

PERSPECTIVES

On the Professions

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"Conflict of Interest in the Professions"

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Some years ago I was asked to referee at a soccer game in which my son, then ten years old, was a player. I was not asked because I was a good choice: most of the little I knew about soccer I had only recently learned from my son. I was asked because a referee called in sick at the last minute and I was there, the only alternative to cancelling the game.

It turned out that I knew enough to be a decent referee. Still, my memories of refereeing are not happy. I wanted to be fair, but I could not just "bend over backward" to be fair to the others; that would not have been fair to my son or his team. If I could not bend over backward to be fair, what was I to do? How could I look over that field of boys running, kicking, and yelling without seeing my son in the blur of bright uniforms? Did I therefore see fouls a stranger would have overlooked? Did I resolve doubts in a way a stranger would not have? Was I harder on my son than the regular referee would have been, easier, or just the same? To this day, I don't know. What I do know is that I could not call a foul in that game with the same assurance any ordinary referee could have-or as I could have had both teams been

strangers to me.

Professions have long described this inability to judge as someone less involved would as a loss of "independence", "detachment," "impartiality", or "objectivity" (depending on profession). Today, they are more likely to describe it as a conflict of interest.

Risk or Harm?

What is a conflict of interest? Kevin McMunigal, a lawyer, argues that we can avoid a good deal of confusion by beginning to answer that question with a distinction between "harm rules" and "risk rules". Conflict of interest is a situation risking a certain harm (in my case, erroneous calls of foul). What creates this risk are "perverse incentives". What makes an incentive, that is, a tug on judgment, "perverse"? Though perhaps proper in other situations (as the special concern of a father for his own child certainly is), in the situation in question the incentive has an untoward effect: it threatens to distort judgment in undesirable ways.

McMunigal argues that even lawyers often make the mistake of thinking of rules concerning conflict of interest as concerned with harm rather than risk. For example: To charges of conflict of interest, defenders of former Secretary of Agriculture Michael Espy responded that he had done nothing in return for favors

received (an expensive dinner, flight to a resort, or the like). That response is no defense against a charge of conflict of interest (properly understood). Had Espy done something in return for the favor, the charge should have been bribery, not conflict of interest.

Conflict of interest is primarily a problem for honest people. The dishonest just cheat, lie, sell their judgment, or otherwise knowingly betray the trust put in them. When I refereed my son's soccer game, I had a conflict of interest only as long as I tried to be fair. Had I chosen to betray the trust put in me, consciously undertaking to favor my son (or consciously undertaking to favor the other team), I would no longer have had a problem of conflict of interest (in any interesting sense). My calls would have been lies. In this respect, conflict of interest is at least one step removed from "harm". While the point of federal rules against conflict of interest is to prevent harm (that is, biased or corrupt decisions about public policy), the means is not prohibition of that harm. Instead, the federal rules try to keep federal officials out of any situation where even they cannot know whether their judgment in some matter affecting one of those who has done them a favor is what it would have been had there been no favor.

Importance of Conflict of Interest

Conflict of interest is an important concept for the professions because most of what makes professions useful is their (specialized) judgment. So, for example, our second contributor, Jeffrey Kovac, is not a chemist simply because he knows what chemists know. He is a chemist because we (or, at least, his fellow chemists) can be reasonably sure that thanks to education, commitment, and practice he will generally engage in chemistry as a chemist should. Conflict of interest makes that assurance less reasonable. To exercise one's judgment when one has a conflict of interest is to take an unusual risk of error. So, for a member of a profession, conflict of interest can be objectionable for at least one of three reasons:

First, insofar as the professional is unaware of the conflict of interest, she is incompetent. Professionals are supposed to know the limits of their judgment, especially when these limits are obvious. Conflicts of interest are obvious. So, for example, Kovac's Professor Aston will know when financial interest tempts him to judge a paper more harshly than he otherwise might (though he may not know what effect that temptation actually has on his final judgment).

