



# INTELNET *News*

Official Newsletter of the  
International Intelligence Network, Ltd.

*Summer 2012*



**IntelNet will host a social mixer during the TALI Conference in San Antonio, Aug. 2-4, which includes a visit to the Texas Rangers Museum. See Carino's Corner, page 2, and Member News, page 3.**

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## *Carino's Corner*

by

**James P. Carino, CPP, VSM**  
*Executive Director, Intellenet*

# *Where are the ideas?*

A profession without growth is doomed to mediocrity. The word growth can be physical, as in height, population, family size, etc., or more abstract as in a system becoming more complex or more mature. It is within this latter context that is the thrust of this column. New ideas – this is new approaches, new concepts, and new solutions to nagging and problematic issues. These are issues in search of ideas. These are issues that offer opportunities for growth of our profession.

In that vein, a terrific opportunity is being offered at the upcoming TALI Conference in San Antonio 2-4 August 2012 (see below). The TALI conference organizers, headed by Kelly Riddle, have issued a call for past, present and future, state, national, and international association leaders, or rephrased – a gathering of associations – to attend and participate in round table discussions about key issues raised by people attacking our profession. What a terrific idea to discuss and resolve current issues, to exchange time tested resolution of problems developed by other state associations, to hear from other successful techniques instituted to foster association membership growth. Successful benefits and services to increase member participation – and who knows what other innovative and fresh ideas will emerge – from a meeting of peers where one great idea may spark another, and another and another.

Will you be there? Will you be the one who generates a new thought, solution, approach – that one great idea that launches our profession on a path for a greater knowledge and lights the lamp to enhance our reputation and standings among other professions, politicians and the public at large? ▣



**Hotel, Registration and Program Details at [www.ICIA2012.net](http://www.ICIA2012.net).**

## MEMBER NEWS

### Welcome New Members 2012!

Here are our newest members since we last published. Welcome one and all...

- **Larry AMAKER**, Hertford, NC
- **Frank MOSELEY**, San Pedro Sula, Honduras
- **Nasr AL HOMOUD**, Mexico
- **Alberto BIANCOFIORE**, Livorno Italy
- **Marty BUGBEE**, Grosse Pointe Farms, MI
- **Jeff HARRIS**, Taipei, Taiwan.

*Please welcome our newest board member, **Jeff Stein***, the president of the Pennsylvania Association of Licensed Investigators. Jeff will be manning the Intellenet booth at the ICIA in San Antonio. ▣

### Members in the News!



### Congratulations Cynthia!

One of Intellenet's own, **Cynthia Hetherington**, Hetherington Information Services, LLC, has received the prestigious James R. Baker Speaker of the

Year Award from the Association of Certified Fraud Examiners. The award is presented annually to honor an individual "... who has demonstrated the true spirit of leadership in communication, presentation and quality instruction." This honor is indeed well deserved.

Cynthia was a featured speaker at the recent NALI annual conference in Chicago. ▣



### John Sexton's

Training Institute was recently voted one of the Top P.I. Training Schools in the U.S. John can indeed be proud of this honor, his second national award. In 2009, John's executive protection training program was voted one

the best in the U.S.

During the Balkan wars of the mid-1990s, John served in the former Yugoslavia as Chief of the Special Investigations Unit. He settled in the Washington, D.C. Metro area in 2000, where he founded his own private security firm and training academy.

John was a featured speaker at the CALI conference in San Diego in June. ▣

**Robert Dudash** is a candidate for president of the Association of Former OSI Special Agents. The 2012 AFOSISA Convention will be at the Doubletree by Hilton Hotel in Portland, ME, September 26-30, 2012. Good luck, Rob!



**Intellenet** will be well represented by speakers at the aforementioned ICIA in San Antonio, including: **Bill Blake; Jim Carino; Tim Johnson; Reggie Montgomery; Kevin Ripa; Allen Stidger;** and **Michele Stuart.** **Brian Ingram** is involved in program development with host **Kelly Riddle.** Intellenet will be exhibiting and hosting a mixer, scheduled right now for Thursday. Stay tuned and we hope to see many of you there. ▣

# Ten Random Thoughts About Investigator Ethics

by Steven L. Kirby

**“Investigation is a way to the truth. Our status as truth seekers demands that we conduct our investigations honestly, unbiased, and with the highest of ethical standards. Anything less diminishes us individually, as a profession, and certainly as a truth seeker.”**

**B**ased upon popular culture, and how we are presented by Hollywood, ethics in private investigations would most likely be considered by most to be the proverbial oxymoron. Movies and television portray us all as computer hackers, burglars, phone tappers, and bribers (not to mention brawlers and sharpshooters). Unfortunately, occasionally a few of our true life brethren perpetuate that stereotype by engaging in at best unprofessional behavior and at worst criminal conduct.

