

ÆGIS



Addressing threats that affect your bottom line

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Concealed assets in fraud, theft, and divorce? Call us!

This month's features:

- **Special Announcement**
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L. Burke Files will be speaking at the Offshore Summit
21-22 April in Miami, Florida
www.samuelgroup.com

Richard Isaacs will be speaking at CPM 2005 West
24-26 May 2005, Las Vegas, Nevada, USA
<http://www.contingencyplanningexpo.com/information/invitation.asp>

1. Asset Location and Due Diligence — Learning from the Oil for Food program and the Development Fund for Iraq

When the massive amount of fraud and waste associated with the Oil For Food program was discovered, there was a predictable outcry, with a number of people saying that this showed how useless and corrupt the United Nations had become.

When the massive amount of fraud and waste associated with the Defense Fund for Iraq was discovered, there was a predictable outcry, with a number of people saying that this showed how useless and corrupt the United States had become.

In fact, although there is a lesson to be learned from both the Oil for Food program and the Development Fund for Iraq (and Enron and WorldCom, *ad nauseum*), the lesson has to do with fraud, not with either the U.N. or the U.S.

When we speak of fraud, we generally need to look at the *fraud triangle*, which consists of *Opportunity*, *Pressure*, and *Rationalization*. The only item you as an employer or business owner control is Opportunity. Pressure and Rationalization are internal to the perpetrator and beyond your influence.

Opportunity is just that: The opportunity to steal, in which we carelessly or thoughtlessly present a potential thief with the active temptation to steal. Opportunity is the easiest piece to control, and large-scale fraud is usually a response to little thought having been given up-front to its avoidance.

We know from long and sad experience that when there is an opportunity for fraud – particularly fraud on the scale seen in Iraq – it should serve as a reminder to make sure that programs contain adequate management controls and oversight to reduce, as much as possible, the opportunity to steal.

It is, thus, a sad truth that fraud is largely not a matter of politics, but of lack of common sense and prudence. It might be said that fraud is a choice on the part of management, either through malfeasance or misfeasance. Avoidance of fraud should be a matter of forethought and policy, both public and private, to prevent ongoing victimization and waste.

2. OPSEC, Economic Espionage, and Competitive Intelligence — The implication of Sarbanes-Oxley on economic espionage prosecutions

In the January issue we discussed two unfortunate results of not having an OPSEC programs.

- The first was that you will have to deal with the consequences of being in non-compliance with Sarbanes-Oxley because you did not have the appropriate internal controls. These consequences can be both civil and criminal in nature.
- The second was that in case of a loss you face a shareholder negligent action suit because you knew, or should have known that, with annual losses of \$300 billion in the U.S alone, there was a significant identifiable threat that you should have addressed. PLUS you were non-compliant with Sarbanes-Oxley, which was at least partly designed to force you to protect the shareholders from just this type of loss, or acknowledge that you are not protecting yourself and your shareholders from losses. We have poled several large insurance companies, and are getting indications that these suits will not be covered under directors and officers insurance as they represent deliberate indifference.

There is a third problem that can arise if you end up in an economic espionage lawsuit. In order for a theft of information to be covered under the Economic Espionage Act of 1996, the information stolen needs to be a trade secret. In order to be a trade secret there are two things that have to be in place.

(A) the owner thereof has taken reasonable measures to keep such information secret; and

(B) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable through proper means by, the public.

Before Sarbanes-Oxley this was fairly straightforward.

After Sarbanes-Oxley the issue became more complex once the SEC said that “the Sarbanes-Oxley Act of 2002 and the Commission's rules promulgated under the Act seek to strengthen pre-existing standards for internal controls, thereby potentially improving the ability of companies to track the costs and impact of economic espionage and theft of intellectual property.” What standards exist for this particular set of internal controls? The standard government program is OPSEC. The professional society

dealing with this, the OPSEC Professionals Society, is the body granting OPSEC Certified Professional (OCP) certification.

So, now someone has stolen your apparently-not-so-secret information, and you have caught them, and turned the matter over to the Feds. Now you are in court being examined by the defense counsel.

DC: So Mr. Smith, tell me about your company's OPSEC program.

YOU: Our what?

DC: Let me rephrase this. Sarbanes-Oxley requires you to have internal controls to track the costs and impact of economic espionage and theft. Which means you have to have a program for the identification, valuation, and protection of your critical information. Could you describe these internal controls?

YOU Well, this is a trade secret, and they stole it!

