



# INTELLENET *News*

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*Intellenet.org*

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## *Interviewing & Rapport*

*Good interviews are built on solid rapport. Why would you give im-  
portant information, sometimes even incriminating information, to a stranger?  
When someone approaches you and asks you difficult, invasive, or important  
questions out of nowhere, it's harder to answer, right? Your natural response is  
to be careful and secretive and to analyze before blurting out anything. In my  
line of work, we can't afford the costs of having someone withhold information  
from us.*

*Good interviews are based on sound, solid rapport. And so, what exactly  
is rapport? It's a relationship or agreement based on understanding and sympa-  
thy. Being able to establish good rapport ensures you have a certain level of  
emotional understanding and synchronicity, that allows for easy and natural  
communication. These milestones are often met organically through the growth  
of a somewhat lengthy relationship.*

*Private investigators do not have time to buy the other party a coffee  
weekly and talk about life. We have to be able to create this link on the fly. We  
appeal to the person with sympathy and navigate the conversation to build a  
bridge of trust.*

*You must approach this process genuinely. At the end of the day, we try  
to be of service for someone waiting for answers. Our job as private investiga-  
tors is to scratch the client's curiosity and to comprehend what they want to  
gain from our service and bring solutions to the table. We have significant so-  
cial responsibilities to think about.*

*As part of the rapport building process, it's important to be prepared  
and know what to do. First off, do your homework. You'll always be more at  
ease and more confident if you are prepared for what may come. A well-shared  
tip is to seat in a position of power, like the head of a table, for example. Adopt  
certain simple mannerisms from the other party. This is called "body mirror-  
ing", and it's a simple technique used to build rapport. Of course, don't overdo  
it. Be gentle and genuine, be careful with not seeming unnatural or mocking.*

*Ask for the person's name, and when you do, don't just store it in your  
pocket. Call them by their name every now and then to build trust. Of course,  
just like the last tip, don't overdo it. It might come off as mocking or just forced.*

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# Peter's Posting

by  
*Peter Psarouthakis*  
Executive Director



## 2020 INTELLENET CONFERENCE RIO ALL-SUITE HOTEL & RESORT 3/30-4/2/20

Our 2020 conference in Las Vegas, NV from March 30-April 2 is right around the corner. As of this writing we have 180 people coming. It is not too late to register! Go to the Intellenet website (<https://www.intellenet.org/annual-conference/>) and you will find all the conference information you need. This is going to be another not to be missed event. Our director of education Jeff Stein has put together a very strong program. CEU credits will be awarded that can be used for licensing and certifications you may need. Contact Jeff Stein for all your CEU questions ([jstein@elpspda.com](mailto:jstein@elpspda.com)). General conference questions should go to myself ([intelleneted@gmail.com](mailto:intelleneted@gmail.com)) or Ed Spicer ([ed@oceanstatesinv.com](mailto:ed@oceanstatesinv.com)). At this year's conference we also will be holding our annual board of directors meeting on Sunday to avoid time restrictions during the conference. The board is working hard on items such as membership recruitment,

marketing the membership to potential clients and providing the best possible conference experience each year. The board will also be working on updating the bylaws. Intellenet was an exhibitor at several conferences in 2019 in order to promote our members to potential clients and we will continue that effort in 2020 and beyond. Driving potential clients to our website when they need investigative and security

services is a high priority for the board. Of course, the association would not be anything without its members. We are always looking for qualified members throughout the world. If you know of a qualified person please send us their name and contact information so that we can help recruit them into our ranks. We look forward to seeing everyone in Las Vegas!

Thanks  
*Peter Psarouthakis*

### Welcome New Members!

Don Aviv - Brooklyn, NY  
Ray Barrett - Edgewater, MD  
Martin Battles - Lake Charles, LA  
Joe Biondo - Forest Hills, NY  
Nick Francis - Oviedo, FL  
Artie (Arthur) Grenier - Dracut, MA  
Brianne Joseph - Baton Rouge, LA  
Paul Mackowski - Stoneham, MA  
Steven Mason - Mesa, AZ  
Adrian Peeters - Melbourne, Australia  
Daniele Rizzetto - Venice, Italy  
Andrew Silverman - Short Hills, NJ  
Richard Sjoberg - Boston, MA  
Michael Sokolski - Kansas City, MO  
Matthew Spaier - Bronx, NY  
Toni Tamarit - Barcelona, Spain  
Yosh Wong - Hong Kong    Jerome Wood - Camp Hill, PA

# Carino's Column

by

**James P. Carino Jr, CPP, VSM, BAI**  
**Intellenet Founder/ Executive Director Emeritus**



## AN INCOMPLETE HISTORY OF INTELLENET (PART II)

### THE MIDDLE YEARS

By 1990 we had several successes. Our foremost, of course, was our birth and early growth, ideas and plans for the future. But also established was our first Board of Directors circa 1986 along with preparation of a code of conduct and concept for future development. The initial Board consisted of a representative from each of the six regions that were established in the US, and at least one each from Europe, Africa, Central/South America and Asia. It is believed the first Board had 15 members. No record exists identifying those selected. Memory recalls Brad Penny (d. 2009), Bob Goodman (d. 1995), Tom Hampson, Bill Parker (d. 2019), Fred Bornhofen (d. 2019), Tom Crowley (d. 2013) and Bill Cramer (d. 2006). A special mention about Bill who eventually retired as a Colonel/PhD (and an OSI special agent). Bill was a B-17 pilot. He wrote a book sub-titled: "A Teenage Warrior in World War II". He flew 38 combat missions. He was shot down five times, wounded twice and was a POW escapee, not yet age 19, before he was old enough to vote or buy an alcoholic drink!

Little did we know nor could we predict what the 1990s held not only for Intellenet but also for the private investigative profession: What, if anything would follow our 1990 conference?; What, if any legislation would affect our profession and would impact directly on Intellenet?; Would our growth and development continue in a positive manner?