Of course, in truth most private investigators are unbiased fact finders who follow the law, secure evidence that can be brought to trial and conduct their business affairs in a principled manner. The ethical investigator usually doesn't make headlines. It is the investigator who justifies the ends regardless of the means who often brings bad headlines and bad laws.

The concept of ethical behavior is as old as civilization. Socrates and Plato both discussed it, the ancient prophets preached it, and religious tenets are based upon the very foundation of ethics. Yet, still today, thousands of years after the concept

of ethics began to evolve, people are debating what is or isn't ethical; constantly pushing the ethical envelope; and more often than not, looking for loopholes. In considering ethics for the investigator here are ten random thoughts on the subject:

## **1 There is no such thing as business ethics (or investigator ethics).**

True ethical behavior involves a conscientious choice to act in a principled manner. Ethical choices involve an internalized moral code that individuals either have or do not. No corporate code of conduct or ethics program will make an individual morally responsible, just as the penal code doesn't make a person law abiding. A sincere ethical approach to business matters and professional conduct goes far beyond such catch phrases as “corporate social responsibility” or “corporate code of conduct.” Many corporate ethical statements are no more than a public relations statement that say, “Look, we really are good guys, so buy our product.”

A business entity cannot have a value based moral code. The corporation itself does not make decisions that define moral values. Corporate values are actually the sum total of the behavior of the employees. People who have these values in all phases of their lives will naturally have them in business dealings. The executives can foster the right environment to encourage ethical behavior by their own conduct and by setting the tone. Even though a corporate executive's responsibilities generally will be to make as much money as possible for the firm or the stockholders, the ethical CEO will do so while conforming to a moral code. Ethics are not simply following what's posted on a company website. True principals and beliefs that are ingrained in the individual create the type of business principles we all should subscribe to.

## ② Ethical conduct is not always easy - but it's not complicated.

It's easy to be ethical when there is nothing on the line. If a store clerk gives an extra dollar in change, for most it's not a difficult decision to give it back. Similarly, if a potential client asks us to violate the law or engage in unethical acts for a \$100 case – how difficult is it to turn that business down? Real ethical challenges come when the cost of being ethical is more than we would like to pay. For example, how do we handle a high billing attorney client who asks us to alter or delete facts in a report so as to make the interview summary more favorable, knowing it's going to be turned over to the other side in discovery? Or that same attorney asks us to “fudge the facts” when testifying. What do we do when telling the truth may cost a client, money, peer approval, or even our reputation? That is when it becomes difficult to do the right thing.

Ethical conduct even becomes more troublesome when one needs to stand up, adopt a moral stance, and call out those who are wrong. The courage of one's convictions comes in not just in our personal behavior, but being counted to point out when others are dishonest. As Irish philosopher Edmund Burke wrote over 200 years ago, “Evil triumphs when good men do nothing.”

The simplicity of ethics is that if an individual just acts as if they are always being watched then they will most likely act in the right manner. The irony is that we are constantly being watched – by our clients, employees, associates, the profession's critics, lawmakers and the media, to name some. If we have the right attitude and maintain a strong center, then ethical behavior is much simpler. Carl Sandburg once wrote, “I had taken a course on ethics. I read a thick textbook, heard the class discussions, and came out of it saying I hadn't learned a thing I didn't know about morals and

what's right or wrong in human conduct.” Or as the title of a best seller once claimed, “All I Really Need to Know I learned in Kindergarten.”

## ③ Laws should not define ethics - legal doesn't mean moral.

If we subscribe only to a standard of legal requirements to define our ethics we miss the point. We can do better. Certainly laws and morality are interconnected but they are not the same. Laws also evolve over time. At one time slavery was legal. We need laws to reflect our morality – not our morality to reflect what is written. No less an authority on the law than former Supreme Court Justice Potter Stewart nailed it when he said, “Ethics is knowing the difference between what you have a right to do and what is right to do.” Philosopher Immanuel Kant wrote, “In law man is guilty when he violates the rights of others. In ethics he is guilty if he only thinks of doing so.” Ethics goes beyond the letter of the law.

## ④ The Golden Rule or Ethics for Idiots.

A basic tenet of Christianity is “Do unto others as you would have them do unto you.” So simple, yet so profound. And it is part and parcel of every religion:

**Islam**                    *“None of you is a believer until he loves for his neighbor what he loves for himself.”*

**Hinduism**                *“This is the sum of duty – do naught unto others what you would not have them do to you.”*

**Judaism**                    *“What is hateful to you, do not do to your fellow man. This is the entire law. The rest is just commentary. “*

Similar sentiments can be found in the writings of Zoroastrianism, Confucianism, Buddhism, and Bahia.

