

# Legislative Committee Report-NALI Mid-Winter Scottsdale Arizona 2001

It has been a very active and busy time since Denver. The NALI legislative Committee has grown from 2 members to 20, thanks to the extraordinary efforts of Co-Legislative Chair, Scott Nelson of Fresno California. The results are impressive but fall short of the absolute necessity of having a legislative committee member in each region at the minimum, preferably a member in each state. Thus far, the only region wherein the legislative committee is not represented is region 4. The position was offered to Region 4 Director Cliff Carpenter and he regretted he could not participate. He has been asked as has other Regional Directors to appoint someone within his region the committee could rely upon to monitor legislation regarding this industry through these perilous times. The Committee has not yet received this much needed anticipated important nomination. The committee looks forward to this void in Region 4 being rapidly filled, particularly in view of the outcome of the recent National General Election. The Region 4 Legislative Committee member could well play a pivotal role in the continued protection of the law-abiding individual as well as the very survival of this industry. The hard working, very active current members of the NALI Legislative Committee are as follows: (I ask each to double check the e-mail address given and report to me any error...many important e-mails concerning pending legislation have been returned as undeliverable)

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If you see any of the members at this conference, stop, say thank you, buy them drink and do anything else you can reasonably do to show them your appreciation of all the hard uncompensated work and non claimed out of pocket expense for reimbursement incurred by these fine representatives of you, NALI and this industry. I could not have accomplished what has been accomplished these past few months without their help and support as well as the support of Larry Troxel, CLI, ND, Al Petritis, CLI, AND and Carol Moore, CLI, Secretary Treasurer. It has been through the continued vision and foresight of the current officers as mentioned that the vision and foresight of prior National Directors, Robert Parke, CLI and Joseph Laski, CLI have been allowed to continue and to be implemented by the NALI Legislative Committee.

In the last Congress, fondly referred to as the 106th, with the assistance of the National Council of Investigation and Security Services (NCISS) under the leadership of the capable Eddy McClain, all privacy bills that would

have adversely impacted the law-abiding individual and this industry was successfully stalled until adjournment. This fine result can be accounted for and was enhanced by a confluence of events not within the control of anyone, namely the extended National General Election, the crush of budgetary approval required before adjournment and other more pressing matters made Privacy Legislation substantially less important to congress. This industry will not be as fortunate once the new 107th congress is up and running. A veritable flood of privacy legislation adverse to the law-abiding consumer will flow off the hill in Washington DC beginning on the first day that new bills can be introduced, January 22, 2001.

Although NALI can, according to its 501 C-3 Charter, lobby for and against various pieces of legislation, that is the function of Eddy McClain and NCISS. NALI works in concert with and facilitates the activities of NCISS. NALI is not subservient to NCISS and NALI must retain its own voice and independence in thought and separate action on relevant legislative activities. The only time that NALI will lobby is under the umbrella of NCISS. That having been said, NALI is focused on building related industry and professional alliances with other organizations throughout the United States and sometimes off shore when it is in the best interest of NALI and the investigative industry. There will be occasions when the position and direction that NCISS chooses to take will not be consistent with NALI and in those instances NALI must remain able to strongly voice its own position, but at the end of the day will either not oppose NCISS or as strongly support NCISS in its lobbying efforts and viewpoint, unless the NCISS position is adverse to the law-abiding innocent individual. I doubt that will ever be the case, but this one caveat to lockstep unification of opinion and action must exist.

Since Denver, NALI has been busy fortifying its alliance with the National Association of Security and Investigative Regulators (NASIR), obtaining a resolution at their AGM in Orlando Florida as follows.

“WHEREAS, the National Association of Security and Investigative Regulators (hereinafter "NASIR") is a non-profit organization of thirty-eight (38) member states and two (2) Canadian provinces established to support integrity and professionalism of the private security, Investigative, collateral recovery, alarm, and electronic security professions; and

WHEREAS, NASIR recognizes the legitimate needs and ends of properly vetted, licensed, and qualified professionals in the aforementioned industries.

BE IT RESOLVED that NASIR fully supports exemptions for properly licensed private security, investigative and collateral recovery professionals from any legislation, administrative rule, regulation, order, opinion or decision which restricts access to any public record maintained by any governmental entity, said records to include personal identifying information concerning people, places or things.”