### CONFERENCE

Our first two, the Pocono's (hosted by Jim Carino) Keystone Resorts, Co. (hosted by Greg Caldwell) were billed as Regionals as the idea was to hold conferences in the six regions on a recurring basis. However, Keystone Resorts (nestled high in the Rockies) drew more out of area than "local". It was decided to drop the word Regional. The 1992 conference (return in 1998) was held at the Cheeka Lodge, Islamorada (hosted by Bill Parker). Both were his successes (at the 1998 gathering Charlie Perkins (d. 2005) arranged our Saturday attendance day to be declared Bill Parker Day in Islamorada). The 1993 affair was the first to address special excursions for spouses as well as group outings. 1993 brought us to the west coast city of Santa Barbara (hosted by Brad & Mary Penny). Our first excursion outside the US brought us to Amsterdam Holland (hosted by Gerd and Ruth Hoffman). This conference brought us to a new level of presentations and activities. The latter included a dinner hour gondola city canal tour with hors' d'oeuvres and cocktails, a bus tour visit of the Hague followed by cocktails with a calliope performing outside a world war famous hotel overlooking North Sea. Noted early on was the Hoffman flag flying next to the Dutch flag atop our hotel. The final day coincided with Jim Carino's birthday with two million (as in 2,000,000) turning out to celebrate. Some thought it might have been for Queen Beatrice who was also celebrating a birthday the same day. The next year brought us to Philadelphia for the first time. It was the first conference to top 100 in attendance. Orca Island followed (hosted by Gary Brown). A whale watching (orca whales of course) excursion thrilled all. A highlight was the young daughter of an attendee (name not recalled) who befriended a deer who followed her constantly. Tunbridge Wells (hosted by Geoff and Maureen Hughes) was our second outing to Europe. Highlights included dinner on the (faux) Orient Express and Geoff shackled in a public square display, looking very forlorn. A special spousal tour included Anne Bolyn's Castle. The 1990s decade conference program concluded in Tucson (hosted by Bert Fulbaum). This was our first (and last) try at vendors invited to conferences until recently successfully re-established. Basically, it was determined we could not develop a solid base to follow on our international overseas ventures.

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## **LEGISLATION**

*Prior to the decade Congress had passed the Freedom of Information Act (FOIA) in 1966, basically establishing the right to access information from the federal government and the Right to Privacy Act in 1974, protecting citizens against invasion of personal privacy through misuse of information. The former had virtually no impact on the private sector and the latter had at best lackluster enforcement with the regard to private investigators. However, that was to abruptly change following the murders of Rebecca Schaeffer (1991) and Amy Boyer (1999). While the Boyer case did not lead to any adverse federal legislation an significant outcome of the Schaeffer case was passage of the Driver Privacy Protection Act (1994) which governs the privacy and disclosure of personal information by state Departments of Motor Vehicles from improper use or disclosure. A third murder, that of William Berkenheiser in PA in 2005 did not produce any adverse legislation as Intellenet members in PA & PALI members successfully precluded.*

*The Fair Credit Reporting Act (FCRA) initially passed in 1970 also began to be rigorously enforced during the 1990s. The Vail Letter of 1999 led to PIs be required to being compliant with the FCRA.*

*The 1991 attack on Nancy Kerrigan resulted in no adverse legislation but did not have an impact on Intellenet. Prior to that incident Intellenet policy was to accept any individual recommended by a member. When evidence developed the prime organizer turned out to be an Intellenet member a backburner project to initiate a screening program moved to front and center. It included the requirement for a minimum of 5 years investigative experience (later increased to 10 years. Move on that later). Of course the perpetrator became an immediate ex-member. Fortunately, there was no adverse news media against Intellenet as we were never mentioned in any of the news media coverage*

*But perhaps the biggest impact on PIs including many of our members was the Y2K mania. Many businesses were concerned that the computers would crash at the turn of the century. To safeguard and upgrade required the expenditure of many dollars. Funds had to found and many companies directed the discretionary funds set aside for investigations to Y2K protection. Unfortunately, many companies did not return those discretionary funds for investigations and many former clients stayed as former. Their mini recession of 2001 had a further negative impact before the big recession of 2007. More on that later.*

## **GROWTH AND DEVELOPMENT**

*Membership continued to expand gradually all through the decade of the 1990s but it was not until 1999 that our first listserv was established. Communication through the decade, thus, was virtually exclusively by Quarterly Newsletters (accompanied by rosters) and telephone with occasional faxes on a one-on-one basis. The listserv essentially eliminated the need for expensive mailouts. Members were being listed on the website and the listserv negated the need at the time for Newsletters which were primarily disseminating information and policy / procedure needs.*

*Early on in the decade we got our first initiative (we did not call it that back then) when member Joe Malley was successful in being approved by the Resolution Trust Corporation (RTC) as an official investigative entity to investigate the failed Savings and Loans banks. This only had applicability in the US and of course, only Intellenet members were used in those many contracts. Malley was one of the winning bidders. One highlight stands out- at a Louisiana bidder conference Intellenet member (since retired) tal, white haired I T. P. Kelley who was retired FBI and retired local Sheriff arrived a bit late and one of the RTC evaluators exclaimed on T.P's arrival "Holy Mackerel, God just arrived". Intellenet quickly got that project.*

*Later in the decade Intellenet (still Intelnet until 2007) linked up with Jim Ross' Surveillance Expo, exhibiting for several years in the Washington DC area. On one occasion I was seated on the dais with G Gordon Liddy – the featured speaker, to my immediate left. I think we had a great conversation but in retrospect I had no idea what he was talking about. This 3-4 year Surveillance Expo run was a successful membership recruiting vehicle, including members for our Supplemental Support List and Security Directors Listserv.*

*A highlight this decade was formalizing (finally) Intellenet as a legal entity, filing as a Sub-Chapter "S" association in 1996. This was after the IRS declined to accept our petition as a non-profit. Basically, the (un)law firm of Carino and Goodman failed to convince the IRS we were a non-profit.*

*Continued page 5*



*Upon appeal it was obvious we were dead in the water when the same person heard our appeal. He pointed out, though that with our \$15 a year dues our total income would be less than \$25,000 so he did not see any concern for us. Our vision of future growth made no impact*

*However, perhaps THE major highlight early in decade and one that had a very favorable impact on all US private investigators concerned PI insurance. Member Butch Heinlein (d. 2008) called and asked if I would meet with George Yergey of Yergey Insurance. Thus, in the spring of 1991 the three of us met almost all day to discuss the setting up of a new concept for PI insurance - a group insurance program for PIs. This sounded like a fantastic opportunity for both as PIs generally were paying in excess of \$3300 per year. It took George about a year to get approvals to operate in all states. My recall in my payment for actually more comprehensive coverage was \$850.00 per year. Savings for many PIs exceeded \$2500.00 annually and, again, with better coverage. Other insurance companies quickly followed suit but Yergey Insurance was the trailblazer for improving insurance rates/coverage for PIs. A relationship between Intellenet and Yergey Insurance now headed by George's son Mike, still exists to this day. Mike with Yergey Insurance has also been exhibitors further supporting our conferences*