No one wants to be lied to, cheated, taken unfair advantage of or mistreated. If we treat people like we want to be treated then doing the right thing, indeed being the right thing, will automatically follow. If we live the Golden Rule, we will focus less on self and more on others and that is a natural pathway to a principled life.

## 5 Why be ethical?

Aside from never really having to look over one's shoulder, ethical behavior has many positives. It makes you feel better about yourself. It makes other people feel better about you. People view the honest person in a positive light. It leads to a positive legacy. The job will be easier. With ethical dealings come better clients, associates, employees and friends. And in the long run, if a person serves the greater good this behavior will also serve business interests. The ethical investigator will accomplish greater prestige, which promotes professional status and an enhanced reputation, affording more opportunities at higher billing rates. All of this leads to a more healthy business environment. In a research study by the Institute of Business Ethics it was found that companies that have a clear commitment to ethical conduct consistently outperform companies that do not display ethical behavior.

On the other hand – has anyone who lived a life full of shortcuts, deception, dishonesty, and cheating really finished well? Ultimately no one is above the law and one really never knows what ethical behavior will eventually cost. And there will be a price to pay at some point in time. It may just be that gnawing guilty feeling – an internalized response to a transgression – commonly referred to

a guilty conscience. Or it may involve censure, a loss of reputation, civil litigation, or criminal charges. As many of the mighty can attest to, no one is above the law. (See thought # 6)

## 6 Famous failures – famous consequences.

So many examples – so little paper.

### Arthur Andersen...

<b>Failure</b>	<b>Cooked the books for Enron by inflating income by \$568 million over a four year period.</b>
<b>Consequences</b>	<b>Investors lost \$60 billion dollars; 5,600 people lost their jobs; pensions lost; people went to jail; one of the largest public accounting firms ceased to exist.</b>

### Bernie Madoff...

<b>Failure</b>	<b>Ran one of the largest Ponzi schemes ever uncovered.</b>
<b>Consequences</b>	<b>Billions lost / stolen; 150 years in prison; son Mark committed suicide.</b>

### Catholic Church...

<b>Failure</b>	<b>Covered up systematic child abuse.</b>
<b>Consequences</b>	<b>Abuse continued; huge juror awards; dioceses facing bankruptcy; loss of moral credibility</b>

### Illinois Politicians...

<b>Failure</b>	<b>Systematic corruption at all levels of government.</b>
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<b>Consequences</b>	<b>Previous two governors both in federal prison; state is broke; no one trusts anyone; nothing is being done.</b>
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**Private Investigators...**

<b>PI Failure Example # 1 ANTHONY PELLICANO</b>	<b>Wire tapping; bribery; corruption; federal weapons violations.</b>
<b>Consequences</b>	<b>At age 64 sentenced to 15 years in prison. Called by the judge, "A high priced thief who fraudulently obtained prominence through the harm he inflicted on others."</b>
<b>PI Failure Example # 2 HEWLETT PACKARD SCANDAL</b>	<b>PIs pretexted to secure HP board members phone records.</b>
<b>Consequences</b>	<b>Federal privacy crackdown on all investigators; indictments; CEO of HP terminated.</b>
<b>PI Failure Example # 3 CHRISTOPHER BUTLER</b>	<b>California PI Butler's first claim to fame was his reality show, "Mommy PI's," where he hired attractive women to entice men into cheating on their wives. It was later learned that Butler admitted using actors to fake some to the so called stings. He then graduated to extortion, robbery and conspiring to deal drugs.</b>
<b>Consequence</b>	<b>He will be sentenced on September 11, 2012 facing 10 years to life.</b>

If there are so many good reasons to remain principled, and adverse consequences for the unethical then why do so many appear to act without honor? While there are several reasons people choose to act in an unprincipled manner, far and away, rationalization is the primary component of unethical behavior. Any act can be rationalized, even murder, if one tries hard enough. Plato, in ancient Greek times, opined that without rationalization no person could ever do anything he believed wrong. No one wants to think that their behavior is so abhorrent as take them out of the mainstream. They act dishonestly because they think that since "everybody does it" it is acceptable. Of course, that is not true. Everyone doesn't do it and even if they did that fact would not make bad behavior ethical. "Everybody does it" isn't the only common rationalization. Some others are: "I'll only do it just this once"; "No one will know"; "I'll do it different next time"; "It's not going to matter." If a person needs elaborate justifications for their acts they are probably doing the wrong thing.

A sense of entitlement – hubris if you will – is also a pathway to unscrupulous deeds: *Because I wasn't paid enough I'll cheat on this invoice; because I know best I'll lie in court; because my case is so important (and so am I) I can commit this act.* Beliefs such as these make it easy for the morally weak to act inappropriately. Politicians such as John Edwards, Charles Rangel, and Richard Nixon all clearly fit this mode.