This resolution would not have passed but for the prior relationship established by NALI with NASIR and the Herculean efforts of Louis Gurvich, Esq, legal counsel and legislative chair for NASIR as well as Art Varnadore, President Elect of NASIR.

In addition, NALI promoted reciprocity agreements and urged the regulators to present rapidly and obtain approval within their state to execute same in behalf of their state. NALI is informed several such reciprocity agreements have since been signed by NASIR regulators. NALI also argued in favor of licensure in those states that do not currently require licensure to practice the investigative sciences.

Art Varnadore, President elect of NASIR has also committed himself to testifying upon reasonable request in states that consider and introduce new legislation to require strong licensure procedures to engage in the investigative sciences within those states that do not currently require same. It is absolutely essential if you practice in a State that does not currently require strong licensure requirements that you immediately undertake to change that status. You can rest assured, if the investigative community is successful in retaining access to personal iden-

tifier information under given circumstances, states that do not have in place strong licensure requirements will not be allowed to participate. Essentially, there will be Federal Regulation of the Investigative Sciences with enforcement thereof being left to the legitimate vendors and those states that have strong licensure and qualifications. Sadly, states such as Colorado, Mississippi and Alabama as well as others will be unable to retain access.

NALI actively participated in and can proudly take partial credit for the stopping of ill conceived efforts to close electronic access down to Maryland Criminal Court Records in concert with NCISS. And low profile alliance dialogue continues with the senior lobbyist(s) on Privacy, Susan Steiman and Catherine McCullough, as well as state representatives for ATLA, Rosalyn Bonati and Nancy Marcus with whom a second meeting was held while NALI was recently in Washington DC to facilitate a historic initial roundtable meeting between the investigative community/privacy advocates and the FTC.

Alliance dialogue has been opened with the National Association of Paralegals, Solveig Singleton, Senior Policy Analyst and Jessica Melugin, Policy Analyst, Privacy, Competitive Enterprise Institute. As an aside, Ms. Melugin asked "Where have the investigators been over the past several years while adverse privacy legislation was being introduced." NALI with the very able assistance of Francie Koehler, President of California Association of Licensed Investigators (CALI), responded we had received a similar unstated reaction from the FTC and assured her, as we had the FTC, that the investigators are here now!

We had hoped to meet with representatives of the National Association of Criminal Defense Attorneys (NACDL) but we were unable to do so. Registration is being made to exhibit at the National Conference of State Legislators occurring in August 2001 in San Antonio Texas, the cost of which will hopefully be off set for all practical purposes by NCISS participation and other state investigative associations that will be invited to help underwrite same by sublet participation of the exhibit booth(s), much as was successfully done at the Consumers Attorneys Association of Los Angeles in 1999. There will be no better time to mix and mingle and explain our concerns for the law-abiding individual. There will be 7,000 state legislators and their aides at this annual function. NALI attempted to obtain exhibit space at the forthcoming ATLA AGM in New Orleans but all exhibit space had already been sold. NALI looks forward to participation in the mid winter meeting in Canada.

We also met with Senator Dianne Feinstein's senior aide and we were able to thank him for the complete elimination of section 7 of S.2328 which will be reintroduced in the 107th with a different number. NALI and Koehler suspect, but did not presumptuously ask, if section 7 was eliminated as a result of Koehlers personal professional relationship developed with Tom Oscherwitz, the Senators senior aide during a second meeting with him when NALI and CALI last visited. We suspect it was to some, perhaps minor extent, after extended dialogue with Oscherwitz pointing out the flaws in that section that would have adversely impacted the law-abiding individual in late September 2000 in Washington DC. Now, we only need deal with Section 8 this session although Section 7 in another form could again be added to the new bill prior to introduction. A courtesy call was made on Senator Barbara Boxer as well.

It is with the permission of Francine Koehler, President of CALI the report she has presented to the CALI Board of Directors concerning the FTC meeting and it's agenda is attached. Please read it slowly and carefully. It must remain the mantra of the licensed investigator, as it always has been, that our industry is as interested as anyone in protecting the privacy and identity of the law-abiding innocent citizen. It is by virtue of the licensed investigator's access to personal identifying information that the privacy and identity of the law-abiding innocent individual is protected...exactly what the privacy advocates want to see come to fruition. The FTC/Privacy Advocates and the licensed Private Investigative Community as expressed by a Privacy Advocate, are truly, not that far apart.

