



ÆGIS e-journal

Addressing threats that affect your bottom line

Volume 2 Number 9, September 1999

From the case files of

The LUBRINCO Group

<http://www.lubrinco.com/>

and

Financial Examinations and Evaluations, Inc.

<http://www.feeinc.com/>

Business in Bogotá or other high-threat areas? Call us!

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1. Due Diligence — Checklists: Are they all they are supposed to be?

As financial investigators we are somewhat baffled by the proliferation of due diligence check lists. These are supposed to be 100% comprehensive lists of must-do items for every industry. Don't believe it and don't pay for it! These books cost up to several hundreds of dollars each. Although they have some good features, they lack a central ingredient: A due diligence professional to execute the check lists and to know the difference between what should be covered and what should be ignored. It is no different than patients seeing a doctor and the doctor giving the patients a check list on how to operate on themselves: The patients do not have the skills and will not understand the significance of the steps.

No business is exactly like another, even in the same industry. No business environment is stagnant long enough to be able to know all there is to know to compile a due diligence check list. Regulations and tax law are constantly changing and cannot be predicted by a check list that, even when newly published, was probably finalized from 6 and 12 months prior to publishing.

When you want or need due diligence service contact a due diligence professional who can help ask and answer the questions that are key to your decision making process.

2. OPSEC, Economic Espionage, and Competitive Intelligence — Beware of your voicemail!

There are many industries and professions that are highly competitive and rely on "gold collar" workers. These are the idea people and engineers who help bring the company forward to lead their respective industries. These people are highly sought after by competitors and by recruiters for competitors.

Recognizing this fact, most semiconductor firms guard their employees so closely that they no longer have employee directories. In the past, these directories usually ended up in the hands of competitors and recruiters more quickly than they went to employees.

Which brings us to the problem of voicemail.

A particularly crafty executive recruiter we know is an expert at *voicemail raids*. He waits until the wee hours, when no one is at a plant or design center, and then calls the company. Most voicemail systems have the caller enter a limited number of selections and then "if you know your party's

extension you may dial it now or if you don't know the party's extension please push [number] and enter the first 3-5 letter of the person's name."

Most larger companies organize their phone mail and extensions according to numbered groups. For example, 1100 to 1200 are the extensions of the people working in shipping and receiving; 2200 to 2300 are the extensions of the people working in purchasing; and 6000 to 6500 are the extensions of people working in design and development. This predictability — according to my voicemail raid expert an 85% or better probability — allows our expert to develop an entire company telephone directory in one or two evenings. Now, our expert doesn't care about shipping or purchasing, he just wants the D&D people. This shortens the task to one or two hours of work. How dangerous could this be for a firm? Read *Quo Vadis?* in the April 1999 AEGIS e-journal (<http://www.lubrinco.com/lgejournal.html>).

How do you defend against this? Simple. Assign the extension numbers at random.

Also key is the message on the voicemail. Don't let employees leave messages like "Hi! This is Diane at extension 6620 in C-MOS Design, my hours are 2pm to 10pm Sunday through Thursday. If you called during this time I am probably at the memory FAB development, extension 6744. You can reach me there or leave a message." This is a real message that our expert recorded, and which he plays when training his employees to do voicemail raids. It tells us that the company is running at least two shifts, and, since the designer is working with FAB, that a new memory product is entering the manufacturing stage. Not bad CI for one phone mail message!

The solution is to make the message more professional and less informative. Diane says "Hello, this is Diane Rogers, please leave a message." It is simple, professional, and with no clues for voicemail raiders.

3. Executive Protection — When it is time to let go

Our job as protective agents is to see that no bad things happen. In real life most of the bad things that can happen involve health problems and automobile accidents, which of course end up as health problems. (*You* be the one to tell Princess Di that the car isn't moving until her seat belt is fastened!)

When a medical emergency takes place two things need to happen. First, you need appropriate first-responder treatment and appropriate follow-up emergency treatment.

