

**Ethics, Continued - Editorial Reply.**

August, 2002

Before we broke for the summer, we were discussing ethical considerations of contract negotiations in the college market. One college administrator, we called him Richard, wrote in about an issue that came up on his campus. It seems that the college had been negotiating with an agency about a possible future booking. The programming board rejected the agency's offer, but did not inform the agency of the rejection, despite Richard's diligent instruction to the board chairperson to do so.

While we have to agree that the school had absolutely no legal authority to inform the agency that their offer was rejected, the snafu still bothered Richard, who believed that, in addition to the obvious agency issues raised by the events, there may have been an ethical lesson from which we could all learn. I agree totally. As our guest columnist, Leo Kearns, will show us, ethical considerations should be our paramount concern in business dealings—especially in the university setting, where young minds are shaped. The deceit and self-indulgence that corrupted Enron and caused American consumers to lose trust in corporate entities could have possibly been stopped before it ever started had a few attentive college administrators showed concern for a few wayward students many years ago.

For those of you who missed last April's column, you can find it, along with all of the previous Campus Law articles, on APCA's website at <http://www.apca.com>.

This month, we will continue our discussion about ethics with a special editorial reply. We are fortunate enough this month to have been given the insight of a business ethics professional. Leo Kearns is a

nationally-respected businessman and a well-known leader in the field of business ethics. I have often consulted with Mr. Kearns myself in matters of ethics and I have always found his guidance to be invaluable. He has graciously agreed to share with us his opinions on the ethical considerations of contract negotiation.

Mr. Kearns writes:

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There is a seemingly unending supply of stories regarding breaches of business ethics being reported in the media. Thus, I found it ironic (or should I say, Enron-ic?) that "ethical considerations" are being raised in a contracts and riders discussion. Ironic because one of the purposes of contracts is to eliminate any confusion arising from one or both parties making inferences or assumptions, whether they are based on custom, past precedent, or a number of other factors. (In the example cited last month by Richard, I believe the larger issue is actually whether or not there was an express, or implied, agency. The dropping of the lawsuit threat may seem to indicate that the agent felt there was none. However, it may have simply decided the cost of litigating was not worth the potential reward.). Idealistically we assume that the gap between what is ethical and legal is relatively small. However, in reality, that small gap may actually be a large gulf. And there is nothing wrong with that. Just as the law is sometimes derived from custom, what a community considers ethical also has its origins in custom. And these customs can differ greatly from one community to the next (the East and West Coast, for example). In order to prevent potential conflict (and because it is the right thing to do), I would argue that universities should strive to maintain the highest of ethical standards, above and beyond what they even expect of their agents.

Campus Activities Directors have to deal with the same market forces that private enterprises do. For starters, they are in competition with other entities, both private and public, for talent or services. Failure to fulfill or abide by a contract (regardless of whether the principal is

legally bound to do so), can irreparably damage the reputation of the Administrator or Director and even the University itself. It may be a "buyers' market" when it comes to finding and booking talent, but just as it does in the business world, word gets around in the college market. Generally speaking, lawyers associate with other lawyers, physicians with other physicians, and agents with other agents.

In the business world, the rule of thumb is that a customer will tell nine people about a negative experience but only one about a positive experience. The lesson here is avoid negative outcomes whenever possible. In Richard's situation, the university made no attempt at further negotiation, and kept the agent in the dark regarding the result of the program board review. They didn't do anything "wrong." But notification of their decision should have been delivered to the agent as soon as possible. Certainly, placing a letter in an envelope and affixing a 34-cent stamp to the outside would have imposed no undue hardship on the university. The lack of notification may have prevented the agent from being able to contract their services to another for that date. If these actions are repeated often enough, the school may find it challenging to book any acts whatsoever, or possibly paying a premium to do so.

Apart from market forces, maintaining high ethical standards will also insulate the school from any possible legal ramifications. Referring back to our example, the agent bears some responsibility here as well. As a seller of services, the agent has a vested interest in seeing that the contract is executed. Given that the agency didn't call until "several weeks later," you could surmise that they believed the university was ethically bound to fulfill the contract. But, had the university taken the lead, the system attorneys could have been left out altogether. Although in this case the rejection letter was sufficient to end the matter, what if it had gone beyond that? While the university does appear to be on solid ground, not all of the facts (or should I say, only one side of them) have been offered. Maybe the agent did have a reasonable expectation (due to a previous contract experience, or a relationship with one of the parties) that the university would perfect

the contract. Court appearances in general never shine a good light on a university.

Maybe most importantly, universities should be heads and shoulders above the rest ethically because of their primary mission...educating tomorrow's leaders. Ethics courses are becoming mandatory at business schools across the country. But those principles are also learned as much through simple observation as they are in the classroom. How can we expect young adults to take what they learn in the classroom out into the real world, if they don't see the same principles practiced by their own campus administrators?

To this end, universities should adopt a code of ethical behavior. The code should not just lay the groundwork for its dealings with students and faculty, and inter-student behavior (which they probably already have). It also needs to establish guidelines for the university with regards to vendor relations. Transactions between the principal and agent must be conducted and guided by uncompromising honesty and integrity. It must also allow for a resolution process. This demonstrates the university's commitment to treating all parties fairly and truthfully. With established procedures in place, agents can conduct business without any qualms.

Granted, having a code of ethical behavior does not guarantee that all employees will follow the guidelines established therein. As long as human beings are running the show, mistakes will be made, there will be errors in judgment, and there will be inevitable disputes with agents. And that's okay. No one code can cover every conceivable situation. That's why instituting a resolution process is so important. It's also important that this process is open and transparent. As far as serving the university's commitment to educate and train their students, convening secretive hearings demonstrates nothing. And while not to denigrate the importance of classroom instruction, this type of real world experience can be invaluable.

Maintaining a level of ethical behavior that is beyond reproach is key

to the university's mission. Universities are places of learning and enlightenment. That culture needs to permeate all aspects of campus life. Otherwise lessons learned in the classroom could be muted by actions taken on behalf of the university. Not only are students done a disservice, but also the college itself can be harmed through litigation, and damage done to its reputation. If nothing similar exists, universities should look immediately at adopting guidelines to cover how it handles its contractual relationships.

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