Spring 2003

Phi Kappa Phi FORUM
A QUARTERLY PUBLICATION

PROFESSIONAL ETHICS

Phi Kappa Phi FORUM

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spring 2003

PROFESSIONAL ETHICS

PHI KAPPA PHI FORUM, Volume 83, Number 2

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Columns:

A Note from the Guest Editor

Neil R. Luebke

IN THIS ISSUE

This issue presents an all-star roster of respected authorities in various specialties in the area of professional ethics; authors were asked to write on the currently pressing issues in their respective fields. The resulting articles should be of interest not only to readers who are in those professions but also to all of us, for we are all affected by the standards of conduct followed by the physicians, accountants, journalists, government officials, lawyers, and engineers on whom we depend for expert services. We are affected as well by the larger social issues that emerge in the practice of these professions.

The modern era of professional ethics began in the 1970s and rapidly blossomed in the 1980s and 1990s. In 1970, outside of a few law schools and medical schools, one would have been hard pressed to find a course on the ethics of a profession. By 1990, virtually all American universities and colleges included such offerings as bioethics, business ethics, engineering ethics, journalism ethics, research ethics, and computer ethics in their curricula. Many professional-accreditation boards now require an ethics component in pre-professional education, and some professional groups require periodic ethics courses for continuing licensure.

The landscape of professional ethics has undergone changes during the past decade. Joseph Herkert makes explicit one change that is illustrated by all the other articles: a greater emphasis on "macroethical" problems. While attention appropriately continues to be given to ethical decisions of individuals in professional practice, the pressing issues appear to be those confronting larger groups such as business and financial organizations, governments, professional societies, and the media generally.

Two authors refer to the Enron scandal as symptomatic of macro-issues in financial and legal spheres. John Boatright, writing on business and accounting ethics, reviews causes and remedies for recent financial scandals. He contrasts an ethical emphasis on fiduciary duties with the establishment of market-based regulations. Robert Lawry addresses the difficulties that the legal profession has confronted in spelling out its role in protecting the public against fraud.

Three authors are also concerned with issues of trust and truthfulness, although focusing on other social institutions. Stuart Gilman, writing in part out of his experience in the U.S. Office of Government Ethics, surveys the complex world of both state and federal ethics activity and suggests that the current legalistic compliance-based systems which dominate in the United States should move in the direction of being values-based. Mark Frankel's call for in-depth scientific study of research integrity has obvious practical implications for research universities, government funding agencies, and the scientific community generally. And Deni Elliott argues that the professional responsibility of the media in democracies is to speak with informed and independent voices to both governments and world citizenry. She illustrates her point with some current, and no doubt controversial, examples.

A final pair of authors calls attention to issues emerging from developments in technology. Joseph Herkert sees computing and information technology as raising professional macro-issues for engineers of all varieties, as well as for computer scientists. Thomas Murray of the Hastings Center focuses our attention on problems of access and responsible use that have either originated from or been exacerbated by "the intersection of medicine, health care, and biotechnology."

Because of space limitations, several important fields of professional ethics are not represented in this issue — for example, education ethics and military ethics. But those that are represented here, even with a limited selection of problems, provide a good overview of the ethical challenges and complexities of modern professional life. I commend them to your thoughtful consideration.

APPRECIATIONS

I am personally grateful to the authors mentioned above, all of them professional acquaintances for several years, for their generous willingness to write for the *Phi Kappa Phi Forum*. I am also grateful to Dr. Brian Schrag, executive director of the Association for Practical and Professional Ethics, for helpful discussions during the early planning stages of this issue. Finally, my thanks to editor Pat Kaetz and his staff for making my task an enjoyable one.

The *Forum* also welcomes the first pieces from its new columnists. We are sure that you will enjoy what they offer.

Neil R. Luebke is Emeritus Regents Service Professor of Philosophy at Oklahoma State University and past president of the Honor Society of Phi Kappa Phi

Forum on

Education & Academics

Andrea Ickes-Dunbar

Security in the Schoolhouse: Fire Drill at 10:15

At my school, we still have fire drills, but our real concerns are about student abduction by noncustodial parents or invasion by an armed attacker. While increased vigilance at the front office is our first line of security, secretarial eyesight is easily distracted. At times no one is in the office; the secretary may be in the principal's office, on break, or in the bathroom. During peak times, such as bus loading and unloading, or at crowded events such as an open house or graduation, unidentified visitors easily slip past the gatekeeper. Every so often, an unbadged adult shows up at my classroom door.

At the same time, the identity of our fifty-four staff members is superfluously authenticated by the mandatory plastic badge that each of us now wears at all times. In the wrong hands, the lanyard from which the plastic badge dangles could easily be employed as a garrote; the badge itself could slice a carotid artery. Such grisly potentials were cheerfully pointed out to me by a noncustodial parent who recently served as a chaperone on a school field trip.

Lockers have been eliminated at my school for security reasons. Instead, students now enter the classroom lugging enormous backpacks. It is impractical to search the bags, so we do not. Some probably contain contraband. So far, nothing more terrifying than a fishing knife has surfaced, but tomorrow it could be a gun. So much for the chimera of security at my school.

The point is, our acute national anxiety makes everyone vulnerable to the suggestion from administrative and governmental watchdogs that we must be willing to forfeit our freedom to maximize our security. Compliant patriots, we submit docilely to registration, documentation, even surveillance of our movements and communications by supposedly well-meaning homeland-security agents. We do not recognize that to forfeit privacy is to lose an essential element of personal freedom. Confident that we ourselves are not targets of official scrutiny, we trust that no harm can come from the list-making efforts of our protectors.

Once relinquished, of course, privacy can never be retrieved. Never before in the history of humankind have there existed such efficient means to eradicate the very notion of anonymity. The groundwork has already been laid. As credentialed teachers, our fingerprints are safely on file. Because we are voters, drivers, and credit-card carriers, our names, photos, and ID numbers appear on numerous lists.

Just as it is misguided to suppose that security is a negotiable commodity, it is equally preposterous to suppose that every person can be documented, every port of entry secured, every pocket and bodily orifice searched. Oddly enough, those who actually pose the greatest security threat may be the least identifiable. The unattached, the socially alienated, the dispossessed, the bankrupt, the unregistered, the uninsured, the unlicensed have nothing to lose and everything to gain. Who, of those boarding planes, trains, and buses, is most likely to be a threat to others? Who, of those entering a particular nation, has the most to gain from its destruction? Who, in my neighborhood, is most likely to covet my assets and least likely to feel remorse about stealing from me? Who, of my students, is most likely to act out aggressive feelings toward their peers or teachers? The difficulty, of course, is to identify the socially alienated, the disenfranchised, the hostile among us. We cannot always tell, and when we prejudge, we are in grave danger of violating basic human rights.

The actual aggressor may not fit a red-alert profile. For example, I recently received holiday cookies from Brad, an apparently typical eighth grader at my school. Six cinnamon-and-sugar-coated snickerdoodles were delivered wrapped in a baggie — kid manufactured, but inspired by mom, who signed the card. Both parents are PTSA members, involved at school, and supportive of teachers and the educational program.

Brad is white, affluent, and lives with his biological parents. He has attended our school since kindergarten. He is popular, athletic, sociable, bright, and seems well adjusted. He does not exhibit any traits that might alert a classroom teacher to potential danger. He is not antagonistic, not a social isolate, not a doomsday doodler. Never has Brad's name appeared on any "heads-up" memo.

Yet, two years ago as a sixth grader, Brad tried to poison one of his classmates by putting chemicals in the child's water bottle. Brad harbored extraordinary hostility, and he acted upon it. He was suspended for a day or two, then returned to the classroom. Brad's attempt to dispatch a perceived adversary is not unique. Our local paper recently reported on five junior high girls who plotted to poison their teacher's cookies. And Lindhurst High School, our local Columbine, is only a few miles away.

I, meanwhile, in deference to my own irrational impulses, have started taking precautions with my water bottle. I now keep it out of sight, with a "decoy" in full view. Despite this reflexive attempt to protect myself, I realize that my safety cannot be ensured. Perhaps foolishly, I ate the cookies.

In the classroom, it is not foreign terrorists whom we dread, but our

(continued on page 9)

Forum on Business & Economics

Larry Chambers

Got Any More Good Investment Advice?

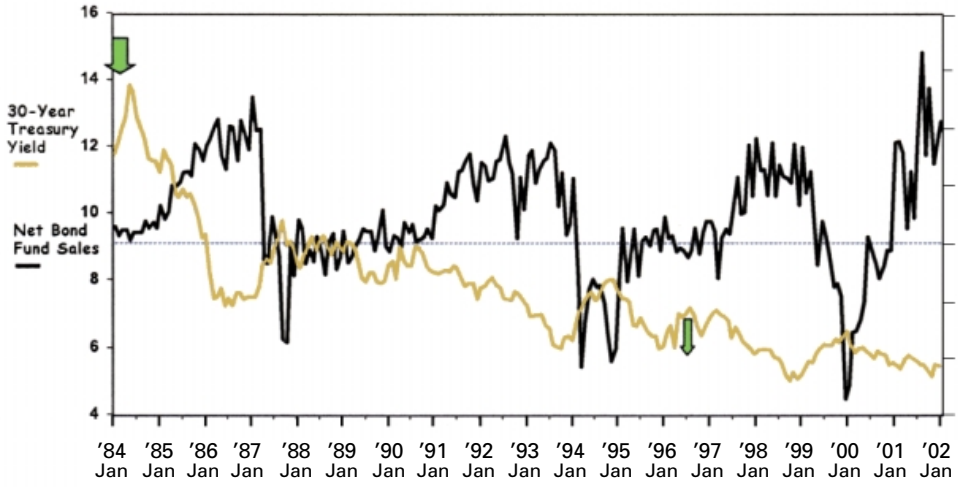
Never have so many Americans experienced such control over their financial futures, yet felt such a need for help. Investors are running scared, abandoning growth and value strategies, and instead, are putting money into annuities, bonds, and money-market funds. It seems that they always do exactly the wrong thing in a very predictable way. The chart below is a good example.

This chart shows thirty-year U.S. Treasury-bond yields and their relationship to bond mutual-fund sales. Because yields and bond prices are inversely correlated, bond prices are high when yields are low. You would expect investors to buy fewer bond funds when bond prices are high, but that is not what bond mutual-fund sales figures show. Investors did the opposite. In almost every peak and trough of interest rates during the past eighteen years, investors did exactly the wrong thing!

Behavioral-finance researchers note that when investors react to new information, they frequently move in the wrong direction and do the wrong thing at the wrong time.

Paul Andreassen, a psychologist at Harvard, has studied the relationship between the news media and investing. In one experiment, Andreassen separated people into two groups: the first group bought and sold stocks solely on recent price data; the second group traded after being given the price data plus news headlines that explained the changes. When stock prices were volatile, Andreassen found that the group that had access to the news headlines earned less than half as much per share traded as the group that received only price data.

Monthly Net Bond Mutual Fund Sales vs 30-Year Treasury Yield



Source: ICI Data and Bloomberg. Right scale equals dollars million. Left scale equals percent yield.

WHY NO NEWS WOULD BE GOOD NEWS!

Andreassen theorized that people tend to consider news reports almost as predictions. When a jump in a stock's price is accompanied by news that seems to support the price movement, we take that as a sign that the trend will continue. Conversely, when news reports justify a price decline, we tend to take that as an indication that the negative trajectory will prevail. As a result, we are likely to buy, buy, buy when the news is good and sell, sell, sell when the news is pessimistic. With thousands of investors reacting this way, stocks can be artificially driven to unrealistically high — or low — levels.

During 1990, numerous stories were published about how our stock market would collapse if and when shooting started in the Middle East. But what actually happened as the missiles started to fly over Baghdad on January 17, 1991, is that the stock market started soaring as well.

Then in 1995 the argument in the media was, "Stock prices have been rising for far too long, and a huge correction will obviously soon occur." As proof, we were told, just look at the uncanny resemblance between prices in the summer of 1995 and in the summers of 1929 and 1987, and the subsequent collapses in October 1929 and October 1987. "So get ready," the media warned; "it's going to happen again." But once again, the markets did not collapse; in fact, until recently they continued to rise.

Yet, we appear to have no memory of these predictions and succumb to each one as though it were factual. Consumer magazines are not research packaged to help investors make unbiased decisions. They are in business to make money for their owners and advertisers. And sometimes they do neither: they disappear. Recently, *Red Herring*, which had employed 200 people during the internet boom,

closed its doors, joining *Mutual Funds* magazine, *Individual Inestor*, *Family Money*, *Consumers Digest*, *Your Money*, and *On Line-Investor* — all gone, along with their advice, predictions, and profiles. Even *Worth* magazine plans to publish only on a limited basis.

Money magazine formerly published an annual "seven best mutual funds" series. In each following year, the prior "best funds" underperformed the S&P 500. *Money* editors stopped this exercise after a few years, I suspect because they sensed that somewhere, somebody might actually hold them responsible for their recommendations.

THE HERD MENTALITY

A study by Dalbar, the Boston-based consulting firm, tracked the gap during several years between investor performance and market performance. Dalbar's data show that for the fifteen years between 1984 and 1998, the average equity mutual-fund investor received an annualized return of 7.3 percent, and the average fixed-income-fund investor received an annualized return of 6.3 percent. Yet, during this same period, the average equity mutual fund returned 13.5 percent annually, and the average fixed income fund returned 8.6 percent. In other words, the funds showed strong performance while investors in those funds actually lost money! How could this be?

There is safety in numbers! Investors poured money into sectors or mutual funds after they heard about significant performance gains. Then, as performance flattened or declined, they moved on to look for the next hot sector. They bought high and sold low. Not only did they miss out on good performance but also, in many cases, they incurred trading costs and tax consequences that set them back even further.

Dalbar has shown over and over that investment return depends far more on investor behavior than on fund performance. Past performance as a predictor of future performance does not work.

Another example is the Morningstar star-rating system. Although the star-rating system is not always used appropriately, it appears to have a disproportionate influence on the frame-of-reference of many investors. They read it like they read the newspaper horoscope, relying on it to predict future events.

In 1995, 70 percent of net sales went to four- and five-star rated funds. In 1998, that number was 95 percent, and recent estimates suggest that four- and five-star funds actually take in more than 100 percent of net sales, thanks to outflows from lower-ranking funds.

Professor Richard Thaler of the University of Chicago conducted a study in which he ranked all of the stocks listed on the New York Stock Exchange by five-year returns. He then formed two portfolios, one consisting of the best-performing thirty-five stocks (the "winners") and the other consisting of the worst-performing thirty-five stocks (the "losers"). He monitored both portfolios for five years. During the course of the five-year test period, the losers beat the winners by about 40 percent.

In its defense, Morningstar does not claim that the star system is useful in predicting future mutual-fund performance. Rather, it does claim, and rightly so, that it is a useful tool for screening the large universe of mutual funds that exists today, on the basis of past performance and other fund characteristics.

WE ASKED FOR IT!

It is not necessary to demonize the media; they are just a mirror of what the audience demands. Strong emotional content sells magazines and television. Unfortunately, that content evokes a strong emotional response, frequently influencing investors to make irrational decisions. The desire to speculate is a hardwired aspect of the human condition. It partly explains why the human race has advanced. But how do you turn off a powerful human impulse when both Wall Street and the entire publishing industry are designed to appeal to that impulse?

Our decisions are mostly made in the right side of the brain — the three-year-old emotional brain that wants what it "knows." But when we get overloaded with too much information and we do not know what we want, we defer to a surrogate "daddy" — the expert.

Everyone wants to find a financial guru, the person who is going to make the money grow so that we will not have to be responsible. We do not seem to understand that these financial gurus are not actually looking out for our specific interests. Realistic investors must acquire a basic understanding of how markets work, become intimate with their own investing parameters and goals, and filter all the information with which they are bombarded through a disciplined decision-making process.

The best advice is simply that every investor is ultimately responsible for his or her individual success. If you cannot trust the general media or Wall Street journalism, where can you go to get unbiased information? In my next column, we will look to the academics for answers that might surprise you.

Larry Chambers is a freelance financial writer living in Ojai, California. He has authored more than 800 magazine articles and thirty-four business books. Two of his books remain specialty best sellers, and three have found their way into book-of-the-month clubs. One of his books,* The First Time Investor*, was named one of the top five books for "investing on a shoestring" by Chuck Myers, Knight Ridder,* Washington Review*. He welcomes feedback at Lchamb007@aol.com.

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Forum on

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Devlin M. Gualtieri

Keeping Secrets

In the summer of 2002, a group of 31,252 computer enthusiasts (aka, computer geeks) completed a quest that had occupied them for almost five years. Their actual labor was small, considering that their computers did most of the work, but theirs was a true labor of love because their reward for this multiyear effort was about thirty-two cents each. They had deciphered a secret message posted with a $10,000 bounty by RSA Security Incorporated. RSA is a Bedford, Massachusetts, corporation that makes millions of dollars each year helping people keep secrets. The business of keeping secrets is called cryptography, from the Greek κρυπτο ("hidden") and γραφως ("writing").

The secret message was encrypted using an RSA proprietary program called RC5 and a 64-bit "key." A key is the "Open Sesame" phrase that allows the program to decrypt the message. The bounty was a way for RSA to prove the effectiveness of its program, and it did. After all, 31,252 people are a lot of resources to throw at a single message, and any cipher with a 64-bit key is less secure than most cryptographic programs now in use. Why do people need such security, and why are they willing to pay so much money for it?

As soon as there was written language, people wanted to keep certain writings secret, and cryptography developed alongside written language. Julius Caesar used a cipher to protect his military communications. Caesar's cipher substituted each letter in a message with the letter three places up the alphabet. The word CAESAR thus would be encrypted to FDHVDU. Substitution ciphers and code-books in which whole words substituted for others dominated cryptography from Caesar's time through the nineteenth century. Later, transposition became another critical cryptographic element. In transposition, the letters of a message are rearranged, so that CAESAR could become EASRAC. Of course, a combination of substitution and transposition gives a stronger cipher, as long as the recipient knows the rules for reversing the encryption. The culmination of these two processes can be found in the German "Enigma" cipher machine that figured prominently in World War II.

The Enigma machine was the creation of the German inventor, Arthur Scherbius, who patented it in 1918. It was improved, used by the German military, and eventually cracked by a dedicated group of English mathematicians that included Alan Turing, a pioneer in computer science who designed special-purpose electromechanical computers to crack enemy ciphers. The idea that Enigma was patented may seem strange. After all, we are trying to keep secrets, but in patenting a device the inventor is required to disclose its construction in full detail. The Enigma patent illustrates another cryptographic principle, that the strength of the encryption should be in keeping the key secret, not the algorithm. In fact, you want as many people as possible to analyze your algorithm to find potential flaws, and this is the reasoning behind the RSA bounty.

From the time of Caesar to the end of the Korean War, cryptography was the sole purview of governments and their military. Aside from the occasional love letter, there was no pressing business or personal need for cryptography. The advent of ubiquitous computing and electronic communications changed all that. In 1973, the U. S. National Bureau of Standards (NBS, now the National Institute of Standards and Technology, or NIST) decided that it was time for a cryptography standard and issued a call for proposals. In November 1976, a modified IBM algorithm known as "Lucifer" became the "Data Encryption Standard," or DES.

DES was controversial from the start. The key size for DES was set at 56 bits, whereas the original Lucifer was designed with a 128-bit key. There had been obvious government pressure to standardize the smaller key, a key that could withstand public attempts at cracking messages, but allow for easy government cracking. Note that the RC5 message cracked by our band of computer geeks, who may today have less computing power than did the government in 1976, had a far stronger key of 64 bits. Today, DES is still used, but data goes through DES encryption three times with three different keys, so-called "triple DES," a process that approximates a much larger key size than 56 bits.

The government's crusade to limit the DES key to 56-bits calls attention to the tug-of-war that exists in cryptography between government and public interests. The National Security Agency (NSA) is the U.S. government agency that was chartered under President Truman to bring all government cryptography together under one roof. The NSA believed that strong cryptography was its personal sandbox because only spies or criminals would need to keep secrets from the government. World War II had proved that cryptography was an essential part of defense, so the NSA attempted to classify cryptography as "munitions of war" and regulate the publication of research papers on cryptography under the International Traffic in Arms Regulation (ITAR).

