

## COMPETITIVE INTELLIGENCE IN LITIGATION

By: Sandy L. Weiss

--- In the movie *Chinatown*, Jake Gittes gathered information by putting watches under the tires of a parked car to see what time the car was driven away. Perry Mason often sent his assistant Paul Drake into the street to see who was watching the front of their office. Such information, though important, is uni-dimensional, useful only when coupled with other pieces of information, sorted, analyzed and transformed into "actionable information" or intelligence.

When the bits and pieces of information gathered through research, experience and observation are pieced together into a matrix the resultant intelligence is invaluable. This intelligence, when used by legal firms or businesses in their strategic planning process, is termed "competitive". Competitive Intelligence (CI) is a means to gain competitive advantage and has substantial value in dispute resolution. The existence of CI as a discipline is common knowledge, but the breadth of legal and ethical services and possibilities available might be a total surprise.

CI uses public but not necessarily easily discoverable sources of information. CI includes Business Intelligence (BI) and Technical Intelligence (TI). BI emphasizes information on competitors, suppliers, customers and the general business environment. TI focuses on the underlying scientific aspects and emphasizes research and development. Remember that technology is playing an increasingly important role in everyone's competitive advantage. Not all cases are good candidates for CI operations but cases that are closely linked to well defined and specific issues have the best chance for success.

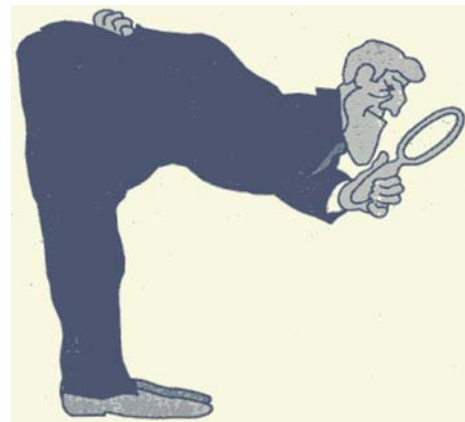
The decision to litigate or resolve a dispute is in itself, a part of the competition. As with any other type of compe-

tion, it is critical to obtain early warning of external developments that represent threats or opportunities. It is also critical to have the strongest players on your team. It makes the most sense to practice CI as an in-house activity. If your organization is lacking internal sources or desires to remain separated from these activities, you can contract intelligence work from outside. The Society of Competitive Intelligence Professionals (SCIP) has a comprehensive website with listings and qualifications at [WWW.scip.org](http://WWW.scip.org).

Plan for any eventuality Pick practitioners with a comprehensive array of skills that are able to leverage available business expertise, technical talents, market access and associates. It is also a good idea to contract intelligence professionals that include licensed private investigators. Pick practitioners that are willing to go beyond secondary research, like data-base analysis, and are capable at primary research, including person-to-person interviews. These endeavors are most economical when performed by experts with a proven methodology for planning and execution.

It is not necessary to find a CI firm that is local. It is far better to find a firm that is capable in the right expertise. The world is very small today. Air travel, telephones, faxes and the Internet have shrunk our theater of operations to the point where it makes just as much sense to work with firms in other states as it does to work with ones in your own city. You might want to consider the elements of the case you are working on and hire a firm that is based in the area of the home office of your client.

In your resolution planning process, keep an open mind. Assess key



issues and identify opportunities and threats. Analyze the competition, consider possibilities for strategies that are not currently at issue. In a recent case involving a manufacturer of material handling equipment wherein their customer sued them due to a claim of lack of proper performance of that equipment, it turned out that a proposed government regulation affecting the end product of the manufactured materials was causing a lack of customer use of the materials. The manufacturer had hired a CI firm to determine if there were any other possible reasons that the user of the equipment might want to return the equipment. When the plaintiff was presented the facts, the case was settled for less than it would have cost to litigate. The manufacturer might have lost millions of dollars if someone had not thought of the possibility of outside factors in the suit. This type of result is not an unusual occurrence when intelligence is properly gathered and used.

Gather all the information you possibly can. Use that information to prepare intelligence and be prepared for any eventuality. It's cheaper to prepare for battle and not fight, than it is to lose the war.

*Sandy L. Weiss is the Director of Competitive Intelligence, StrataMetrics, Naperville, IL.*