

RAPT FLIGHT SYSTEMS, INC.

INTRODUCTION

The case will deal with marketing intelligence as well as access to proprietary information and trade secrets of competitors. What are the responsibilities of individual employees with knowledge of potential improprieties? What are the obligations of the organization? How do market pressures create risk? The case will also examine the obligations of employees to their prior employers and proprietary information of the prior employer to which they had access.

BACKGROUND

Rapt Flight Systems, Inc. is a leading producer of control systems used on commercial aircraft. Located in Southern California, Rapt designs and manufactures flight control systems, hydraulic systems, and power management systems. Founded in 1951, Rapt is a \$7.5 billion company doing business in both the U.S. and overseas. The company employs 3,800 people and operates in a highly-competitive market. Commercial airplane manufacturers have become increasingly cost sensitive and the trend is to transfer much of the development risk for new or redesigned aircraft to their suppliers. The suppliers' reward for absorbing the development risk is obtaining a privileged position in the supply chain for each aircraft. This position creates a predictable long-term revenue stream.

THE CASE

The New Business Briefing

"The bid and proposal budget doesn't look adequate for a competition like this," Doug said as he looked up from his briefing documents at the summary slide on the screen. "The Barracuda project is potentially very lucrative for the winner. If we win the flight controls system and the hydraulic system for the landing gear on this plane, then we have a franchise that will create a profitable revenue stream for 10 to 15 years. We need this business, Ellen. I don't want you to pinch pennies on this proposal. We need to do whatever it takes to win."

The Barracuda was a new small jet in development by one of their longstanding customers, Triquad Systems, Ltd (TSL). Using a single primary design, TSL could offer variants that served different markets: short commuter flights for airlines, executive jets for private use, and law enforcement applications. Whoever won the initial contracts from TSL for critical systems could expect to be locked in for many years as a single source, including upgrades. Changing systems to a new supplier would require too many interface redesigns to be practical. Until TSL rolled out a completely new aircraft design (many years down the road), it was not likely they would run new competitions for critical systems.

Ellen was the proposal manager for the Barracuda opportunity and a 15-year veteran at Rapt. Doug, the Vice President of Marketing, had pushed for her assignment to Barracuda. Her reputation for delivering on projects was well-known and well-earned. "I understand, Doug," Ellen replied, "and I won't hesitate to ask for whatever I need. But I think I can get a winning proposal out the door with this budget. I've got a couple of advantages that will help a lot." Ellen used the remote to move to a new slide. "As you can see, our Independent Research and Development (IR&D) projects in both these areas have moved more quickly than

we had anticipated. The team feels we can leverage our IR&D work to reduce the engineering work needed to respond to TSL's Request for Proposal (RFP). Plus, we think our approach on the hydraulic system is superior to anything that ComFlight can offer." ComFlight was the primary competition for Rapt on Barracuda.

"On what do you base that opinion?" Doug asked. "I doubt that ComFlight is relying on their older designs for this project. We know what those look like; they've been in service for years just as ours have been. We both know each other's capabilities on the existing systems, but the RFP specs from TSL will require a radically different approach than either we or ComFlight have used in the past. They'll be leveraging their own research. You can count on it."

"Barry Harris, the engineer we hired away from ComFlight six months ago, worked in their hydraulic systems department," Ellen replied. "It was quite a coup to get him; he's a recognized expert in these systems and has a string of innovative patents to his name. We actually license a couple of his older patents from ComFlight for use in our current systems. He has solved some of the problems that had held up our IR&D and enabled us to make progress far faster than we had anticipated. Barry has told us that what we have is far ahead of ComFlight both on schedule and in technical innovation."

"Sounds encouraging," Doug said. "Keep me up to speed and again, ask if you need more money or resources. Do whatever you have to do to win this one."

In the Hallway Afterwards

Jamal caught up to Ellen as she headed to her office. "Ellen, do you have a minute?" "Sure," she replied, "Walk with me. I have to get back to my office for a conference call in ten minutes, but I can chat until then."

"I noticed that you didn't mention the information that Denise in Marketing picked up on ComFlight's design," Jamal said.

"That's right, I assumed Doug knew about it – he's the head of Marketing and Denise works for him. Besides, that's the kind of thing we should keep on a need-to-know basis. I didn't want to put that in front of the whole company in the new business briefing. As my chief design engineer on the proposal, you need to know, but the whole team doesn't need all of our marketing intelligence. They just need to get the inputs that affect their individual tasks."