*As the decade was nearing an end, membership had grown to about 300 with a member in each US state and about 45 other countries.*

*The first listing of Board Members found was that of a June 1999 Board, consisting of, alphabetically: Jerry Adams, TX; John Belrose, MA (d. 2006); Fred Bornhofen, PA (d. 2019); Gary Brown, OR (d. 2012); Jim Carino, PA; Tom Crowley, FL (d. 2013), Robert Dudash, NE; Bert Falbaun, AZ (d. 2015); Art Fredhein, MA; Tom Hampson, IL; Gerd Hoffman, Netherlands (d. 2006); Geoff Hughes, United Kingdom; Bruce Hulme, NY; Jerry Levy, NY; Reggie Montgomery, then NJ; Bill Parker, then FL (d. 2019), Brad Penny, CA (d. 2009); Nancy Poss-Hatchl, CA (d. 2016); Werner Prening, Austria; Lynette Revill, FL; and Stan Schwartz, CA.*

*It was a committed and diligent Board. Specific duties were Bornhofen as Assistant Executive Director, Brown as Listserv Master (he set them all up), Hulme as Legislative Chair, Fredhein as Treasurer, Poss-Hatchl as Secretary, and Brad Penny as the Conscience of the Board, Prime Organizer, Historian and the admin "go to" guy.*

*New goals were set to include name branding (we didn't call it that, then) with plans to expand exhibiting at conferences, exploitation of the listserves, and increased coverage internationally as well as how to address Y2K.*

*In sum, this was the decade that established Intellenet as a force in the private sector investigative area.*

*As 1999 drew to a close all eyes were on Y2K and its high concern impact.*

*The next part of this series will cover 2000 through approx. 2013.*

*To be continued— next newsletter*



# ***Peggy's Page***

by  
***Peggy Centonze***  
***Intellenet Administrative Assistant***

Hi:

*I hope everybody have a nice holiday season. With all of the conference stuff going on and the membership renewals coming in, I am going to skip this newsletter! I will be back for the next one & I hope to see you in Las Vegas!*

*I am here to assist you with any administrative need or question you have, so feel free to contact me anytime by emailing [intellenet@intellenetwork.org](mailto:intellenet@intellenetwork.org).*

*Thanks*

*Peggy*

## ***Interviewing & Rapport- Continued from page 1***

*Start the conversation slow, then start to gauge the interview. What does this mean? Start simple. Don't ask hard or complicated questions right off the bat. Climb the ladder slowly. Even when you know you are doing a good job, you might encounter roadblocks in which the person shuts down or gets defensive. This is where you need to think quick and find another line of questioning. Patience is key.*

*Of course, a big part of building rapport is letting the other party know that you have common ground. Sharing hobbies or likes with a stranger helps create ease and builds trust. Mostly because, if you both share something, that must mean that you share values. Look around the space, see what you find. Sports memorabilia? Family pictures? Military gear? If you have some of these in common, most definitely bring them to the table.*

*It's not impossible to build rapport with someone. You just have to see the human side of every situation. People relate to others that share feelings, interests, and traits. Don't think of it as a chore, but rather as creating a piece of art that gets bigger and bigger as time goes by. If there's a misstep, make sure you note it and continue to build. Interviewing is a genuinely mesmerizing technique when employed correctly. Connecting with someone in a limited time patch, enough that they entrust you with their knowledge is magical. Use your powers for good.*



# ★ *Member Photos* ★ *From the past*





# *New Member Profile*

*Brianne Joseph*



*Brianne Joseph is an award-winning, nationally recognized Entrepreneur, Private Investigator, Best-selling author, and speaker. She is the Owner and Head Investigator at Sly Fox Investigations - an all female Private Investigation agency. She has been a Licensed Private Investigator in the state of Louisiana for 14 years. She began her career as a surveillance investigator, working for various local surveillance firms. Her excellence in surveillance and covert operations allowed her to grow her all female agency from an idea to a six-figure brand, which has now become one of the most sought-after agencies in the state of Louisiana. Her commitment to excellence allows her firm to spearhead million-dollar insurance fraud cases for some of the nation's top super lawyers. With offices in Baton Rouge and New Orleans, Sly Fox Investigations specializes in surveillance for Insurance Defense, Child Custody, and Infidelity cases. Brianne has written published articles about Private Investigation. She has been a guest on television shows, radio shows, and has been featured in national publications including Essence Magazine, The Atlanta Post, and many others. Most recently, Brianne was featured on the July 2019 cover of the New Orleans Gambit magazine and in the July 2019 Baton Rouge Advocate newspaper. A recognized leader, Brianne was previously appointed the Region II Director of the Louisiana Private Investigators Association, she was honored at the Baton Rouge 40 Under 40 Entrepreneurs Award ceremony, was named the 2011 'Investigator Of The Year ' by the National Association of Investigative Specialists, was awarded 2018 'Best Private Investigator in New Orleans' by Expertise and also received the 2019 'Esprit De Femme' award from LSU for her contributions to women's empowerment. In May of 2019, Brianne was invited to the Louisiana Senate floor to receive a resolution and recognition for being a "pioneering entrepreneur in founding Sly Fox Investigations, an exceptional licensed Private Investigator, for advancing the role of women to a single profession, and for building a successful business enterprise in Louisiana". Brianne is also featured in the September 2019 industry publication PI Magazine, in which she also contributed an article. As a breast cancer survivor, through her breast cancer empowerment brand, she travels the country as a keynote speaker at oncology conferences, educating doctors and oncology staff on ways they can better empower their patients. Brianne has spoken at Xavier University, LSU, Louis Martinet Society, has been a keynote speaker at the Athena Women's Empowerment Session, 2017 National Oncology Conference, 2018 South Carolina Medical Managers Conference, The Global One-Woman Fearless Summit and many others.*

*Sly Fox Investigations*

*(225) 305-7468*

*[www.slyfoxinvestigations.com](http://www.slyfoxinvestigations.com)*

*[slyfox@slyfoxinvestigations.com](mailto:slyfox@slyfoxinvestigations.com)*



## **Private Investigations 2.0**

**Learn the skills you need to succeed in the industry!**

**March 6th & 7th, 2020 (8:00 AM—5:00 PM)**

### **Conducting Surveillance**

- Surveillance Cameras & Equipment
- Using Covert Cameras
- Creating Videos & Sharing Them



