

Intelligence Gathering on Gut Instinct Rather Than on Knowledge

*Survey on ethical and legal intelligence gathering shows US-
Europe cultural bias*

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Survey on ethical and legal intelligence gathering shows US-Europe cultural bias

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BACKGROUND

Over the past two decades, the competitive intelligence profession has focused most of its efforts on technique, often assuming that corporate management has already taken the ethical and legal issues into account. Such is not the case. Fuld & Company and The Academy of Competitive Intelligence have found its students lacking a sound knowledge in this area. With this ironic intelligence gap in mind, Fuld & Company and The Academy of Competitive Intelligence surveyed more than 100 competitive intelligence (CI) professionals from the U.S. and Europe on ethical and legal intelligence gathering boundaries. The CI professionals were asked to review four hypothetical intelligence-gathering scenarios and to assess the behavior described in each situation as normal, aggressive, unethical or illegal behavior.

Fuld & Company and The Academy of Competitive Intelligence circulated 122 surveys to participants of its seminars and training programs both in the U.S. and in Western Europe. The participants are, for the most part, managers who are either full-time competitive intelligence professionals or others who need to develop skills in the competitive intelligence (CI) area.

Most audiences polled by Fuld & Company – including those who participated in this survey – do not know or have not received formal training on legal and ethical information-gathering. CI practitioners will therefore confuse ethical behavior with legal limitations, or visa versa. Much of the time, when a full-time CI professional or any corporation employee needs to gather critical competitive information he or she works more on gut instinct rather than on a firm knowledge of the legal limits.

Prior to this survey, straw polls of Fuld-ACI course participants indicate that most (four out of five, roughly) have never heard of the Economic Espionage Act (passed in the U.S. in 1996) or of equivalent laws relevant to trade secret or information collection, or even the information-gathering guidelines their own companies have developed.

CONCLUSIONS

- **Principles do exist, but remain largely unknown:** The competitive intelligence profession, both in the U.S. and in Europe, has developed legal and ethical principles over the course of the past two decades. The problems, or potential missteps occur when those involved in CI for their companies do not receive the appropriate training.
- **Conservative information-gathering behavior:** Properly trained CI professionals generally know how to stay out of legal trouble, though they (a) cannot explain their actions in legal terms and (b) tend to be more conservative than what the law allows.
- **European and American differences, more culture than law:** The differences between American and European responses are more an issue of culture than law. The corporate ethics of competitive behavior is routinely examined in the American press, which tends to create a concern on the part of many CI practitioners that they may potentially be subject to media scrutiny for CI activities.
- **CI practitioners need a better education:** There is a need to better understand general principles of law and the fundamentals of trade secret law. This will enable CI practitioners to (a) recognize how the line between legal and illegal, and legal and unethical, are drawn, and to (b) better recognize what situations suggest seeking legal advice. Gaining a basic understanding of competitive intelligence law enables CI professionals to more confidently and aggressively perform their CI functions.

SURVEY FINDINGS

Fuld-ACI presented all the participants with the following scenarios. Each respondent had to select one of four assessments for each scenario. The four options were either: (1) Normal, (2) Aggressive, (3) Unethical, or (4) Illegal behavior.

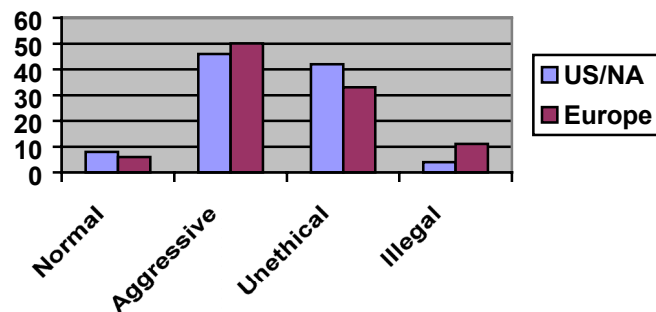
The following includes both the scenario and the breakdown of findings:

1. Hotel and documents left behind:

“You become aware that your competitor has its board meeting at a certain hotel, so you drop by that hotel towards the end of the day to see what documents someone had left behind.”