Jamal hesitated then plunged in. "Should we even have access to that kind of information? Knowledge of their engineering approach includes their proprietary information." Ellen stopped and pulled Jamal to the side of the hallway and waited while stragglers from the meeting passed by. She spoke quietly and earnestly, "Jamal, let me assure you that we didn't run any corporate espionage operation here. Denise was approached by an engineer from ComFlight. He'd been passed over for a promotion about a year ago and now he's been given a layoff notice. He's bitter and wants to hurt ComFlight, but we didn't solicit him. He came to us out of the blue. All Denise did was accept the information. She didn't pay him or promise him a job. The information just fell into our laps. No corporate espionage, no hacking into computer systems, no theft, no bribes. Just dumb luck." Jamal still looked uncomfortable, but he conceded the point to Ellen, "Well, I guess it's OK," he said.

In the Office of Rapt's Chief Ethics and Compliance Officer

"Tanya, let me see if I have heard this correctly," Frank said. He glanced down at his notes. "You're working on the Barracuda proposal..." "Yes," Tanya broke in, "but just the technical proposal for the hydraulic systems." "That's what I have in my notes," Frank assured her.

Tanya appeared nervous. She had been nervous since she had knocked on his door at 5:00 PM and asked to talk – if Ellen or Doug found out she was here... well, she blocked that out of her mind. Frank continued to feed back her comments for confirmation, "You were given a copy of three pages of technical information by the technical proposal lead, Mike Evans, that you were told represented the likely technical approach for our chief competitor, ComFlight. You were asked to 'ghost' that approach in the technical proposal." He paused. "I want to make sure I don't misconstrue anything you've told me," he continued, "so, what do you mean by 'ghosting'?" "Well," Tanya replied, "it means that you make statements in your proposal that subtly discredit a competitor's supposed technical solution while showing how what we are proposing solves the technical problems in their solution or offers advantages that the competitor's approach doesn't have. You never actually mention the competitor. You just say things along the lines of 'Of course, we're not proposing to do A, because no one who understands the situation would ever propose A'." She smiled for the first time since she had entered the office and closed the door. "It's a little subtler than that, but you get the idea. We had planned to take a similar approach to ghosting based on information Barry Harris gave us, but not quite so pointed. This information took the plan to a new level – we could do real damage to ComFlight's chances if we were right about their approach."

"Anything wrong with ghosting someone else's proposal?" Frank asked. "No," said Tanya, "as long as you don't lie. It's not the ghosting that concerns me, it's the information I was given so I would know what to ghost. Those pages were labeled, 'ComFlight Private Information' at the top of each page and I was told not to discuss them with anyone else. When I questioned whether we should have the information, I was told not to worry about it. Mike said that Ellen knew about it and was comfortable with our having it." She looked at Frank, "But I'm not comfortable with it. Maybe I'm wrong, but that's why I came to you."

In the Office of the Chief Executive Officer of Rapt

Marian O'Brien, CEO of Rapt, looked across her desk at Frank Willis, her Chief Ethics and Compliance Officer, and Patricia Kramer, her General Counsel. "When you two insist on seeing me first thing in the morning, I'm guessing I have a problem. Do I?" Quickly, Frank and Patricia sketched what they had learned from interviews with Tanya, Ellen, Jamal, Doug, Mike, and Barry. "Everyone was quite candid with us as far as I can determine," Patricia said. "I think we have a good handle on the facts."

"But I still need an answer to my question," Marian pressed Patricia. "What do the facts tell me? We need the business this proposal represents. I cannot afford to have this proposal compromised. Do I have a problem?"

THE ASSIGNMENT

- Consider the facts. Has anyone violated the law? Has anyone violated ethical principles?
- Consider the people. What motivates the behavior of Ellen? Jamal? Barry? Tanya? What should each of them have done?
- Consider the situation. What actions should Marian take? Why? What are the possible repercussions?

This case was written for the Daniels Fund by Charles Chadwick, Senior Advisor, Ethics Research Center (ERC), the research arm of the Ethics & Compliance Initiative (ECI).