DC Your honor, it appears that the plaintiff is not in compliance with Sarbanes-Oxley, and, therefore, through deliberate indifference, has not taken reasonable steps to keep his information secret. The plaintiff has therefore abandoned their trade secret. It appears clear that, since the information was not trade secret, it is not covered by Title 18, Part II, Chapter 90. Since this court thus has no jurisdiction, we move that the case be dismissed with prejudice.

At which point you are back to angry shareholders, and have to explain why your company failed to identify, value, and protect its property, and thus have a loss not covered by any insurance or laws.

3. Executive Protection — The Magnasphere® switch

One of the staples of the tools that protect our physical property is the magnetic switch. You see these switches everywhere: Doors, windows, you name it and you will find a magnetic switch somewhere nearby. When the door or window is closed the switch is near a magnet, which holds the switch closed. When the door or window is opened, it moves away from the magnet and the circuit is broken, triggering the alarm.

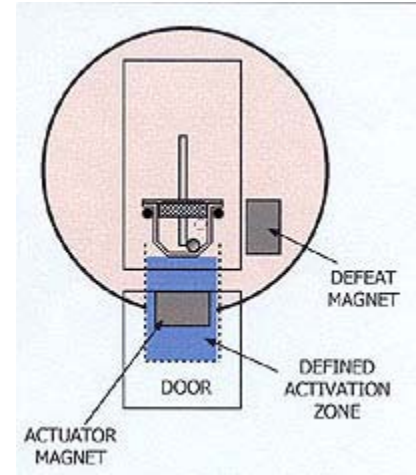
The devices are well-established and work well, but are defeatable by someone with knowledge, a compass, and a magnet: You use the compass to find out where the magnet is, and therefore the switch is, then put your own magnet next to the switch while you open the door or window.

There are, of course high security switches which deal with this problem, but they tend to be a bit pricey, albeit worth it if the threat is high enough.

A new approach has been taken by the folks at Magnasphere Corporation, (<http://www.magnaspherecorp.com/>), who created a simple device that cannot be defeated by use of an outside magnet because of the needed directional sensitivity of the system: A magnet placed anywhere but at the bottom will break the circuit, rather than keep it open.



The device innovative and simple, which means the cost should be low enough to use anywhere a normal reed switch might be used, giving a good combination of low price and high protection. The device comes in several versions, including high security device (not shown), and the standard device shown above. You might want to suggest that your physical security folk take a look at these devices.



4. Technical Issues — Diskeeper

As computers have become faster and faster, a significant constraint on speed of computer operations has become the speed of access to data on the hard drive. More accurately, a fragmented hard drive can become a weak link in the operation of the machine.

To understand how this happens, think of your hard drive as being like a file cabinet, with limitations. So now we stick in a file folder, then a second. Then we make a change in the first folder, and the limitation kicks in: The folder is full, so we put the new information in the third folder, and leave a note in folder one telling where to look for the rest. And this is what happens as you make changes to files on your hard drive: Each addition tucks another note on, telling where to look for the next piece. This means that rather than grabbing one hunk of memory in one read, or several contiguous read, we may end up with many reads in many different locations. What should be a quick operation becomes slow as the heads are searching all over your hard drive for bits and pieces of your files to put together.

The way you deal with this is with defragmentation software, and the best program on the market to handle defragmentation is Diskeeper from Executive Software (<http://www.diskeeper.com/>). Besides merely

defragmenting your hard drives, this excellent software gives you a lot of options for keeping the drive de-fragmented. You can set it to run at specific times, or only at night, or when needed. You can set it to run when the screensaver comes on. You can even do a boot-time defragmentation, which will put directories where they should be. No matter what your scheduling needs, nor the stress on the drive

Diskeeper also defragments the Master File Table and paging files, and is smart enough to stop working when programs need data.

Why is all this important, besides the time saved for users on their individual workstations? Think SERVERS. Your company's servers can be the heart of your company, and anything that can be done to speed them up is of significant importance. So, on the off chance that your IT staff is not familiar with Diskeeper, tell them about this must-have software, and be a hero.

5. Real Stories from the Field — Good ideas, great ideas, bad ideas

There is a tendency to forget that there are a lot of good ideas out there, and a lot of different ways to do things. With innovation, the whole paradigm can be changed. As an example, by the 16th century the sonnet was pretty much an antique poetic form, with there being the general feeling that all the sonnets that could be written had been written. Then came Shakespeare.... And, in fact, there are lots of good ideas to be seen, many of them, after the fact both clever and obvious, yet hitherto un-thought-of.