The fruit and wisdom of this recent meeting may have already started to develop with the rhetoric of the Privacy Advocates having been somewhat modified as demonstrated in a recent press release following the meeting with

them and the FTC. Their rhetoric in opposition to continued access to personal identifiers in the recent press release eliminated in its entirety ( at least in this particular press release) opposition to continued access by licensed investigators. This Chair submits that the results of this meeting can be considered favorable and we know the FTC was listening closely. The FTC stated at the beginning they would not actively participate. The FTC not only actively participated and engaged in an exchange of reasonable continued access to personal identifiers, several members of the FTC and Privacy Advocates openly stated the meeting was very beneficial if for no other reason than to eliminate the stereotypical Hollywood image of the private investigator. They were most surprised to learn, licensed investigators are willing to consider additional regulation and accountability with severe sanctions for both supplier and recipient for violations in exchange for continued electronic access to personal identifiers. Neither the FTC nor the Privacy Advocates as a whole want the bad guys to get away, nor do they want the good guys confused with the bad guys simply because licensed private investigators fail to retain electronic access to personal identifiers. There are those that will say the progress was limited or at best a small step forward. This Chair disagrees. A huge step forward was taken by all involved in this meeting. There is very valid reason to be cautiously optimistic.

It would be impossible to place into words the importance of the roles played by the investigative community attendees at this meeting. The investigative community, in particular, those in NALI have every reason to be very proud of their participation in this meeting, as does Bill Fason of Texas Association of Licensed Investigators (TALI.) It is an understatement to describe the meeting as “historic.” It may not be an overstatement in the months and years to come, to look back and state this initial meeting and the content as having been “profound.” It is equally dismaying as to why such a meeting like this has not taken place heretofore.... ever! The Chair wonders how any divergent viewpoints can ever be resolved, if the party’s with the divergent views are unwilling to meet and discuss those divergent views to find common ground and work from there towards a resolution acceptable to all participants?

We appreciate Beth Givens, Founder and Director of the Privacy Rights Clearing House in bringing the attending Privacy Advocates to the table. Kitty Haileys, CLI insightful real world examples were poignant and captured the attention of both the Privacy Advocates and the many representatives of the FTC. Brian McGuinness, CLI was eloquent, Larry Troxel CLI was on point, Eddy McClain stopped the Privacy Advocates relative to their presumed adverse view of collection of debts, rightly owed as well as the stats used which are 23 plus years old or not relevant to activities within the United States, Larry Sabbath Esq NCISS paid lobbyist, was fortunate to be able to find the time to unexpectedly attend. His cogent remarks helped keep the meeting focused. A summary of the minutes taken by Deb Alyward (another Herculean assignment,) State Association Advisory Board (SAAB) and NCISS member are attached as well as opening remarks.

The FTC law requires listening to arguments from all comers. They are not, however, required to expend the effort nor taxpayer revenues for a roundtable meeting of this nature. One could not help but understand the importance and significance of this meeting as viewed by the FTC by the number of high level staffers that participated. Francie Koehler, President of CALI was invaluable in setting this meeting and following through on the necessary details. She advised privately as an aside, in excess of 600 e-mails and untold hours on the phone were required to see this meeting come to fruition as conceived.

Regrettably, there are still a few members of NALI that just do not understand what the NALI legislative Committee is all about nor do they understand its goals, its charter nor the necessary related expenses. I will try to address some of those issues.

As stated earlier in this report, NALI does not lobby, unless it is covered by the umbrella of NCISS. NALI is in the business of building Alliances and being very aware of legislation that is being proposed and introduced at federal, state and local levels that adversely or positively impacts the law-abiding individual as well as the membership of NALI and only the membership of NALI.

NCISS represents many state organizations and assisted in creating the State Association Advisory Board. NCISS may not always take a position that is consistent with the best interest of NALI. NALI must be prepared via it's legislative committee and have the financial ability to rapidly respond when necessary to ensure the law-abiding individual as well as it's own venal self interest are protected when necessary or an opportunity to protect those interest is presented. There have been two such occasions since Denver.

Fortunately, in each situation NALI has incurred the necessary minimal expense to take the needed action which has resulted in the favorable resolution at NASIR and the recent Federal Trade Commission, Privacy Advocates and Investigative Community roundtable meeting in Washington DC. But for NALI involvement neither situation would have been handled nor reported to the NALI membership with the NALI membership's best interest in mind. Simply because an organization or individual(s) are emmersed in and have great knowledge of a particular subject in this case legislation it is overly optimistic, perhaps even naive, to conclude they also have the necessary attitude or approach to resolve the issue in the best interest of the entire constituency they represent. It must be understood and accepted the approach used in 1990 is not viable in 2001.