RAPT FLIGHT SYSTEMS, INC.
INSTRUCTOR/FACILITATOR CASE NOTES

CASE SUMMARY

The proposal manager for a lucrative opportunity at Rapt Flight Systems gains access to proprietary information of the primary competitor for the business. A critical member of her proposal team is also a former employee of the competing firm. The case follows different employees of Rapt and how they act regarding both these issues. What are the responsibilities of individual employees with knowledge of potential improprieties? What are the obligations of the organization? How do market pressures affect behavior and create risk?

LEARNING OBJECTIVES

The learning objectives of this case study are as follows:

- Recognize the ethical implications of marketplace competition
- Understand the values that should drive conduct in questionable situations
- Differentiate between legal obligations and ethical obligations

ISSUES

Intellectual Property Rights

Although the case focus should be on the ethical and principle-based imperatives in the situation described, there are key legal issues here. These notes will provide a brief overview of the law; more detailed information can easily be found on the internet if desired.

There are two issues to consider here:

1. *An employee's ability to carry knowledge from one employer to another.* In general, an employee cannot be restricted from taking common professional skills he/she has developed or using technical information that is publicly available (even if he/she applied that information to the benefit of the first employer). The same is not true of proprietary information. Many companies have their employees sign a non-disclosure agreement requiring employees to maintain such information as secret. These agreements survive their employment.
2. *Unauthorized access to another company's proprietary information.* There are distinctions between trade secrets and proprietary information in the law, but we will treat them as the same for our purposes. There are two general requirements for both proprietary information and trade secrets:
 - i. they must have commercial value, and
 - ii. the owner must take reasonable steps to preserve them as secret.

Most states have legislation that protects such information, allowing an owner to seek both monetary relief and injunctive relief against anyone who discloses the information or induces someone to disclose it. There are also federal laws on the subject. The key here is that the discussion of the case should reflect an awareness that

there may be a legal issue, but should not attempt to resolve it. Highly-technical legal or regulatory matters should be referred to those with expertise for advice. The key is recognizing the ethical content of the situation which would then lead someone to seek advice.

Daniels Fund Ethics Initiative Principles involved: Rule of Law and Fairness (specifically, fair competition)

Rationalizing Questionable Actions

Ellen sees no issue in having access to ComFlight's proprietary information since Rapt did not seek it out or offer anything to get it. The use of Barry (the former ComFlight employee) on a proposal competing with his former employer seems to raise no question in her mind. She doesn't consider the possibility of Barry using ComFlight proprietary information to improve the Rapt design. Nothing in the case indicates that Barry has done so. However, neither Ellen nor anyone else involved in the business opportunity has recognized the issue and taken precautions. In most companies, such a hire from a competitor would have been vetted by Human Resources and referred to Legal for guidance. This guidance would usually be a memo to the new employee and his/her manager instructing them on restrictions on using or disclosing the former employer's proprietary information. There is either no evidence of that happening here or Ellen is ignoring it.

Daniels Fund Ethics Initiative Principles involved: Integrity, Respect (specifically, for property of others), Rule of Law (both legislative/regulatory laws and also appropriate procedures and practices internal to the organization), and Viability

Bottom Line Pressure

Doug may not understand what he is implying when he says, "We need this business, Ellen. I don't want you to pinch pennies on this proposal. We need to do whatever it takes to win." He reinforces the concept by closing the new business meeting with, "Do whatever you have to do to win this one." He creates pressure on Ellen to win or risk damaging her career. Even Marian, the CEO, stumbles into this trap when she is briefed by the Chief Ethics Officer and General Counsel, "We need the business this proposal represents. I cannot afford to have this proposal compromised. Do I have a problem?" Her first concern is the business the proposal represents, not the reputation of the company or whether something unethical has occurred.

Daniels Fund Ethics Initiative Principles involved: Integrity, Transparency, Accountability, Fairness, and Viability

Lack of Safe Environment/Retaliation

Jamal is willing to question Ellen on the use of ComFlight's proprietary information, but she provides a rationalization that is clearly intended to put an end to the discussion despite Jamal's continued discomfort. An alternate approach would have been to have Jamal discuss it with the General Counsel or offer to do so herself. She offers neither option. Tanya is afraid of what may happen to her if Ellen or Doug finds out she has raised her concerns. Despite this, she exhibits the moral courage to elevate the issue.

Daniels Fund Ethics Initiative Principles involved: Integrity, Trust (both positive in trusting the system and negative in not trusting Ellen/Doug), Accountability, Transparency, Fairness, and Respect (or lack thereof)

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