes for each file—determining when each file was created, last modified, last accessed and when deleted.

Computer forensics is being able to run a string-search for e-mail, when no e-mail client is obvious. An analysis will reveal Internet usage, recover data, and accomplish a full analysis even after the computer has been defragged and/or formatted. It is using industry-standard methodology, and supplying you with a concise report with clearly demonstrable results, something you can understand that is organized in a manner to make your job easier.

If any of this applies to your case, it's time to call a forensic computer expert.

## WHAT'S IT WORTH...

Another factor to consider is the value of your case. There are several considerations to this. In the vast majority of cases an analysis will be successful, and much of the time it will be *very* successful. However, regardless of what you have been told, each case is different, and sometimes the desired evidence is *not* going to be on the computer. If that is the case, you have a right to be told so, and an experienced examiner will be able to advise you regarding the possibility *and* probability of finding what you're looking for.

For example, an attorney who needed

the recovery of instant messages, which have, generally, a low probability of success, recently contacted me. I told him so, "Save your money, it's not worth it." He'd been given different advice—that there would be no problem—and went for it, much to his chagrin. However, on a different case, it might have been the right decision.

What's it worth? That depends. I use the analogy of a poker game. If it's a small pot, and you have a great hand, you'll call the raise—little risk. If it's a big pot, even if you have a poor hand, you may still call the raise because there is so much to be gained. But, if it's a small pot, you've got a mediocre hand, and it's a large raise, you'll probably fold—it's not worth the risk. This is much the same for a forensic computer exam. If there is a lot at stake, it's worth taking a chance to recover those instant messages. If it's a small pot, let it go.

## WHAT TO DO, WHAT TO DO...

Billy Crystal, in *City Slickers*, talked about a "do-over." This may be a good thing in the movies, but it's a lousy idea in forensic computer analysis. I can make few guarantees, but among them is that if an examiner has to do an analysis after the computer has already been worked on, it will be more expensive to *do-over*, and the probability of good results will be compromised.

Also, you get what you pay for. You can fly to Europe in a prop-job, or you can fly on the Concord—if you are paying the same hourly rate, the Concord is obviously less expensive. But is the Concord worth more per hour? Maybe. The same applies in picking your forensic computer examiner. Compare certifications, experience, training, background, education, and experience. Ask for references. Query their



equipment—is it state-of-the-art? If you get positive answers to the above inquiries, you're probably on the right track.

## DON'T DESTROY YOUR OWN EVIDENCE...

I recently completed a case for a very large corporation. Unfortunately, in their haste to assist me, they actually hindered the process by allowing their in-house IT personnel to “help.” The subsequent results were less than satisfactory. Here is how the conversation went with the CEO:

**CEO:** “Why can’t you testify to the date that file was looked at?”

**Me:** “Because the date-stamps show the file was accessed several days *after* you confiscated the computer from the employee.”

**CEO:** “You can tell that!”—embarrassed pause—“What difference does it make?”

**Me:** “Did your own people try to view the file, after it was confiscated?”

**CEO:** “Of course not!”

**Me:** “According to the forensics, somebody accessed that file after the computer was no longer in the hands of your employee. You’ve given them a defense.”

At this point, there is generally a big sigh of resignation that says (although not in so many words), “We really screwed up, didn’t we?” Had the question been spoken, my answer would be that they had, indeed, really screwed up.

The client made two mistakes. They did not bring counsel into the process soon enough (something I always encourage), and they allowed the evidence to be corrupted. In forensic computer exams, the biggest favor you can do for a client is to preserve

the integrity of the computer, thus preserving the evidence for an experienced forensic computer examiner.

## MAINTAIN COMPUTER DATA INTEGRITY...

If the computer is ON, leave it on; if it is OFF, leave it off. Each time an operating system boots up it writes to several hundred files, and overwrites data crucial to the investigation. I use tools specifically designed to acquire the data without booting into Windows. This data is retrievable if it is not overwritten by the boot process.

Never allow company personnel to access the computer. This changes the date that files were last accessed and/or written to, stores contaminated data in files that are only accessible by forensic experts, and taints the evidentiary value of all data. I never boot into Windows; there is no way to do so and insure the hard drive’s integrity as Windows writes to several hundred files during each boot process.

Never allow a copy to be made of the hard drive. A forensic copy differs from a Windows or DOS copy, which only copies existing, logical files—not the entire physical hard drive. We make a bit-copy of the entire physical hard drive, including slack (that data remaining in the unused portion of each cluster) and unallocated space (that space not assigned a FAT—File Allocation Table), where much of the needed data resides.

By following these simple suggestions you allow us to insure a thorough forensic examination that can be testified to at a later date.

*Rick Albee is the president of DataChasers®, Inc., he holds a Masters*

*degree, is a BAR Associate member, and he is certified through multiple disciplines in computer forensics. Having served in law enforcement for 29 years, Rick’s last public-sector assignment was the operations lieutenant for the detective division, including the computer forensics and fraud investigations. He is an expert witness in several jurisdictions as well as Special Master to Federal Court. Additional information can be found on his website ([www.DataChasersInc.com](http://www.DataChasersInc.com)).*



The individuals pictured here are responsible for not only the success of the ABM, but also PICA as an organization. Anne Marie Batesole (top), Dave Boykoff (Center) and Ken Shigut (Bottom), have all given selflessly of their time and personal funds in order to push PICA and the ABM into the Major League. Please take a moment and thank them for their sacrifice.

*Continued from page 6*

have joined because you wanted to be part of something that you could have a say in, have some control in how you were represented, be able to protect your profession and not watch your dues flushed to frivolity. So, get involved. We need your help. Legislative day is right around the corner and we need people to help pull this off in order to give PICA the credibility that it so deserves. If you want those in office to think of us seriously, then we can't look like a bunch of amateurs on "take your PI to work day". All it takes is a few minutes here and there. Research some legislation, help us to pinpoint important facts and representatives so that we may plead the cause for our industry. If everyone gave a half hour that would be a minimum of one hundred and ten hours of solid work force. Imagine what could be accomplished. Contact President Ken Shigut to see what you can do.

Another thing I had hoped to accomplish was a make over of the format for the PICA Investigative Reporter. I will actually begin this next

week and would welcome any suggestions or advice. This really is a one-man operation right now so if anyone would like to help, it would be appreciated. Experience is not necessary, only willingness. We are looking to go full color in the near future, and while that has not been financially possible with this issue, I hope to have it accomplished within the next few issues. We have advertisers inquiring and in fact committing to the publication. This revenue will help us to bring a first-class product without taxing the general fund, and hopefully in the very near future will bring a self-supporting publication to the members.

It will, however depend on the involvement of the membership. I need your input, recommendations, and promotions to your friends as well as colleagues and authors to provide fresh content.

My hope was to accomplish keeping my address short, with good information and to not harangue the membership to get involved in their organization. Oh Well... maybe next issue.

Take care, be safe and watch out for those who would do us harm  
Jim

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## Professional Investigators of California

10200 Mason Ave.  
Suite 227  
Chatsworth, CA. 91311  
(800) 765-7422  
[information@PICA-Association.org](mailto:information@PICA-Association.org)  
[www.PICA-Association.org](http://www.PICA-Association.org)