Some think that money, the love of which being the root of all evil, is the cause of unethical behavior. Not necessarily so. While making money may be looked at as a motivator for unethical conduct, it's often more symptomatic. As Henry Ford said, "Money doesn't change men – it unmasks them. If a man is naturally selfish, arrogant, or greedy the money brings it out, that's all."

Consumers and clients constantly demand gratification (case resolution) faster and cheaper.

**7 Why do some act without regard to ethics?**

This demand for expediency can present the ethically challenged with the need to compromise. The microwave generation wants everything and they want it now. Bernie Madoff and his clients all wanted their profits now. Conducting investigations the right way can be timely and costly. Trying to cut corners will often lead to a crisis of ethics.

People who fail to develop the discipline to properly prepare are regularly tempted to cheat to keep up. Cheating on tests in school is a result of failure to study. Steroids in athletics are a shortcut to aid strenuous workouts. Cheating in business almost always follows failure to properly do the job right in the first place. A lazy person with a poor moral core is an unethical actor waiting to perform.

Lack of structure – a failure to develop an internalized moral code -- is a fast track to unethical behavior. If parents, teachers, coaches, and mentors fail to impress the importance of good deeds then it is difficult to develop that internal system. Unfortunately, to a large extent, modern life and pop culture have torn away structures that taught ethics. Cynicism, political correctness, and a view that traditional values are passé have eroded many ethical concepts. Furthermore, calling attention to bad conduct or judging someone's behavior is considered bad form. Ethical relativism is considered acceptable and deviations from established morality are today's norm.

If a person places himself in an ethical environment it will be easier to be ethical. Even people with the utmost integrity will never stop needing the support of similarly ethical people. Just as when someone is regularly around sick people they run the risk of being infected, associating with the unethical is just as likely to be infectious.

## **8 The erosion of integrity is rarely quick and spectacular.**

It is usually a gradual slipping of standards. Fraud investigators learn early on that embezzlers learn to lie before they steal and learn to steal small before graduating to grand theft. Most people are afraid to jump into serious dishonesty without first practicing. They engage in conduct that, if they are caught, the potential penalty will be insignificant. Only when they think they have gotten away with the minor acts of dishonesty are they emboldened to commit more serious acts. Similarly, the ethically challenged engage in minor ethical lapses before moving onward and upward to more serious misconduct. That's why the little things count. Small lapses invariably lead to chasms. Cheating on expenses leads to billing fraud. Lying to employees and clients leads to perjury. Stealing "just a little" leads to grand larceny.

## **9 Why ethics are particularly important to investigators.**

As private investigators we are part of a profession. Professions are distinct from occupations in that they exist to secure some fundamental end beyond simply making a living. The legal profession exists for justice. Academia exists to develop knowledge. Medicine has a goal towards health. Investigation is a way to the truth. Our status as truth seekers demands that we conduct our investigations honestly, unbiased, and with the highest of ethical standards. Anything less diminishes us individually, as a profession, and certainly as a truth seeker.

Another reason that ethics is a critical part of our profession is that virtually every client comes to us with troubles and in a vulnerable position. How we respond to those in need is the core of our values. Are they taken care of or taken advantage of. Our clients also reveal matters in confidence. How do we treat those confidences?

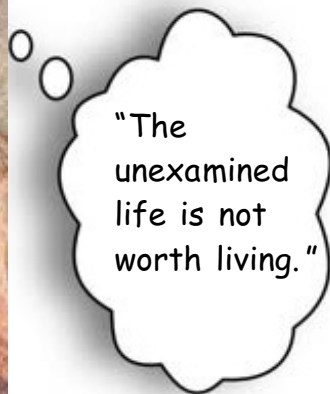
We have the knowledge and tools to access information that other's do not. The unethical investigator abandons the fundamental goal – truth



seeking – and uses this professional knowledge to further selfish ends. The ethical investigator understands that information uncovered in an investigation should only be used to achieve an honorable outcome.

Our ability to do what we are able to do and the tools to which we have access invite more and more scrutiny by lawmakers, both at a Federal and State level. With privacy being a high bipartisan priority, our ability to pierce peoples' secrets invites unfair criticism and examination. Further making our life more difficult is the unprincipled private investigator as portrayed on movies and television. Bad acts make for bad laws and it only takes one major scandal, such as Hewlett Packard, to open the door for adverse legislation.

Due to the types of cases we investigate; and the liars, thieves, and criminals we often confront; investigators encounter corruption and ethical lapses on a regular basis. There is also some moral ambiguity in the methods we utilize to investigate cases. Pretext, undercover assignments, covert surveillance, interrogation, and other investigative techniques sometimes involve deception and trickery. Done properly, and towards a legitimate goal, all of those procedures are appropriate. However, we must be constantly vigilant to ourselves, as it can be an occupational hazard to slide over that thin line.