Second, if those justifiably relying on the professional for a certain judgment do not know of the conflict of interest and the professional does (or should) know that they do not, she is allowing them to believe that she is something she is not but should be; she is, in effect, deceiving them. Their reliance on her is justified by her professional status until she reveals that she has a special interest, that is, one not standard among members of her

profession. That, for example, is why Kovac's Professor Aston should tell a journal's editor of his financial interest in a paper (should he not decline to review it). Revealing the conflict of interest avoids deception.

Third, even if the professional informs those justifiably depending on her judgment that she has a conflict of interest, her judgment will still be less reliable than it ordinarily is. She will still risk appearing less competent than usual (and perhaps less competent than members of her profession should be). Conflict of interest can remain a technical problem even after it has ceased to be a moral problem (and, even as a technical problem, can harm the reputation of the profession or individual in question). This, I think, is the objection to many of the conflicts of interest with which Kovac concludes his piece.

That, however, is not the only objection to the conflicts of interest that concern Elliot Cohen. For Cohen, avoiding the conflicts of interest that arise when a psychological counselor who is also a teacher has a student as a client, or a client as a student, is important not only for preserving the reliability of "technical" judgment but also for avoiding that mere appearance of betrayal or indifference capable of destroying the therapeutic relationship (for example, the rejection a client might feel when receiving a low grade from his counselor-teacher). Even when we can manage the conflict of interest itself, we may not be able to manage appearances.

Business

Both Cohen and Kovac focus on professionals who are also educators. Their pieces might seem parochial were it not so rare

for academics to write about their own conflicts of interest. McMunigal's piece on legal ethics might seem parochial for another reason. Conflict of interest seems the natural denizen of a lawyer's office. With Neil Luebke's piece on conflict of interest in engineering, however, we enter the wide world. Here we meet not only the codes of ethics of several major engineering societies but also those of several major corporations. These documents make clear that, for better or worse, conflict of interest is a practical problem for many people in business.

Like McMunigal, Luebke notes that the term "conflict of interest" has been used for circumstances better categorized in other ways. For example, use of company equipment for private gain is not conflict of interest but theft of service. Luebke's piece concludes with a useful list of five ways to deal with conflict of interest. The choice among them is to be made so as to preserve the trust of those properly relying on the engineer's judgment-good advice, and yet, as my own experience with refereeing suggests, not always good enough. We must sometimes live with a conflict of interest because all the alternatives are worse; but just because we must live with a conflict of interest does not make living with it easy.

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"Distinguishing Risk from Harm in Conflict of Interest"

Kevin C. McMunigal, Case Western Reserve University

In law as in all professions, perverse incentives threatening

the proper fulfillment of professional duties are a persistent problem. Commonly referred to as "conflicts of interest", they can arise from something as routine as an insurance company employing a lawyer to defend a policy holder or as extraordinary as Marcia Clark's 4.2 million-dollar deal for a book about the Simpson case. Sources of such perverse incentives seem limitless. Relationships with family, friends, or other clients, simple greed, even the laudable ideal of reforming the law to better serve society, all may tempt the lawyer to disserve a client.

The legal profession takes conflict of interest seriously. There are ethical rules, published cases and bar opinions by the hundreds, and an expanding academic literature all devoted to conflict of interest. Lawyers who violate conflict rules may incur serious sanctions—money damages, loss or reduction of a fee, discipline by the bar, or disqualification by a judge from representing a client.

Despite all this, the subject of conflict of interest remains needlessly confused in part at least because of the frequent failure to distinguish clearly between harm to the fulfillment of professional duties and risk of such harm. To understand this failure and my proposed remedies, we must grasp the difference between harm rules and risk rules.

To see how a harm rule differs from a risk rule, consider the following problem far from lawyering. Player brawls—fights involving more than one player from each team—have marred the playoffs of the National Basketball Association (NBA) in recent years and received extensive media coverage. How

might the NBA stop player brawling?

One strategy would be to adopt a rule that any player who brawls is suspended or fined. This is a harm rule—it requires a player actually to engage in harmful conduct for sanctions to be imposed. Like the crimes of homicide, rape, or robbery, such a rule directly proscribes what it seeks to prevent; it requires occurrence of that harm to trigger its operation. In that sense, a harm rule is reactive.