The Dyson vacuum cleaner

As an example, the Dyson vacuum cleaner (<http://www.dyson.com/>). As you know from seeing his ads, instead of filtering out the dust, he spins the dust-laden air so fast that centrifugal force whips the dust to the side. Where it falls into a container, obviating the need for a filter. Clever and obvious, yet hitherto un-thought-of.

Thurman Multi-Dimensional Sound Ports

One of the difficulties with classical guitar – with any non-electric guitar – is that the dynamic range is rather limited, making it a difficult instrument to fit into an orchestra. A step in dealing with this has been Roger Thurman's innovative sound ports, U.S. Patent #5,952,591 (<http://members.aol.com/rogluthier/index2.html>).



While many luthiers have played with ports, often one or two golf ball sized holes on the side of the neck, Thurman's ports are wildly different, angling out at 45 degrees. The structure of these ports would lead us to expect the spread of sound to the player's left, as well as the ability of the player to hear what is being played (sound is coming directly to the player's ear, rather than totally from the sound hole), as well as the fact that they make it easier to reach the upper frets.

Less obviously to be expected, but clearly revealed and quantified in tests conducted by Audio Technica, is the effect of the ports on (in audio speak) the cabinet. The measurements indicated that wavelengths too long and too short to be useful were mysteriously (to us, at least) re-equalized to the midrange where we have most of our hearing, with the end result being that these ports increased sound production by an astonishing 2 decibels (a 3 decibel increase *doubles* the sound). This means that the Thurman Multi-Dimensional Sound Ports represent a significant new option for a luthier.

In retrospect the increased spread, and the better monitoring for the sound by the guitarist, and the easier reach – and perhaps even the increased volume – are clever and obvious, yet hitherto un-thought-of.

ebay

Another example is ebay (<http://www.ebay.com/>), which takes a tiny piece out of each sale. A small piece, but they more than make it up in volume. The idea of being middleman via the Internet is terrific and, after the fact, obvious. Ebay provides the computer power and structure, while others deal with the merchandise. Clever and obvious, yet hitherto un-thought-of. They prudently developed a process patent on the idea and defended it zealously.

Specialize sports clubs

Many sports leading potentially to the Olympics are pretty demanding on the participant, their parents, and their parents' wallets. We are given to understand that the proud parents are likely to be spending something on the order of \$25,000 a year on their teenagers' hobby if they plan to compete seriously. One parent considered opening his own club, which reminded us somewhat of James Garner's character Henry Tyroon in the 1963 movie *The Wheeler Dealers*. The logic, however, is that if you live in a large city, and can get together with a handful of other parents whose children share the same passion, you can chip in and hire the best coach in the world for \$100,000 a year. You will, combined, use only a small amount of the

coach's time, and the rest will be available for the use of the club. You might even make a profit (other than from your child's college scholarship) from this tax write-off. Clever and obvious, yet hitherto un-thought-of.

Power in Motion

One of the great curses of life can be pain. If any of you suffer from chronic pain you will understand what we mean when we say that the best curative option sometimes seems to be suicide.

We have a close friend that was in a crippling automobile accident, and was suffering horribly. There were no medical treatments that seemed to be available, pain clinics did not help, and heavy medication did not provide sufficient relief, either. Although we have no way of knowing for sure, we suspect their life was starting to be at risk.

They ended up at **Power in Motion** (<http://www.power-in-motion.com/>), a rehabilitative clinic in Libertyville, Illinois, only because a sibling happened to hear Roma on Chicago's WLS *Don and Roma* morning show raving about how Power in Motion had helped the broadcaster with an untreatable 30 year old injury.

Now, on the surface it would seem unlikely that a group of physical therapists, even physical therapists that were willing to incorporate alternative approaches to health issues, would be able to step in where doctors and pain clinics had failed. But, sometimes, unlikely things do happen, and this was one of those cases. And a bit of investigation revealed that this was not a fluke case: They really do have the better mousetrap!

So if you know someone in pain who has been told that there is no hope, or that there is no resolution, or that they will just have to learn to live with the pain, you might want to refer them to Power in Motion. Worst case you will be their hero for life. Best case you will save their life. And we are willing to bet that, in retrospect, you will find that what they do is clever and obvious, yet hitherto un-thought-of.

The New York Jets Stadium

An idea whose innovative virtue we can't put our finger on is the NY Jets Stadium. Start by understanding that in New York City all is not always what it seems. As an example, the City recently sold a major developer the square block between 41st and 42nd street, running between Dyer Avenue (the exit from the Lincoln tunnel, halfway between Ninth and Tenth Avenue) and Tenth Avenue. The developer paid \$100,000 for the block, on

which he plans to build a sixty story building. This is a good deal – a GREAT deal!!! – for the developer, as condos in the area probably sell for \$850 a square foot! The same folk who sold this plot of land have come up with the idea of putting a 75,000 fan football stadium for the NY Jets on top of the last piece of developable land on the Hudson River in midtown Manhattan, the west side railroad yards. The area itself has remained blighted for many years because it is zoned for industrial use, and, at \$850 a square foot, people don't build factories there.