NSA also tried, unsuccessfully, to force the private sector to use a hardware device called "Clipper" for all cryptography. Each Clipper chip would have a unique identifying number that could not be altered. This number, along with a technique known as "key escrow," would allow

the NSA to decrypt all messages encoded by Clipper. The private sector did not buy into a system with a built-in trap door, and very quickly some simple research showed that the original Clipper chip was flawed in a way that would allow anyone to decrypt messages almost as easily as the government could.

The legacy of the Vietnam War helped to kill Clipper and other NSA attempts at regulating cryptography. A basic distrust of government had begun to pervade American society, and it was generally agreed that there were some secrets citizens would want to keep. A case in point was the burglary of the offices of the psychiatrist of Watergate-figure Daniel Ellsberg, a government employee who had leaked a study critical of the Vietnam War (the "Pentagon Papers") to the *New York Times*. The burglary was an attempt to get information to discredit Ellsberg. The NSA has since backed away from its original tough stance against private cryptography and has even opened a National Cryptologic Museum to improve its public image.

Of course, the real secret in secret messages is the decryption key. Somehow, the key must be known to the message recipient. Keys can be transferred in person, or by messenger, but key management becomes a cumbersome process, and it does not allow instant messaging between strangers. Secure internet transactions would be instantaneous only between organizations that could physically exchange large numbers of keys beforehand. This key-exchange problem was solved in the late 1970s in a collaboration between Martin Hellman, a professor at Stanford, and Bailey Diffie, a dedicated amateur cryptographer who became Hellman's student. Their invention, Public Key Cryptography, went against the fundamental idea of keeping keys secret. They used a mathematical "one-way" function, an operation that gives an easily computed value for a pair of numbers, but is too hard to analyze to find what numbers were used.

Strangely enough, the function used is simple multiplication. When two large prime numbers are multiplied together, it is extremely difficult, even with computers, to analyze the result to obtain the original factors. The number obtained by multiplying two prime numbers becomes the public encrypting key, and only the generator of this key has the two factors needed to decode the message. This is the fundamental process for all secure internet transactions.

As computers become more powerful and more accessible, secret communications are in more danger of being compromised, so we have seen a steady increase in key size. Cryptographic security has always been based on the "Age of the Universe" criterion, that a powerful computer should take an unreasonable time to decipher a properly encrypted message. Forty-bit encryption was once the standard for web browsers, but now only 128-bit is considered safe. The security in IEEE 803.11b, a standard for wireless local-area networks, was recently upped from 40 bits to 104 bits. NIST has recently standardized a cryptographic algorithm to replace DES. The Advanced Encryption Standard (AES) has a 128-bit key. Microsoft is using a 2048-bit key to prevent unlicensed games from operating on its Xbox game system!

Lately, cryptography has been getting a lot of media exposure. It is possible that terrorists are using the many cryptography programs freely available on the internet for communications. Music companies are trying to prevent sharing of music files through the use of cryptographic techniques such as electronic watermarking and Digital Rights Management. The "Fair Use" provision of copyright law is under attack as copying becomes easy and nearly free. Public cryptography is here to stay. It is impossible to put this genie back into the bottle when a computer-precocious teenager could write, in just a few hours, his own secure cryptography program with information available on the internet.

Devlin M. Gualtieri received an undergraduate physics degree and a PhD in solid-state science from Syracuse University. He is currently senior principal scientist with Honeywell, Morristown, New Jersey. Dr. Gualtieri has been a member of Phi Kappa Phi for thirty years, and he can be reached at gualtieri@ieee.org.

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Forum on the Arts

David Thurmaier

The Beatles as Musical Experimentalists

What is it about the Beatles that still fascinates and captivates many of us? Surely even the surviving Beatles were surprised when their collection of number-one hits, *Beatles 1*, was one of the biggest-selling albums of 2000 — thirty years after the last song on the album was recorded! For many years, the literature about the Beatles has focused on the story of their origins, on the value of their memorabilia, and on establishing their place in music and cultural history. A few books have even highlighted the more sordid aspects of their storied career. To be sure, anyone interested in writing seriously about the Beatles must know these sources to gain an overall picture about their impact.

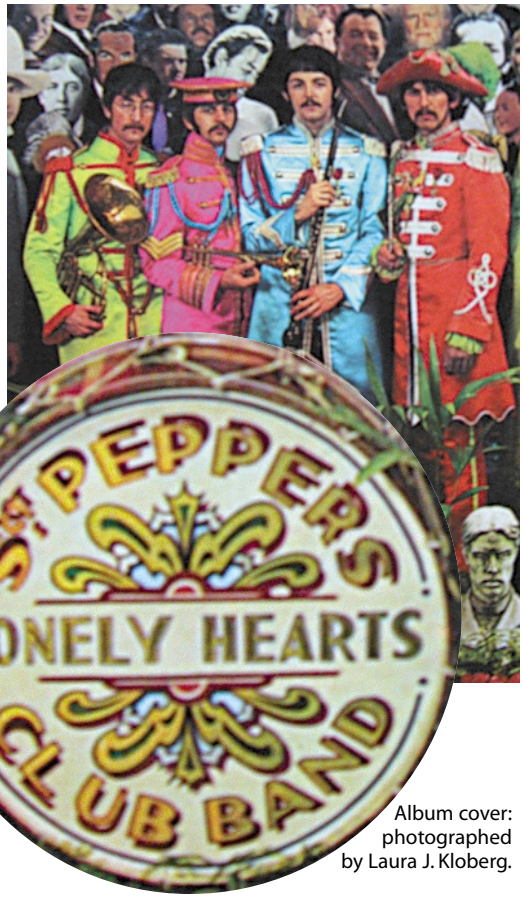
Until recently, only a few serious studies dealt with them as musicians. Unfortunately, most of these studies treated them too clinically, as if the essence of the Beatles' music could be distilled to a chord or pattern of notes. Fans know such musical facts as who was responsible for placing guitar feedback on "I Feel Fine" (John), who plays the Eastern-influenced guitar solo on "Taxman" (Paul), who brought Indian music to the group (George), and who took only one drum solo in all their recorded output (Ringo). However, those looking to understand the Beatles' importance as composers and performers have had to wait until the publication of some recent books that I will mention throughout this article. As both a professional musician and a serious fan, I believe that their music tells the story and explains why the Beatles have remained such an influential musical force thirty-nine years after their arrival in America.

Above all, the Beatles remained curious about all types of music, and they continually reinvented their own music by injecting it with fresh influences from multiple cultures. This experimentation adds a dimension to their work that separates it from their contemporaries' music. In the second volume of his book *The Beatles as Musicians*, Walter Everett explains that "rock musicians' interest in Indian sounds multiplied rapidly" after George Harrison introduced the Indian sitar to the song "Norwegian Wood (This Bird Has Flown)." Also, the string quartet on 1965's "Yesterday" would make its way into the music of other groups around the same time. This exchange of musical innovations worked both ways; for example, the Beatles were able to take elements from Bob Dylan's music and meld them into their own. Their relentless experimentation and questing for the "new" is one strong element that makes the Beatles' music attractive and rewarding for study and enjoyment.

To offer some concrete examples of musical experimentation and innovation, I will focus on two songs from perhaps the most famous Beatles album, *Sgt. Pepper's Lonely Hearts Club Band*. Before doing so, it is useful to consider their single that was recorded and released in February 1967, immediately before *Sgt. Pepper*, "Strawberry Fields Forever" and "Penny Lane," to gain a more complete picture of these advances. For example, "Penny Lane" contains a prominent piccolo trumpet inspired by a performance of Bach's second *Brandenburg Concerto*, which Paul McCartney first heard on television. "Strawberry Fields Forever" was even more innovative in its scope. What began as a wistful song played only on the guitar (as heard on 1996's *Beatles Anthology 3*) turned into a highly polished and orchestrated song. Especially noteworthy was the display of studio wizardry by producer George Martin to unify two separate performances, each in different keys. The use of cellos and a peculiar keyboard instrument called the Mellotron add a mysterious quality to the song. Some of these sounds and techniques would make their way onto *Sgt. Pepper*.

Sgt. Pepper was released at the height of the "Summer of Love" on June 1, 1967, and received widespread acclaim. Critics remarked about the unique album cover, replete with members of the "Lonely Hearts Club Band" (including such notables as Marlon Brando, Bob Dylan, Albert Einstein, and Marilyn Monroe). The album cover also revealed the Beatles sporting mustaches, wearing colorful costumes, and posing with classical instruments. Other innovations included a sheet of cut-outs with every record, and printed lyrics on the back of the album. In his book, *A Day in the Life: The Music and Artistry of the Beatles*, Mark Hertsgaard observes that *Sgt. Pepper* "assured the Beatles of their place in history . . . [and] they would not have been remembered in quite the same larger-than-life way in later years had *Sgt. Pepper* not been the radical groundbreaker it was." Yet the innovations I have mentioned are secondary to the experimentalism found in the music.

Two songs from *Sgt. Pepper* display clearly the Beatles' sense of innovation. "She's Leaving Home" represents the chasm between parents and their children so common in the late 1960s. This story about a young woman who runs off from her seemingly good parents to "meet a man from the motor trade" illustrates its message through unique musical means. The song is a dialogue between Paul McCartney, singing the part of the narrator, and John Lennon, who expresses the sadness and despair of the parents. What makes this song particularly heartbreaking is the orchestration, which consists of a harp and string nonet. As Everett notes, "the string arrange-



Album cover: photographed by Laura J. Kloberg.

ment is closely related to the meaning of the text." The use of "text painting," or depicting text musically, is a practice that goes back to at least the Renaissance but is relatively uncommon in rock music. Everett cites a descending violin line connected with the text "she goes downstairs" and frantic rhythms in the upper strings illustrating a mother's sadness on the line "Daddy, our baby's gone" as representative examples of text painting in the song. By combining the instruments of the classical world with an emphasis on musically depicting the complex text, the Beatles have taken the traditional guitar-bass-drums popular song to a more sophisticated level.

"Being for the Benefit of Mr. Kite" follows "She's Leaving Home," and it also demonstrates the Beatles' penchant for experimentation. Based on an old antique circus poster, John Lennon's lyrics (largely taken verbatim from the poster) portray a lively atmosphere, complete with a "show on trampoline" and "Mr. Kite" doing somersaults to the delight of the crowd. To evoke this circus flavor, Lennon — with help from George Martin and engineer Geoff Emerick — raided the studio looking for examples of music from steam organs. Instead of just including the tapes as they existed, the team juxtaposed the excerpts randomly, producing a wash of sound. Everett also comments on the song's unique chord progressions, which do not relate to one another in a traditional sense. In short, the song's unusual subject matter, swirling harmonic progressions, and creative studio manipulation produce a work that is a complete contrast to "She's Leaving Home." In fact, the entire *Sgt. Pepper* album teems with these striking contrasts, in addition to musical and studio innovations.

These two songs from *Sgt. Pepper* merely scratch the surface of what a listener can discover when focusing in on the Beatles' experimental flair. Recent books by Everett, Hertsgaard, and Mark Lewisohn (author of several authoritative books on their touring days and recording sessions) all focus on treating the Beatles as musicians. Thus, these books highlight the Beatles' musical sophistication and experimentation and help us gain a greater appreciation for their unique contribution to popular music.

David Thurmaier teaches music theory at Lawrence University and is a PhD candidate in music theory at Indiana University. His primary research focuses on the music of Charles Ives.

(continued from page 3)

own students. Albeit on a minor scale, our schools are terrorized by disgruntled malcontents who may be outraged by disappointing grades or test scores. The grown child once persecuted by schoolyard bullies may return years later to lash out in murderous retribution on the site of an earlier humiliation. Our home-grown youthful "terrorists" have been desensitized by countless hours of video shoot-em-ups and a steady diet of virtual violence eerily reminiscent of military-commando indoctrination.

Our alienated and antisocial children are glorified by media coverage of their own suicides, drug deaths, and school shootings. When a youngster kills or dies, he or she is publicly immortalized. Anniversaries of murders and hostage events are commemorated with media reminiscences, flowers, slogans, tee-shirts, and candlelight vigils. Far from being innocent bystanders, we adults are complicit. "What has become of them?" we lament, rather than "What have we done to them?"

So what can we do? At the microcosmic level of the classroom, we can increase security by ensuring that students feel valued and integrated into the school community. We must work constantly to renew and reinforce mutual trust and tolerance. We must provide frequent opportunities for our students to engage in productive collegial activity. We must work assiduously to resolve conflicts, status issues, and to foster reciprocity. We need to work on the root causes of insecurity, rather than merely to tighten security.

As a veteran public school teacher of adolescents, I am increasingly aware that some of my students do pose a threat to my personal security. At the same time, I am beginning to realize that security is an ephemeral peace of mind based on perception, not a quantifiable, attainable condition. Freedom and security are not tradable commodities, the one purchasing the other. Basic human rights are nonnegotiable. The most sustainable guarantee of security is the fostering of mutual interdependence and enlightened self-interest across the entire spectrum of the human family.

And it starts in my classroom. Snickerdoodles, anyone?

Bulletin (please announce to all classes): There will be a fire drill at 10:15 today.

Andrea Ickes-Dunbar teaches seventh and eighth grade English and Spanish to a second generation of students in a multigenerational K-8 California public school. Her passion is languages. In Mexico and Chile, she learned Spanish. In the arctic wilderness, she learned conversational phrases in raven caw and wolf howl.

John R. Boatright

Ethics for a Post-Enron America

The high-profile scandals at Enron, WorldCom, Global Crossing, and Tyco, among others, combined with the spectacular dissolution of the accounting firm Arthur Andersen, are more than business failures. Numerous and voluminous news reports have revealed egregious failures by top executives and their advisers — including accountants, investment bankers, and lawyers — to fulfill their basic fiduciary duties to serve the interests of shareholders and the public.

A fiduciory duty is a duty of a person in a position of trust to serve the interests of others. Accordingly executives are fiduciaries who are pledged to serve the interests of shareholders. Yet, some have manipulated earnings, hidden debts, and falsified accounting records, all in order to exercise their lavish stock options at their shareholders' expense. Accountants who perform audits for the benefit of the investing public have permitted many instances of so-called "aggressive accounting" and approved financial statements that subsequently proved false. Investment bankers have helped executives to develop complex financial transactions that generated phantom earnings or removed unwanted debts from the balance sheet.

All the while, the banks' analysts, who are supposed to be objective, were giving favorable evaluations of the securities of companies with which the banks were doing deals, and the banks' brokers were filling their customers' portfolios with these same securities, even as they sometimes denigrated them in internal communications. And the lawyers who blessed many of these accounting and financial shenanigans were acting as though their clients were the executives who hired them and not the shareholders, who were ultimately paying for their services.

In each of these cases, the moral wrong is simple: a failure to fulfill a fiduciary duty, generally because of a serious conflict of interest. That this kind of behavior is immoral, and often illegal, is clear, but what challenge does it pose beyond recognizing that it is wrong and attempting to prevent it? Some argue that existing laws and the force of the marketplace are sufficient, so that nothing more needs to be done. Indeed, many of the wrongs in the recent scandals are slowly being rectified. Congress has mandated new rules to ensure that directors and auditors are "independent," which is another way of saying "free of conflicting interests." Among the many provisions of the Sarbanes-Oxley bill, for example, are the requirements that audit committees be composed entirely of independent directors with no ties to management and that accounting firms doing audits refrain from performing certain nonaudit services that could bias an audit. Similarly, Eliot Spitzer, the New York State attorney general, has forced some major investment banks to increase the independence of analysts to reduce the risk that their ratings of stocks will be influenced by the banks' deal-makers.

Although these efforts to reinforce fiduciary duties by removing conflicts of interest and restoring objectivity may produce some improvements, they do not address the most important challenge posed by the recent scandals. The effectiveness of fiduciary duties as a regulator of business conduct has been seriously undermined in the past two decades by several developments in the American business system. In particular, executive compensation tied to performance, the combining of auditing and consulting by accounting firms, and consolidation in the financial-services industry have produced powerful new incentives that have been major factors in the recent scandals. Restoring the traditional fiduciary duties in the face of these developments will be a difficult, if not impossible, task.

There are alternatives, however. Imposing fiduciary duties is one form of regulation that relies heavily on moral force, but market-based regulation that seeks to alter the incentives is another form. The challenge in this post-Enron era, then, is to determine which form of regulation, or what combination of these forms, can best secure the kind of ethical business environment in which future Enrons will not occur.

WHAT WENT WRONG?

We cannot propose reforms to prevent another Enron, much less understand the post-Enron world, without a firm grasp of why the recent scandals occurred. The stories are complex, and each one is different, but they all share some common features. Each case involves a business strategy gone awry, executives determined to boost short-term stock price by any means, directors who failed to detect warning signs, accountants who acquiesced in aggressive accounting, investment bankers who structured questionable financial deals, and lawyers who showed how to achieve the desired results with a plausible legal veneer.

A major factor in the scandals of 2001 is an increased focus on share price. This greater attention to stock price began in the early 1980s during a period of hostile takeovers, when a high share price was the best defense against a takeover. The impetus for high executive compensation tied to performance came originally from companies taken over that needed to raise share price quickly. Institutional investors encouraged this trend because it seemed to promote good corporate governance by aligning executives' interests more closely with those of shareholders. Finance theorists, most notably Michael Jensen, further supported this idea with arguments drawn from agency theory, which studies the problems of a principal (in this case the shareholders) controlling an agent (the CEO). Reducing the loss from an inadequately controlled CEO would more than offset the high executive compensation — or so the theory goes. Executives also became enamored of rising stock prices, not only because of their option-rich pay packages, but also because a high stock price opened up a growth strategy of making acquisitions.

A second important factor is the deregulation that occurred in the past two decades. Market deregulation, especially in energy and telecommunications, began a scramble to develop business models for a

future that no one could accurately predict. It is significant that the biggest bankruptcies occurred at Enron (an energy-trading company) and at WorldCom and Global Crossing (in telecommunications). The novelty of these companies required new accounting methods that tested generally accepted accounting principles (GAAP). How should Enron price long-term contracts for delivery of energy, for example? Or how should WorldCom and Global Crossing classify unused telephone lines and optic-fiber cable? (WorldCom counted lease payments for idle capacity as capital investments, which is garden-variety accounting fraud.) At the same time, investment banks were developing sophisticated financial instruments that permitted, to cite just one example, loans that could be booked as trades. In this deregulated financial environment, Enron became more like a hedge fund than an energy company.

In addition to market deregulation, in the 1990s the legal liability of accounting firms and investment banks was reduced. It is difficult for a company to commit massive fraud without the complicity of its accountants, bankers, and lawyers. However, a 1994 court decision held that accounting firms and investment advisers could not be held liable for "aiding and abetting" fraud in securities transactions, and the 1995 Private Securities Litigation Reform Act protected investment banks from class-action suits for alleged securities fraud. Although this liability deregulation was introduced to make business more efficient, it had the unintended consequence of weakening a powerful constraint on accounting firms and investment banks.

The third factor, and perhaps the most significant, is simultaneous changes in the compensation structures for executives, accountants, and investment bankers. The rapidly escalating pay for CEOs has become heavily weighted with stock options that must be exercised within a narrow period. This time limit, combined with the importance of meeting analysts' expectations, produced great pressure to achieve short-term results. To achieve the needed results, earnings management, which has long been used to iron out small wrinkles in financial statements, was now used to fashion figures out of whole cloth.

The American business system is schizophrenic in that it combines a market system built on the pursuit of self-interest with a system of fiduciary duties, in which one party is pledged to serve the interests of another. This system has worked because of the compartmentalized professional roles of those with fiduciary duties.

Further, accounting firms had discovered that it was far more lucrative to sell consulting services to their audit clients, thus tempting the firms to go easy on audits lest they lose the consulting business. And investment banks found that they could make more money doing deals with large companies than by servicing individual brokerage clients. As a result, analysts touted the stock of companies with which the deal-makers were doing business and encouraged the firm's brokerage customers to stuff their portfolios with these stocks. Individual investors were further shunted aside as investment banks made their most lucrative opportunities, such as shares in hot initial-public offerings (IPOs), available to their CEO-clients. These CEOs received thinly disguised kickbacks for bringing their company's business to the investment bank.