The NBA might also seek to prevent brawling through a more indirect strategy, penalizing conduct that increases the risk of a brawl. The NBA might decide, for example, that players leaving their team's bench when a fight begins on the basketball court increase the risk that the fight will escalate into a brawl. The NBA would then adopt a rule that any player who leaves the bench during a fight is suspended or fined, regardless of whether he actually brawls. Like the crimes of conspiracy, attempt, and solicitation, this "leaving the bench" rule is proactive. It anticipates harmful conduct which may or may not in fact occur.

Both the harm rule and the risk rule just described have the same ultimate objective: preventing brawling. But they pursue it in different ways. The harm rule directly proscribes the target harmful conduct. The risk rule seeks to prevent the target conduct by proscribing conduct that has a good chance of leading to the target conduct. A harm rule is about sin, a risk rule about temptation.

An Identity Crisis

The ultimate objective of conflict

of interest rules is clear: preventing failures to carry out fundamental professional duties. But how do rules about conflict of interest pursue this objective? Is the prohibition against conflict of interest essentially a harm rule or a risk rule? Unfortunately, it tries to be both.

In law and other fields, the term "conflict of interest" is commonly used loosely to encompass both harm rules and risk rules dealing with perverse incentives, often without distinguishing clearly between them. This unresolved "identity crisis" about the strategic thrust of rules against conflict of interest can result in considerable confusion.

Take, for example, the recent exchange in the news between former Secretary of Agriculture Michael Espy's defenders and Special Prosecutor Donald Smaltz, who recently indicted Espy on "conflict of interest" charges. Espy's defenders emphasize that any favors he received did not influence performance of his duties as Secretary of Agriculture, that the perverse incentives those favors created actually did no harm. Implicit in that defense is a view that conflict of interest regulations are harm rules. Smaltz, in contrast, emphasizes that Espy violated those regulations even if he did nothing in return for those favors. For Smaltz, the prohibition of conflict of interest is a risk rule. Though both Espy's defenders and Smaltz are talking about conflict of interest, one side focuses on harm, the other on risk; they therefore simply talk past each other.

To get a better sense in a legal context of the contrast between the harm interpretation of conflict

of interest and the risk interpretation, consider a hypothetical case in which a defense lawyer in a high-profile criminal case enters into a deal to write a book about the case. Assume the prosecution offers the defendant a guilty plea, acceptance of which is in the defendant's best interest. Since a trial will generate publicity increasing the value of the book deal, however, the lawyer advises the client to decline the prosecution's offer. The lawyer also leaks confidential information about the case to generate publicity likely to increase future book revenues.

There are three problems here. The lawyer: (1) engaged in risky conduct-the book deal; (2) gave advice serving his own interests rather than the client's; and (3) leaked confidential information.

In legal ethics it is relatively easy to distinguish problems (2) and (3). They involve substantive harms we place in separate conceptual compartments. We lawyers refer to giving guilty plea advice tainted by self-interest as a violation of the professional duty to exercise independent judgment and the information leak as a violation of the professional duty to preserve client confidences. We talk and think about problems (2) and (3) as distinct conflict of interest and confidentiality problems.

But in legal ethics distinguishing problem (1) from (2) is difficult because our standard concepts and vocabulary do not allow it. We refer to both the high-risk situation created by the book deal's perverse incentives and the resulting tainted advice as conflict of interest and view both as falling under the duty to exercise

independent professional judgment. We collapse problems (1) and (2) risk and harm-into the phrase "conflict of interest" and the conceptual compartment of independent professional judgment.

There are times when rules of legal ethics clearly distinguish between risk and harm, as in the rules about lawyers suing former clients. These are explicitly based on avoiding risk of misuse of confidential information. But more typical is the blending of risk and harm. For example, the conflict of interest provisions of the 1969 Model Code of Professional Responsibility begin with Canon 5's general harm rule, "a lawyer should exercise independent professional judgment on behalf of a client", which says nothing about risk. But the provisions which follow, both advisory Ethical Considerations and mandatory Disciplinary Rules, though supposedly derived from Canon 5, flip flop between harm and risk prohibitions. Similarly, Rule 1.8 of the 1983 Model Rules of Professional Conduct, "Conflict of Interest: Prohibited Transactions", contains a mixture of harm and risk rules.