To make a financial contribution and sit back, become passive and impotent and rely on NCISS in all matters legislative is shortsighted and muddled thinking. If such a position is taken by the Executive Council, then NALI does not require an active legislative committee. NALI simply needs a mute, eunuch figurehead to attend the annual general meeting of NCISS to voice NALI concerns hoping the hierarchy will provide more than lip service to those concerns. This Chair doubts that any business man with very limited resources would turn over all of it's limited funding to it's "investment advisor" and allow that investment advisor to make presumed appropriate investments without very close oversight and constant complete unbiased reports on the returns from the investment.

It has been argued that NALI receives a "stipend" for every new NALI member that joins NCISS. When one does the math, the referral fee is minimal at best for NALI and removes any control over how and when those funds are spent. NALI should be just as willing to discount membership fees to attract additional members if it believes the funds received from NCISS for those referrals are significant and substantial. It is apparent that NCISS considers the referral fee insignificant when the big picture is considered, otherwise, they would not make the offer. This Chair does not believe this stipend is one of substance which either makes or breaks a motivated individual member of NALI from also becoming a member of NCISS. We can certainly use the members, but only members that are well vetted, qualified and motivated to protect the privacy and identity of the law-abiding innocent individual. NALI can neither be a sales clearance house for NCISS. We can and will for the foreseeable future consistently recommend and do our level best to promote joint membership in NALI as well as NCISS notwithstanding that NALI as an entity is a member as well.

It is doubtful that activities of Legislative Committees of other similar organizations are not underwritten and financially supported by these olrganizations. It is true that members of NCISS have devoted substantial time and resources to the "good fight" altruistically on occasion, but not on all occasions. Further, when you have an image of fighting the "good fight" out of your own pocket consistently you become similar to the attorney who represents himself, you very soon are far too close to the forest to see the trees and might miss an opportunity to resolve an issue favorably simply because there is too much developing on far too many fronts at the same moment to respond to everything. You also erroneously begin to believe that you are the only one with the answer(s) and as long as your public image is that of altruism, you begin to think of your position, thinking, logic and activity as an "absolute" devined only to you and you alone, you are omnipotent, not to be challenged, questioned closely or held accountable. Your mind is closed to outside or independent thinking and approach(s) to the matter you wish to mutually resolve. Further, thinking of this type does not put into place what is commonly referred to as middle management to take over the reins of authority if something untoward should happen to the current architect of current policy.

This Chair urges the Executive Council to not only increase the dues sufficiently enough to offset and set aside the necessary expenses to pay for the out of pocket expenses for the efforts of the NALI Legislative Committee, but to make access to those funds and the use thereof inviolate. The Chair urges the NALI Executive Council to consider the following quote of Margaret Thatcher:

"You may have to fight a battle more than once to win it."

Let there be no mistake, the Investigative Community is in a nuclear war to protect the law-abiding individual and for its very own survival. It is not a matter of "if we win," it is a matter that "we must win." The United States did not win World War 11 simply by making financial contributions to other engaged countries representing it's particular point of view on freedom, it had to roll up it's sleeves and make great sacrifices, build important and not so important alliances for it's way of life to prevail. Regrettably Pear Harbor had to happen first before the United States called this Nation directly into the action. It was not inexpensive, but the very existence of freedom as we knew it was the center piece we needed to protect.

So it is with NALI. Those members who might question the sensibility of NALI's continued financial support of the Legislative Committee simply do not have a grasp on reality and the gravity of the legislative battle in which we find ourselves involved. As opposed to sitting on the sidelines and "sportingly snip," "gently but openly grouse" or unknowingly but aggressively front for others that wish to remain anonymous or perhaps even cower behind the scenes, I suggest they step forward, come into the sunshine, become a part of the committee, become educated on the issues and what is at stake, then form an opinion, taking action accordingly. The bottom line is if we do not win this war, continue to take the necessary actions to protect the law-abiding individual, there need not be a concern about our limited funding and financial condition...there will be no need....the licensed legal investigator will disappear, much like the dinosaur.

Respectfully submitted,

Robert Townasend  
Chair-NALI Legislative Committee.