The effect of these changes is that what had previously been a system of healthy checks and balances became a united front, at the expense of investors. Instead of having opposed interests that served to protect investors, these entities now had an unhealthy common interest. The fiduciary duty that executives owed to shareholders took a back seat to the pursuit of a short-term increase in stock price. Accountants, who had formerly policed financial reports to protect the public, now had a strong incentive to help executives to do whatever was necessary to boost share price so as to keep them as consulting clients. And investment bankers no longer served as trusted advisers to their customers, scouting out the best securities. They found it more advantageous to work with executives and accountants to finance deals that raised stock prices, even if this meant selling out their customers.

This broad-brush indictment also overlooks many factors, but it does paint a picture of a systemic failure with multiple causes. It is like a major industrial accident that happens when a number of small mishaps, inconsequential by themselves, occur together with catastrophic results. Although the individual failures are predictable, their occurrence together is highly improbable and hence not easily foreseen. Lacking an understanding of the convergence of factors that led to the Enron collapse and

to other bankruptcies, the people involved could not easily appreciate the risks they were taking. For the most part, they were playing the game with which they were familiar, unaware of how treacherous the playing field had become.

WHAT IS TO BE DONE?

The American business system is schizophrenic in that it combines a market system built on the pursuit of self-interest with a system of fiduciary duties, in which one party is pledged to serve the interests of another. This system has worked because of the compartmentalized professional roles of those with fiduciary duties. Public accountants, stock brokers, and lawyers have operated as professionals who serve clients — or, in the case of public accountants, the public. Even CEOs and other top executives have generally viewed themselves as quasi-professionals and have taken their fiduciary duties seriously.

However, the compartmentalization of those with professional roles has been seriously eroded in recent years by several factors. One is the enormous compensation packages that have become common in recent years. These are designed to align executives' interests with those of shareholders so as to solve the agency problem of how to induce executives to serve the shareholders' interests. Whatever the merits of this strategy, one effect is to replace a moral and legal mechanism with a purely market mechanism. Fiduciary duties are now less important as a means for restraining executive behavior because the market is now being employed to achieve the same end.

Another factor is the consolidation of multiple services in accounting firms and investment banks. Accounting firms now provide many internal accounting and auditing services, set up accounting and financial-information systems, advise on tax strategies, and offer appraisals and fairness opinions. In a similar manner, investment banks that mainly served large corporate clients merged with those that offered brokerage services mostly to small individual clients. As a result, brokers and analysts, who have always operated with both fiduciary duties and market mechanisms, now find themselves with even greater conflicts.

A third factor is the devaluation of some professional services. Auditing is a cost to companies that must be borne because the service is mandated by law. The cost is passed along to the intended beneficiaries, the investing public, but investors have little control over the price or the quality of audits. Similarly, securities analysis is a cost for brokerage firms that is also passed on to investors. Thus, corporations have an incentive to skimp on audit costs, and investment banks on the costs of analysis. In the recent bull market, investors had less interest in both the quality of audits and the quality of research because they found that everything they bought unfailingly increased in price. As a result, accounting firms and investment banks have tended to treat auditing and analysis, respectively, as loss leaders to attract more lucrative business. These professional services have thus become peripheral to the more basic business services of consulting and investment banking.

This erosion of professional roles and decline of fiduciary duties is the reality of the post-Enron era. Although efforts can be made to reverse this development, doing so might require changing executive compensation and breaking up accounting firms and investment banks.

This erosion of professional roles and decline of fiduciary duties is the reality of the post-Enron era. Although efforts can be made to reverse this development,

doing so might require changing executive compensation and breaking up accounting firms and investment banks. Congress has grappled unsuccessfully with the issue of executive compensation, and the proposal by Arthur Levitt, the former chairman of the SEC, to separate auditing and consulting services was soundly rejected. And the consolidation of the banking industry has so collapsed the distinctions between investment banks that serve large clients and those engaged in retail brokerage that any return to the past would be very difficult.

Would we really be better off if we could put on the brakes and return to the pre-Enron period? After all, high executive compensation tied to performance might actually provide greater protection for shareholders than would a sense of fiduciary duty. The problem in the recent scandals is not that the pay packages were too large, but that they did not create the right incentives. Arguably, corporations and shareholders are better served by multipurpose accounting firms that can attract the best people and provide economies of both scale and scope. And financial supermarkets that offer a multitude of services also might serve everyone better. In any event, the market is telling us that these kinds of consolidation are more efficient and that they can be undone only at a price.

What is the alternative? Despite their importance, fiduciary duties are a second-best means of regulation. They are generally employed in relations in which one party agrees to serve the interests of another. If the obligations in question can be fully specified and embodied in contracts, then there is no need for fiduciary duties. Fiduciary duties, which are general, open-ended obligations to act for the benefit of another, are employed, then, when precise rules are not possible. For example, the main reason for imposing a fiduciary duty on executives to serve the shareholders' interests is that shareholders cannot specify in detail what executives should do to serve their interests because the situations that might arise are unpredictable. However, tying executive compensation to performance gets around this problem without the need for fiduciary duties. A market mechanism that appeals to self-interest, rather than an ethical and legal duty, is used instead.

An alternative to more rules is the European approach of employing accounting principles instead of rules. A principle-based accounting system, which prescribes general goals instead of specific means, allows accountants to choose, and auditors to approve, the accounting methods that provide the truest picture of a firm's financial situation. However, the European system requires a greater reliance on the integrity of the persons doing accounting and auditing.

Although accounting is a highly rule-bound activity, the rules still leave considerable discretion that accountants can use to benefit one party over another. The fiduciary duty of public accountants to serve the public is one way of ensuring that the public is served. However, the new Public Company Accounting Oversight Board, which was created by the Sarbanes-Oxley bill, is charged with creating even more rules and with conducting reviews of audits. The result of such efforts may further constrain the accounting profession and reduce the need for fiduciary duties. In addition, more accounting information is now available from corporations, and it may be possible in the near future for investors to have real-time access to company books. Such a development would reduce the need for audits and provide an external check on their quality.

Some people argue that there are already too many rules in accounting and that their number merely encourages the search for creative ways of getting around them. An alternative to more rules is the European approach of employing accounting principles instead of rules. A principle-based accounting system, which prescribes general goals instead of specific means, allows accountants to choose, and auditors to approve, the accounting methods that provide the truest picture of a firm's financial situation. However, the European system requires a greater reliance on the integrity of the persons doing accounting and auditing. American accountants already have the authority to depart from GAAP if doing so provides a truer picture, but few take advantage of this opportunity because it imposes a burden of proof that can be avoided by merely following the rules. In addition, the pursuit of principles should lead to the best methods of accounting,

which can then be codified in rules. In return, these rules prevent unnecessary disagreements over the best methods. It is probably better to have precise rules wherever they are possible and to leave principles for difficult cases that are less amenable to rules.

The problem of biased analysis by investment banks has a very easy solution. Instead of guarding the independence of analysts or requiring analysts to disclose any conflicts, which are among the current proposals, encourage the development of a larger market for analysis. If analysis has value, then it will be purchased by investors, and analysis from a provider with a reputation for objectivity will bring a higher price. Part of the problem with analysis at investment banks is that top-notch analysts receive more in salary than brokerage customers are willing to pay for, and so the money for their high pay can be generated only by adding value to the bank's deal-makers, which creates a conflict of interest. The best solution, then, may be to invest only as much in analysis as buyers will pay for in the marketplace.

CONCLUSIONS

Both fiduciary duties and market-based regulation aim at a common goal, which is to reduce risk. In particular, investors run the risk that executives will enrich themselves at the shareholders' expense, that a company's financial statements will not be accurate, and that a broker's advice will not be sound. In each case, the solution has been to impose fiduciary duties that reduce the risk with a promise, in effect, not to take advantage of investors. Executives, accountants, and brokers each promise to act in the investors' interests. Rules on conflict of interest further reduce the risk to investors by prohibiting situations in which the parties might be tempted to break this promise.

However, the goal of reducing risk can be achieved in a number of ways. A market-based system of regulation would shift the risk away from investors and back to the parties that now have fiduciary duties. For example, if accounting firms cannot be held liable for "aiding and abetting" clients in fraud, then they bear little risk in facilitating "aggressive accounting." Removing this protection would require accounting firms to engage in more extensive risk management so that they would, in effect, be regulating themselves more closely. In short, if accounting firms and investment banks bore more of the risk of the activities for which they now have a fiduciary duty, then investors would have less need to rely on this kind of obligation to serve their interests.

There are drawbacks to such a regulatory approach. An increased risk burden would lead to less risky behavior, which might not be in investors' interest given that greater risk leads to higher returns. This burden involves a cost that would most likely be passed along to investors because accounting firms, for example, might spend more money on audits or buy more insurance. However, fiduciary duties also have a cost, and so in the end the choice of regulatory approaches may depend on a trade-off between effective protection and the cost of that protection.

However this issue is ultimately decided, it is clear that in this post-Enron era the fiduciary duties of the various players in the American business system have become less-effective protections for investors and the public. This erosion of a traditional means of regulation has resulted from many changes that have taken place in recent years, some of them highly beneficial. The challenge we face, then, is deciding whether to strengthen these fiduciary duties, in part by effectively reducing conflicts of interest, or to find other means of protecting against the kinds of scandal that Enron represents.

John R. Boatright is the Raymond C. Baumhart, S.J., Professor of Business Ethics in the Graduate School of Business at Loyola University Chicago. He currently serves as the executive director of the Society for Business Ethics, and is a past president of the Society. He is the author of the books *Ethics and the Conduct of Business* and *Ethics in Finance*. His current research focuses on ethics in finance and corporate governance. He received his PhD in philosophy from the University of Chicago.

Deni Elliott

Balance and Context: Maintaining Media Ethics

As this article moves toward publication, most members of the U.N. Security Council are arguing against using force to disarm Iraq. President Bush is claiming not to care about the opposition to a U.S.-led war in Iraq. *Slate* magazine has the likelihood of that invasion set at 99 percent.

The most pressing issue for American journalism is one reflected in, yet not completely embodied by, current coverage of our world's crisis. The most important job of journalism in democratic countries is to provide information that allows citizens to engage in fully informed self-governance. To do this, American journalists and news managers must figure out how journalism can best accomplish that goal in an increasingly global environment. A strongly nationalistic press is a relic of a bygone era, along with the notion of nations with hard borders that made nationalistic journalism possible. The world has changed, citizens' needs have changed, and the role of journalism must change as well.

Citizens and government need an independent professional press that has a voice separate from government and from public-opinion polls. This perspective need not be monolithic. The press should consist of a multitude of voices, not unlike that of a Greek chorus in ancient drama. But, like the Greek chorus of old, the press of the twenty-first century must both assist citizen audiences and governmental actors in communicating with one another and also provide professional perspectives that are committed to seeking and providing true and complete information above all else. The special function of news media in a democracy is to tell citizens what we need to know so that we can make educated decisions on our self-governance. News reporting in the twenty-first century requires independence, investigative skills, and a keen ability to look where others are not pointing.

I will start with a scattering of examples of reporting from January to March, 2003, to illustrate how news media have failed to report stories in a timely fashion and how they have demonstrated the lack of balance and context that is requisite for comprehensive reporting. I will then provide a few thoughts on some relevant changes in the world order and end with suggestions of how the press can best serve its audience in the new millennium.

IF SOMETHING IS NOT REPORTED, IS IT STILL NEWS?

In mid-February, a friend alerted me to some breaking news, just as I was preparing a public lecture on the responsibilities of press and government in the current world crisis. The evening before on his PBS television program, Bill Moyers had interviewed the executive director of the Center for Public Integrity. The Center had obtained a copy of a confidential draft of the "Domestic Security Enhancement Act of 2003." According to the press release issued by the Center, the Justice Department was preparing "a bold, comprehensive sequel to the USA Patriot Act . . . which will give the government broad, sweeping new powers to increase domestic intelligence-gathering, surveillance and law enforcement prerogatives, and simultaneously decrease judicial review and public access to information" (http://www.publicintegrity.org). I read the text of the confidential memo and then read the response issued by the Department of Justice. The response basically said to Americans, "Don't worry your pretty little heads about it."

This move to enhance the Patriot Act had been going on under the radar. If someone had not leaked the document to the Center for Public Integrity, it would still be going on under the radar.

"Wow, this is big news," I thought.

I was scheduled to give my lecture less than a week after this story broke, and I watched carefully to see how the mainstream media covered the news. The potential of citizens losing even more liberties in what has been called the "War on Terrorism" would certainly be a huge story. Liberals would raise the alarm; conservatives would argue national security over liberty. I would lead off my talk with observations on the coverage of a story that would undoubtedly be on the minds of those in my audience.

This turned out to be disturbingly short lead. There was no story. A few news organizations ran brief stories the day after the interview, but there was no follow-up. No second-day stories. News managers across the country seemed to agree that whatever plans the Justice Department might be making for Patriot Act II were not something that needed to be on the plate for public discussion. Governmental officials refused to discuss the story, and it simply dried up.

Here is another example. While the American press and U.S. citizens had become familiar, if not completely comfortable, with antiwar sentiments in this country and around the world by mid-March, knowing how to report these expressions lagged far behind the worldwide antiwar effort. Most notably, during the first half of February, nothing appeared in the nation's press on the plans for the international week of antiwar resistance that concluded on February 15 and 16 with millions of people around the globe demonstrating against a potential war in Iraq. Yet, the antiwar activities were just as surely scheduled as the weapons inspectors' report to the U.N. Security Council on Friday, February 14. Newspaper columns and news program minutes were filled with stories of possible implications of the upcoming inspectors' reports and, most particularly, with the U.S. governmental message that the United States would do as it deemed necessary, regardless of the inspectors or the U.N. Despite the lack of U.S. press coverage, information on the planned antiwar activities was getting out through the internet and foreign press, or millions of people around the world would not have known to gather.

Wire-service photos of that weekend's antiwar demonstrations contained, and many U.S. newspapers ran, a picture that showed two demonstrators with American flags printed on one half of their faces and death masks on the other. The implication of such photos is that these clownish extremists fairly represented the millions of protestors. Such pictures of extremists, which were also popular in illustrating antiwar protests during the first Gulf War, minimize the importance of the protest.

Journalists need to tell stories that should be of concern to citizens — such as proposed limitations on civil liberties and planned protests of U.S. policy — especially when governmental officials refuse to acknowledge the importance of the stories. This coverage would be an example of journalists looking for stories in places where officials are not pointing. The coverage needs to be respectful. What follows are some examples of journalists failing to provide balance and context in the coverage of the U.S. governmental perspective.

SELECTIVE BALANCE AND CONTEXT

"Balance" and "context" refer to the journalistic attempt to help readers and viewers create meaning. Journalists "balance" claims made by one source of information with other legitimate, but competing claims. Journalists provide "context" for a story when they let their audience know more facts than those selectively provided by a source.

For example in mid-February the National Public Radio newsmagazine, *All Things Considered*, ran a story about a group of poets from around the country who were gathering to give readings in protest against a U.S.-led war in Iraq. The story contained the voice of organizers who explained why they thought that such a public statement was important. The story also included a sound bite from a poet who called the protest "juvenile highjinks." The dissenting poet provided "balance."

Journalists need to tell stories that should be of concern to citizens — such as proposed limitations on civil liberties and planned protests of U.S. policy — especially when governmental officials refuse to acknowledge the importance of the stories. This coverage would be an example of journalists looking for stories in places where officials are not pointing.

Coverage of antiwar demonstrations in print and electronic media always include mention of counter-demonstrators, regardless of their numbers. The stories include mention of any violence or arrests. In journalistic terms, providing more than one perspective within the story gives legitimate balance.

However, reporting on recent U.S.-governmental perspectives has been decidedly without balance.

The appearances of Secretary of State Colin Powell before the U.N. Security Council, in contrast to the coverage of representatives of countries that oppose U.S. action in Iraq, provide an example.

Statements made by Powell in that setting were consistently treated by U.S. news media as facts. When journalists report what was "said," rather than what was "claimed" or "alleged," they imply the truth of the statement. "Claimed" or "alleged," in comparison, signals a need for external verification.

Nor did news organizations seize that opportunity to provide context to what Powell was saying — to show that sometimes the U.S. government had been wrong in its allegations and assertions. For example, the Associated Press concluded in an analysis in January that, "In almost two months of surprise visits across Iraq, U.N. arms monitors have inspected thirteen sites identified by U.S. and British intelligence agencies as major facilities of concern, and reported no signs of revived weapons building." Providing that information in stories in which a U.S. governmental official claims otherwise provides balance and context. Information of this nature does not have the same impact when run independent of questionable governmental claims.

Columnists and news reporters consistently offered claims that should have been used to balance governmental statements at the time that they were initially reported. For example, Robert Sheer, a regular opinion writer for the *Los Angeles Times*, dissected Powell's February 5 presentation to the U.N. Security Council later that week in this way: "The main evidence presented by the secretary of state was a satellite photo of a forlorn outpost, allegedly linked to Hussein and Al Qaede and which Powell claims is in the business of producing chemical weapons." Scheer pointed out that the camp is outside of the part of Iraq controlled by Hussein, and inside the area patrolled by U.S. and British warplanes. (This information was clearly available to reporters covering the February 5 U.N. Security Council meeting, yet was not often included in the U.S. media reports on that presentation.)

Scheer said that the Kurds who control the camp responded to Powell's allegations by inviting twenty foreign reporters to wander freely throughout the camp. According to those reporters, they found a "dilapidated collection of shacks without indoor plumbing or the electrical capacity to produce the weapons in question." While the reporters wrote, and their newspapers published, stories describing the visit to the Kurds' camp, few included the link with the Secretary of State's presentation.

American news media have consistently reported without context the U.S. administration's disregard for antiwar protests in this country and for the arguments against going to war made by other member states of the U.N. Context would include information on the role of public voice in democracy and the fact that the United States might well be in violation of the U.N. charter it helped to write if it attacks Iraq without U.N. Security Council approval. The Charter states, "The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken to maintain or restore international peace and security." While the Charter allows member nations to act independently in self-defense, that action is allowed only in cases in which an armed attack occurs. A story not yet written is why the U.N. is not likely to draft a resolution regarding the U.S. defiance of member-state agreements.

Governmental rhetoric, in the United States, as elsewhere around the world, has the primary agenda of promoting the governmental position. When news media repeat governmental rhetoric rather than reporting on it, citizens are robbed of the opportunity to think critically about what is being said.

COLLABORATIVE DECISIONS HAVE REPLACED SOVEREIGN NATION CHOICES

Governments, media, and citizens around the globe have a shared interest in creating a world that is based on something other than fear of violence. At least sixty nations and untold numbers of terrorist organizations possess or soon will possess what governments and news media now call "weapons of mass destruction." Power by threat must be replaced with a view toward mediation if we are to have any future at all.

Nations can no longer protect their citizens from alien others. Citizens have become preferred and purposeful targets in conflicts. This fact is true whether they are victims of suicide bombers acting independently of state sanction or whether they are targeted by national governments as were citizens in Germany, Poland, and in Japan in World War II. In 1900, the ratio of soldier-to-civilian casualties in armed conflict was nine to one; nine soldiers were killed for every one civilian who was killed. By the turn of the twenty-first century, the ratio had switched to one to nine, that is, one soldier killed for every nine civilians. (Stremlau, J. "People in Peril, Human Rights, Humanitarian Action, and Preventing Deadly Conflict." *A Report to the Carnegie Commission on Preventing Deadly Conflict*. New York: The Carnegie Corporation, 1998. p. 25.)

However, national governments had lost their power to protect their citizens from external aggressors and accidents long before 9/11. For decades, we have lived in a world in which political borders are increasingly meaningless in the ability of one state to affect another.

- Degradation of the water, land, and atmosphere happened without respect for national boundaries.
- A nuclear accident in one country caused death and destruction in another.
- No nation is a financial isolationist.
- Global communication no longer allows citizens to remain ignorant of the plight and strife of innocents anywhere in the world.

The idea of sovereign nations is based on the seventeenth-century social contract in which citizens give up individual power in return for being protected by the state, and nations exist in suspicion and distrust with occasional displays of their military ability to dissuade others from aggression. While national governments still play an important role in maintaining domestic peace and prosperity, foreign policy is now, necessarily, a collaborative project.