Possible Remedies

How could we better distinguish risk from harm in conflict of interest?

We could begin with the semantically ambiguous phrase "conflict of interest", jettisoning it on the ground that it is freighted beyond salvage with ambiguity. Alternatively, and perhaps more practically, we could restrict the term "conflict of interest" to risk rules governing perverse incentives, referring to harm rules by the underlying duty each is

based on, such as independent professional judgment, confidentiality, and competence.

We could also separate risk rules more clearly from harm rules. For example, the Model Penal Code reserves a section for treatment of the anticipatory offenses of conspiracy, attempt, and solicitation, clearly distinguishing them from harm offenses. Similarly, risk rules could be given a distinct place in an ethics code, rather than being placed, as in the Model Code of Professional Responsibility, under the duty of independent professional judgment. Putting both risk and harm under the duty of independent judgment, as in the Model Code, makes it difficult to distinguish between them. Putting them both there also erroneously suggests that conflict of interest is concerned only with protecting independent professional judgment, not with protecting other duties such as confidentiality and competence.

Even after we succeed in distinguishing risk from harm, questions remain. How much risk is acceptable? What reasons for taking that risk are legitimate? Who should decide whether to take the risk? These are hard questions, of course, but distinguishing risk from harm is a necessary first step to confronting them squarely and to making conflict of interest more understandable.

"Conflict of Interest in Chemistry"

Jeffrey Kovac, University of Tennessee

Chemistry is perhaps the most practical and least glamorous of the natural sciences. While physicists claim to be discovering the fundamental laws of nature and biologists to probe the secrets of life, chemists seem engaged in nothing more exalted than the messy and smelly business of making new substances: dyes and drugs, paints and polymers, fuels and fibers. Chemistry is often characterized as the central science responding to society's needs. Because of that centrality, chemists regularly find themselves with multiple relationships that can lead to conflicts of interest.

A conflict of interest occurs when a professional, in a relationship of trust, has another interest that might interfere with the proper exercise of judgment. Since the day-to-day practice of science is filled with judgments, there are many opportunities for conflicts of interest. Questions of data interpretation, reporting of results, authorship, and peer review all involve professional judgment. For the chemist in a university setting, my primary focus here, these judgments are made in the context of multiple relationships with other parties such as students, postdoctoral research associates, colleagues inside and outside of the department, editors, granting agencies, private industry, and the public. Rarely is the university chemist involved in the relatively simple professional-client relationship that characterizes the practice of medicine or law. Instead, the university chemist must often balance several potentially competing interests. The resulting ethical questions can be perplexing.

Money

The most obvious cases of conflict of interest in chemistry involve money. Because of the utility of chemical research, it is common for a chemical company to retain a university chemist as a consultant. A consulting arrangement might also lead to a contract for basic or applied research to be conducted in the university, often by graduate students or postdoctoral research associates. The contract might include arrangements concerning intellectual property and patent rights. Both personal financial gain and research funding are powerful interests that can interfere with professional judgment. Several possibilities come immediately to mind.

Suppose that a journal asks Professor Aston to review for possible publication a paper written by chemists at a company for whom he serves as a consultant. If the paper concerns research in which Aston is directly involved, he should of course send it back to the journal citing conflict of interest. Suppose, however, that the research is quite distant from his work with the company, but still within his area of scientific competence. Do his financial ties to the company still constitute a conflict of interest? Should he still recuse himself? If he chooses to review the paper, should he disclose his consulting arrangement to the journal's editor?