### **Computer Research for Investigators**

- Using Databases & Social Media
- Search Sites, Tips, & Tools
- Other Sources of Information

### **Interviews & Statement Taking**

- Tools and Techniques
- Asking Proper Questions
- Reporting your findings



### **Intro to Working Different Types of Cases**

- \*Criminal Defense \*Domestic
- \*Financial Crimes \*Due Diligence

#### **Location**

Crown Plaza Executive Center  
4728 Constitution Ave.  
Baton Rouge, LA 70808

#### **Other Topics Covered**

Networking & Associations  
Promoting Yourself  
Getting Business

#### **Registration & Cost**

\$265.00 Advance Purchase  
\$300.00 Day of Event  
Contact: [jerry@defattapi.com](mailto:jerry@defattapi.com)

**Learn from 3 instructors who each have over 20 years of experience in the investigative industry!**

Jerry DeFatta, CFE, BAI, CRT  
DeFatta & Associates, LLC

Nicole Bocra Gray  
Infinity Investigative Solutions

Jeff Stein, LPI, BAI, CCDI, V.S.M.  
ELPS Private Detective Agency



# **READI™**

## **RESPONSE**

***Kevin McClain, CCDI, BAI*** recently announced the initial launch of his mobile application connecting investigators and clients in real time scenarios at accident and incident sites. The launch is scheduled for April 15, 2020 and it's not too late to sign up ...

***All Intellenet members who sign up before launch date will be grandfathered in and will never have a subscription fee!***

Kevin already has over 450 investigators in his investigative network and clients are signing up for beta testing. The Phase 1 Launch in October will offer the app to over 300,000 truckers as a part of a strategic agreement with the trucking industry, offering real-time local investigative expertise at accident sites via the app's instant notification capabilities.

***If you are ready to be a part of this exciting network or have any questions about READI Response, contact Kevin at 877-532-1152 or email [mcclainpi@gmail.com](mailto:mcclainpi@gmail.com) or [kevin.mcclain@readiresponse.com](mailto:kevin.mcclain@readiresponse.com).***



## *Internet links & email addresses of interest*

*"Is It Down Right Now"*      <https://www.isitdownrightnow.com/>

*Life Insurance Policy* <https://www.lifeant.com/faq/how-can-you-find-out-if-somebody-had-a-life-insurance-policy-before-they-died/>

*Access to Official Military Personnel Files*      <https://www.archives.gov/personnel-records-center/ompf-access>

*Online Detainee Locator System*      <https://locator.ice.gov/odls/#/index>

*Trusted Traveler Programs*      <https://ttp.cbp.dhs.gov/>

*Free Public Record Searches*      <https://www.blackbookonline.info/>

*ISP List*      <https://www.search.org/resources/isp-list/>

*Boston Police Public Records Request-*      [publicrecordsrequest@pd.boston.gov](mailto:publicrecordsrequest@pd.boston.gov)

*Commonwealth of Virginia Statewide Court records -*      <https://eapps.courts.state.va.us/ocis/search>



## ***IN MEMORY-2019 DECEASED MEMBERS***



**Tony Otero- January**  
**Al Kaplan- February**  
**John Noukas- March**  
**Nate Lenow- April**  
**Fred Bornhofen- August**  
**Bill Parker- September**



**JT PALMER & ASSOCIATES**  
— THE KEY TO YOUR SEARCH —



## ISPLA Insights for INTELLENET

by

**BRUCE H. HULME, CFE, BAI**  
**ISPLA Director of Government Affairs**

### INTELLENET & IASIR

*In October, I attended the annual conference of the International Association of Security & Investigative Regulators in Baltimore, and joined our Intellenet members Don C. Johnson and Nicole Bocra Gray. Don serves as IASIR's First Vice President and Nicole is the current Private Investigation Industry representative who succeeded me in that elected position in 2018.*

*The conference received high marks for its forward looking presentations under the general theme of "Re-forecasting Regulatory Climate Change: How to plan for and react to the realities of present-day industry trends and developments." Attendees examined long-held assumptions in the face of fast changing realities. Forward looking presentations and lively discussion addressed movement in cannabis legalization, training methodology, and certification for all-hazard response scenarios. The four day event received high marks from its U.S. attendees, as well as those of foreign members from Canada, France, the Union of South Africa, and speakers and guests from India.*

*Over the years that I attended many of IASIR's annual conferences, I found the regulators of our profession to be invaluable in providing letters in support of our profession's positions to members of Congress that were of legislative concern to ISPLA and NCISS while I was legislative director of both organizations. I served on the IASIR board from 2004 - 2018, and as one of its few life members I will always stand ready to assist my successor Nicole in any way that I can. Intellenet needs to continue to be a strong supporting member of IASIR.*

### **CALIFORNIA PRIVATE INVESTIGATORS: Subcontractors or employees?**

*California State Assembly Bill No. 5 became effective in that state on January 1, 2020, having been signed into law on September 18, 2019 by Governor Gavin Newsom. It may make it more difficult for some private investigative firms to treat its workers as independent contractors. **The law not only affects California businesses, but also out-of-state businesses that contract with them.***

*This law codifies a 2018 decision by the California Supreme Court which will have implications on determining just who is considered a subcontractor rather than an employee. It said that workers misclassified as independent contractors lose rights and protections including a minimum wage, workers' compensation, unemployment and disability insurance and often health insurance and retirement benefits. It specifically codifies into law the new "ABC" test for determining whether an independent contractor should be deemed an employee as articulated in the California Supreme Court Decision of *Dynamex Operations West v. Superior Court* (2018) 4 Cal. 5<sup>th</sup> 903 ("Dynamex"). Effective January 1, 2020 AB 5 will add section 2750.3 to the Labor Code. The new law is based upon two key judicial opinions issued by the California Supreme Court in the *Dynamex* case and the *Borello* case.*

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**Dynamex:** *The Dynamex decision issued on April 30, 2018 reviewed the employee or independent contractor question in one specific context. The court decided what standard applies, under California law, in determining whether workers should be classified as employees or as independent contractors for purposes of California wage orders, which impose obligations relating to the minimum wages, maximum hours, and a limited number of very basic working conditions (such as minimally required meal and rest breaks) of California employees. In California, wage orders are constitutionally-authorized, quasi-legislative regulations that have the force of law. (See Cal. Const., art. XIV, § 1; Lab. Code, §§ 1173, 1178, 1178.5, 1182, 1185; Industrial Welfare Com. v. Superior Court (1980) 27 Cal.3d 690, 700-703 (Industrial Welf. Com.).)*