THE INADEQUACY OF GOVERNMENTAL RHETORIC

Governmental rhetoric, in the United States as elsewhere around the world, has the primary agenda of promoting the governmental position. When news media repeat governmental rhetoric rather than reporting on it, citizens are robbed of the opportunity to think critically about what is being said.

If news media had done more than simply repeat the U.S.-governmental claim that war was necessary to "disarm" Iraq, citizens might have had the opportunity to engage in a debate about whether it was appropriate or just for the U.S. military to engage in a war with the intent of forcing the leader of another nation to leave office.

"Axis of evil" is another example of news media repeating governmental rhetoric rather than reporting on it. The phrase was developed by the Bush administration soon after the September 11 terrorist attacks to provide a link between those attacks and Iraq. The speechwriter's assignment, in his words, was to further the World War II analogy already begun by the administration in describing the attacks as "another Pearl Harbor," and "to extrapolate from the Sept. 11 terrorist attacks to make a case for 'going after' Iraq."

For the State of the Union address after the attacks of 9/11, the speechwriter wrote, and Bush said, and news media repeated, that "a lesson taken from Sept. 11 was that the United States of America will not permit the world's most dangerous regimes to threaten us with the world's most destructive weapons."

But, because Germany, Japan, and Italy together formed the Axis powers in World War II, two other bad actors were needed to lump in with Iraq. Iran and North Korea fit the bill.

"Axis of evil" is no longer used by the administration because the effort since August has been to explain how Korea and Iraq are different fron each other rather than alike and how the provocative actions of the former necessitate a diplomatic response as compared with how the less provocative actions of the latter necessitate a military response. Once the administration dropped the phrase, it disappeared from the journalists' lexicon as well, with no explanation of how or why that change took place.

THE ROLE OF NEWS MEDIA

The first job for American news media is to refrain from being journalistic cheerleaders. News organizations became flag-waving, banner-rippling, nationalistic voices during the Gulf War and in the wake of 9/11. In both cases, the journalists' nationalistic rhetoric became more vehement as the public-approval rating for military intervention soared, which resulted in higher public approval both for the action and for the media. News media need to break out of the government-citizen approval spiral to provide opportunities for alternative voices, no matter how quiet or few. News media need to be safe for voices other than the U.S.-company line. That safety is hard to find, even on the opinion pages, if editors are fired for questioning the war effort, as some were during the first Gulf War.

The next, and toughest, job for American news media is to convince citizens and government that providing a public forum for discussion and alternative views is not disloyal. News organizations need to provide context for statements and stories, especially those made by our own administration. I am not advocating that journalists stop being objective, only that they start being the Fourth Estate, watchdogs on government, again.

The idea that objective reporting means that journalists simply repeat what powerful governmental officials have to say was discredited more than fifty years ago when courageous journalists stopped allowing Senator Joe McCarthy to make his vicious and unwarranted accusations.

Contextualized reporting includes letting citizens hear the voices of our government's enemies, as well as critics of governmental policy from within and from outside of the country. The purpose of providing alternatives is not to lessen the effect of governmental messages, but rather to open those messages to broad examination and understanding. Support for governmental perspective, if warranted, will be stronger when citizens can understand that view in light of opposing alternatives.

Deni Elliott is the University Professor of Ethics and Director of the Practical Ethics Center at the University of Montana. She lectures extensively and has published prolifically on topics in practical ethics. Most recent book titles include *The Ethics of Asking: Fundraising in Higher Education* (Johns Hopkins University Press); *Journalism Ethics: Contemporary Issues* (ABC-CLIO) and *Research Ethics: A Reader* (University Press of New England). Her documentaries include *A Case of Need*; *Buying Time: The Media Role in Health Care*; and *The Burden of Knowledge: Moral Dilemmas in Prenatal Testing*, all available through Fanlight Productions. Professor Elliott is a founding member of the Association for Practical and Professional Ethics and continues to serve as an elected member of the Association's executive committee.

Our Heartfelt Thanks

Many Phi Kappa Phi members have heard of James T. Barrs. Especially if you have been a long-time officer or member in what was formerly the Eastern Region of the Society, which was subsequently divided into the Northeast and Southeastern regions, you know of Dr. Barrs' tireless devotion to developing new chapters and spreading the word about Phi Kappa Phi's mission. Traveling mainly by car, Dr. Barrs spent countless hours visiting chapters and campuses in his time as a member of the Board of Directors.

We here at the *Phi Kappa Phi Forum* appreciate Dr. Barrs for a different reason. For the past 12 years, James Barrs has served as the *Forum*'s outside copy editor, bringing his fresh eyes and perspective, as well as his vast knowledge of language and rhetoric, to the articles that we print. Needless to say, our small staff (three people, only two of whom are full-time) is grateful for his untiring assistance.

And of course, it has all been voluntary. Other than reimbursement for mailing expenses, Dr. Barrs has never received a penny for his work for the *Forum*, just as he never received a penny in pay for his other work for the Society. He has epitomized the spirit of volunteerism that is so important to the success of Phi Kappa Phi. If over the years all Phi Kappa Phi members had his level of love, energy, and dedication, Phi Kappa Phi would most certainly be a household name.

This note conveys our belated yet sincere appreciation to you, Dr. Barrs. We and the Society at large thank you.

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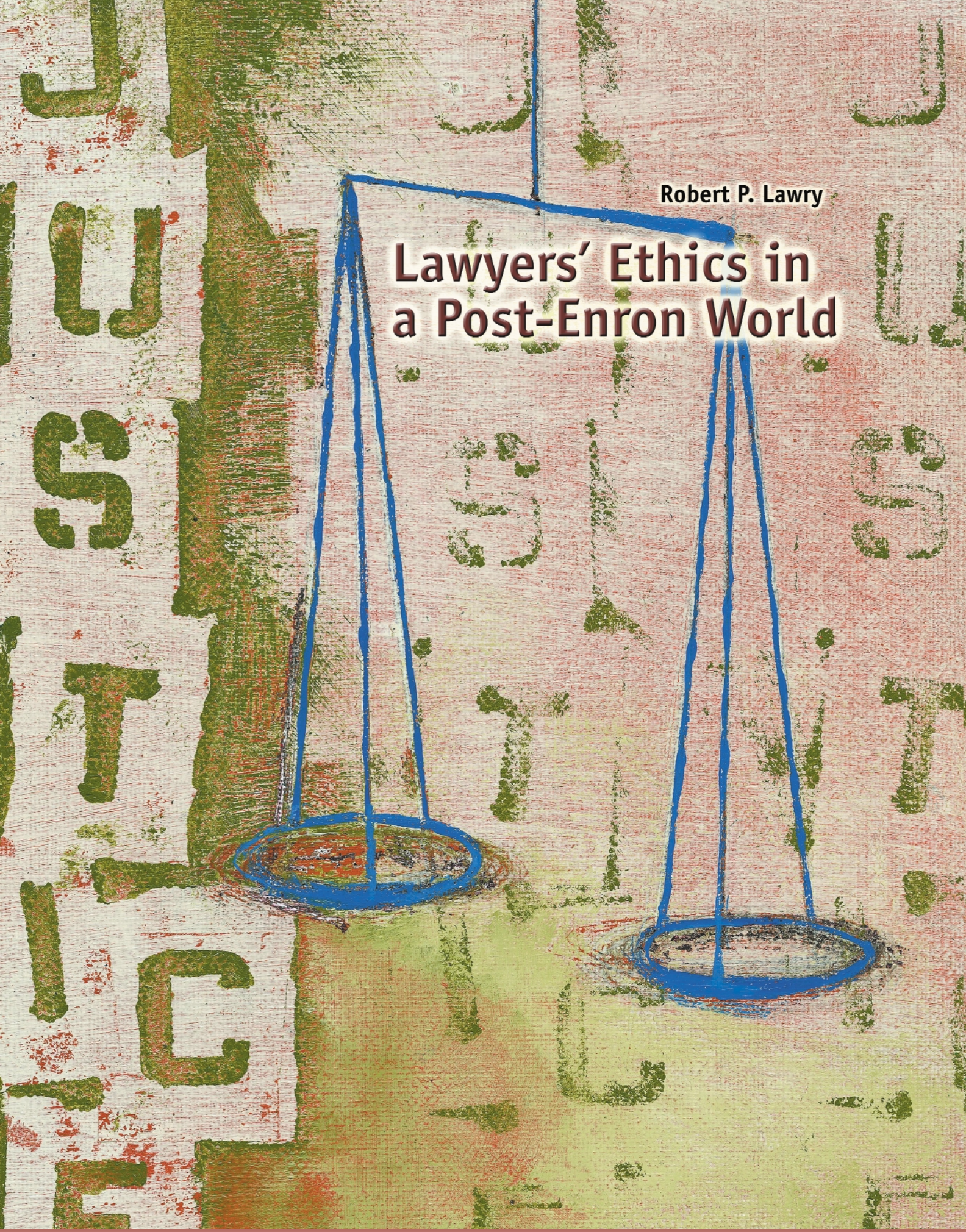
Robert P. Lawry

Lawyers' Ethics in a Post-Enron World



The ethical issues that shot their way to the forefront for lawyers in 2002 all came from the mouth of the huge corporate cannon, Enron. As the popular press denounced accountants, executives, and boards of directors, private litigators and the federal government added lawyers to the list of unsavory characters in this huge financial scandal and to those other scandals that followed in its wake. A lawsuit in Texas named Enron's outside lawyers as defendants in a case designed to recover investor losses. Meanwhile, Congress passed the Sarbanes-Oxley Act, legislation aimed partly at lawyers. Finally, as a result of Sarbanes-Oxley, the Securities and Exchange Commission (SEC) drafted new rules that are designed to hold lawyers to higher standards in protecting the public against corporate fraud.

Two sets of rules became the focus of the SEC's rulemaking. The first dealt with issues internal to the corporation. These rules are meant to require lawyers to bring concerns about fraud to the highest authorities within an organization. The second dealt with issues external to the corporation. These rules are designed to provide broader exceptions to the general requirement that lawyers keep information related to a client representation strictly confidential. Both sets of issues have been the subject of intense debate within the legal profession for decades. Historically, they rise to dominate ethics debates during and immediately after corporate-fraud scandals such as Enron. Since the 1970s, some of the most highly publicized scandals that have served as triggering mechanisms for such debates include the National Student Marketing case (securities fraud), the OPM matter (commercial fraud), the Lincoln Savings & Loan and allied savings and loans (S&L) failures of the 1980s, and the BCCI bank failure of the 1990s (fraud in financial institutions). Now there is Enron, and another huge financial fraud that has wreaked havoc on the economy and caused untold harm to many innocent people.

The questions raised after each of these debacles are the same: Are the ethical rules governing the behavior of lawyers a contributing factor to these frauds? If so, should those rules be changed? We are not talking here about lawyers who are deliberately and actively involved in illegal and corrupt practices. We are talking about lawyers who are trying to do good professional jobs, even as their clients do wrong. The very idea of what it means to do a good, professional job is at the heart of the matter. Therefore, embedded within the debates about changes in rules is a profound difference in the concept of what it means to be a lawyer. Before identifying that difference, it is necessary to understand some of the history of the debates about specific rules. I will examine the internal corporate issue first; then, I will take up the more important external question of confidentiality; finally, I will conclude with a brief analysis of the underlying conceptual difference that accounts for the recurring debates on these issues.

UP THE CORPORATE LADDER

Although the American Bar Association (ABA) passed its first code of ethics in 1908 (*Canons*), and completely overhauled and changed the format in 1969 (*Model Code*), it was not until the third substantial revision in 1983 (*Model Rules*) that drafters paid more than superficial attention to the special problems that lawyers face in representing an organization rather than an individual person. Rule 1.13 of the *Rules* provides a variety of options for lawyers who know that a person internal to the corporation "is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization." One of the options provided was to take the information to a "higher authority" in the organization, even to the "highest authority that can act on behalf of the organization." If that "highest authority" (presumably the Board of Directors) acts illegally or refuses to act, thus causing "substantial injury to the organization," the lawyer "may resign."

A lot is packed into this rule. Because lawyers often deal most directly with middle management or members of the in-house counsel staff, it was something of a jolt to be told that they might seek to push beyond the level of reporting to which they were accustomed, even to the CEO or the Board itself. Yes, they were at least technically aware that their client was the organization, not any individual officer or other employee; however, they were often hired (or fired) by mid-level employees, and they felt uncomfortable in going beyond the authority of those with whom they worked most directly. Nevertheless, it made sense to remind lawyers in no uncertain terms that going to the "highest authority" was an option, at least before resigning, when there were some uncontrolled or uncontrollable illegalities going on "below." Although not required by the ethics rules to go up the ladder in any specific situation, lawyers were still criticized by judges in the S&L cases of the 1980s for not moving beyond sometimes powerful CEOs to Boards of Directors in the face of suspected problems of fraud or mismanagement.

The new SEC rules have changed this state of affairs for lawyers "appearing and practicing" before

the SEC. When any such lawyer becomes "aware of evidence of a material violation" of the securities laws, that lawyer is required to report such information to the chief legal officer of the organization or to the CEO, or to both. If an appropriate response to the problem is not made, the lawyer is mandated to then report the matter to the audit committee or other independent committee of the Board, or to the full Board itself. Alternatively, if the organization has set up a special "qualified legal compliance committee" under SEC rules, the lawyer has fully complied with his or her reporting mandate by reporting to that committee. These SEC rules will now force lawyers doing securities work to go up the ladder in a way not seen before. Whether this will change the culture of lawyering more generally remains to be seen. It is likely to do so. Lawyers are generally now much more aware that serving the client in an organizational setting may mean pushing beyond mid-level management when they see evidence of serious misconduct. With the SEC forcing the issue, lawyers and officers and directors of corporations may see that this kind of gatekeeping by lawyers internal to the corporation is a good thing. Public demand for more accountability on the part of all the groups implicated in the recent financial scandals may add weight to the effort to make this particular behavior change for lawyers.

CONFIDENTIALITY

Confidentiality is one of the core values for lawyers. Many believe it to be the most important value of all. Generally speaking, unless there is an explicit exception, a lawyer is required to keep in confidence all information obtained in representing a client. Justification for a strong rule in favor of confidentiality stems from the belief that clients will not be forthcoming about sometimes delicate personal or important matters unless they are assured that the lawyer will keep such information confidential. And unless they are forthcoming, clients cannot be helped. Law is an important public good, and access to law comes through lawyers. Therefore, a strong rule ensuring clients of confidentiality is necessary. All the helping professions espouse a similar justification for their confidentiality rules, based on the same need to help and client unwillingness to disclose necessary information without the promise of confidentiality. Despite this need for "professional secrets," there are standard exceptions to the rule of confidentiality, which apply generally across professions. Philosopher Sissela Bok lists three:

(1) when the client is incompetent, for example, when the client is a child or someone mentally ill;

(2) when the client's actions may be injurious to the client, for example, when the client wants to commit suicide;

(3) or when the client's actions may be injurious to others, for example, when the client wants to physically assault someone.

The third general exception plagues the client-fraud cases. More on that later. First, it is useful to point out that unique exceptions may also apply to client confidences because of the nature of the profession itself. For example, since the early days of the common law in England, an exception has always existed for the lawyer to disclose confidences to rectify the effects of perjury in a trial. This exception existed because of the centrality of lawyers in preparing witnesses to testify, and because of the importance of the trial process itself in maintaining the integrity of the legal system. The idea that a lawyer may not remain silent when he or she knows that perjury has occurred is thus a longstanding ethical norm for lawyers — even if maintaining the norm requires a breach of confidence. This particular norm was challenged in the late 1960s by a brash young criminal-defense lawyer and law professor, Monroe Freedman.

Freedman raised the hackles of traditional lawyers by proclaiming that the lawyer's obligation of confidentiality took precedence over any obligation the lawyer had to any court to expose or to rectify client perjury. Then Circuit Court Judge, later Supreme Court Chief Justice, Warren Burger wanted Freedman disbarred for espousing this position. There had been a long, consistent ethical tradition that forbade lawyers from allowing perjury to remain as a pollutant in any trial. Now Freedman said that the tradition was wrong and that most lawyers ignored it anyway, silently allowing perjured testimony to stand. As the dust of the debate settled over the draft of the 1969 *Model Code*, the traditionalists seemed to have won. The *Code* provided four discretionary exceptions to the normal obligation of the lawyer to maintain the confidences of his client "inviolate." These exceptions were also traditional:

(1) If the client consents.

(2) If a law or court order requires disclosure.

(3) If the client intends to commit a crime.

(4) To allow the lawyer to defend against allegations of ethical or legal impropriety.

All of these exceptions were permitted, not mandated, by the *Code*. In other words, the lawyer was not bound by confidentiality in any of the situations described, but could exercise his or her unfettered

discretion to disclose or not to disclose, as a matter of personal ethical judgment. It was assumed that most lawyers would disclose only in the most egregious cases, for example, a felony involving serious bodily injury or substantial financial harm. However, the *Code* gave the lawyer complete discretion within the broad categories enumerated.

There was one more exception, and this one was mandated. I reproduce it as it was set forth in the *Model Code*:

> DR7-102. REPRESENTING A CLIENT WITHIN THE BOUNDS OF THE LAW
>
> (B) A lawyer who receives information clearly establishing that:
>
> (1 His client has, in the course of the representation, perpetrated a fraud upon a person or tribunal, shall promptly call upon his client to rectify the same, and if his client refuses or is unable to do so, he shall reveal the fraud to the affected person or tribunal.
>
> (2) A person other than his client has perpetrated a fraud upon a tribunal shall promptly reveal the fraud to the tribunal.

As widely understood, these provisions captured both frauds before a tribunal (perjury) and any other fraud in matters wherein a lawyer's professional services were used. The policy reasons for such a rule were clear:

(1) Lawyers may not assist their clients in fraudulent activities;

(2) If the client tries to engage in fraud, the lawyer must refuse to help, either by remonstrating with the client, or, failing a change of heart by the client, by resigning from the representation; and

(3) If the lawyer himself or herself was duped by the client too, or used by the client to dupe another, the lawyer, as a special officer of the law, had a mandatory duty to disclose the fraud to appropriate people in order to rectify the abuse of the legal system itself by the abuse of the lawyer's professional services.

Soon after the *Code* was passed, it was amended in a confusing way. The following language was added to the end of the previously quoted DR7-102(B)(1):

> ". . . except when the information is protected as a privileged communication."

Despite awkward drafting and word choice, the ABA interpreted this "except clause" not only to negate the duty to disclose client fraud, but also to prohibit the lawyer in most cases from disclosing client fraud, period. Because the original rule was written in the past tense, the idea is that the misuse of the lawyer's service by the client was an insufficient reason to breach the confidences of that client. Of course, if the fraud was criminal and was to occur in the future, the lawyer still had the discretion to disclose. The distinction between past and future criminal acts has deep roots in professional tradition. Moreover, the idea that perjury before a tribunal must not be allowed to stand also had deep roots. What was new and troubling to the bar was the idea explicitly introduced in the *Code* that any fraud, accomplished through the use or misuse of the lawyer by a client, must be reported, even "past" frauds. Lawyers' services were equated with the trial process as fundamental to the effective working of the system of justice. It was argued that those services as well as that process should not be allowed to be corrupted. Rectification of the effects of the fraud on the court or on the persons affected must be made to ensure the continued integrity of the system. Against this argument was a deeply held belief that confidentiality is so central to the lawyer-client relationship that even "lawyer abuse" could not support any additional exception to the confidentiality rules.

Thus, the issue was joined. Securities lawyers had been at the forefront of pushing for the 1974 amendment to DR7-102(B)(1). Fraud is a major concern in the securities industry, and throughout the 1970s the battle raged. In the National Student Marketing case (1978), a federal court upheld the SEC's claim that lawyers had violated the law in allowing a merger to be consummated when the lawyers knew that financial disclosures previously made and relied upon were inaccurate. The lawyers claimed that it was the client's decision whether or not to complete the merger under those circumstances, and the lawyer's ethical obligation was to respect client-confidential information and permit the now-fraudulent transaction to go forward. It was Monroe Freedman's position on perjury transferred to the world of transactions: even if fraud is discovered before the transaction is completed, client confidentiality trumps disclosure, despite the fact that silence allows substantial financial harm to occur. As with Freedman's argument in the context of client perjury, however, the effort to privilege lawyer-client confidentiality over financial harm to third parties largely failed. This failure was not just because of cases such as Student Marketing. The 1974 "except clause" was not accepted by most states. Thus, lawyers in most states were still mandated under the original version of DR7-102(B)(1) to disclose client fraud even after the fact. Nevertheless, there was fallout because of the debate and

the passage by the ABA and a few states of the 1974 "except clause"; that fallout was incipient confusion. Suddenly, even the original version of DR7-102(B)(1) was reinterpreted, casting doubt on the obligation of lawyers to disclose in a variety of contexts. A need for clarification was widely felt.