- a. **Findings:** Both North Americans and Europeans view this scenario in roughly the same way. In both instances, most of the audience either believed the action of going back and collecting documents at the hotel was either Aggressive (46%=NA, 50%=Europe), or Unethical (42%=NA, 33% = Europe). 11% of Europeans believed the action was illegal.
- b. **Conclusions:** The case is not explicit. Were the documents left in a relatively public space in the hotel, or were they left in the meeting room? Those that stated it was an unethical activity could have been reacting more to the discomfort level of the action, rather than the ethical level of the practice itself.

Hotel Documents Left Behind

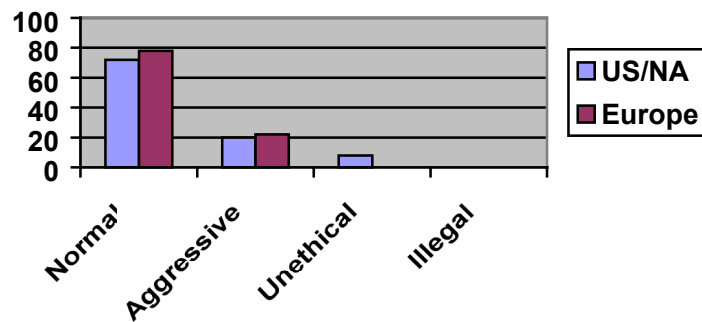


2. Airplane conversations:

“You are sitting in an airplane and overhear a competitor state to his friend information that appears to be confidential. They don’t know who you are or that you can overhear them.”

- a. **Findings:** Once again, Americans and Europeans fell out in a similar pattern, with the vast majority believing it is normal behavior to overhear information while strapped in your seat. No one saw it as illegal.
- b. **Conclusions:** This is a likely scenario and the group generally viewed this action as legal.

Airplane Conversation

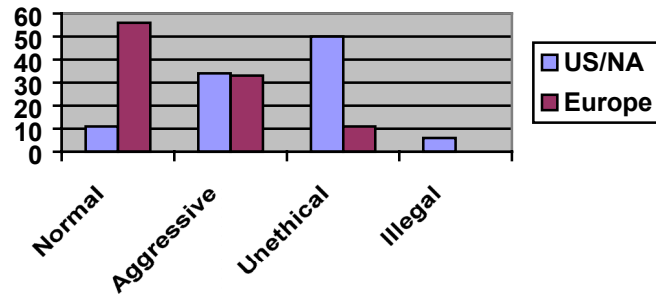


3. Trade Show and badge removal:

“You are attending a trade show. You take off your badge that identifies you as a competitor, and you then approach a booth at the exhibition. You tell the representative you have an interest in the product.”

- a. **Findings:** Here the North Americans and the Europeans split widely. The North Americans believed that the action was aggressive (34%) at best and likely unethical (50%), 6% of North Americans even believed it was illegal. Europeans, on the other hand, mostly found the behavior totally acceptable 56% found it normal and 33% found it aggressive. Only 11% found it unethical.
- b. **Conclusions:** Cultural norms, more than legal biases creep into these answers. With those from North America generally wanting to be more up front, and identifying who they are before asking questions at a trade show.

Trade Show

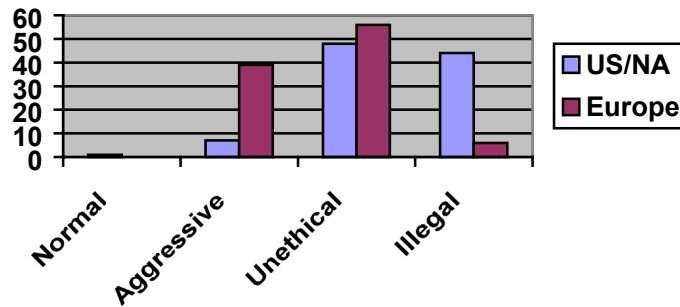


4. Entering the private suite

“You are attending a trade show. You take off your badge that identifies you as a competitor, and you then enter a private suite that is labeled “For Clients of Company X Only.”

- a. **Findings:** Once again, the North Americans and Europeans go separate ways, for the most part. The North Americans think the action is either unethical (48%) or illegal (44%). The Europeans see the action as either aggressive (39%) or unethical (55%), with only 6% viewing it as illegal.
- b. **Conclusions:** This is the only scenario that most directly appears illegal. Because the suite holder warned potential entrants that it has applied some measures to protect its information, it could argue that any unauthorized person taking information from that hotel suite is doing so illegally. Less than half the North Americans recognized that fact and most Europeans did not believe it was at all illegal.