While something does need to be done to the area, on the surface a stadium doesn't seem to be a reasonable part of the development mix for a number of reasons. First is the fact that while the stadium is being done off-budget, so that the City Council and the voters don't have input. In simplistic terms, the Jets will pay \$800 million for the stadium, with about \$600 million coming from City and State bonds, the proceeds of which will be given to the Jets to give to give back to the City and State, which will then use the money to pay off the bonds. Based on estimate overruns on construction, bringing the cost to 1.4 billion, most of the cost will eventually be born by the taxpayers when it perforce goes on-budget.

In addition, if you do some quick research on the benefit to communities of sports stadiums, you will find that virtually all of the studies say that the public benefit is somewhere between negligible to actually negative. And if you think of the neighborhoods surrounding most stadiums, you will notice that they are not swell. Oh, and you will also find the study by the Jets saying the benefits will be great.

In addition, there is the environmental impact. While events taking place at Madison Square Garden, which sits on top of Penn Station and several subway and other train connections, reputedly has 20% of its customers arriving by public transport, the estimate for the stadium is that 80% of its customers will take public transport. We would guess that, realistically, 25,000 cars would drive in for each game. This will be interesting, as no public parking associated with the facility is being included, since, after all, 80% of attendees will come by public transport....

In addition, the proposed stadium is to be dual-use, with conventions too large for the Javits Center being held there. There are a number of stadiums associated with convention centers, so the idea is not new, and based on the experience of other similar facilities, there will likely be only of these events 15 events per year. None of these dual-use facilities do well. In one case a stadium is being torn down and replaced by an expanded convention center.

This is surprising, because the others are not doing markedly better, and we would have assumed that they, too, would be replaced. The bottom line is that if the Jets play fifteen games a year there, and it is used for other events fifteen days a year, for over ten months of the year it will be an empty hulk, as compared with the activity associated with building residential and commercial property on the site.

Finally, the stadium is supposed to be an important part of New York's bid for they Olympics. Unfortunately, while this stadium *is* large enough for the Jets, it is reportedly too small for either soccer or the Olympics, and would require an additional \$200 million to be expanded to be usable for the Games.

There is also the impact on the neighborhood itself. Imagine you were buying an apartment. How eager would you be to live next to any stadium you have ever attended when there are 75,000 people trying to get in and out? How about when it is empty for weeks at a time?

We suspect that while there is enough profit potentially being made on this that there is compelling high-level political pressure in its favor, it will not get built. But in the unlikely event that the stadium *were* to be built, we would hope to be involved in the subsequent investigations of fraud, misfeasance, and malfeasance.

6. Book and Product Reviews

The Retail Manager's Guide to Crime and Loss Prevention

Liz Martinez

Looseleaf Law Publications ISBN: 1-889031-66-6 211 pages \$29.95

<http://www.looseleaflaw.com/> 1-718-359-5559

One of the nice things about our reviews is that we often get sent material in fields not related either to high-risk endeavors, yet of intellectual interest to us, and practical interest to at least someone with whom one of our readers might be dealing. When something like this crosses our desk, we are delighted to receive it, to read it, and to recommend it.

One such book is Liz Martinez' well-crafted *Retail Manager's Guide to Crime and Loss Prevention*. While we have only peripheral contact with the world of loss prevention – and that only very rarely – we nonetheless recognize its importance in protecting the bottom line against attack on already-slim margins.

While a good primer for anyone, Ms Martinez' book is aimed at the smaller retail establishment, where there is no loss prevention department. The

suggestions are concrete and implementable at costs reasonable to the risks. The book is broken down into broad areas covering internal theft and external theft, the latter including workplace violence and sexual harassment issues, as well as basic issues dealing with doing business on the Internet.

We found this guide to be readable and informative. It would be a good recommendation for any retailer without a loss prevention department, or for a manager who wants to understand how loss prevention works.

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 1. American businesses lose \$300 billion annually to competitive intelligence, economic espionage, and information theft.
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 - LUBRINCO provides private sector access to OPSEC, the government-standard process for identification, valuation, and protection of intellectual property and critical information from competitive intelligence, economic espionage, and information theft.
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