That clarification came after the debate intensified during the ABA's efforts to change its code of ethics once again. After acrimonious debate on many issues, the ABA passed its *Model Rules* in 1983, establishing very narrow exceptions to Rule 1.6, which, like its predecessor in the *Model Code*, generally required confidentiality of all information relating to the representation of a client. Under Rule 1.6, the lawyer was permitted to reveal confidences:

(1) to prevent the client from committing a criminal act reasonably likely to result in imminent death or substantial bodily harm; or

(2) to establish a claim or defense on behalf of a lawyer in a controversy with the client or in any proceeding where the lawyer's conduct is an issue.

Under Rule 3.3, perjury was singled out as needing special treatment. The rule requires the lawyer to disclose perjury when necessary to prevent a fraud on the tribunal even if it means a breach of confidentiality. The duty lasts until "the conclusion of the proceeding." The narrowing of the number and the scope of the exceptions to confidentiality from *Code* to *Rules* is stunning. Even future crimes of the client — a traditional exception — were not permitted to be disclosed, unless the crime involved "death or substantial bodily harm." Future crimes involving financial harm or fraud of any kind, other than perjury, were not permitted to be disclosed at all. A bone of an odd sort was thrown to defeated traditionalists by a comment to Rule 1.6, which allowed a lawyer who withdrew from a representation to disclose "the fact of withdrawal" and to "withdraw or disaffirm any opinion, document, affirmation, or the like." This so-called "noisy withdrawal" provision allows a lawyer to distance himself or herself from any work done for a client that might be tainted by client fraud. It does not require disclosure as the original DR7-102(B)(1) did. In fact, it does not allow actual disclosure at all. It merely allows the lawyer to refuse to be used by a client in defrauding third parties. Of course, in one sense, the lawyer has already been misused by the client but, at least, the lawyer can reclaim some lost integrity by distancing his or her work product (and services rendered) from the client's fraudulent scheme. This approach walks a fine line. It does not permit actual disclosure. It just refuses to force the lawyer to stand by and be misused for the client's illegal purposes.

What happened after the 1983 *Model Rules* were passed was very different from what had happened after the passage of the 1908 *Canons* and the 1969 *Code*. Previously, the states had acted quickly to adopt the document, and to adopt it nearly always as passed by the ABA. The road to the adoption of the *Model Rules* was longer and considerably rockier. First of all, state-by-state acceptance of the *Rules* went slowly. Even now, twenty years later, a few states still have not adopted the *Rules*. Most importantly, the confidentiality provisions were attacked and seriously modified in most states from the beginning of the adoption process. Very few kept the narrow exceptions to confidentiality provided by Rule 1.6. Most allowed for a more traditional "future crimes" exceptions. Many, too, permitted or required disclosure when the lawyer's professional services were misused. The result of this process is the astonishing fact that there is more diversity in the rules governing exceptions to confidentiality state-by-state than has ever been the case before. The situation is a disaster for lawyers who are licensed to practice in different states when they try to work together. It has undermined the idea of a unified profession, maybe even undermined the idea of law as a profession altogether.

Fast forward to the aftermath of the Enron scandal. With respect to exceptions to confidentiality generally, the SEC has adopted a rule that will permit (but not require) a lawyer to reveal information to the SEC itself to prevent fraud or perjury or to rectify the consequences of a material violation of securities laws in which the lawyer's services had been used. This rule comports with the ethics rules in many states after they rejected the narrowing of exceptions in the *Rules*. The SEC is still debating whether or not to require outside lawyers to resign and issue a "noisy withdrawal" if they reasonably believe fraud is ongoing or will occur, or to have discretion to resign and issue a "noisy withdrawal" for past occurrences.

CONCLUSION

The debate within the securities community continues and is the same debate that is current in the larger community of lawyers. A serious public policy issue exists about how the role of gatekeeper is to be regarded by lawyers and how seriously lawyers are to understand their role as officers of the law. Shall lawyers be required or permitted to disclose ongoing or future fraud? Should it depend upon whether or not the fraud is criminal? Shall lawyers be required or permitted to disavow work they have done in assisting clients in perpetuating fraud on third parties?

Over the past several years a special ABA Ethics Commission 2000 has been working to revise the *Model Rules*. On the subject of confidentiality, the commission has recommended a set of exceptions that captures the spirit and letter of ethics rules as adopted in many states. Leaving the mandatory disclosure of perjury under Rule 3.3 more or less in place, the commission has recommended the following discretionary exceptions to confidentiality:

(1) to prevent death or substantial bodily harm.

(2) to prevent a crime or fraud resulting in substantial financial injury where the lawyer's services had been and were being used.

(3) to prevent, mitigate or rectify substantial financial injury from a client's commission of a crime or fraud where the lawyer's services were used.

(4) to obtain legal advice about compliance with the *Rules*.

(5) to establish a claim or defense on behalf of the lawyer in any controversy with the client or in any proceeding.

The ABA itself rejected numbers (2) and (3) above, but accepted the rest in a pre-Enron vote. After Enron, an ABA Task Force on Corporate Responsibility recommended not only that (2) and (3) be added as exceptions to the *Rules*, but that they be made mandatory rather than discretionary. The debate continues.

As is evident from the work of the commission, the rejection by the ABA, and the recommendation by the task force, these issues are deeply dividing the organized bar. Those who demand exceptions to confidentiality that are based on the misuse of the lawyer's services believe that the lawyer's primary obligation is to the processes, procedures, and institutions of the law. Those who have voted to exalt confidentiality over disclosure in these cases believe that the lawyer's primary obligation is to his client, even in matters of great public harm. In the wake of Enron, is that narrow position any longer tenable?

Robert P. Lawry is a professor of law and director of the Center for Professional Ethics at Case Western Reserve University in Cleveland, Ohio. The author of a number of books and articles in Professional Ethics and Jurisprudence, Professor Lawry is currently working on a book-length manuscript tentatively entitled *Ethics in the Shadow of the Law*. He is a member of the Executive Committee of the Association for Practical and Professional Ethics, and is a frequent lecturer and media commentator on various issues in personal and professional ethics.

FIDELITY

Your fried heart is on the plate
your husband sets in front of you

he toasts himself, success, and you,
the mirror of his life

you lift your glass of wine and smile
like a wife smiling like a wife

you want to eat but the fork has leaped
beneath the gaily patterned tablecloth

your heart cools in a pool of grease
and your hands in your lap go tingly and numb

you lost your voice when you cooked your truth
and now you are dumb

DANIEL JOHN

Daniel John, from Saskatchewan, Canada, is a movement and massage therapist, playwright, and landscape designer. He teaches "Intuitive Gardening" for Brookline Adult Education. His essays and poems have been published in numerous literary magazines, including *Thin Air*, *The Owen Wister Review*, *The Comstock Review*, *Phantasmagoria*, and the *English Journal*.

Stuart C. Gilman

Government Ethics: If Only Angels Were to Govern!

If angels were to govern men, neither external nor internal controls on Government would be necessary. In framing a Government which is to be administered by men over men, the great difficulty lies in this: you must first enable the Government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the Government; but experience has taught mankind the necessity of auxiliary precautions.

– James Madison,
Federalist Papers #51 (1787)

Democratic government is always fragile. Yet democratic government is something most Americans take for granted. Through skill, luck, insight, tinkering, and persistence, the United States has become one of the strongest models for democracy in the world. Certainly, geography, natural resources, and the diversity of its people have contributed to this success. However, we often ignore the institutional fabric and the ethical values and structures that undergird the great American democratic experiment.

For the average citizen, the term "ethics," including government ethics, seems abstract. Punsters even suggest that it is an oxymoron. The reality is quite different. Since the 1970s, ethics systems have become dominant at both federal and state levels in the United States and to some degree have become models for the rest of the world. However, by and large the systems have little to do with imparting values and fundamental ethical principles. Instead, government ethics systems emphasize compliance with laws and regulations. And, the vast majority of these laws and regulations focuses on conflicts of interest.

These legal structures are often based on fundamental principles, codes of ethics, and codes of conduct. However, often little ties the aspirational values in these codes or principles to what is often overly complex legal guidance. For the most part, government ethics is currently a list of "don'ts" with very little explanation as to why government officials should do the right thing. Often, the most complex of legal discussions obscures even the "don'ts." This having been said, our surveying this landscape of government ethics to understand both its potential for guiding ethical conduct and the lurking ethical problems that still confront us as a democratic society is a worthwhile endeavor. The point of all ethics systems is to reinforce the public's confidence in the institutions of government. If such systems fail at this purpose, they are paper structures that can actually increase the public's cynicism.

GOVERNMENT ETHICS

Until the Watergate scandal, government ethics was a hodgepodge of rules and regulations that forbade certain forms of conduct without a reasonable framework or institutions to provide advice or enforcement. However, Watergate was the turning point for ethics in the United States. In 1978, the government sought to implement a compliance-based approach to ethics to prevent the gross misconduct that had occurred during Watergate — when government ethics had not yet been defined — by passing new legislation (such as postemployment restrictions) and creating several new institutions. Within months of each other, the federal government created the first six inspectors general (there are now more than sixty), the provision for appointing Independent Counsels (made famous by Ken Starr), the Office of Special Counsel (to protect whistleblowers), the Federal Election Commission, and finally the Office of Government Ethics to provide interpretation, guidance, financial disclosure, and education on the ethical obligations of all employees.

The U.S. government's own reforms of government ethics implemented in 1978 were designed to be both carrot and stick: some institutions were created to provide guidance and protection for those who did the right thing, and other institutions were created to ensure effective punishment if laws or rules were violated. The success of these institutions can be debated; however, it would be a mistake to believe that a heavily compliance-based system is the only way to have government ethics — because, as complex as the U.S. system is, it has not had the success of countries such as Australia, Canada, and New Zealand, where codes of ethics are based on clear and simple positive attributes. In these countries, regulations are minimal and encourage values-based behavior rather than simply compliance with rules. Enforcement, especially for administrative infractions, can be broadly based (for example, for an action that has undermined the integrity of the public service).

THE FEDERAL GOVERNMENT

Our federal government has implemented ethics in several layers, as noted above. Congress established the U.S. Office of Government Ethics (OGE) as a decentralized system. More than one hundred designated Directors of Agency Ethics Offices (DAEOs), who head ethics offices in every government agency, now exist. DAEOs serve several functions: to provide counseling, advice, and training, and to administer a financial-disclosure system. (A single code of conduct as well as massive training on ethics was implemented by the Office of Government Ethics pursuant to Executive Order 12674 by President George H. W. Bush in 1989.) Under this executive order, a single, comprehensive Code of Conduct was created for the executive branch, as well as education requirements, including annual training for the most senior executive-branch employees.

Perhaps the most controversial program overseen by the OGE is collecting, evaluating, and releasing financial-disclosure forms for 20,000 of the most senior government officials. These individuals are required to list the assets, liabilities, agreements, boards, and commitments *for themselves*, *their spouses*, *and their minor children*. If the individual is a political appointee, the public financial disclosure must be submitted to OGE before the appointee's Senate confirmation hearing. The disclosure is "scrubbed" by agency officials and OGE to remove any real or potential ethical problems. According to OGE unofficial estimates, nearly one-third of all political appointees are required to make some changes before their hearing, indicating that without some government oversight there would be many unrecognized or unknown conflicts of interest.

Senior civil servants and ambassadors, as well as generals and admirals, must file the same form when they assume their posts. The OGE and/or the agency's ethics official reviews all forms and advises candidates on how to divest certain assets to avoid potential conflicts of interest, either through the sale of some assets, not participating in certain activities, or putting assets into a blind trust. All of the twenty-some-thousand government employees must file a disclosure when they enter office, annually while in office, and when they leave office. In addition, more than 200,000 confidential-disclosure filers must file similar forms that are not available to the public.

Because most state legislators are only part-time, they are confronted with a host of conflicts of interest. Yet, there is little ethics oversight of state legislators' activities and almost no training or education to sensitize them to the ethical issues that they confront. If we are to have "citizen-legislators" we owe them the protections afforded through clear guidance and serious ethical education.

This system has many drawbacks. It is burdensome. The large number of individuals required to file is out of proportion to the actual number of people in which the public and the press are really interested. It duplicates, for many political appointees, similar forms required by individual Senate committees responsible for confirmation. For that reason, it is considered one more impediment to public service for those who want to serve. The system is far from perfect, but it does identify problems, focus public servants on their ethical responsibilities, and discourage those who would try to abuse public office from filling government positions.

Ultimately, the question is one of balance. It is a continuing question that we will wrestle with in public-policy circles for the foreseeable future.

THE STATES

The individual states have vastly different systems of government ethics. Some states require only financial disclosure by personnel; others involve themselves only in the election process; some oversee multiple county commissions; others have implemented codes of conduct; and some directly intervene during cases of prosecution. States truly are the laboratories of democracy when it comes to ethics. In all, there are some forty state ethics commissions and more than a dozen ethics offices in metropolitan areas, plus perhaps hundreds of local and county ethics offices. State ethics commissions vary widely in their political strength: in New Jersey, the legislature designed the ethics office to be weak; in Missouri and Virginia, despite legislative mandates, the ethics offices have proven ineffective and have actually "disappeared" from time to time; in Wisconsin, the Ethics Board has played a strong role in enforcing its code of conduct and in anticipating possible ethical dilemmas; in Alabama, a strong ethics commission has not been afraid to take on the governor if necessary.

AREAS OF VULNERABILITY

Congress

Although both houses of Congress have ethics committees with sophisticated staff members, they are significantly limited because of the perceived politics of ethics accusations. In the late 1970s the original design of the congressional ethics system required the Government Accounting Office (GAO) to do oversight. The GAO was far too intrusive for many members of Congress, which has led to the current system. The dilemma is that the ethical expectations for representatives and senators are constantly changing, leading to what one scholar has called "mediated political corruption." Fair or not, it is the reality that representatives and senators face. Ironically, many in Congress seem to feel license in the area of ethics and to be insensitive to the concerns of the public. One can make a reasonable claim that the Founders in writing the Constitution saw the Congress as an inherent bundle of conflicts of interest. Apparently, few in Congress today feel the tension caused by these conflicts.

Just this year the House of Representatives liberalized rules on accepting meals and gifts for themselves and their staffs. This area has always been troublesome, and many in Congress seem willing to increase the vulnerability of the institution for the price of a meal. The House of Representatives is especially vulnerable to these kinds of ethics failings.

For the past five years, the House has been operating under an ethics truce. Recently, when Ethics committee Democrats suggested that Representative Martin Oxley be investigated, the Republicans threatened that they would then demand an investigation of Democratic Representative Nancy Pelosi. This bizarre stalemate appears to set the stage for an unprecedented scandal in the future. It is too strong to suggest that this system is bankrupt, but it is far too limited to prevent abuse.

State Legislatures

At the state level, legislators face additional ethical vulnerabilities. Because most state legislators are only part-time, they are confronted with a host of conflicts of interest. Yet, there is little ethics oversight of state legislators' activities and almost no training or education to sensitize them to the ethical issues that they confront. If we are to have "citizen-legislators," then we owe them the protections afforded through clear guidance and serious ethical education. It is both naïve and dangerous to assume that everyone knows "ethics" or that elections make legislators wise in this area. For that reason, state legislators and local council members are some of the most ethically vulnerable people in government.

The Judiciary

Equally as worrisome is the ethical situation of the judiciary in the United States. At the federal level, justices are protected from some types of conflicts of interest through their lifetime appointments. Yet this same protection makes them insensitive to at least the appearance of conflicts of interest. It is common for federal judges to accept free trips for "seminars" to exotic places from a variety of sources, including plaintiffs who have appeared (or will appear) before them.

Many Americans do not realize that most state judges are elected. A recent study by the Committee for Economic Development noted that almost 27,000 of the 30,000 non-federal judges are elected in the United States. In thirty-nine of the fifty states, some or all of the judges are elected. In the past, this method has not been a problem. However, recently trial lawyers and corporations have competed to seat judges favorable to their points of view, from trial judges all the way to state supreme courts. The cost of these elections has gone up dramatically, so that the rather bizarre specter of trial judges raising campaign contributions in their courtroom has become a reality. (See *Justice for Sale*, Washington, D.C.: Committee for Economic Development, 2002). The only possible results from these mammoth infusions of money in judicial elections are either actual corruption of judges or a perception that justice can be bought. Arguably, the latter, absent any real conflicts, could do the most damage to our civil- and criminal-justice systems. This is a scandal waiting to be born.

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The Executive

The executive branch, with all its sophisticated ethics apparati, still has a significant number of vulnerabilities. Governments at all levels are geometrically increasing the amount of privatization and "contracting out." The reality is that many agencies are left with skeleton management teams who have little competence to oversee the contracts for which they are responsible. Even worse, many functions that were formerly considered inherently governmental have been contracted out. One can argue that several elements of U.S. foreign and domestic policy-making have actually been "contracted." Finally, political appointees are paid relatively little compared with their private sector counterparts, leaving room for temptation, perceived conflicts of interest, and out-and-out corruption. Although pressure has been brought to bear from all areas of the government to reduce the complexity of ethics oversight, it would be naïve to suggest that there are no continuing vulnerabilities in the executive branches of government, both political and civil service, from the council chamber to the presidency.

CONCLUSION

Because the United States has shied away from a values system for ethical behavior in the government, employees often find very fine distinctions between good conduct and misconduct. The tendency for many public servants is to ask whether an action violates the law, rather than if it is the behavior that the American people expect from their public servants. Even though the United States has one of the most sophisticated systems of government ethics, it is also one of the most complex and

dynamic. Because many systems are rule-bound, it has actually become more difficult to determine when someone has violated them. The research of the Ethics Resource Center, as well as international models provided by Canada, Australia, New Zealand, and England, suggests that the American public would be better served by a value-based system for public servants. Such a program would emphasize the positive values of public service and provide a clear vision of the obligations that Americans expect from those who work for them.

More than a thousand years ago a great Chinese sage is credited with the following aphorism that captures the essence of my argument:

> Tzu Kung asked for a definition of good government. The Master replied: It consists in providing enough food to eat, in keeping enough soldiers to guard the State, and in winning the confidence of the people. — And if one of these three things had to be sacrificed, which should go first? — The Master replied: Sacrifice the soldiers. — And if of the two remaining things one had to be sacrificed, which should it be? — The Master replied: let it be the food. From the beginning men have always had to die. But without the confidence of the people no government can stand at all.

Stuart C. Gilman, PhD, is president of the Ethics Resource Center in Washington, D.C. The Ethics Resource Center is a non-profit, non-partisan ethics center that has provided leadership in ethics since 1922. The activities of the Center include development and assessment of ethics in government, corporations, non-profits, schools, and multinational organizations. For further information, visit www.ethics.org.

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UNSEEN SHORE

1.
The next thing you did was the first
in a series of one more last things.
The salt tide inched up
to your ribs; sand waves
continued in the absence of warmth.
Webs of the beach
umbrella trembled and pumped
like a noiseless lung.

2.
Before, in this beginning to find
a sigh, you were the way
you moved like the ripple
of a large cat flanking the back-
drop, sun-stunned all the dumb-
struck afternoon

STEPHEN MASSIMILLA

Stephen Massimilla is from Sea Cliff, New York. His book *Forty Floors From Yesterday* received the 2001 Bordighera Poetry Prize from the Sonia Raiziss-Giop Foundation and is forthcoming from Bordighera Press. His sonnet sequence *Under High Seas* received the Grolier Poetry Prize from the Ellen La Forge Memorial Foundation.