## 10 Taking our ethical temperature.

It was Socrates who orated, “The unexamined life is not worth living.” Let’s examine our professional ethics.

### ***Macro Ethics: Do we...***

- Follow the Golden Rule?
- Obey the laws that govern us?
- Tell the truth?
- Care about the common good?
- Keep promises?
- Do the little things right?
- “Fess up” when we “mess up”?

### ***Business Ethics: Do we...***

- Behave honestly with clients, employees, and vendors?
- Have one culture that applies to all?
- Hire people with good and sound character?
- Associate with ethical people?
- Mentor our employees to ethical standards?
- Take care of our obligations?

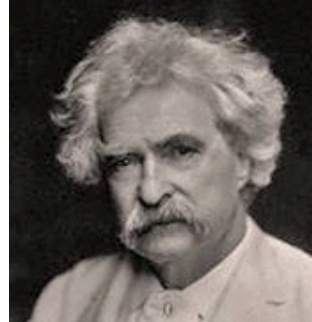
### ***Investigator Ethics: Do we...***

- Act as truth seekers?
- Investigate unbiased?
- Write reports that are factual and accurate?
- Bill fairly and honestly?
- Avoid conflicts of interest?
- Keep secrets?
- Use our abilities for professional purposes only?

Ultimately, ethical behavior is an individual decision. Laws, rules, regulations, and corporate codes of conduct will not make a person ethical. The choices we make, not just to do the right thing but to strive to be the right thing, even when it is

difficult, is what makes a person ethical. While no one is perfect and we all make mistakes or have lapses in judgment, if we strive towards following the Golden Rule (of all faiths), in the end we will have a better business and professional and personal life. Or, as Mark Twain once advised, “Always do right. This will gratify some people and astonish the rest.”

© 2012. All rights reserved by the author. Steve Kirby, CFE, CII, is rumored to be retired from Edward R. Kirby & Associates, Elmhurst, Illinois, in the Chicago area.



“Always do right. This will gratify some people and astonish the rest.”



## Scandinavia or Nordic?

By Anne Styren

**I**t is not unusual to use collective concepts. We like to talk of areas such as Central America, Europe, the Far East, the Nordic countries and Scandinavia. The aforementioned concepts denote geographical areas where the component parts are understood to have common denominators. But the collective terms can be troublesome – and often the similarities are not at all as strong as one might believe.

*continued...*

Actually there is a good deal of confusion as to the distinction between Scandinavia and the Nordic countries and the countries involved are very different when it comes to both language and access to information.

## **What are the Nordic Countries? Where is Scandinavia?**

The Scandinavian peninsula; i.e. Norway and Sweden, is the basis of the concept Scandinavia. We often also include Denmark when we talk of Scandinavia, but, strictly geographically speaking, the peninsula consists only of Sweden and Norway.

The “Nordic countries,” however, is significantly larger as it also includes, in addition to the two Scandinavian countries, Denmark, Finland, Iceland and the Faroese Islands. Since Greenland is part of Denmark, you could also say that this polar region might belong under the concept of the Nordic countries.

It may also be of interest to mention that the Nordic countries are home to two aboriginal peoples - the Lapps in northern Scandinavia and the Inuits in Greenland - adding an additional dimension to the area.

### **About Languages**

Scandinavia, as previously stated, is not “a country” – nor do we have “a language.” It is not even certain that we understand each other despite our geographical proximity.

The Nordic languages, with the exception of Finnish, have a common Germanic basis. Old Norse and Icelandic are very

closely related and today’s Norwegian “Bokmål” (Norway has two official languages; Bokmål - Book Language - and Nynorska - New Norwegian) has its basis in Danish. Aside from all the dialects, which can create additional difficulties, one could in general say that there is a good deal of comprehension between the Swedish, Norwegian and Danish languages. Icelandic and Faroese are, however, different and are not immediately understood by the Scandinavian population. Finnish, which belongs to the Ugrian family of languages is even more unfamiliar and has nothing in common with the other Nordic languages. As



luck would have it, Finland also has two official languages, Finnish and Swedish, which makes communication easier, principally in those regions where Swedish is common. (Without going too deeply into the linguistic variations, we would nevertheless, as an example, like to mention that Sweden today has five recognised minority languages: Lappish, Romani, Meänkäli, Finnish and Yiddish!)

Naturally, it is also the case that the majority of people who live in the Nordic countries today speak English and/or other non-Nordic languages.