*In Dynamex, two individual delivery drivers, suing on their own behalf and on behalf of a class of allegedly similarly situated drivers, filed a complaint against Dynamex Operations West, Inc. (“Dynamex”), a nationwide package and document delivery company, alleging that Dynamex had misclassified its delivery drivers as independent contractors rather than employees. The drivers claimed that Dynamex’s alleged misclassification of its drivers as independent contractors led to Dynamex’s violation of the provisions of Industrial Welfare Commission wage order No. 9, the applicable state wage order governing the transportation industry.*

*The Dynamex court held that workers are presumed to be employees unless all three of a specific set of standards are met. These standards are referred to in the Dynamex opinion as an “ABC” test and consist of the following three conditions:*

- (A) The individual is free from control and direction in connection with the performance of the service, both under his contract for the performance of service and in fact; and*
- (B) The service is performed outside the usual course of the business of the employer; and,*
- (C) The individual is customarily engaged in an independently established trade, occupation, profession or business of the same nature as that involved in the service performed.*

*This holding established a new standard for determining whether a worker is an independent contractor or an employee.*

**Borello Test:** *Prior to Dynamex, California law followed the "multi-factor" or the "economic realities" test for determining independent contractor status adopted by the California Supreme Court in the case of S. G. Borello & Sons, Inc. v Dept. of Industrial Relations (1989) 48 Cal.3d 341. In applying the economic realities test, the most significant factor to be considered was whether the person to whom service is rendered (the employer or principal) has control or the right to control the worker both as to the work done and the manner and means in which it is performed. The Borello test also considers “secondary” factors, such as whether the worker was engaged in a distinct occupation or business, the skill required in the particular occupation, whether the hiring entity supplied the tools used to perform the work and where the work was performed. California courts and public agencies have historically applied the Borello test for determining whether a worker is an independent contractor or employee for most wage & hour, tax and insurance related purposes.*

## **Overview of Assembly Bill No. 5**

*1. Specifically codifies the Dynamex presumption with respect to the application of provisions of the Labor Code, the Unemployment Insurance Code, and the Wage Orders of the Industrial Welfare Commission, that a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates:*

***Continued page 14***

*A) the person is free from the control and direction of the hiring entity in connection with the performance of the work,*

*B) the person performs work that is outside the usual course of the hiring entity's business, and;*

*C) the person is customarily engaged in an independently established trade, occupation, or business.*

*2. Provides that any statutory exception from employment status or any extension of employer status or liability remains in effect, and that if a court rules that the 3-part test cannot be applied, then the determination of employee or independent contractor status shall be governed by the test adopted in Borello "economic realities test."*

*3. Exempts various occupations and industries from the application of the ABC test, and would instead provide that these are governed by the Borello economic realities test, subject to additional statutorily specified conditions or criteria being satisfied. Exempt occupations include, among others, licensed insurance agents, certain licensed health care professionals (e.g., physicians, dentists, psychologists, etc.), licensed professionals in other specified licensed professions (attorneys, architects, engineers, private investigators, accountants), registered securities broker-dealers or investment advisers, direct sales salespersons, real estate licensees, and commercial fishermen. AB 5 additionally states exemptions for contracts for specified "professional services," provided that six specified conditions are met with respect to the individual providing the services. Such "professional services" include, among others, human resources administrators, grant writers, graphic designers, and freelance writers. Also exempt (again, subject to specified conditions) is the relationship between a contractor and an individual performing work in the construction industry.*

*4. Exempts a "bona fide business-to-business contracting relationship" that exists between two business entities (formed as a sole proprietorship, partnership, limited liability company, or corporation). Provided that specified criteria are satisfied, the determination of employee or independent contractor status of the business entity that is providing services is determined under the Borello test.*

*5. Makes additional related changes to the definition of "employee" for purposes of unemployment insurance (Sections 606.5 and 621 of the Unemployment Insurance Code) and workers' compensation (Section 3351 of the Labor Code).*

*6. Provides that the addition of Section 2750.3 to the Labor Code does not constitute a change in, but is declaratory of, existing law with regard to violations of the Labor Code relating to wage orders of the Industrial Welfare Commission. Moreover, AB 5 provides that it will apply retroactively to existing claims and actions to the maximum extent permitted by law while other provisions apply to work performed on or after January 1, 2020. Lastly, AB 5 prohibits an employer from reclassifying an individual who was an employee on January 1, 2019, to an independent contractor due to the bill's enactment.*

*The law affects California-based companies of all sizes and out-of-state businesses using California contractors, and is being challenged in state courts, while companies including Uber and Lyft are campaigning for a referendum on the 2020 election ballot on whether they should be exempt from the law. Employment law attorneys expect the state legislature to add to the list of professions the law already excludes. Private Investigators are on the list of excluded professionals, so long as they pass the Borello Test and have all required professional or occupational licenses. The most significant factor under this test is whether the hiring firm has control or the right to control the worker, both as to the work done and the manner and means in which it is performed. Add to this secondary factors such as who provides work tools and the individual's opportunity for profit or loss.*

**Continued Page 15**

*Failure to comply with this new law raises the possibility of penalties running into the tens or hundreds of thousands of dollars, expands the ability of local officials, and not just state tax officials, to enforce the law, and can lead to lawsuits brought by workers misclassified as independent contractors as they lose rights and protections including a minimum wage, workers' compensation, unemployment and disability insurance and often health insurance and retirement benefits.*

### **CALIFORNIA CONSUMER PRIVACY ACT**

*As of January 1, 2020, businesses worldwide will also have to comply with additional regulations related to processing of personal data of California residents. Pursuant to the California Consumer Privacy Act of 2018 (CCPA), companies have to observe restrictions on data monetization business models, accommodate rights to access, deletion, and porting of personal data, update their privacy policies and brace for additional penalties and liquidated damages. The California Legislature adopted and the governor signed the bill on June 28, 2018, after an unusually rushed process in exchange for the proposed initiative measure No. 17-0039 regarding the Consumer Right to Privacy Act of 2018, also known as the "ballot initiative," being withdrawn from the ballot the same day, the deadline for such withdrawals prior to the November 6, 2018 election.*