Joseph R. Herkert

Back to the Future: Engineering, Computing, and Ethics

A few years ago, Bill Joy, a cofounder of Sun Microsystems and coauthor of the Java software specification, published a controversial article in *Wired* magazine in which he suggested that certain paths of scientific and technological research — genetic engineering, robotics, and nanotechnology — posed such great dangers to the future of the human beings that we ought to think twice before proceeding down those paths. Joy believes that what distinguishes these technologies from earlier ones is their potential for self-replication, thus raising the specter of a "future [that] doesn't need us." However, not all technologists share Joy's concern. For example, in a panel discussion of "humanoid robotics" that appeared in *Discover*, Marvin Minsky, one of the founders of the field of artificial intelligence, commented, "I don't see anything wrong with human life being devalued if we have something better."

Others, while not necessarily agreeing with Minsky's optimistic outlook for robots, have dismissed Joy's article as a naïve statement of technological determinism. For example, in a recent review of Michael Crichton's nanorobot thriller *Prey*, Freeman Dyson argues that "Joy ignores the long history of effective action by the international biological community to regulate and prohibit dangerous technologies." Nonetheless, I find Joy's article worthy of notice for a number of reasons. First, a leader in the technical community speaking out on ethical issues, though not unheard of, is certainly rare. Second, Joy's focus on "macroethical" issues reflects a growing trend in engineering ethics. And third, the three problem areas cited by Joy — robotics, nanotechnology, and genetic engineering — indicate the growing need for greater collaboration among engineering ethicists and computer ethicists.

I started work as a consultant in the electric utility industry in the mid-1970s a few years after earning my bachelor's degree in electrical engineering (and after a brief interlude studying creative writing). Though the first oil shock had just taken place, the utility industry was still barreling toward the future with plans to double generating capacity every ten years. In retrospect, I can identify many ethical issues that went unnoticed at the time. Conflicts of interest, such as in underestimation of costs in planning studies to perpetuate the need for consulting services, though not everyday occurrences, were clearly present. Construction flaws and survey errors were overlooked to maintain good relations with contractors and to avoid embarrassing other engineers. Public concerns about nuclear power were belittled. And while these events sometimes tugged at my conscience, engineering ethics was a subject that was never broached in my education or work experience. Hand calculators had replaced slide rules, but computer simulations were still uncommon. I recall being criticized by a supervisor for writing in a business-development prospectus that we would attack a particular problem using a digital computer. Computers, he scolded, are merely tools — it was our engineering expertise that made us attractive to clients.

By the time I returned to my graduate studies in the early 1980s, engineering ethics was emerging as a full-fledged branch of applied ethics. Federally funded collaborations among engineers and philosophers led to significant developments in research and teaching. While moral theories, grounded in philosophy, and engineering codes of ethics, grounded in part in engineering's desire to earn respect as a "profession," competed for the attention of scholars and

teachers, the case study emerged as a principal mode of pedagogy. Issues covered ranged from conflict-of-interest cases and industrial secrets to protecting public health, safety, and welfare, which all contemporary codes of engineering ethics now list as of "paramount" importance. For the most part, the behavior of individual engineers and the internal workings of the engineering profession (or what now might be called "microethics") received the most attention. The 1990s saw not only an explosion of textbooks and other print and online educational resources, but also recognition by the Accreditation Board for Engineering and Technology (ABET) that "professional and ethical responsibility" is one of eleven knowledge areas critical to a general engineering education.

One case study that has been a particular focal point for engineering ethics (and business ethics as well) has been the space shuttle *Challenger* explosion. Perhaps more has been written on this case than any other (and much more is certain to come, given the parallels to the recent space shuttle *Columbia* disaster).* Many classic engineering-ethics cases deal with disasters such as these, and like the *Challenger* case often focus on whistleblowing and its usually negative consequences for the whistle-blower. Recently, however, more emphasis has been placed on cases with happier endings. The best known of such "good works" cases is the story of William LeMessurier, the chief structural designer of New York's Citicorp building who, upon discovering flaws in the building's construction, essentially blew the whistle on himself.

MACROETHICS AND MICROETHICS

Despite an occasional call for more concern among engineering ethicists for macroethical issues — that is, the social responsibility of the engineering profession and public policy concerning technology — engineering ethics until recently remained focused primarily on microethical issues. But this focus has begun to change. Political scientists Langdon Winner and Ned Woodhouse, for example, have called attention to pressing societal needs, such as over-consumption, that deserve more attention from engineering. And William Lynch and Ronald Kline have suggested that sociology and history should play a more prominent role in engineering-ethics education. In my own work, I have focused on the relationship of engineering ethics and public policy in such areas as risk assessment, sustainable development, and product liability.

Macroethics in engineering has also drawn some attention outside of academia. Many engineering organizations and engineering leaders have promoted the concept of sustainable development and the role of engineering in making it a reality, as highlighted in a document prepared by several U.S.-based engineering societies for the Johannesburg Earth Summit 2002:

> Creating a sustainable world that provides a safe, secure, healthy life for all peoples is a priority for the U.S. engineering community. It is evident that U.S. engineering must increase its focus on sharing and disseminating information, knowledge and technology that provide access to minerals, materials, energy, water, food, and public health while addressing basic human needs. Engineers must deliver solutions that are technically viable, commercially feasible, and environmentally and socially sustainable.

Bill Wulf, President of the National Academy of Engineering (NAE) who, like Joy, is a well-respected leader in the engineering community, has also championed the cause of macroethics, with his concerns also focusing on nanotechnology, biotechnology, and information technology. Wulf is attempting to establish a Center for Engineering, Ethics, and Society at NAE with a primary focus on macroethical issues and social responsibilities of the engineering profession.

* See for example Thomas G. White, Jr., "The Establishment of Blame in the Aftermath of a Technological Disaster: An Examination of the Apollo I and *Challenger* Disasters," (*National Forum*, 81.1: 24–29) — Editor.

ENGINEERING AND COMPUTING — CONNECTIONS AND DIVERGENCE

Many, if not most, of the emerging macroethical issues in engineering intersect with the growing dependence of engineering on computing, and on information and communication technology (ICT) in general. With my colleague, Brian O'Connell, I have lately been working on comparing and contrasting the fields of engineering ethics and computing ethics. We began with the observation that computer ethics is much more relevant to engineering ethics than engineering-ethics texts would have one think. While most such texts recognize the importance of knowledge of environmental ethics to engineers of all disciplines, few give special treatment to computer ethics, which for the most part is taught only to computer scientists and computer engineers. When computing topics are covered in engineering-ethics texts, it is usually piecemeal, with no special significance placed on the revolutionary nature of computing and information technology. This lack is curious, given that computing is no longer merely a tool, as my engineering supervisor once chided me, but an integral component of contemporary engineering. As Wulf has noted:

> The pervasive use of information technology in both the *products and process of engineering* . . . has the potential to change the practice of engineering significantly, and hence the education required to be an engineer. . . . As the power of computers . . . increases exponentially, more and more routine engineering functions will be codified and done by computers, simultaneously freeing the engineer from drudgery and demanding a higher level of creativity, knowledge, and skill [emphasis added].

Given the significance of ICT in engineering education and practice, engineering students of all disciplines, and not just computer engineers, stand to benefit from exposure to ethical issues that are standard fare in computer ethics, in such areas as privacy, intellectual property in the digital age, and computer-systems reliability.

Moving on to examining research, O'Connell and I have found that while the emergence of engineering ethics and computing ethics as academic fields of study occurred more or less concurrently, engineering ethicists seem more interested in and better prepared to deal with microethical issues, while computing ethicists are much more willing and able to take on macroethical concerns. It seems to us that this distinction results at least partly from the strong tradition of professional practice and professionalism in engineering and the important role it has played in the development of engineering ethics. Given that the roots of computing are more abstract and academic than those of engineering, computer ethics has developed in an atmosphere that does not parallel the professional traditions of engineering. On the other hand, unlike engineering ethicists, from the very beginning computer ethicists have more naturally turned to the broader social implications of ICT, as suggested in the goals of computer-ethics courses enumerated in Johnson's classic text on computer ethics:

(1) to make students (especially future computer professionals) aware of the ethical issues surrounding computers;

(2) to heighten their sensitivity to ethical issues in the use of computers and in the practice of computing professions;

(3) to give them more than a superficial understanding of the ways in which computers (do and don't) change society and the social environments in which they are used;

(4) to provide conceptual tools and develop analytical skills for sorting out what to do when in situations calling for ethical decision-making or for sorting out the likely impacts computer technology will have in this or that context.

It is not uncommon, for example, to find computer ethicists immersed in such issues as gender and ICT, the "digital divide," electronic documents, online communities, information security, and design issues in ICT. To cite one example, the computer-ethics community reacted with great concern over the Bush Administration's plans for mining ICT technologies for information on terrorist activities at the probable expense of civil liberties.

FRUITFUL COLLABORATION AND CONTINUING CHALLENGES

Recognizing that the strengths of engineering and computing ethics are complementary, O'Connell and I have concluded that much can be gained from a more deliberate interaction among engineering and computer ethicists. Indeed, recent trends would suggest that both engineering and computing and their ethics counterparts are moving closer together as disciplinary boundaries blur and issues become more complex. For example, the accreditation board for computer science has recently been integrated with ABET. The Institute of Electrical and Electronics Engineers (IEEE), the world's largest technical society, has 300,000 members in more than 150 countries, of which nearly 100,000 belong to the IEEE

Computer Society. Perhaps most importantly in relation to ethics, the IEEE Computer Society and the Association for Computing Machinery recently collaborated to establish a Software Engineering Code of Ethics and Professional Practice that addresses both the microethical and macroethical responsibilities of software designers.

Joy's examples of the ongoing revolutions in robotics, nanotechnology, and genetic engineering illustrate the convergence of engineering and computing and the need for ethical thinking in both fields that bridges the microethical and the macroethical. Indeed, efforts are underway to form a new interdisciplinary field of science with input from nanotechnology, biotechnology, information technology, and cognitive science (NBIC). Ethical dilemmas posed by NBIC developments range from maintaining professional competence as disciplinary boundaries are crossed to pushing the limits of what it means to be human. Less threatening technologies also pose challenges of mutual interest to engineering and computing ethicists. The explosion in wireless networking, for example, involves traditional microethical issues such as product safety and reliability, along with more global challenges such as preserving privacy and providing equitable access to information.

If all engineering and computing professionals were as thoughtful and prudent as Joy, there might be less of a need for ethicists to focus on these fields. Unfortunately, this is not the case. Most engineering practioners, I fear, are no more aware of their ethical responsibilities than I was some twenty-five years ago. For example, of the 300,000 IEEE members, fewer than 2,000 are members of the Society on Social Implications of Technology, for more than twenty years one of IEEE's "technical" societies, and most members have probably never read the IEEE *Code of Ethics*. The IEEE's ethics activities, highly regarded by most outsiders, have waxed and waned throughout the years, reflecting an ongoing internal struggle within the professional societies between engineering professionalism and the corporations for which most engineers work. The IEEE's Ethics and Member Conduct Committee and its members, for example, are currently prohibited by IEEE Bylaws from "provid[ing] advice to individuals."

While significant inroads have been made in engineering and computing education in the area of professional ethics and social responsibility, and advocacy by business and academic leaders such as Joy and Wulf is becoming more prominent, it is ultimately rank-and-file engineers and computer scientists, and their professional societies, who must acknowledge and face head-on the traditional microethical responsibilities and emerging macroethical ones. The future surely does need us, but only if our sense of professional and social responsibility becomes more in tune with our technical achievements.

Joseph R. Herkert is associate professor of multidisciplinary studies at North Carolina State University where he teaches in the Science, Technology, and Society Program and is director of the Benjamin Franklin Scholars Program, a dual-degree program in engineering and humanities/social sciences. Dr. Herkert is editor of *Social, Ethical and Policy Implications of Engineering: Selected Readings* (Wiley/IEEE Press) and recently guest-edited special issues of *IEEE Technology and Society Magazine* on "Engineering Ethics: Continuing and Emerging Issues" and "Social Implications of Information and Communication Technology." He may be contacted via e-mail at joe_herkert@ncsu.edu

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IN THE DISTANCE, HALEAKALA

its blue-ly drifting mass. You beg the rusty soul *Quicken.*
Sky is flying everywhere like night blooming moths.
But some part of the soul isn't strong enough, it is

resting, a stray black and white cat
asleep after, finally, food.

And when will you. Wake up. When the stray is made strong
on mouse bodies? When it's finished its meal of mouse bone?

You go out anyway. *You* say *even if & etc…*
One air holding it all…

Across the channel light
streaks multiple greens though the canyons
like combings of sun through their hair

You go out.

Bright taste of bone on your tongue.

KARLA CLARK

Karla Clark has been writing poetry for ten years. Her work has been published in *convulvulus* and *Loose Associates*. She was the recipient of the Anna Davidson Rosenberg Prize in 1998 in the category of emerging poet. She and her husband live and work in Northern California.

Thomas H. Murray

New Challenges in Bioethics: Medicine, Technology, and Justice

All of us, as citizens and as family members, face striking challenges posed by the intersection of medicine, health care, and biotechnology. This is not news. What may be less well understood is that a broad range of professions will be called upon to respond to those challenges, including, but not limited to, health professionals and life scientists.

Two distinct sorts of challenges will be important in the foreseeable future. The first concerns the responsible use of the powers conferred by science and technology. The second deals with less exotic but no less important problems of access, distribution, and justice.

Responsibility requires the possibility of choice and action. A simple enough proposition: We can only hold a person ethically responsible for something if she or he had been able in some way, at some time, to intervene and alter the course of events. Whether one chooses to intervene or not is not the crucial factor; failing to act when one could have can, under the right circumstances, make a person fully worthy of moral praise — or condemnation. What is crucial is the possibility for exercising moral judgment and action.

TECHNOLOGY AND MORAL DILEMMAS

The key to understanding the grain of truth in the bromide "technology creates moral dilemmas" lies in appreciating the connection among moral responsibility, the possibility of intervention, and the need to choose whether and how to intervene. Many — not all, but many — of the ethical issues worthy of our attention in medicine and the life sciences arise because technologies create new possibilities to intervene and, hence, the need to make choices, sometimes very difficult ones.

The respirator, now ubiquitous in hospital intensive-care units, was, half a century ago, a novel machine intended to carry patients through the hours or at most a few days after surgery when their bodies were not able to breathe effectively on their own. Some patients, however, did not cooperate. With the respirator's help they could continue to breathe. Take the machine away, though, and breathing became an insurmountable, indeed lethal, challenge.

Ethical questions multiplied rapidly. When is continuing on a respirator in the patient's best interest? When, if ever, is it not? Who should decide whether to continue or discontinue respirator treatment: the physician? the patient? the patient's family? What if there are more patients able to benefit from the respirator than there are machines to go around: how should we allocate such a scarce, life-prolonging resource? Should we simply build all the respirators anyone could conceivably use? Would the money necessary to buy those machines and staff the ICUs needed to house them be better spent on other forms of therapy, on preventive care — or, for that matter, on schools, accident-prevention programs, or for other social purposes? What if the resource itself were tragically scarce, such as hearts or lungs? We cannot increase the supply by scaling up production, yet the supply of transplantable organs falls far short of the need. How aggressive should we be in trying to increase the number of organs available for transplantation? How can we allocate fairly the organs that we obtain?

Scholars in medicine, science, philosophy, theology, and law began asking questions about the ethical implications of science and technology well before the interdisciplinary field of Bioethics coalesced. But coalesce it did. Most commentators date the birth of Bioethics to 1969. In that year, The Hastings Center was founded, devoted to the study of ethical issues in medicine and the life sciences. A few years later, the Kennedy Institute of Ethics was organized at Georgetown University. Nearly a quarter of a century later, scholars have dismissed a large number of possible answers to the litany of questions above, mostly because those answers were conceptually incoherent, irredeemably confused, or morally indefensible. That dismissal is not the same as reaching consensus on any single answer. In some instances, broad agreement has been found, for example, that the person who should make the decision on whether or not to intervene is the patient, as long as that person is a competent adult; in other cases, disputes linger for years or decades.

Bioethics has not run out of interesting problems. If anything, the problems it is now tackling once again have the grand scope characteristic of the questions being asked in its earliest days. The visionary scholars who were in the first crop of Fellows at The Hastings Center were concerned not merely with the immediate consequences of employing technologies individual-by-individual, but with the broad, long-term implications of medicine, science, and related technologies.

Bioethics has not run out of interesting problems. If anything, the problems it is now tackling once again have the grand scope characteristic of the questions being asked in its earliest days. The visionary scholars who were in the first crop of Fellows at The Hastings Center were concerned not merely with the immediate consequences of employing technologies individual-by-individual, but with the broad, long-term implications of medicine, science, and related technologies. Twenty-four years ago we did not have the ability to design our descendants; true, there were a few hints that some such capacity might be coming, in those early days of genetic counseling and prenatal genetic testing. Nonetheless, those scholars believed it was important to ask whether the ability

to determine or control the characteristics of our offspring was, altogether, a good thing. How might such powers be used or misused? What set of professional ethics, social policies, or laws would promote the responsible use of such technologies? What, in any event, counts as responsible, rather than irresponsible, use?

ETHICAL IMPLICATIONS OF PRENATAL TESTING

We now have powers undreamed of twenty-four years ago. Preimplantation genetic diagnosis, or PGD as it is known, allows us to pluck a single cell from an eight-celled embryo and determine whether that embryo has specific genetic alleles or the proper number of chromosomes. When a family has already had a child born with a lethal disease such as Fanconi Anemia, it is no surprise that parents may want to avoid having another child with the same condition. The technology of PGD, though, knows no difference between disease and other traits or characteristics for which it might be used. In the case of the Nash family, for want of a compatible bone-marrow donation, Molly Nash was dying of Fanconi Anemia. Her parents wanted to have another child who would not live under the pall of the disease. They chose to use PGD, as have hundreds of other couples who did not want to go through pregnancy, prenatal genetic testing, and — if the results confirmed their fears — abortion. In time it became possible to use the same PGD also to select an embryo that would be immunocompatible with its older sister. Thus, the cord blood from the new-born child could be harvested and used to treat the sister.

The physicians confronted an interesting ethical question. It was one thing, they reasoned, to use PGD to identify and implant a healthy embryo. In that sense, their professional actions were intended to prevent harm to the child whom they hoped that embryo would become. But determining the embryo's potential to be a cord-blood donor for its older sibling had almost nothing to do with enhancing the would-be-child's well-being. (I say "almost" because families are intense communities of memory shaped decisively by their particular history. The death of a child can be devastating to parents, as can be the worry and care required for a chronically and severely ill child. It is not possible to say just how the fate of an older sibling will affect the life experience of a new child; but shape it in some fashion, it surely will.) Because only cord blood recovered from the umbilical cord and placenta would be used, the new child would not risk additional physical harm, such as can occur with bone-marrow extraction.

In the end, that proved the decisive consideration. Making PGD do double duty exposed the child to no additional risks, yet could be life-saving for its older sibling. If performing PGD was justifiable to find an embryo unaffected by Fanconi Anemia and another important good could be accomplished with no further risk to that child-to-be, then it was deemed to be morally permissible. A healthy baby was born, the cord blood was recovered, and a transplant was performed. At last report, both children were doing fine.

Health professionals — in medicine, nursing, and genetic counseling — will face increasing challenges as it becomes possible to know ever more about our offspring before they are born, or, with PGD, before they ever touch a womb. The use of these technologies will be the responsibility of other professionals as well.

PGD is one of the new technologies offering control over reproduction. Others include prenatal genetic testing, fetal imaging, gamete selection, and — perhaps some day, but not now — altering our children's genetic makeup. Prenatal genetic testing has been with us for decades. Two techniques predominate: amniocentesis, in which fluid containing fetal cells is aspirated from within the womb; and CVS (not the pharmacy chain!) in which chorionic villi, tiny fingers of tissue derived from the embryo but not a part of the developing fetus, are snipped off for analysis. A third technique, in development for a decade or more, takes advantage of the discovery that fetal cells can be found in the circulating blood of its mother. Those fetal cells must be separated from those of the mother. Once that is done, a growing multitude of tests can be performed on the chromosomes and the DNA of the fetal cells. If and when fetal-cell sorting becomes reliable and inexpensive, the barriers that limit the use of amniocentesis and CVS may effectively crumble. Those barriers were the physical invasiveness of the woman's body and the slight but discernible increased risk of miscarriage after the procedures.