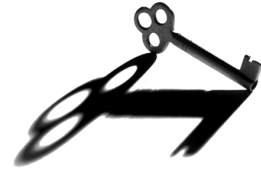
Private Suite



About Fuld & Company

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Who We Are

Fuld & Company Inc. is the world's preeminent research and consulting firm in the field of business and competitive intelligence. Founded by Leonard Fuld, a pioneer and recognized leading authority in the field, Fuld & Company is a full-service, business intelligence firm, providing research and strategic consulting, business intelligence process consulting, and training to help clients understand their external environment. Our ultimate goal is to help our clients make better decisions and improve their performance.

Since 1979 our company has served many public and private companies, including more than half the U.S. Fortune 500, as well as numerous international clients, and our client roster continues to grow. Our clients tend to be Fortune 500 companies. Within those companies, we serve the business intelligence needs of many functional areas including Operations, R&D, Strategic Planning, New Ventures, E-Commerce, Mergers & Acquisitions, Marketing, Sales, Distribution/Logistics, Purchasing and Human Resources.

Our staff brings to our clients industry expertise in consumer products/retail, technology, telecommunications, e-commerce, financial/business services, pharmaceuticals/health care, energy/utilities and industrial/manufacturing. Our project managers are experienced in analysis and comprehensive reporting to executives as well as managers. Through extensive experience researching strategic, operational and tactical issues for companies in a wide range of industries, we have the interviewing, documentation, analysis, and presentation skills to meet the needs of our clients.

Whether we are analyzing markets or competitors, helping companies establish in-house competitive intelligence capabilities or training staff in intelligence-gathering methods and analysis techniques, our work translates into bottom-line gains for our clients. Fuld & Company's impressive record of repeat business (more than 90% of our assignments come from repeat clients) is a testimony to the quality of our work.

About The Academy of Competitive Intelligence



The Academy of Competitive Intelligence is the culmination of a vision of the two most respected pioneers in the field of competitive intelligence (CI), Ben Gilad and Jan Herring. It was founded in February 1996 in response to a shortage of rigorous, comprehensive training in the emerging field of CI and a clear need for experienced help for managers charged with building a competitive intelligence function. Much of the training of the Academy is based on the founders' record as the creators of the fundamental CI theory used by all major US companies, and their practical experience in setting up the leading intelligence programs in Corporate America. Its mission: to train, to educate and to counsel managers and companies in the art and science of competitive intelligence.

Testing Ethical Boundaries

Schedule of program: June 21, Cambridge, Massachusetts USA.

Included in the Fuld-ACI curriculum is an in-depth program on ethical and legal guidelines. The following is a summary of that course (For more information on the program, contact Fuld & Company (617) 492-5900 or www.fuld.com).

Course Description:

The very nature of the “competitive intelligence business” means you face ethical and legal challenges each and every day. This course addresses these issues head-on by presenting the audience with both the legal and the ethical concerns any manager or intelligence function must deal with on a daily basis. Too often, companies tend to train their staff in information collection and analysis, but fail to inform them of their ethical and legal responsibilities (*Source: Fuld & Company study, Anniversary of Economic Espionage Act Shows Little Impact on Corporate America, 1997*).

Potential misrepresentation, conflicts of interest, internal management disputes, overselling findings, bribery, and use of third parties, are among the many issues participants will learn about during this case-driven program. Participants will use Harvard Business School cases focused on information gathering and service businesses to push each of these issues to the limit, as well as to allow students to explore each intelligence gray zone in depth. Participants will also gain a fundamental understanding of trade secret law as it applies to competitive intelligence techniques.

Throughout the program, audiences will learn how to:

- Apply practical approaches to globally based legal guidelines expressed in trade secret law, The Economic Espionage Act, and other related areas
- Take an action that requires striking a balance between the corporation’s business interests and an individual’s ethical values
- Examine alternate strategies to deliver critical information and avoid or eliminate ethical concerns
- Act in concert with ethical responsibilities of the profession while remaining effective
- Gain a legal understanding of the nature of a “gray zone”
- Understand what compliance means with regard to intelligence collection

For further information about the survey, contact:

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