Still, we must be able to communicate in the local language to ensure that we appreciate the subtle nuances and share a common understanding of concepts and technical terms – between us, the client and the respondent. We must be able to read articles and texts in their original versions to get a first hand impression of what the writer has thought and meant. In addition it is, of course, also the case that the majority of material found in any country about companies, markets, laws, et cetera, is in the country’s home language.

So despite the fact that English versions are produced more often these days we spend quite a large part of our work in translating, collating and making summaries into English.

## Information Culture

The Nordic countries are also very different when it comes to their information culture. Perhaps one can trace some of these differences to occupation versus neutrality during World War II?

Sweden has, for whatever reason, a considerably more open outlook towards information than its Nordic neighbours. In Sweden, many more personal facts are publicly available than in, for example, Denmark and Norway. Statistics have been kept far more diligently here, and companies' annual reports were put into digital format much earlier. Finally, there is a somewhat greater openness and willingness to answer questions about a company and its market in Sweden and Finland than there is in Norway or Denmark.

## Sources and Databases

The Scandinavian countries have very different accesses to data-based information. The number of commercial databases is not so great. Even if the digitalised official sources are increasing in number and accessibility there is still much which can only be obtained by telephone as you have to call to ask the official to do the search in their internal database.

When it comes to personal information it is notable that the publicly available material in Sweden is far more extensive than in Norway and Denmark. As personal information is almost non-existent in Denmark a relatively new database of business executives is particularly helpful.

All three countries use "personal ID-numbers" and these are very important to the research process. In Sweden they are often accessible, but in Norway and Denmark they must be provided by the individual as there is no easy way of obtaining the ID numbers. Basically a personal visit to the local authorities is needed to obtain information – a phone-call will not do.

Company accounts are digitally available in all Nordic countries – but please note that they are in the local language.

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This article's small ambition is to provide some insights into some of the differences within the Nordic region. We can provide a detailed list of the basic can and can't-do's for personal due diligence/background research for each specific country to anyone that is interested. Just e-mail me and I'll send a fact-sheet to you.

## Profile Intelligence.

*Anne Styren is owner and managing director of Profile Intelligence AB, Tel +46- 86 45 90 45, [mail@profile.nu](mailto:mail@profile.nu), based in Stockholm, Sweden. Anne has been working with business research since 1987 both locally and internationally. She has been employed by the very same company since the beginning of her career and since year 2000 is Profile Intelligence's sole owner. The company has been co-operating with international clients since the start. Research projects mainly deal with persons and companies within Sweden and the neighbouring Nordic countries or further abroad. This article is intended to give an insight into some Nordic peculiarities.*





## The U.S. Supreme Court Upholds Most of the Affordable Care Act

by Bruce Hulme

On June 28, the U.S. Supreme Court issued its decision on the constitutionality of the Patient Protection and Affordable Care Act (PPACA). What will this decision mean to some of our investigative and security professionals to comply with the provisions of this act? Now that we are no longer waiting for the court's decision, plan sponsors should be focused on making certain their plans and reporting practices comply with the components of the Act. There are Employee Retirement Income Security Act (ERISA) implications of making changes to comply with PPACA. Fiduciaries, with documentation, are obligated to make certain that required changes are made regarding amendments to their health plans.

### *Changes...*

Changes required by PPACA, which should already be in effect and amended, include the following:

- **Auto Enrollment.** Employers with more than 200 employees that offer coverage must automatically enroll new full-time employees in coverage with the opportunity to opt-out.
- **Pre-existing Exclusions.** No pre-existing exclusions for enrollees under age 19.

- **Dependent Coverage.** Extension of coverage of adult children to age 26.
- **Coverage Rescissions.** Coverage cannot be rescinded absent fraud or intentional misrepresentation by the enrollee.
- **Lifetime Limits.** No annual or lifetime dollar limits on "essential" benefits.
- **Appeals Procedures.** Appeals process required to allow for appeals of coverage determinations and claims (includes internal appeals and external review).
- **External Appeals.** The regulations require group health plans and insurers to comply with applicable external review process in states that have implemented such a process.
- **Emergency Services.** Must cover emergency services without prior authorization and in-network.
- **Primary Care Provider.** Must allow designation of OB/GYN and pediatrician as Primary Care Provider.
- **Preventative Care.** Must cover preventive care without cost sharing.

### *Future Compliance Issues...*

#### **For 2012:**

**W-2 Reporting** - Employers must include aggregate cost of employer-sponsored health coverage on annual Form W-2.

**Summary of Benefits Coverage** - Insurers and plan sponsors of self-funded plans must provide summary of benefits to all participants and applicants, based on format set by Secretary, using uniform definitions and stating whether the plan provides minimum essential coverage and whether ensures the plan's share of costs is at least 60 percent of actuarial value.