Health professionals — in medicine, nursing, and genetic counseling — will face increasing challenges as it becomes possible to know ever more about our offspring before they are born, or, with PGD, before they ever touch a womb. The use of these technologies will be the responsibility of other professionals as well. Lawyers will debate the legal principles relevant to prenatal testing and diagnosis and will litigate the cases that will shape their use. Politicians will pass laws. Policy experts of many stripes will influence how those laws are interpreted and enforced. Journalists will inform, or misinform, the public about the nature of these technologies, the choices they pose, and their effect on our lives.

USES AND ABUSES OF GENETIC TESTING

New medical technologies, like guns, tend not to aim themselves. The mechanical ventilator was aimed at one sort of patient — short-term, likely to recover — but doctors soon found plenty of other patients whom it could keep alive but who might never recover much function, including consciousness itself. The ventilator was still being used in a medical setting, for a medical purpose — sustaining life. But thoughtful people soon began asking whether it was the wisest use of finite medical resources, and whether, in individual cases, it was doing any good for the patient as a person, rather than merely for a set of lungs that could be pumped.

The technologies of prenatal testing and diagnosis have a different sort of aiming problem. They can be directed at nonmedical ends just as easily as medical ones. Any of the three technologies just described, as well as visualization by ultrasound, are capable of determining the sex of the fetus. In some countries, prenatal testing for sex, followed by termination of any fetus of the undesired sex, is widespread. American clinics report frequent requests for such testing. It takes no special foresight to predict that as people come to believe in the power of prenatal genetic testing to foretell characteristics of their offspring there will be more and more requests for just such tests.

A little reality-testing needs to be inserted here. Note that I referred to people's belief in the power of genes to predict their future children's traits; there is ample, I believe compelling, scientific reason to believe that predicting those traits likely to be most important to parents will be exceedingly more complicated and the results more unsatisfying than most people suspect. The genetics of eye color is complex; the genetics of intelligence, creativity, honesty, and happiness is likely to be immeasurably more so. This indeterminacy will not prevent entrepreneurs from marketing genetic "predictions" to a gullible and curious public. (If you have any doubt about this observation, glance at the fame and money showered upon the folks who claim to have cloned a human baby. Their boast was ludicrous on its face, and yet they received an astonishing amount of free publicity. Their claim to have attracted the money of clients is much easier to believe.)

For all the attention showered on the latest and newest technologies, ensuring that effective health care — which is often not terribly expensive — is available to all people who need it is a greater moral challenge in the United States and in the developing world. (Almost all other nations in the industrialized world have social policies that make core health-care services available to all or virtually all of their citizens.)

However dubious — scientifically or morally — the motives that might attract would-be parents to obtain prenatal or preimplantation genetic testing, professionals will have to respond to such requests. To do so in a principled, informed manner will require those same professionals to be prepared — prepared to talk about the relevant medicine and science; prepared as well to talk about the ethical and policy implications of such choices. Professional organizations can help both by appropriate education for their members and by articulating clear professional standards to guide conduct. For example, when biosynthetic human Growth Hormone, or hGH, first became available in quantity, pediatric endocrinologists had to cope with parents seeking the drug for their children who had a normal supply of hGH but who happened to be short. Then there were parents whose children had plenty of endogenous hGH, and were within or above the normal height range, but wanted their daughter or — more commonly — son to be taller still. Small stature can be a disability or a

disadvantage; being tall can confer a discernible advantage. The relevant professional organizations set out standards that discouraged administering hGH except for legitimate medical reasons. Such professional guidance and self-regulation can be very valuable, especially when it is not merely in the service of fostering a profession's financial interests.

Other efforts to adapt medical technologies for non-therapeutic ends are likely to come at us with increasing frequency. Most of these technologies are not self-aiming; few are self-limiting. Rather, they require wise and informed individual choices, sound and responsible professional standards and practices, and thoughtful public policy.

ACCESS, DISTRIBUTION, AND JUSTICE

Turn back now from the sharp edges of technology and return to the core where health care is indisputably effective and where the ethical problems concern access, distribution, and justice. For all the attention showered on the latest and newest technologies, ensuring that effective health care — which is often not terribly expensive — is available to all people who need it is a greater moral challenge in the United States and in the developing world. (Almost all other nations in the industrialized world have social policies that make core health-care services available to all or virtually all of their citizens.)

America has reached out to selected groups from time to time. We provide health care to veterans of our armed services. As the population of retired persons grew, along with the cost of health care, insurers became increasingly reluctant to take on older customers, and more and more elderly persons were overwhelmed with the cost of health care. Medicare was created to respond to this market failure. Similarly, the poorest of the poor suffered more than their share of illness but had few financial resources to pay for insurance or health care. Medicaid was meant to help this group of Americans. I have suggested that we look upon all three of these programs as efforts to rescue private health insurers from the moral opprobrium they would otherwise have suffered for leaving veterans, the elderly, or poor women and children to fend for themselves.

Tightening state and federal budgets are squeezing health-care programs, forcing cuts in benefits, eligibility, or both. Sooner or later the United States will have to face the central moral question of what health care means to us as a community. If effective health care is a good that should be distributed according to need, as most Americans appear to believe, then our system of health care and its financing will have to be drastically reformed.

Internationally, there has been a historic underinvestment in research aimed at preventing or curing diseases of the developing world. A recent announcement by the Gates Foundation that it will commit a significant sum to such research is welcomed. And there have long been dedicated researchers from the United States and elsewhere, including developing countries, committed to understanding and dealing with diseases such as malaria that cause enormous suffering and early death in poor nations. In addition, federal support exists for basic research on such diseases. The large-scale clinical trials required to move a potential treatment from good idea to accepted therapy, though, are very expensive. Their cost is usually borne by pharmaceutical companies hoping to make a profit on the drug once it is approved. An obesity drug that can be marketed to a wealthy overfed population in the industrialized world is much more appealing to investors than one that prevents or cures a tropical disease affecting poor people. The former is profitable; the latter may not be.

Access, distribution, and justice — here and around the world — are vital moral challenges that deserve the same intensity of intellectual focus, and the same passion for change, as the most esoteric ethical conundrum in professional ethics.

Thomas H. Murray, PhD, is president of The Hastings Center in Garrison, New York.

CANADA THISTLE

Cirsium arvense

Outlaw. Unwanted in 37 states.
I'd be abetting a fugitive if I let you
on my property. But here you're king
of the backroad. Tall, crowned
like your House of Stuart relative.
Flaunting it.

Last week you got in my blood.
My finger dripped into your own
reddish center so irresistible to bees
and wingless feasters
who must have climbed half an hour
to get there. None of your customers
seemed put off by my seasoning.

Today you are softer, more expansive.
A grounded nova, a slow-motion explosion
of stars. White dwarfs adrift, gleaming
rays bearing their motives aloft
for inches or miles. Orbiting
with their old designs on the dark heavens
of warm earth.

GLENNA HOLLOWAY

Photographs by Glenna Holloway.

Glenna Holloway's poetry has appeared in *The Pushcart Prize, 2001*, *Notre Dame Review*, *Michigan Quarterly Review*, *Trail & Timberline*, *Western Humanities Review*, and many other magazines and anthologies. Between silversmithing and photography, she is working on her first book.

HISTORY

After last night's storm, 70 mph winds,
An old tree is down, a venerable one
Nearly ninety feet, Norway spruce, dark
Foliage, pendulous branchlets, spreading.

Men are sawing it in pieces, wood-burning
Size, dragging resiny branches away. I'm
Amazed at their sensitivity, their gentleness
With the old tree's stubborn bulk and weight.

The fine spidery branches of other trees are
Beginning to sprout tiny leaves; March and
The grass is coming back; early Spring, 1991,
Minus 128 rings makes 1863, and when you

Turn that over history settles like a cloud.
128 rings, one each year, thin some years,
Thicker in others, but each one added as if
Something was begun, made, accomplished.

In the one from 23 years ago I said good-bye
To my father, 20 years ago a good friend, four
Years ago another friend, three within the ring
Of this last tough year, closer to the bark, to

That thin layer soon to grow into another ring,
Emerging from a yearly struggle, from the fear
That everything becomes horizontal, the wind's
Power unleashed, falling, reaching blindly upward.

DANIEL JAMES SUNDAHL

Daniel James Sundahl is Russell Amos Kirk Distinguished Professor in English and American Studies at Hillsdale College where he has taught for the past twenty years. He is the author of three books and nearly 400 poems, books reviews, and academic articles. The poem "History" marks his second appearance in *Phi Kappa Phi Forum*.

Mark S. Frankel

Developing a Knowledge Base on Integrity in Research and Scholarship

It should be obvious that integrity in research is of great importance to the public, to individual researchers and their institutions, and to the health of the research enterprise. The increasing social, economic, and political significance of research has led to greater demands that researchers and their institutions be held accountable when using public funds. Research subjects and their families expect investigators to do what is necessary to minimize the risks posed by experimental procedures. Scholars rely on the honesty and competency of their colleagues, and society's confidence in and support for research rests on public trust in the integrity of researchers and their institutions. It is incumbent upon the research community to create and nurture an environment that both promotes high ethical standards and preserves public trust in scholarly inquiry.

Yet, all is not well in the research community. Several high-profile incidents, ranging from plagiarism in the humanities, to the fabrication of scientific data, to the death of research subjects, have raised concerns about the integrity of those engaged in research and scholarship. During the past decade, we have seen too many instances of research misconduct that have, like the cover story of *Time* in 1993, reflected a "Crisis in the Labs." Who could forget the poignant case of Jessie Gelsinger, a teenager, who despite having his disease under control, volunteered for experimental gene therapy at the University of Pennsylvania, only to be the subject of headlines weeks later announcing his death. (*The Washington Post*, 2000)? His father was later reported to have said that the family trusted the researchers, but ultimately ending up suing them for failing to tell them about all the relevant risks associated with the experimental treatment. A year later, the journal *Science* (December 2001) reported that the "career of a promising young social psychologist lies in ruins following her admission that she fabricated five experiments...." And just last fall, a physicist at Bell Labs was found to have "faked discoveries" that were reported in published articles between 1998 and 2001 (*Science*, September 2002). This was a researcher who many believed was on his way to winning a Nobel Prize. Incidents such as these have extended beyond science, reaching into the classics and history as well. No area of scholarly inquiry has been untouched by serious breaches in research ethics.

One result of this cascade of incidents has been the adoption by the federal government of a series of policies that require research institutions receiving federal research funds to establish mechanisms for protecting human- and animal-research sub-

For example, we need some general agreement on what is meant by "research integrity" if this research is to produce generalizable results. Researchers must identify factors that influence their behavior and indicators that accurately reflect the conduct that one is observing. And we need to be able to measure the direction and intensity of the effects that various factors have on behavior. Indeed, even the methods and measurement tools themselves must be shown to be valid and reliable.

jects, for managing conflicts of interest, and for responding to allegations of misconduct in research. Institutions have responded by putting procedures in place that implement these federal policies. Legitimate questions have been raised, however, about how we know the extent and nature of the problem and how we assess efforts to remedy it. For more than two decades, the government, universities, and disciplinary societies have introduced policies, guidelines, procedures, and educational programs intended to respond to allegations of research misconduct and/or to promote the responsible conduct of research. Yet, no solid evidence exists to show that these approaches are effective in reducing misconduct or in creating a research environment that is conducive to nurturing ethical-research practices.

DEVELOPING A KNOWLEDGE BASE

Several recent initiatives have brought these questions to the surface of debates on research ethics. One is the Research on Research Integrity Conferences in 2000 and 2002 organized by the U.S. Office of Research Integrity (ORI). These meetings have been a showcase for some of the emerging empirical research that is generating data on research misconduct and research integrity. In April 2000, the American Association for the Advancement of Science (AAAS) held a conference to explore the role of scientific societies in promoting research integrity and devoted several sessions to issues associated with assessing efforts undertaken by the societies. And in 2002, the Institute of Medicine (IOM) published a report that focused on the need for more data addressing what approaches could be effective in creating a research environment that promotes responsible conduct, including as its first recommendation that there be more study of ways "to identify, measure, and assess those factors that influence integrity in research." (In the interest of full disclosure, I was on the program committee for the two ORI conferences, was the lead organizer for the AAAS meeting, and was a member of the IOM committee that produced the report.)

All three initiatives indicate that the time has come to move beyond personal experience, anecdotes, and political and media hype to develop a reliable knowledge base for addressing such issues as:

- What factors precipitate or prevent research misconduct;
- How best practices are defined by the research community and how they are transmitted to the next generation of researchers;
- What educational approaches are likely to be most effective in promoting ethical conduct in research;
- How we can measure and assess variables that appear to affect research conduct.

Far too few empirical studies have sought to answer these or other questions relevant to our understanding of scientific misconduct and research integrity. The findings of such studies could be helpful to researchers and their institutions seeking guidance in the face of conflicting pressures and could contribute to the formulation of appropriate policies.

SHOW ME THE DATA

As is true about research generally, it is easier to agree that more research is needed than it is to actually carry it out. Difficult challenges lie ahead for any effort to rigorously investigate the questions above. These challenges include complex conceptual, methodological, and measurement issues. For example, we need some general agreement on what is meant by "research integrity" if this research is to produce generalizable results. Researchers must identify factors that influence their behavior and indicators that accurately reflect the conduct that one is observing. And we need to be able to measure the

direction and intensity of the effects that various factors have on behavior. Indeed, even the methods and measurement tools themselves must be shown to be valid and reliable. When one considers the inextricable link between individual researcher integrity and institutional integrity, it is evident that definitional, methodological, and measurement issues will need to be addressed at both levels.

Research on these matters will be complicated. There is, for example, the nature of the problem being studied. Scientific misconduct is a sensitive matter that individuals as well as institutions will likely want to keep hidden from public view. It is also relatively rare, making it difficult to produce enough data from which to draw strong inferences. The IOM report mentioned earlier identified the external environment as a key factor in understanding the conduct of research, but also found very little research on the relationship between environmental factors and ethical research practices. Studying the research environment will be critical for improving our understanding of where and how researchers and institutions get their cues for their behavior. In the most immediate sense, researchers are exposed to peers, mentors, collaborators, and students. But they, and all these other actors, are further exposed to a larger environment that includes their institutions (departments, laboratories, offices of sponsored research, and so on), professional journals, scientific societies, federal regulations, and media stories that fuel public expectations and perceptions. Distinguishing the real data from the noise in this larger environment will be no easy task.

On what, then, should investigators focus when pursuing research on these matters? It seems plausible that the following factors would have some influence on research integrity (these are examples only and are not intended to be comprehensive):

- Standards of conduct, whether promulgated by the scientific community or the government. These standards presumably reflect the collective and accumulated wisdom of scientists about the accepted norms and practices of the field and approximate as much as anything else specific guidelines that researchers can refer to when faced with an ethical dilemma. While some standards will apply across all fields of research (for example, reporting data and findings accurately), others will vary depending on the scientific field.
- Practices and rules intended to detect or prevent unethical research behavior. These rules could include federal regulations, institutional policies and procedures intended to implement those regulations (for example, institutional-review boards, research-integrity officers), journal practices for peer review and requirements for disclosures of conflicts of interest, and procedures for maintaining lab notebooks.
- Personal characteristics and experiences, such as previous ethics training, mentoring opportunities, attitudes and knowledge about research ethics, and treatment of subordinates.
- Immediate research environment, including the involvement of collaborators, the relationship between investigators and the research sponsors (whether the research is in a local laboratory or in the field in a distant country), and the adequacy of resources to support the research.
- Broader research environment, including the general political climate for science, public attitudes toward scientists, the treatment of whistleblowers, how "hot" the particular field of research is, and the availability of funding for scientific research.

In addition to basic research, the IOM report also stressed the importance of evaluating efforts to respond to scientific misconduct or to promote research integrity as a "basis for organizational learning and continuous quality improvement." Evaluation is a means for translating knowledge gained from research to improve whatever activities

For all of its scientific rigor, the research community has not made much progress in assessing its efforts to promote research integrity. The April 2000 AAAS conference found that the scientific societies have expended little effort to determine whether their actions had any effect on their members' knowledge, attitudes, or behaviors in the research context.

or strategies are undertaken to affect both processes and outcomes. For example, if basic research identifies a strong correlation between knowledge of research standards and ethical behavior, then an effort to increase researchers' exposure to proper standards of conduct would seem to be a strategy worth pursuing. But the kind of strategy to be used is yet another area that would benefit from evaluating different approaches for increasing knowledge about standards.

MORE PROGRESS STILL NEEDED

For all of its scientific rigor, the research community has not made much progress in assessing its efforts to promote research integrity. The April 2000 AAAS conference found that the scientific societies have expended little effort to determine whether their actions had any effect on their members' knowledge, attitudes, or behaviors in the research context. More work will need to be done if we are to convince ourselves, as well as others, that we are serious about research ethics.

In recognition of the gaps that currently exist in our knowledge base about scientific misconduct and research integrity, the IOM report recommended that the federal government make more resources available "to fund studies that explore new approaches to monitoring and evaluating the integrity of the research environment . . . for research designed to assess the factors that promote integrity in research across different disciplines and institutions . . . [and that] assess the relationship between various elements of the research environment and integrity in research." Not only is it important to invest in research; we also need to invest in training (perhaps through targeted training grants and postdoctoral fellowships) to create a critical mass of scholars committed to and skilled in pursuing this type of research.

Self-assessment is never comfortable. But if the scientific community is to live up to its responsibilities to maintain the quality and integrity of science, then we have no choice but to do so, and to do it with the same rigor that scientists apply in the laboratory or in the field. The time has come to embrace the value of a "scientific approach" to understanding scientific misconduct and research integrity, an approach that can lead to initiatives based more on what we know that works, rather than those that result from research scandals or political expediency.

Mark S. Frankel is director of the Scientific Freedom, Responsibility and Law Program at the American Association for the Advancement of Science, the largest multidisciplinary scientific society in the world. He develops and manages the Association's activities related to science, ethics, and law.

Resources

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Institute of Medicine. *Integrity in Scientific Research: Creating an Environment that Promotes Responsible Conduct*. (Washington, D.C.: The National Academies Press, 2002).

Investigating Research Integrity: Proceedings of the First ORI Research Conference on Research Integrity. November 2000; see http://ori.dhhs.gov/html/publications/rcri.html.

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AT THE CEMETERY

Why can't the dead take their eyes
off of us, staring up through the dark
grainy canopy as they do?

Maybe they've learned to read us
from the ankles up. Maybe our briefs
are the emblems of our characters,
or our knees the phrenology of the departed.

They must know we fear long silences,
that we lead distracted lives,
that our ritual standing here is just
another interval between them and us.

And what of the cremated? Our physics
predicts the brilliance of an element of ash,
settled on the tip of a leaf sewn into the light breezes,
on a bluff overlooking the gray petal of sea.

PETER DESY

Peter Desy is retired from the English Department at Ohio University. He has poems in or forthcoming from *Green Mountains Review*, *Shenandoah*, *Poetry International*, *Free Lunch*, *South Carolina Review*, and other journals.

ICI HALL

We sit with hundreds of waiting
travelers on the baggage carousel
at Charles de Gaulle airport. The power
went off hours ago. A young woman —
we both noticed her last night on the plane,
her breasts falling from the pink tank top —
crawls onto the conveyor belt
into that dark cavern
searching for her backpack. She needs
to be somewhere besides Here Hall.

I can't watch the living
statues — the mummy outside the Louvre,
the mime standing in the rain
for hours at Deux Magots. Next to the church
there is a white box — small, two feet square —
with a plaster head resting on top.
The sign asks for donations
Pour restituer la statue.
Only — there's a woman inside.
She never moves.
Her dog stretches and wanders
back into the shade.

An insect I don't recognize flies
through the hotel's open window.
I listen to water from a fountain,
birds outside in yellow forsythia
and in bushes I think are azaleas.
A car comes up the road
you walked down.
A man's voice, *Yes, well*.
A bull snorts from a nearby barn.

We stand above the dam
on the Indre — ah, smooth reflections
of pale willow. From this cliff
I see no movement, but water
has to reach the spillway for white plumes
to rush past violets and tiny yellow flowers.
Later, we sit on the stone bench
carved to look like bark, ancient oak.
Moss grows near your hand. Together,
you and I breathe as slowly as we can.
Still, we know — and here.

