

# Ethics and the Law for Private Investigators: An Overview

20 Feb 2020

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*By Philip Segal*

Which side do you want to be on? This is the question investigators need to ask themselves all the time, under pressure from clients and even lawyers to do things they should not.

On one side is the investigator who says, “If I break laws with abandon, what’s to stop someone from doing something illegal to harm me, my family or my business? Laws are for everyone, and it’s possible to do plenty of robust investigation while staying on the right side of the law.”

On the other side (and investigators have said this to me): “It’s nice to say ‘follow the law,’ but if I did that I’d be out of business.”

If a client asked you to get him some cocaine, would you do it? I hope not. If he asked you to forge documents so he could invest illegally in North Korea? Ditto. And I figure that in addition to saying no, you would not hook him up with people who could help him with these goals.

So why would you hire a service that you know – or should know – is illegally getting someone’s bank account information? Cell phone records? Medical information?

I’m sometimes asked whether professional investigators ought to have a [written code of ethics](#). I think it’s a good idea but misses the point for many, because if you work for a lawyer you already have a code of ethics: the one that binds the lawyer. Not only are lawyers not allowed to break the law; they are also forbidden from engaging in all sorts of behavior that is legal but deemed unethical. The key for non-lawyer investigators: A lawyer agents’ behavior (YOUR behavior if they’ve hired you) gets imputed to those lawyers.

### **Situational or Absolute Ethics?**

As difficult as some statutes are to figure out, many are straightforward. No impersonating a police officer, for example. But ethically, lawyers and their agents aren’t supposed to lie about who they are. That can be considered fraud. Yet, there are exceptions for intellectual property matters and some criminal matters when a person’s liberty is at stake.

Imagine trying to buy a dozen fake Chanel handbags on Canal Street in New York and handing over your PI business card so they can make out the invoice. (The only way to get anything done in this case is to give the name of a real dummy company and pretend it’s an importer). Courts and ethics panels tend to be fine with this kind of thing.

Where they are not fine is when you are backgrounding the attorney on the other side, and you pretend to his friends that you are calling from *The Best Attorneys Magazine* and need information for a profile of this year’s Fast Rising Star Award. [Uber’s investigators](#) did this very thing, got caught in 2016, and had all the evidence excluded in federal court in New York. Judge Rakoff was not impressed with their resourcefulness. They also broke a law against [taping phone conversations](#) in Massachusetts, which is a [two-party state](#).

Note that even in a one-party state they could have been in trouble, because many state bars say it’s unethical for [lawyers to tape most conversations](#). New York (where the Uber investigators were operating) is among these anti-taping jurisdictions. This is a good example of something that may be legal, but is still unethical if you happen to be working for a lawyer.

Shortly after the Uber case, lawyers for Harvey Weinstein let loose a bunch of overseas investigators from a company called [Black Cube](#), and again there was much egg on many faces. Celebrity lawyer [David Boies](#) acknowledged that he had insufficiently supervised these rogues, but he avoided professional sanctions.

Black Cube didn’t just *bend* the rules of lawyers and their agents always having to tell the truth ... except for when they “dissemble.” (Think puffery in a real-estate negotiation, when you knowingly misstate your client’s bottom-line price). In this case, they created fake identities and

lured one of Harvey Weinstein's accusers to London to find out what she might say in court. Just because the lawyers let them do it doesn't make it ethical.

As I pointed out at the time on [our firm's blog](#), creating entire identities and companies out of whole cloth to mislead people is the kind of thing our spy services do all the time (and Black Cube is staffed by former spies). I'm glad this country has spies in some very dangerous places, knowingly breaking the laws of those countries (and knowing that those countries operate in the U.S. and break laws here). That's life, but that's not the business of anyone working for a U.S. lawyer.

## **If Not Sure of the Law, Check**

One of the places I'm convinced more investigators will eventually get into trouble is getting access to bank records. The [Gramm Leach Bliley Act](#) makes very clear that you are not allowed to get someone's bank records through fraud. There are a few exceptions that would allow an investigator to get records (for instance, child support), but in most cases these records are off-limits without a subpoena or court order.

I've steadily quizzed the outfits that offer this service, and it's astounding what they come up with as justifications. One pointed me to the permissible uses page at Lexis Nexis, which covers access to credit-header information that has nothing to do with account numbers and balances.

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The giveaway to me is that whenever you ask someone how they get bank records, they tell you it's a "trade secret." When I hear that, I get suspicious. But if you must go on, ask the vendor of these services under which section of the Gramm Leach Bliley Act it's legal for third parties to get account information. I'm still waiting for a decent explanation.

## **Further Steps**

If you care about the law, you can do a lot of research on your own. Federal and state laws are freely available. As for the ethics rules that lawyers have to follow, a good place to start is the set of [model rules for professional conduct](#) kept by the American Bar Association.

Most state bars follow the numbering pattern of these rules. You must check the rules of the state you're working in as well (and in the case of New York, Philadelphia and other large cities, the city or county bar). Be aware that in addition to the rules, you should look at the comments for extra guidance.

Three areas with recent or fast-changing legal or ethical rulings across the country:

- **GPS tracking** – Laws in many states are making it illegal to put them on someone else's car without that person's knowledge.

- **Social media contacts** – Using deception to “friend” someone on Facebook is increasingly frowned upon by ethics bodies across the country. The Philadelphia Bar says using your real identity but misstating the purpose of friending is akin to entering someone’s home on false pretenses.
- **“Pinging” cell phones** – The Supreme Court decided in 2018 that police need a warrant before getting cell phone tower data of users. Never mind that your friend at the phone company is willing to give it to you. It’s off-limits by law without a court order.

### **About the author:**

*As a former financial journalist who became an attorney, Philip Segal has found private investigations to be an ideal mixture of the inquisitive digging a reporter does with the ethical, discreet, client-based service provided by lawyers. His firm, [Charles Griffin Intelligence](#), can trace assets, conduct due diligence, and locate and profile witnesses or other key individuals in the context of litigation, takeover battles, crisis management, and many other scenarios. Read more about how he works in his book, [The Art of Fact Investigation](#) (Ignaz Press, 2016).*