**Advance Notice of Mid-Year Changes** - Plan must provide 60-days advance notice of changes to summary of benefits.

**Quality of Care Reporting** - Plans and insurers must report on plan benefits and reimbursement structures that provide incentives for the implementation of case management, care coordination, chronic disease management and medication and care compliance activities for treatment or services under the plan or coverage; the implementation of activities to prevent hospital readmissions; improving patient safety and reducing medical errors through best clinical practices, evidence based medicine and health information technology; and the implementation of wellness and health promotion activities.

**Nondiscrimination** - While originally intended to be effective in 2011, nondiscrimination rules will generally apply to fully insured plans just as they apply to self-insured plans as soon as guidance is issued. Further guidance is expected to be issued in 2012.

**For 2013:**

**Flexible Spending Account Changes** - Limits FSA contributions to \$2,500, indexed in future years.

**Employer notice requirements** - Effective March 1, 2013, employer requirement to provide written notice informing employees about the exchange, and their potential eligibility for premium credits if the employer's share of costs is less than 60 percent of the allowed total cost of benefits.

**For 2014:**

**Penalties to Commence** - Businesses having fifty or more employees will be subject to a “free rider tax” for those employees obtaining subsidized insurance from state health exchanges. For those businesses not offering coverage under the minimum requirements for all of their full-time employees, and have at least one full-time employee who qualifies for a subsidy, such employers will be required to pay

\$2000 per year for each full-time employee, except for the first thirty. Employers who offer coverage meeting the minimum requirements for all full-time employees and still have at least one full-time employee who qualifies for the subsidy will be required to pay \$3000 for each employee receiving a tax credit. There will certainly be more clarification on these requirements, particularly the notice requirement, once the rules related to the exchanges are finalized.

ISPLA thanks the employment law practice of Fox Rothschild, LLP for providing this timely and important information for our members.

## Law Enforcement Collecting Cell Phone Information on Millions of Americans

In the first-ever accounting of its kind, Congressman Edward J. Markey (D-MA-7), co-chair of the Congressional Bipartisan Privacy Caucus, has found that in 2011, federal, state and local law enforcement agencies made more than 1.3 million requests of wireless carriers for the cell phone records of consumers, and that number is increasing every year.



In May, Rep. Markey queried nine mobile wireless carriers about their policies and practices for sharing their customers’ mobile phone information with law enforcement agencies after a report in the New York Times reported that law enforcement was routinely requesting consumers’ cell phone records, sometimes with little judicial oversight and

no consumer knowledge. The responses received by Rep. Markey were startling in the volume and scope of requests made by law enforcement, including requests for “cell tower dumps” in which carriers provide all the phone numbers of cell users that connect with a tower during a discreet period of time, including information on innocent people. According to the carriers, all requests were made pursuant to a legal warrant or granted due to an emergency situation in which an individual was in imminent danger.

*“We cannot allow privacy protections to be swept aside with the sweeping nature of these information requests, especially for innocent consumers,” said Rep. Markey, also senior member of the House Energy and Commerce Committee. “Law enforcement agencies are looking for a needle, but what are they doing with the haystack? We need to know how law enforcement differentiates between records of innocent people, and those that are subjects of investigation, as well as how it handles, administers, and disposes of this information.”*

Other findings from the responses to Rep. Markey include:

- There were approximately 1.3 million federal, state, and local law enforcement requests for cell phone records to wireless carriers in 2011 (This number does not include T-Mobile because the company did not provide this information in its response.)
- As a point of comparison in 2010, there were approximately 3,000 wiretaps issued nationwide.
- Verizon reported that there has been an annual increase of law enforcement requests of 15 percent, and T-Mobile reported an increase of 12-16 percent.
- Information shared with law enforcement includes data such as geolocation information, content of text messages, wiretaps, among others.

- Requests also include “cell tower dumps” in which carriers provide all the phone numbers of cell users that connect with a tower during a discreet period of time.
- In many cases, this includes information on innocent people, as cell phone tower dumps include all the calls made from a tower during a period of time.
- There is no comprehensive reporting of these information requests anywhere – this is the first ever accounting of this.

Rep. Markey sent letters to U.S. Cellular, Sprint Nextel, T-Mobile USA Inc., Leap Wireless Inc./ Cricket Communications, Inc., MetroPCS, Verizon Communications Inc., AT&T, C Spire Wireless, and TracFone Wireless. Concerned about possible privacy intrusions in the absence of consumer knowledge or consent and without judicial oversight he wrote to the wireless carriers: “The practices of cell phone tracking raises a number of legal, constitutional and privacy questions. According to 5,500 pages of internal records obtained by the ACLU from 205 police departments nationwide a number of departments ‘claim broad discretion to get records on their own’ without any judicial orders....” The 2012 U.S. Supreme Court ruling that “found the warrantless use of GPS devices to track suspects unconstitutional brings to light questions about the standards for cell phone tracking....”