Second, once the emergency is stabilized, you need appropriate medical treatment. In the US, appropriate medical treatment can usually be found

within a reasonable distance. Abroad, it *may* be necessary to get back to the US or to some other medically satisfactory location. If you happen to be a senior executive with a company jet and unlimited funds, this is not much of a problem. If you are at the lower end of the totem pole, hopefully your company (or you) has a contract with one of the travel emergency providers. This editor uses the *Travel Emergency Network* (<http://www.tenweb.com/>), but there others.

Sometimes, however, the state of the art in modern medicine may not be yet at a level to deal with the problem, and a hard decision must be made to refuse or discontinue life support. In this case it is *imperative* that there be a living will and health care proxy available. Without these some hospitals will refuse to discontinue heroic measures to save the patient.

For those who do not have one, here is a sample living will / health care proxy:

TO MY FAMILY, MY DOCTOR, MY LAWYER:

Should the time come when I can no longer make decisions for my medical care, these are my considered wishes:

A. Living Will

If there is no reasonable expectation of my recovery from extreme physical or mental disability, I, _____, direct that any treatment or procedures being administered to me which merely prolong my dying be withheld or withdrawn. I specifically do not wish to be kept alive by artificial means or heroic measures, including without limitation the administration of nutrition (food) or hydration (water). I ask that drugs be administered to me to alleviate the pain of terminal suffering, even if this might hasten the moment of my death.

This request is made after careful thought and while I am in good health and spirits. These directions express my legal right to refuse treatment, therefore I expect you who will care for me to regard yourselves as legally and morally bound to act in accordance with my wishes or those of my health care agent. I recognize that these directions place a serious responsibility upon you. It is with the intention of sharing that responsibility and freeing you from any legal liability that I make this statement.

B. Health Care Proxy

To effect my wishes, I, _____, hereby designate my _____, _____, residing at _____, (Telephone _____), as my health care agent, or, if he/she fails for

any reason to act as such, I appoint my _____,
_____, residing at _____, (Telephone _____), as my health care agent in their place and stead, to make any and all health care decisions for me, including the decision to refuse life-sustaining treatment, if I am unable to make such decisions myself. This power shall remain effective during and not be affected by my subsequent illness, disability, or incapacity. My agent shall have authority to interpret my Living Will, and shall make decisions about my health care pursuant to my instructions or, when my wishes are not clear, as my agent believes to be in my best interests. I release and agree to hold harmless my agent from any and all claims whatsoever arising from decisions made in good faith in the exercise of this power.

I sign this document knowingly, voluntarily, and after due deliberation this _____ day of _____, 199_.

We declare that _____, who signed this document, is personally known to us, appears to be of sound mind and to have acted willingly and free from duress. He signed this document in our presence. We have neither of us been appointed as agent by this document.

Witness signature:

Printed name:

Address:

Witness signature:

Printed name:

Address:

4. Technical Issues — FTC vs Affordable Media (A must-read)

The full case citation is [Federal Trade Commission vs Affordable Media LLC 9th Circuit Appeal No. 98-16378, June 15, 1999] This is also known as the “Anderson” case.

Denyse and Michael Anderson were successful telemarketers and had created a foreign asset protection trust in the Cook Islands in 1995. A few years later, around April 1997, they were hired to do telemarketing for a company that, it turns out, was defrauding its customers. Please note that the Andersons formed their trust well in advance of any problems.

The FTC sued the fraudsters, and, more importantly, the FTC asked the Andersons to rebate the money they had earned from the fraudulent

contracts. The Andersons refused, stating that the telemarketers alone, not they, were party to the fraud. (Note: The case would not exist if the Andersons had done their due diligence.)

The FTC fought the Andersons, and won a preliminary injunction that required them to return all of the money from the Cook Islands trust. The Andersons faxed a letter to the Cook Islands trustee, telling the trustee that they had been ordered to repatriate the trust assets. However, the trustee advised the Andersons that since they were under “duress” the assets of the trust could not be repatriated since it violated the terms of the trust.

The Andersons went back to the Judge and told him that they were sorry, but, according to the trustee, their hands were tied and they could not comply. The judge threw the Andersons in jail for contempt of court.