Here is a more interesting case: Along with her university position, Professor Simpson is involved with a small startup company attempting to commercialize one of her discoveries. Her company is racing to get a product to market

and also to publish the scientifically interesting results of its research to strengthen its market position. Simpson knows that other companies are working on similar products. Suppose she is asked to review a paper written by chemists working in one of the competing companies, a paper on a subject having nothing to do with the product that makes that company her company's competitor. Should she agree to review the paper? Can she provide a good professional judgment? Or is there a temptation to judge the paper harshly, delay its publication, and thus make the competing company look less good than it otherwise would?

With the increasing emphasis on technology transfer, university chemists more and more will have to answer such questions.

Reputation

Even when money is not involved, a university chemist can be confronted with competing interests that might compromise good professional judgment. One of the most powerful interests is one's own research reputation. Building a national or international reputation is essential to success in chemistry, as in other fields. With reputation comes tenure and promotion, invitations to speak at important conferences, prizes given by professional organizations, and the increased likelihood of funding. A high profile is also good for one's students and for science because it helps bring in the intellectual and financial resources that facilitate good research and good education.

Overzealous pursuit of personal success, however, can distort professional judgment in a variety of ways.

For example: In chemistry, graduate students become apprentices to faculty, receiving laboratory space, equipment, and financial support in return for conducting much of the laboratory research. Generally, the master's or doctoral project of a student is part of a broader research program conceived by the faculty research advisor. In return for a commitment of time, energy, and ideas to the project, the student is trained in the craft of chemical research. Since some of the credit for successful projects must be given to the student, most publications in chemistry have more than one author: the student is included. The protocol concerning the order of authors is not well established, but a sufficiently significant contribution by a student is often rewarded by putting the student's name first. Often too, or instead, a student's contribution is generously acknowledged in public presentations. The judgment concerning the way in which credit is apportioned rests with the professor, however. Consider the following case:

Martha Scott is a bright student working with Professor Waterman on a project in synthetic organic chemistry. Waterman had suggested a particular target molecule and synthetic strategy to Scott which she tried to implement. After several months of failure, she found an old journal article that gave her a new way to approach the problem. Within days, her new synthetic route had produced the target molecule in high yield. When she presented her results to Waterman, he realized that her results could make his reputation; the target was important and the synthesis was both beautiful and broadly useful. All he would need

to do is to avoid playing up Martha's contribution and stress his own and not without justification: The laboratory and project are his; so, his name could justifiably be put first among the authors. He would, of course, take care of Scott when it came time to write recommendations.

Waterman may be right about all this, but clearly his interest in professional success is too powerful for him to be sure he is not planning to treat Scott unfairly. Although the overall design of the project was his, the crucial idea was hers and deserves substantial recognition.

Other Causes of Conflict of Interest

The life of a university chemist is filled with such temptations. Waterman is probably asked by federal agencies like the National Science Foundation to review grant proposals, usually written by researchers working in areas very close to his own. Perhaps by rating their proposals a little lower than they deserve he could increase his own chances of winning scarce resources. He could delay publications of his competitors' results by continually raising objections in the peer-review process. He might be tempted to over-interpret data to make his results look more impressive or to increase the number of his publications. All of these are instances in which an interest in success threatens professional judgment. Students, other scientists, and the process of science, all could be shortchanged.

The moral ideal of science is the habit of truth or, at least, the search for reliable knowledge. The internal code of scientific practice requires, as Richard

Feynman said, "a kind of utter honesty—a kind of leaning over backwards," both in dealing with data and its interpretation and in dealing with students, colleagues, funding agencies, and the public. Personal interests, financial or of another sort, can compromise this ideal. A strong personal relationship with a colleague or student can also influence judgment. Finally, as in cases such as cold fusion or polywater, unreasonable commitment to an idea can result in poor science. The chemist stands in the center of many relationships and interests. When a professional judgment is made, the key is to find a path that balances the competing interests in a way withstanding ethical scrutiny.

"Psychological Counselors-Educators: Some Conflicts of Interest"

Elliot D. Cohen, Indian River Community College

Psychological counselors are often also teachers. They may be full-time faculty and part-time counselors, or adjunct faculty who work full-time in mental health. Combining teaching with counseling can have significant professional advantages. Ongoing practical experience can give an instructor credibility that non-practitioners lack and provide a fresh stream of practical experience from which to draw in class. However, the two roles, counselor and teacher, also have the potential for collision, creating conflicts of interest.