A link to the carriers’ responses from the carriers can be found at:

<http://markey.house.gov/content/letters-mobile-carriers-reagrding-use-cell-phone-tracking-law-enforcement>

*Bruce Hulme, CFE, is ISPLA’s Director of Government Affairs (www.ISPLA.org). ISPLA is a resource for the investigative and security professions, U.S. and state governments and the media.*



# Some Cruise Ship Crimes Are Not Being Reported

**When** *the U.S. Senate passed the "Cruise Vessel Safety and Security Act of 2010," the International Cruise Victims Association (ICVA) had hailed the legislation for guaranteeing greater transparency in the reporting and investigating of crimes on cruise ships, as well as improving the training of cruise ship personnel and fostering greater cooperation between the FBI, which has jurisdiction of crimes on cruise vessels, and the Coast Guard.*

*On June 12, 2012 the ICVA released a press release expressing their frustration with watered-down provisions of the law that allow the cruise industry and the FBI to report only those cases that have been investigated and closed. Many cruise ship crimes are never resolved. The following*

*article by crime blogger Jim Fisher addresses the issue, not sparing what he sees as a cozy relationship between the cruise industry, legislators and some in the FBI.*

*Appreciation is extended to Mr. Fisher for permission to re-post his blog, while noting that any opinions expressed are the author's.*

## **Why is the FBI Covering Up Cruise Ship Crime?**

**By Jim Fisher**

**W**orldwide, there are 200 cruise ships owned by 26 cruise lines. The average ocean cruise consists of a huge boat carrying 2,000 passengers and a crew of 950. The biggest ships can hold more than 4,000 vacationers. These are small towns on water. In

*continued..*





2012, 12 million people purchased cruise line tickets. This is a big, global industry represented by an influential trade association called the Cruise Lines International Association (CLIA).

Over the years, cruise line companies have received bad publicity due to a series of high seas rapes, murders, and passenger disappearance cases. These high-profile crimes suggest the possibility that women and children on these huge vessels are vulnerable to molestation by crew members and other passengers. One expert on cruise ship crime believes that a woman is twice as likely to be raped aboard one of these boats than on land.

When a U.S. citizen aboard a cruise ship anywhere in the world is raped, assaulted, or murdered, the FBI has jurisdiction. But until recently, the bureau did not make these crime statistics a matter of public record. As a result, people contemplating an ocean cruise had no way of assessing the crime risks associated with this form of recreation.

To enlighten and inform the American public of the relative crime risks that come with ocean cruises, Congress passed the Cruise Vessel Security and Safety Act of 2010. Under this federal statute as initially proposed, the FBI would make public all crimes reported to them by the cruise lines or by passengers directly, and do it in a timely manner. This data would be stored on a U.S. Coast Guard website. However, when the bill was in committee, high-ranking FBI administrators lobbied for the insertion of a qualification that essentially defeated the purpose of the law. FBI brass managed to get Congress to limit what the bureau had to make public. Under the legislation as enacted, the FBI is required only to report cruise ship cases that the bureau has opened and closed.

The FBI only opens 10 to 20 percent of

cruise ship crimes that come to their attention, and the cases they do open are not closed for years. As a result, only a fraction of cruise ship crime statistics are made public, and what is published is old information. This, of course, is exactly how the cruise ship industry wants it. What the public doesn't know hurts them, but helps the cruise line business.

So, how did the cruise line industry get the FBI to thwart the intention of Congress, and the interests of the cruise-taking public? When did the bureau change from a law enforcement agency to a Washington lobby firm?

The cozy relationship between lawmakers and lobbyists for various enterprises is nothing new. Congress has always been up for sale. But what seems to be new is how an industry has been able to corrupt legislators and the FBI. How did the CLIA get to the bureau? Easy. The trade organization wines and dines top FBI personnel every two months at various vacation spots. And since 2007, two top-ranking FBI executives (they can retire at 50) have been given lucrative retirement jobs in the cruise industry. No one knows how many mid-level FBI administrators in D.C. have landed good security positions with cruise lines.

The effect of the FBI tampered with, cruise line-friendly federal crime reporting law is producing the results the CLIA has paid for. If you look at the U.S. Coast Guard crime data web site, you will find that in 2012, there has been only one reported case of cruise ship rape. Just one. Thanks to the FBI's sabotage of the Cruise Vessel Security and Safety Act of 2010, vacationers know nothing about the crime risks of an ocean vacation. But that is no excuse for naivete. Cruise ships are not child molester-rapist free zones.

*Posted July 6, 2012 on the Jim Fisher True Crime blog, a place for people interested in crime, criminal investigation, policing, law, writing, and forensic science. ■■■*

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