



## **Business Ethics: My Humiliating Failure as a Corporate Spy**

**Compliance and Ethics**



Huddled with seven colleagues in a dimly lit hotel room in Morgantown, WV, and bleary-eyed from days of reviewing thousands of pages of documents, a clandestine plan was being hatched that I now regret being a part of.

We were a due diligence team working on behalf of a multinational corporation engaged in discussions with another company about the possible acquisition of their Morgantown chemical manufacturing facility. The two corporations that were party to this contemplated transaction agreed that it was premature to disclose the talks to either plant employees or shareholders. So, we were forced to perform our due diligence work in secret.

After poring through the documents in the data room, the only thing left for us to do was to visit the plant. As the company's safety, health, and environmental senior attorney, this was a critical part of my job. I needed to conduct a thorough inspection of every inch of the sprawling chemical manufacturing facility and report my findings back to senior management.

Our challenge was figuring out how to do this without letting the cat out of the bag. The senior plant managers who were assisting us recommended we each assume a false identity. I was directed to pose as an engineering professor from the nearby Morgantown University.

I had been through this kind of covert due diligence exercise on several occasions, and, in my experience, such potential transactions are the worst kept secrets. There is no way for the acquisition

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target to gather and produce all the documents necessary to let their counterparty “kick the tires” without involving employees who could not be told why they were tasked with doing so.

When this is coupled with a parade of strangers visiting the plant, it does not take a genius to figure out what is going on. And, of course, once one person knows, within hours everyone knows. Suspecting this was the case in this circumstance, I was deeply uncomfortable with the idea of inspecting the plant with a false identity.

Despite my misgivings, the plant tour went well until my escort introduced me to an overly inquisitive production unit manager. Clearly suspecting the ruse, the manager said, “Professor Nortz, it’s so nice to meet you. My son goes to Morgantown University. What school do you teach in?” Not expecting to be subjected to such an interrogation, I was ill-prepared to respond, and the manager took delight in my obvious discomfort from his barrage of questions.

Blushing, I did my best to make up a story and to change the subject, but my inquisitor didn’t let me off the hook until he was done toying with me and had thoroughly tied me in knots. Good thing I was never a Cold War spy. I would have been arrested on the spot and whisked away to a Gulag somewhere in Siberia.

I don’t regret participating in the false identity scheme just because it was a humiliating failure. I also regret it because, as corporate counsel, I should have known better. I should have recognized that there is a significant moral chasm between a principled decision to remain silent and deliberate deception.

It is both ethical and prudent for companies to keep confidential a contemplated transaction in some circumstances. In fact, if their stock is publicly traded, companies are compelled to do so unless they are prepared to tell the world. But it is simply wrong to misrepresent your identity when engaged in due diligence or competitive intelligence gathering activities.

This principle is codified in the [Strategic and Competitive Intelligence Professionals](#) (the SCIP) Code of Ethics, which mandates accurate disclosure of “all relevant information, including one’s identity and organization, prior to all interviews.” This stricture outlaws disreputable practices once common in the field of corporate spying, such as posing as a recruiter, fellow employee, or customer to induce employees to divulge company strategies or trade secrets.

Performing due diligence in accordance with the SCIP Code years ago in Morgantown would have posed some challenges for us. But, constraining ourselves to a more honorable course would likely have led to a better plan of action.

For example, we could have (and probably should have) postponed an on-site visit until a public announcement was made or conducted the visit in a way that deliberately avoided contact with plant employees who were not supposed to be “in-the-know.” We also could have prepared ourselves in advance to provide honest responses to possible employee enquiries about our identity while at the same time providing no comment on rumors about a deal in the works.

By contrast, our ill-considered decision to deceive put us in the worst possible position. Not only did we fail to maintain confidentiality, but we also earned the justifiable contempt of the entire employee population. Had we gone through with the acquisition, this would have been a particularly difficult problem for me because just months later I was promoted to become the company’s first vice president of business ethics and compliance.

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Having learned my lesson the hard way, I vowed to abide by the following four principles when conducting competitive intelligence gathering or clandestine due diligence:

1. Always understand and abide by applicable legal requirements.
2. Never misrepresent my identity or engage in disreputable activities (like “dumpster diving” to collect discarded company records).
3. Never induce or knowingly permit someone to breach their confidentiality obligations.
4. Never hire someone else to gather competitive intelligence or perform due diligence who does not agree to do so in compliance with the three principles outlined above.

The moral of the story is: Ethical corporate espionage is the only right way to spy.

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