*The CCPA adds to the California Civil Code about 10,000 new words and Sections 1798.100 to 1798.198. The legislature acknowledged some of the many existing data privacy laws that California has already enacted over the years and has led the U.S. in codifying privacy protections, enacting the first laws requiring notifications of data security breaches (2002) and website privacy policies (2004). In the operative section of the new law, however, the CCPA's drafters did not address any overlap or inconsistencies between the new law and any of California's existing privacy laws, possibly due to the rushed legislative process, or perhaps due to limitations on the ability to negotiate with the proponents of the Initiative. Instead, the new Cal. Civ. Code §1798.175 prescribes that in case of any conflicts with California laws, the law that affords the greatest privacy protections shall control. Notably Cal. Civ. Code §1798.194 instructs courts that the new law "shall be liberally construed to effectuate its purposes."*

*Businesses, (some private investigators and large contract security companies), privacy officers, and lawyers will have to deal with an even more complex and fragmented privacy law landscape in California, and therefore in the United States and worldwide. Given the impact of California on the global economy as the 5th largest, behind only the United States as a whole, China, Japan and Germany, most global companies will have to continue to do business in California. The EU General Data Protection Regulation also has provisions that investigative and security professionals should be aware of.*

### **Protected Data: Who and what?**

*All California residents are protected under the CCPA with respect to any information that relates to them. They are not just protected in their roles as consumers, but also as employees, patients, tenants, students, parents, children, etc. Cal. Civ. Code §1798.140(g) defines "consumer" as any "natural person who is a California resident, as defined in Section 17014 of Title 18 of the California Code of Regulations, as that section read on September 1, 2017, however identified, including by any unique identifier." According to these regulations, a "resident" "includes (1) every individual who is in the State for other than a temporary or transitory purpose, and (2) every individual who is domiciled in the State who is outside the State for a temporary or transitory purpose," subject to a number of clarifications and specifications set forth in Section 17014 of Title 18 of the California Code of Regulations.*

*Companies around the world have to comply with the CCPA if they receive personal data from California residents and if they — or their parent company or a subsidiary — exceed one of three thresholds: (a) annual gross revenues of \$25 million; (b) obtains personal information of 50,000 or more California residents, households or devices annually; or (c) 50 percent or more annual revenue from selling California residents' personal information. Parent companies and subsidiaries using the same branding are covered in the definition of "business," even if they themselves do not exceed the applicable thresholds.*

*(a) Companies must comply if they have annual revenues in excess of U.S. \$25 million. It is not clear whether this number needs to include only their California revenue or global sales. While Cal. Civ. Code § 1714.43(a)(1) defines the scope of the California Transparency in Supply Chains Act expressly in reference to "annual worldwide gross receipts," the new Cal. Civ. Code §1798.140(c)(1)(A) merely refers to "annual gross revenues" without an expanding reference to "worldwide." Yet, a limiting reference to California is also missing, as for example contained in Section 17942(a)(2) of the California Revenue and Taxation Code, which refers to "total income from all sources derived from or attributable to this state."*

*(b) A company would need to comply if it obtains personal information of at least 50,000 California residents annually. Companies may pass this threshold more quickly than anticipated because the scope of personal information is broad. Most companies operate websites and inevitably capture IP addresses. Notably, companies need to comply regardless of whether the website targeted businesses or individual customers in California given that the term "consumer" is defined to mean any "resident." Even individual bloggers and relatively small businesses outside California may find it difficult to ensure that they do not receive personal information of more than 50,000 California resident visitors to their website annually, simply from having it be passively accessible from there, and, within California, most retailers, fitness studios, music venues and other businesses will meet this threshold.*

*(c) Companies can also be subject to the law based on whether they sell California residents' personal information. A relatively small company in California may need to comply if it derives more than 50 percent of its annual revenue from selling California residents' personal information. "Selling" is defined broadly to mean any disclosing or making available for monetary or other valuable consideration, subject to a number of exceptions set forth in Cal. Civ. Code §1798.140(t), including consumer-directed disclosures to third parties that do not sell the personal information, limited sharing with service providers, and business transfers in bankruptcy, M&A and similar transactions.*

*(d) A company without a physical presence or affiliate in California may be able to avoid complying with the statute, however, if it can ensure that its "commercial conduct takes place wholly outside of California" for purposes of Cal. Civ. Code §1798.145(a)(6)) and that it is not doing "business in the State of California" for purposes of Cal. Civ. Code §1798.140(c)(1). Most U.S. companies will find it difficult to determine that they are not doing business in the state of California, because the term "doing business" is generally understood very broadly. According to California Revenue and Taxation Code Section 23101(a) an out-of-state company is "doing business in California if it actively engages in any transaction for the purpose of financial or pecuniary gain or profit in California." Furthermore, according to California Corporations Code Sections 191(a), 15901.02(ai) and 17708.03(a), companies outside of California and qualified to do business in California may be subject to the law if they enter "into repeated and successive transactions" in California, which could occur remotely and online.*

Thanks,

Bruce H. Hulme, CFE, BAI

*Intellenet Legislative Liaison Board, Life Member  
P.O. Box 112  
Purdys, New York 10578  
Telephone: 1.212.962.4054 - Email: [brucehulme@yahoo.com](mailto:brucehulme@yahoo.com)*



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## *What is TikTok and is there serious security concerns?*

*Michele Stuart*



*TikTok, was the most downloaded app in the United States in 2018 and is reported to be the 7<sup>th</sup> most downloaded app of the decade. A research firm, Sensor Tower, estimated the app to have been downloaded over 800 million times worldwide; although, another source estimates as of today it is even higher with an estimated 1.5 billion downloads. Tiktok allows users to create videos ranging from 3 to 60 seconds. The app is owned by a Beijing based firm by the name of ByteDance, founded by Zhang Yiming in 2012.*

*Let's step back just a bit for a moment. Do you remember the incredibly popular TEENAGE app called Musically? Well in November 2017, the parent company of TikTok purchased Musical.ly for \$1 billion dollars. Statistics show that 41% of the users on TikTok range in the ages of 16 to 24 and with its popularity this platform has shot up to the top for the younger age group to try and become TikTok famous. As with any app that pushes itself toward this generation, comes the concerns of predators and their ability to reach them via the internal messaging system. Recently, one of the largest charity groups in the UK, National Society for the Prevention of Cruelty to Children, conducted an in-depth survey of 40,000 students. Their report found that 25% of children admitted to connecting with a stranger and it further found that 1 in 20 of these children were asked to strip during live streams. Another important factor user's should be aware of is that TikTok automatically sets all accounts to public. Users have also found TikTok videos surfacing that they didn't upload; however, had saved to their phone. Some of which are being used in ads.*