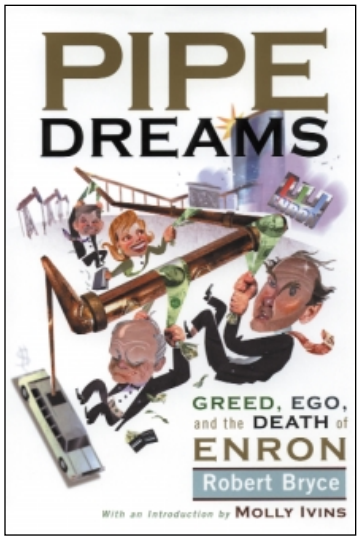
CATHERINE HAMMOND

Catherine Hammond has work anthologized in *Fever Dreams: Contemporary Arizona Poetry* (University of Arizona Press), and in *Yellow Silk II*. Her poems appear in many magazines including *Laurel Review*, *North American Review*, *Hayden's Ferry Review*, *Mississippi Review*, and *Chicago Review*. She has been a semifinalist four times for "Discovery"/*The Nation*.

Book Reviews

ROBERT BRYCE. *Pipe Dreams: Greed, Ego, and the Death of Enron.* New York: Public Affairs 2002. 394 pages. $27.50.

What more appropriate book to review in an issue on professional ethics than the story of the corruption and downfall of Enron? In *Pipe Dreams*, Robert Bryce traces the history of a modest company that became an energy-trading giant, and then in a series of acts of hubris by its executive officers, overreached itself and went bankrupt, thereby ruining the lives and retirement nest-eggs of thousands of loyal employees. Bryce, an investigative reporter who has worked for such Texas newspapers as the *Austin Chronicle* and the *Texas Observer*, interviewed more than two hundred people and employed more than 1,800 print sources in gathering information for this book.



Bryce's essential thesis is that Enron went bankrupt "because its leadership was morally, ethically, and financially corrupt" (12). Bryce details how Enron's downfall began when CEO Ken Lay and Chief Operating Officer (COO) Rich Kinder allowed Jeff Skilling (later to succeed Kinder as COO) to talk them into changing their accounting method from cost accounting to mark-to-market accounting. Bryce defines the two systems as follows:

> For example, assume Enron was a Venetian company that had signed a contract to sell another company one boat each year for ten years, with each boat costing $100. Under [cost accounting] rules, Enron would have only been able to record the $100 debit (and credit) for the sale once each year.
>
> But under mark-to-market accounting, Enron could estimate the total value of the ten-year deal at any price it chose. So although total revenue was projected at $1,000, Enron could slap a net present value on the deal of, let's say $800, and enter that $800 debit in its ledger right away. The deal gets completed by the entry of an $800 liability on Enron's balance sheet (62).

While mark-to-market accounting (apparently a widely accepted and perfectly legal form of corporate accounting) was not in and of itself responsible for the collapse of Enron, what it allowed its executives to do was to hide enormous debts from ill-fated ventures into such areas as metals and water trading, while appearing to post tremendous profits that drove the stock up and allowed those same executives to make tens of millions of dollars by selling their stock options at top prices. While Rich Kinder was in charge (he was COO from 1990-1996), he was a stickler for making sure that Enron had real cash flow and cash reserves; when Skilling took over, that requirement went by the wayside and making deals became paramount.

Almost none of the principle players in the Enron debacle emerge unscathed. Ken Lay comes off either as being in collusion with the fraud or as one of the most detached and/or ignorant corporate heads in history. Jeff Skilling is depicted as the supreme egotist whose only real interest was in making deals, with little concern for whether those deals were good for the company. Bryce paints Andy Fastow, whom Skilling named CFO, as the principle architect of the numerous off-the-balance-sheet companies that allowed Enron to fool everyone on Wall Street for so long. Even Sherron Watkins, publicly hailed as the only honest person in the company hierarchy for her whistle-blowing memo to Ken Lay, is not seen as particularly heroic; she is described by her former fellow employees as a "calculating, vindictive woman" (295) who wrote the memo to protect herself from being fired and who never went public with what she knew until it was too late.

Bryce is at his best in *Pipe Dreams* when he is recounting the obscene excesses indulged in by the key players when Enron was flying high — often at company expense. For example, there was the time when Robin Lay, Ken Lay's step-daughter, was in Paris and homesick. Lay dispatched the company jet to pick her up and bring her home, at a cost of around $125,000 (259). Lou Pai, CEO of Enron Energy Services, owned his own mountain in Colorado and was given to running up tabs of hundreds of dollars at strip clubs during lunch and submitting the costs as an expense — which the company invariably paid (205–206). And Rebecca Mark, who headed an ill-fated water-trading business that reportedly cost Enron $2 billion in losses (but who herself cashed in approximately $100 million in stock options) insisted that she travel by limousine everywhere, no matter how mundane the trip. And of course many of us witnessed Linda Lay's "weepy interview" (345) with *TODAY*'s Katie Couric in which she lamented that all she and Ken had left was their home, which is valued at $7.8 million (346). One certainly wonders what happened to the nearly $185 million in stock-option money that Lay exercised before the collapse.

The frightening thing about reading Bryce's long and well-documented book is the sneaking suspicion that perhaps the excesses at Enron are really not all that unusual in corporate America. At Enron, however, Bryce suggests that the excesses and the egos driving them were so extreme that

they finally destroyed the company. *Pipe Dreams* is certainly not an unbiased look at the demise of Enron, as Bryce's main thesis clearly states. In fact, it reads a little like an extended gossip session. Neither is *Pipe Dreams* an elegantly written book. However, Bryce does his best to make it clear and understandable, especially when he is trying to explain such things as the complexities of corporate accounting or the maze of "independent" companies set up by Andy Fastow to hide and trade Enron assets. Though fairly lengthy at 394 pages, the book is divided into fifty-one chapters, so few are more than five to ten pages long. All in all, Bryce has done an excellent job with a complicated story. *Pipe Dreams* is a riveting tale that will horrify and anger you, and it certainly serves as a cautionary tale for our times.

Pat Kaetz is editor of the *Phi Kappa Phi Forum*.

CARLO CELLI. *The Divine Comic: The Cinema of Roberto Benigni*. Lanham, Maryland, and London: The Scarecrow Press, 2001. 175 pages. $32.50.

Carlo Celli offers English-language readers the first important monographic introduction to the cinematic art of Roberto Benigni. Meticulously researched and eminently readable, Celli's volume documents Benigni's rise from obscurity to household-name status. Most North Americans have come to know of Benigni through his 1997 film *La vita è bella/Life is Beautiful*, which garnered a record number of Academy Awards for a foreign film, as well as many other honors throughout the world. Since that meteoric rise to international fame, Benigni has directed and starred in another film, *Pinocchio* (2002), in which he tells the story, in a very straightforward narrative style, of Italy's most famous non-human literary character. But most North Americans are unaware of the biographical details of Benigni's life or earlier career, which encompassed film, television, and theatre.

Born in 1952, Roberto Benigni was reared in poverty such as the vast majority of contemporary North Americans could not imagine. Celli argues that, as a result of his having grown up in a culture closer to the realities of the nineteenth rather than the twentieth century, Benigni acquired skills and developed an awareness that permitted him to develop his unique style of comedy. This comic style is based on the oral poetic traditions of his native Tuscany and on the artist's acute consciousness of the "cultural tensions and transformations" (2) of the Italy of his childhood and adolescence.

Following the fall of Mussolini during World War II and the birth of the Republican era after the war's end, Italy underwent social, political, and economic changes that transformed it from an agriculturally-based nation to one that was and continues to be consumer- and industrial-based. So profound were these changes that "the national economy grew by nearly 47 percent" (2) during the 1950s alone, according to Celli. Yet despite these rapid cultural and economic changes, many parts of Italy still retained much older traditions, whose roots, in some cases, reached at least as far back as the Middle Ages.

For Benigni, the ancient Tuscan tradition of improvisation in octet verse form, which he learned as a youth, formed the foundation upon which he built his performance techniques. Much like medieval minstrels, the traditional Tuscan *poeti a braccio* spontaneously composed poems, often bawdy, either individually or in competition with one other. A keen memory, a quick wit, and an ease of comic performance style are all requisites in this apparently crude yet culturally sophisticated form, still alive (though barely) today: Benigni tells us that "the only person with whom I have these poetry contests is Umberto Eco. . . . He is incredible in linguistic games but he enjoys challenging me in something where I am better prepared than he is" (129).

Benigni's adaptation of these skills is easily identifiable in films such as *Johnny Stecchino* (1991) and *Il mostro/The Monster* (1994), both of which Benigni directed, as well as in Jim Jarmusch's *Down by Law* (1986).

Before becoming a film director and actor, Benigni was engaged in various other artistic and intellectual endeavors. In the 1970s, Benigni and a few fellow artists moved to Rome, where Benigni performed in avant-garde theatrical productions with noted impresarios. It was during this period that Benigni, who did not study at university, began to read widely (particularly Rabelais, Dostoyevsky, Whitman) and to develop a serious interest in silent film (especially Chaplin and Dreyer). In 1975, Benigni co-wrote with Giuseppe Bertolucci a monologue entitled *Cioni Mario di Gaspare fu Giulia/Mario Cioni Son of Gaspare and the Late Giulia*, which features a foulmouthed country bumpkin from Tuscany who is angry at priests, politicians, women, and the world at large. After making a few films and appearing in a number of television shows, Benigni studied for a year under the neorealist master Cesare Zavattini, who was, in Benigni's words, "a great dreamer"(135). Other important masters whose work and ideas influenced Benigni include Federico Fellini and Pier Paolo Pasolini.

Benigni's directorial debut came in 1983, with *Tu mi turbi/You Bother Me*, which was followed by a collaborative effort with the late Neapolitan comic Massimo Troisi in *Non ci resta che piangere/Nothing Left to Do but Cry* (1984). Various other films directed by and starring Benigni followed, culminating in the highly popular and equally controversial *La vita é bella/Life is Beautiful*, in which

Benigni dares to link a vaudevillian comedic style to one of history's greatest tragedies, the Holocaust.

Some critics have denigrated Benigni's films for their lack of directorial flair. Celli reports that Benigni prefers an unaffected, direct style (with an emphasis on silent-film techniques, the 3/4 shot, and few tight closeups, for example) in order to give full rein to his comic persona: "Benigni's cinematic style is based on the requirements of performance rather than on the technical manipulation of film" (74). Thus, in Benigni's earlier films, verbalism dominates visualism. But beginning with *Il mostro* (1994), Celli tells us, Benigni's directorial style has shifted from one of "cinematic pragmatism" (67) to a more technically sophisticated approach.

One fascinating aspect of Benigni's art is his blurring of the distinction between so-called high and low art forms. Benigni, sometimes the personification of the scatological Mario Cioni, is also the orator who declaims (and explains) Dante's *Divine Comedy* to academic audiences both in Italy and abroad. Celli emphasizes the importance of this fusion of the intellectual and the earthy in the title he gives to his monograph, *The Divine Comic*. Far from closeting the "father of the Italian language" in a tower of intellectual untouchability, Benigni emphasizes the all-too-human aspects of the author of Italy's greatest *poema*, whom Benigni contends was quite the womanizer. At the same time, Benigni draws attention to the power of the vernacular oral tradition that he believes infuses the *Comedy*. In the revealing interview with which the volume closes, Benigni notes that "poetry was born as a yell. . . . When you hear Ariosto or Dante out loud the effect is a thousand times more powerful" (129). While I agree with this statement about the power of oral delivery, I would argue with Benigni's characterization of English as "an extraordinarily infantile language . . . with no middle ground" (147). Celli interprets Benigni's "bathroom" humor (as evidenced in such creations as his hymn to a satisfying bowel movement, *L'inno al corpo sciolto*) as being based on Michail Bakhtin's theories on upper and lower body comedy (*Rabelais and His World*, Cambridge, Mass.: MIT Press, 1971).

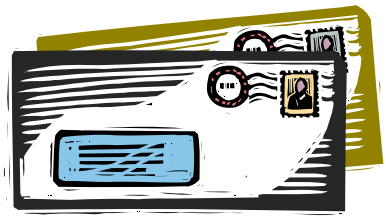
Other interesting observations that Celli makes about Benigni's cinematic art include the following: 1) that in most of his films Benigni dons the self-referential mask of educator in order to teach his viewers about their shortcomings; and 2) that Benigni's stock costume (the ill-fitting formal suit of the "incompetent outsider" [80]) allows the comedian to "remit the spectators' fear of exclusion from community" (80). Benigni sees America's perpetual love affair with "the great Italian cinema" (147) as the driving force behind recent American films that tend to "depict an Italy of the past of the 1930s or '40s" (147) (Ridley Scott's *The Talented Mister Ripley* springs to mind). Benigni also notes the difficulty facing both Italian and American filmmakers in portraying contemporary Italy "because one cannot recognize or know just what it is. . . . Therefore, there is this sense of loss" (147).

Celli analyzes all of Benigni's films, but his most detailed critiques are those of *Il Mostro* and *La vita è bella*. In the former, readers will find insightful commentaries on themes such as mob mentality, consumer society and its concomitant "hostility toward inanimate objects" (89), "subversion voyeurism" (90), and castration anxiety. Celli notes that in *Il Mostro* Benigni also pays homage to both classic psychological thrillers à la Lang and Hitchcock and to the notion of diversity of point of view à la Kurosawa (*Roshomon*). Similarly enlightening is Celli's discussion of various critical ideas swirling around *La vita è bella*: apprehension about a comic's ability "to approach the subject with appropriate sobriety and respect" (98), "the fable as a defense against the sociopathology of Nazi-fascism" (99) — which Benigni finds to be "a sort of artistic bigotry against comedians" (98) — the use of sincere deception for a great good, "tackling a fascist past with childhood innocence" (103), the Bakhtinian "union of laughter and death (103)," and the emptiness of intellectualism. (Readers may wish to read my interview with Rabbi Steven Silvern entitled "Roberto Benigni's *Life is Beautiful*: Daring to Laugh in the Face of the Unthinkable," which appeared in *National Forum* [Spring 2000].)

For Benigni, as for all great comics, nothing is sacred: he ridicules political corruption, sexual mores, consumerism (calling the fashion industry "the sister of death" [80]), Italy's criminal element, the religious establishment, intellectualism, American cultural imperialism, and so forth. As fans of Italian cinema mourn the recent death of the Roman master comic Alberto Sordi, we must wait to see what the Tuscan Roberto Benigni's lasting legacy will be. Carlo Celli's book goes a long way towards defining that legacy.

V. Louise Katainen is associate professor emerita in Auburn University's Department of Foreign Languages and Literatures.

Letters to the Editor



BIG SPACE/LITTLE SPACE

As an astronomy teacher for two decades, I am surprised at how much book space is devoted to multiple universes and to inflation. There is a hidden agenda there; this is religion trying not to look like it is. Let's be honest, physicists liked the eternal universe — no God, no beginnings, just physics forever. The expanding universe demoralized them, and the 3K background radiation devastated them. Physicists then did a complete turnaround. Instead of avoiding creation, they have gone gung ho for infinite creation of infinite universes — again to avoid God. You do not see these ideas in print in any astronomy book, yet it is important to know for non-physicists. The physicists' God is "stupid but has a big magic wand" that makes all possible universes possible.

James Edmonds
Lake Charles, LA

BULLY PULPITS AND CANCER

I just received my husband's copy of the *Phi Kappa Phi Forum* ["Cancer Research," Winter 2003] and must admit I was about to throw it away. I flipped through the magazine and saw the letter from Stephanie J. Bond ["Lagniappe," page 38].

My husband and I were traveling in France this May when I received a phone call from home that my father had died. We flew to Florida, and when we got back to Ithaca, my husband complained of nagging back pain — something he had had before. We both did smoke but stopped about twelve years ago. In June he was diagnosed with lung cancer; chemo failed, and he died this October. It was a nightmarish experience. He was a vibrant, active man, a wonderful teacher — careful about his health.

If you find an audience that we could scare — I'd be happy to help.

Carol Seligmann
Ithaca, New York

CANCER RESEARCH

I was very much interested in the recent issue of the *Phi Kappa Phi Forum* ["Cancer Research"]. The articles on cancer were interesting, and I also identified in many ways with the editor's contribution. There were several things missing from the editor's remarks. It would have been very helpful to the reader to have been referred to several web sites where people can find bona fide information. For real medical information there are *Medline* and *Medscape*. Other help lines are provided by the National Cancer Institute and its multiple links. I have found much support from these sources in my own fight with non-Hodgkins Lymphoma (NHL). While the initial diagnosis is devastating, there are many therapeutic approaches that can extend life. My diagnosis was in 1996, and with the thoughtful treatments prescribed by my hematologist, I am in good health today.

The particular kind of NHL which is my diagnosis is Mantle Cell Lymphoma, for which there is not yet any cure. Nonetheless, I have been given an opportunity for a "lot of living" with yet a "lot of living" to do. The editor raises the issue of quality of life. Armed with information, surrounded by support groups, and focused on my tasks at hand, I have been able to experience a quality of life that has more meaning than before the diagnosis. I feel utterly blessed that I have been able to complete my academic career and have been given the chance to enjoy retirement. Before my splenectomy and stem-cell transplant and even after, I have been able to travel extensively, was able to complete a Rotary project in Belize, and have been involved in a number of community activities.

So, what I want the readers of the *Forum* to realize is that there is a lot of good information out there, that through advances in medicine the chances of survival are continually improving, that life takes on special meaning thanks to support groups, and that regardless of the illness a person can lead a very good quality of life.

Cornelis W. Koutstaal, PhD
Kirksville, Missouri

Your most recent "Note from the Editor" ["Cancer Research"] must have prompted a flood of mail from friends and readers. Having undergone a similar experience just last year, I add my voice to those who applaud your recovery and wish you well.

My tumor sat atop my speech center inside the brain, about the worst possible site for an English PhD to be so visited. But, except for having to grope often for the correct word and "not its second cousin," surgery and radiation have left me fairly intact.

I am far enough from the initial shock to mind and body to reflect with some equanimity on the experience to date. My initial reaction — *anger* that this was happening to me, just when I seemed to have arrived where I wanted to be in life — may dissolve over time. But I have also learned a few things, as well:

- Appreciation of friends and family who continue to support me — cancer is a very lonely disease, as you must know;
- Trust of others in whose hands my life depended. (This letter could be an encomium to Dr. Keith Black, Cedars Sinai, L.A., who truly does have "magic hands," as a friend promised);
- Patience — never one of my strong points, but a slowly acquired virtue;
- Recognition that I can't solve everything, but then I don't have to;

- Humility, in recognition that my circumstances, however distressing, are nowhere near as grave as those of many other persons;
- Courage to go on with my life, in spite of the odds and of some people's disapproval;
- And, I hope, more consideration of others than I might previously have exhibited.

Lest the above list provoke you to recommend me for sainthood, know that I still curse the television and write an occasional sarcastic letter to the local newspaper!

Mary Loftin Grimes
Jacksonville, Florida

[ED. NOTE: Mary Loftin Grimes was one of the *Forum*'s first "Education & Academics" columnists, 1994–1996.]

BOSTON, 9/11

I
I want to keep my cool but realize on the train
I'm crying. My towering office block deserted
when I got there, even security gone, an email:
Everyone go home, spend time with your family.
And here the Doomsday we have always known,
in the back of our hearts, lay waiting…this image
of ourselves falling 100 stories, human Lucifers
plunging match-head first. A whole city emptied
that day, thinking *We're next*. I say again, a city.
Trains packed and silent as cattle cars, like every
disaster man's ever made, body to body to body.

II
In Manhattan, Andrea is not only alive but angry
she can't get into her art studio, barricaded by fire
trucks and traffic. *Don't you know* I grip the phone
people are dying? but Andrea may be the only one
in America to feel no fear. Since her recovery, she
sculpts figures in fragments flying through the air,
a fingerbone, a lung — once, an entire wall of eyes
I stood helplessly beneath while she waited for my
judgment — and it occurs to me. Yes, she knows.

III
Deserted. Images of ourselves. Match-head first.

ELLEN WEHLE

Ellen Wehle is a performance poet who is featured regularly at bookstores, colleges, and the Boston and Worcester poetry festivals. Her poems are upcoming in *Runes*, *FIELD*, the *Christian Science Monitor*, *Poet Lore*, *Texas Review*, *Westerly*, and *Terra Incognita*. She lives in Winthrop, Massachusetts, with her husband and two stepchildren.