By Christmas the Andersons had helped the FTC get the funds. They were let out of jail with no money, and they had to surrender their passports. The Andersons appealed the decision — and lost! The appeal decision (which should be read by all financial investigators, financial planners, and attorneys) states in essence that since the offshore trust was created only to “frustrate and impede” US Courts, and that the transfer of the funds to the trust served no economic purpose other than to avoid garnishment, the Andersons could be held in jail for contempt of court.

These types of structures, whether domestic or foreign, have been held by law to be improper and possibly illegal. What makes this decision so revolutionary is that this is the first case that deals directly with Foreign Asset Protection Trusts, and provides a remedy in the US (imprisonment for contempt of court) for failure to return/repatriate the funds so they can be garnished.

This decision is broadly worded and has the potential to allow the persons and professionals who establish these mechanisms to be held both civilly and criminally liable for the creation of these “structures that frustrate and impede.”

This case may well be the foundation case for the litigator to go after foreign trusts, and those who establish them, for recovery of funds.

Whether or not you like this case law, or even the premise behind the case, it is something that should be read in its entirety.

5. Real Stories from the Field — Going undercover, and threat levels

Threat levels when going undercover are directly related to three variables: *Purpose, type of contact, and time.*

Purpose has to do with what you, the undercover person, are going to do with the information you obtain. Is this information going to be used to put an organized crime figure in jail (high threat), used for competitive intelligence, or just a pretext to get someone's address for service of process (low threat)? The threat level behind the purpose is what will happen to you if you are uncovered.

Type of contact is the method in which you contact the person you are going undercover to meet. A high threat level would be meeting in a private room, one-on-one, in a city or country away from home. A low threat level would be meeting a person in a busy restaurant for a meal, or over the telephone.

Time is a threat factor because the longer you are in contact with the target, whether this is in public, in person, or over the telephone, the greater your chance of being uncovered.

Basic preparation for the undercover work requires that you become the person you intend to be. Some people can take on different roles as easily as others change a hat. Most of us, however, are bad at assuming roles.

Experience has taught that people with a good stage presence and acting ability are good at undercover work — who woulda figured?

People who are detailed oriented are usually bad at undercover work.

At a recent undercover operation this editor practiced my new name for hours: Dan Stouts, Dan Stouts, Dan Stouts. And when a smiling face said "Good morning my name is Nancy," I responded "Hi, my name is Bob". She looked at me very puzzled and said "What?" I quickly responded "My full name is Robert Daniel Stouts. Dan to my friends, usually Bob for meetings." Her response was "Oh! OK." The rest of the operation went fine and we got the information we needed. My partner even said "Good recovery, I only had time for one "Oh s@#\$" under my breath before you recovered." This was not a high-threat operation it was a medium- to low-threat encounter. If it had been a high-threat encounter.... Well, now you know why I don't do much undercover work.

For low-threat work we have memorized a set of telephone undercover aliases (pretexts) that we have been practicing for years. We have been

working these aliases without any slip ups or problems. When we take these aliases “to the street” it is only for short encounters, and we have complete wallet setups with ID’s and business cards, etc.

For higher threat levels, significantly increased practice and preparation is a must if you want to survive the experience.

6. Book and Product Reviews

The Economics of Organized Crime

Edited by: Gianluca Fiorentini and Sam Peltzman

Centre for Economic Policy and Research

Cambridge University Press

The reviewer must first state that this book is fascinating but difficult. The premise that organized crime families follow economic rules was an intriguing hypothesis and irresistible to the reviewer — this, followed by the implied ability to model and describe them, was too much for the reviewer to resist. It is a masterfully assembled work, and should be read by anyone who might come in contact with organized crime or the effects of organized crime. This should include (at a minimum) law enforcement, insurance, banking, and government officials, plus any economist who thinks he knows how real business models work. You will have your eyes opened wide by the premise and conclusions reached in this book. The authors included sections on: Origin of criminal organizations; Criminal organizations as a firm; Organized crime and state intervention in the economy; Deterrence policies against illegal firms; and Deterrence policies against organized crime.

Two warnings: This book is not for the casual reader: The information is too important to be treated as trivial. The second is for those who see the equations and balk: The equations are there for the economists and those wishing to construct their own models. If you don’t like the equations then read around the math. The message will still come through loud and clear.

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