*Now looking into some of the concerns: In 2019 TikTok was found to be illegally collecting children's data, under the age of 13, and was fined by the FTC in the amount of \$5.7 million. The collection of data violated COPPA (Children's Online Privacy Protection Act) which protects children under the age of 13 from companies collecting information without parental improvement. Further accusations of data gathering came about in the end of 2019; whereas, a class action lawsuit from the US claims that TikTok installed "Chinese surveillance software" that violated consumer protection laws. Large amounts of private and personal identifiable user data were gathered and transferred to servers in China. A US college student by the name of Misty Hong filed another class action lawsuit when she found TikTok had transferred her information, including "users' locations, ages, private messages, phone numbers, contacts, genders, browsing histories, cellphone serial numbers, and IP addresses" to a Chinese server.*

*The concern over Chinese collection of data and the way it is controlling political information has become a national security issue. Chinese law requires Chinese companies to comply with government intelligence operations. With the ability of collecting massive amounts of data, the concern has become so real that both the US Navy and US Army has banned all enlisted from using this Chinese app on government phones. An Army spokeswoman, Lt. Col. Robin Ochoa, told Military.com "It is considered a cyber threat."*

*Not only can TikTok collect this data from your device, but if you choose to link it to other social media networks "(such as Facebook, Twitter, Instagram, or Google), we may collect information from these social media services, including your contact lists for these services and information relating to your use of the Platform in relation to these services." A quick look at TikTok's privacy policy shows the amount of collection: <https://www.tiktok.com/legal/privacy-policy?lang=en#privacy-us>*

*Not to be ignorant in the fact that almost all apps collect a certain amount of information, some more aggressively than others. The concern is who is actually data-mining this data from this particular app and what the use of the data will be used for.*

### **About the author:**

*Michele Stuart has 28 years of investigative and training experience. Beginning her career in financial investigations, she then formed JAG Investigations, Inc. in 1997. Ms. Stuart's area of expertise includes OSINT, counter intelligence, insurance fraud investigations, financial investigations, threat assessments, due diligence, organized retail crime, corporate and competitive intelligence. Ms. Stuart consults and trains federal, state and local law enforcement agencies, the military intelligence communities, fortune 500 companies as well as the financial and insurance industries in open source, social media and threat assessments / mitigation.*

# ***37<sup>th</sup> Intellenet Annual Conference Schedule of Events***

## ***March 30 – Apr 2, 2020***

### ***As of January 17th***

#### **Sunday March 29, 2020**

4:00 PM Board of Directors meeting

#### **Monday, March 30, 2020**

7:30 AM - 8:00 AM Check-in

8:00 AM - 9:00 AM Welcome, Introductions, Overview; Peter Psarouthakis & Jeff Stein followed by personal Introductions by attending members.

9:00 AM - 12:00 PM Nicole Gray, Daniel Loper and Michele Stuart – Session 1:  
Aspects of a Fraud Investigation – from A to Z In this presentation our firm is engaged to investigate a new fraud case involving financial exploitation. This case has three key components: the financial fraud; obtaining & analyzing digital evidence & identifying & reviewing open source intelligence.

12:00 PM - 1:30 PM Lunch on your own

1:30 PM - 4:00 PM Nicole Gray, Daniel Loper & Michele Stuart - Continued

4:00 PM - 4:20 PM John Gaspar - Board Accredited Investigator Certification

5:30 PM Cocktail party

7:00 PM Welcome dinner for all paid attendees

#### **Tuesday, March 31, 2020**

8:45 AM - 9:00 AM Additional Opening Remarks, Introductions for new attendees

9:00 AM - 10:00 AM John Gaspar– Demystifying the Investigative Process

10:10 AM - 10:45 AM Bruce Hulme - Legislative Updates

10:45 AM - 12:10 PM Wesley Clark - Investigative Statement Analysis

12:10 PM - 1:15 PM Lunch

1:15 PM - 2:20 PM Tony Olivo - AEGIS: Beyond Surveillance-Using State of the art technology for security & video analytics

2:20 PM - 3:20 PM Lisa Dolan - Growing your Security Business, Selling to the Government-what's involved

3:30 PM - 4:30 PM Panel of International Investigators – Discussing overseas/international perspective on investigations & what can & can't be done in their respective countries

#### **Wednesday, April 1, 2020**

9:00 AM - 9:15 AM Announcements

9:15 AM - 12:30 PM Michael Julian - ALIVE; Active Shooter Survival Training

12:30 PM - 1:30 PM Lunch on your own

1:30 PM - 2:30 PM Kelly Riddle - "Cases That Can Land You in Jail"

2:30 PM - 3:30 PM Eric Flores - Kidnapping Express

3:30 PM - 4:30 PM Kitty Hailey – Ethics

5:30 PM Cocktail party

7:00 PM Gala Dinner for all paid attendees: Speakers, awards, scholarships, auction, etc.

#### **Thursday, April 2, 2020**

9:00 AM - 10:30 AM "Thomas Brooks; Probate Investigations - an overview of "how to" investigate disputes involving a descendant's estate upon their death. We often hear about someone changing their will & giving all their money to their housekeeper...cutting out the family. Presentation provides an example of how this occurs & how to invalidate a Will. I also show "how to" market your service in this area to Trust Companies and Attorneys."

10:30 AM - 11:30 AM Kelly Riddle - Marketing your business to make money

11:30 AM - 12:00 PM Closing Remarks– See you in 2021 in ???????



## ***PAST CONFERENCE LOCATIONS***

*2019 Charlotte, NC*

*2017 Denver, CO*

*2015 Las Vegas, NV*

*2013 Philadelphia, PA*

*2011 Washington, DC*

*2009 Honolulu, HI*

*2007 San Antonio, TX*

*2005 Arundel, England*

*2003 Cayman Islands*

*2001 Florence, Italy*

*1999 Tucson, AZ*

*1997 Islamorada, FL*

*1995 Philadelphia, PA*

*1993 Santa Barbara, CA*

*1991 Keystone, CO*

*2018 Aruba*

*2016 Toronto, Canada*

*2014 San Juan, Puerto Rico*

*2012 Vancouver, BC*

*2010 New Orleans, LA*

*2008 Sorrento, Italy*

*2006 Calgary, Alberta, Canada*

*2004 Boston, MA*

*2002 San Francisco, CA*

*2000 Mt. Tremblant, Canada*

*1998 Royal Tunbridge Wells, England*

*1996 Orcas Island, WA*

*1994 Amsterdam, Holland*

*1992 Islamorada, FL*

*1990 Mt. Pocono, PA*



## 2020 Calendar of events

- 2/4-2/7 *Florida Association of Private Investigators (FAPI) 2020 Annual Litigation & Investigators Conference February 5– 7<sup>th</sup>, 2020 at Hilton Altamonte Springs / Orlando, Fl.*
- 2/20-2 *Intellenet Member Eric De Van will be hosting Continuing Education Conference. Below is the link fmi <https://myemail.constantcontact.com/12-Credit-P--I--Continuing-Education-Conference--SC--NC-.html?soid=1127281664924&aid=XvM046FRTFo>*
- 3/12-3/15 *CII Regional Meeting, Charleston, SC, FMI Ryan Colley [RDC@colleypi.com](mailto:RDC@colleypi.com)*
- 3/20 *Medical Serial Murders, John Jay College of Criminal Justice, New York, NY. The 1St international conference on medical serial murders will be held at the John Jay College of Criminal Justice in New York City. For more info, visit: <http://www.jjay.cuny.edu/msm2020>*
- 3/30-4/2 *Intellenet 37<sup>th</sup> Annual Conference, Rio, Las Vegas, NV <https://www.intellenet.org/annual-conference/>*
- 4/23-4/24 *Georgia Association of Professional Private Investigators Spring Conference at Chattahoochee Technical College in Acworth, GA, & attendees will receive twelve (12) hours of continuing education credits. For more information go to [www.gappi.org](http://www.gappi.org) or contact W. Larry Davis at 404-229-7093.*
- 5/7-5/9 *South Carolina Association of Licensed Investigators 2020 Annual Conference, Marina Inn at Grand Dunes, Myrtle Beach, SC, [www.scalinv.com](http://www.scalinv.com)*
- 5/13-5/15 *"BELIEF Interviewing" Narrative-based investigative interviewing. FMI [lies@truthsleuth.com](mailto:lies@truthsleuth.com)*
- 6/11-6/13 *California Association of Licensed Investigators (CALI) Annual Conference, Palm Springs, CA, fmi, Jim Zimmer [zimmerpi@pacbell.net](mailto:zimmerpi@pacbell.net)*



**DLM**  
**ELECTRONICS**

[office@lawmate-usa.com](mailto:office@lawmate-usa.com)  
Office 512.487.1370  
Fax 512.487.1396

[www.lawmate-usa.com](http://www.lawmate-usa.com)



## **WHY BECOME A BOARD ACCREDITED INVESTIGATOR?**

**INTELLENET is the first international professional investigative association to offer a unique credential specifically designed for professional investigators.**

### **MEMBERSHIP BENEFITS**

- **Expanded professional network & opportunities to showcase your expertise at professional and global events.**
- **Increased fee potential - Certified practitioner's fees are up to 30% more than non-certified professionals.**
- **Backing of the world's most respected association of investigative professionals.**
- **Certification indicates mastery/competency as measured against a defensible set of standards, acquired by application or examination.**

### **APPLICATION PROCESS & REQUIREMENTS**

**BAI INFORMATIONAL TRIFOLD [http://baipi.org/resources/Documents/BAI\\_Tifold.pdf](http://baipi.org/resources/Documents/BAI_Tifold.pdf)**

### **APPLICATION**

**<https://www.baipi.org/membership-application>**

### **INFORMATIONAL WEBSITE**

**[www.BAIPi.org](http://www.BAIPi.org)**



## ***Intellenet Scholarship Award***

*Started in 2017 Intellenet plans to award at least two scholarships annually to a child, stepchild, grandchild or grand stepchild of an Active Member in good standing of Intellenet.*

*The scholarships are intended to provide financial assistance to students entering their first year of college, a post graduate year, vocational/trade school or students presently attending a college or university.*

*A scholarship will be awarded to one child of an active Intellenet member's family.*

*The recipient or recipients will be chosen by the Scholarship Committee, selected by the Intellenet Executive Director, and their decision will be final.*

*After 2017 previous Intellenet scholarship award recipients are not eligible.*

*Only those who plan to be enrolled the ensuing fall semester are eligible.*

*It is the expectation of Intellenet that the applicant be in good standing with their present academic institution.*

### ***CRITERIA***

*All applicants must meet the following eligibility requirements:*

*Be child, stepchild, grandchild or grand stepchild of an Active Member in good standing of Intellenet, and one of the following:*

*A high school senior who will be continuing their education at an undergraduate college or university, junior college, vocational or technical college.*

*A high school senior who will be continuing their education in a post graduate year.*

*A post-secondary student attending an undergraduate college or university, junior college, vocational or technical college.*

### ***APPLICATION PROCEDURE***

*The application is on the next page and can be submitted electronically to the Chairperson of the Scholarship Committee or [intellenet@intellenetwork.org](mailto:intellenet@intellenetwork.org). Applications must be submitted no later than March 1st. The scholarship recipients will be announced at the yearly Intellenet Conference gala banquet. Recipients of the scholarship will be required to provide proof of enrollment at an eligible post-secondary institution prior to the funds being dispersed.*



*Intellenet Scholarship Application*

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone #: \_\_\_\_\_

Intellenet member's name: \_\_\_\_\_

Relationship to Intellenet member: \_\_\_\_\_

High School and year of graduation: \_\_\_\_\_

\_\_\_\_\_

Post-secondary undergraduate institution you (choose one)

Are attending: \_\_\_\_\_

Will be attending: \_\_\_\_\_

Will most likely be attend: \_\_\_\_\_

or \_\_\_\_\_

Major or anticipated major: \_\_\_\_\_

Anticipated year of graduation: \_\_\_\_\_

**It is the expectation of Intellenet that the applicant be in good standing with their present academic institution. \*\*\* Please submit a 1-2 page essay telling the committee about the activities that you have been involved in as a High School student & College student if applicable. The essay should also tell the committee what your plans after college are, and how you plan to utilize your college degree.**