Dual-role Relationships in Psychological Counseling

According to the Code of Ethics (1995) of the American Counseling Association (ACA), "The primary responsibility of the counselor is to respect the dignity and to promote the welfare of clients." Fulfillment of this primary responsibility requires that counselors remain loyal to their clients. Otherwise, clients would not trust their counselors, would not disclose their deepest secrets, and would therefore not work through their "unfinished business". Loyalty requires that counselors maintain independence of judgment in matters related to their clients' welfare, interests, and needs. Where a counselor's independence of judgment is compromised by a conflict of interest, the welfare and dignity of clients are likely to suffer.

A person can be said to have a conflict of interest when he or she is in a relationship with one or more others requiring the exercise of judgment in the others' behalf but has a special interest tending to interfere with the proper exercise of judgment in that relationship. Conflicts of interest sometimes arise for counselors when they take on or maintain "dual-role relationships" with their clients. Such relationships exist when counselors occupy two or more different (professional or personal) roles with respect to the same client.

Dual-role relationships do not always involve conflicts of interest; nor are they necessarily morally problematic. For example, a counselor-educator in a graduate program who is both teacher and supervisor to a graduate student-intern need not have a conflict of interest. However, dual-role relationships that involve conflicts of interest

are invariably morally problematic. For example, dual-role relationships in which a counselor counsels a client with whom he or she shares (or has formerly shared) a personal relationship (for example, friend or sexual partner) typically involve conflicts of interest and should be avoided.

On the other hand, dual-role relationships may sometimes be morally problematic even if they do not involve a conflict of interest for the counselor. This is the case when the client thinks the counselor has a conflict of interest or when the client otherwise feels uncomfortable about the dual-role relationship even if the counselor does not have any conflict of interest. Thus, dual-role relationships may be morally problematic when there is serious potential for distortion of the client's judgment.

Dual-role relationships may also be morally problematic because they involve a public appearance of conflict of interest. For example, counselors who engage in sexual relationships with former clients (regardless of whether counseling was terminated for the sake of pursuing such a relationship) can adversely affect the public image of counselors, thereby deterring prospective clients from seeking counseling.

Since counselors may also be (and often are) professional educators, they may occupy dual-role relationships arising as a result of working within these two related though distinct professions. There are at least four possibilities for conflict of interest: (1) a counselor agrees to counsel a current student; (2) a counselor agrees to

counsel a former student; (3) a current client enrolls as a student in the (current) counselor's class; (4) a former client enrolls as a student in a (former) counselor's class. Let's consider these in order.

Counseling Students

By agreeing to counsel a current student, a counselor takes on responsibilities that are potentially incompatible. Counselors have a primary responsibility to look out for the welfare of their clients. They must encourage their clients to make self-disclosures without fear of reprisal or of being rejected because of their ideas or feelings. To accomplish this, counselors must convey "unconditional positive regard" for their clients in the form of a nonpossessive, nonjudgmental, caring attitude.

Professors, on the other hand, have a primary responsibility to provide fair and competent instruction and evaluation. According to the Statement of Professional Ethics (1990) of the American Association of University Professors (AAUP), professors should "make every reasonable effort to foster honest academic conduct and to ensure that their evaluations of students reflect each student's true merit." More specifically, as teachers in counseling education programs, professors are required to act "upon ethical obligations to the profession" and thus to evaluate their students (who are prospective members of the counseling profession) according to "predetermined academic standards that are separate from and not dependent upon the student's level of self-disclosure." (ACA Code, F.3.b)

A teacher-counselor who counsels a current student thus confronts a conflict of interest insofar as maintaining unconditional positive regard for the client tends to hamper, conversely, tends to be hampered by-assessment of the student according to independent, pre-determined academic standards. Further, even if the individual counselor does not encounter a problem in maintaining independence of judgment in these circumstances, the substantial risk that the client-student will encounter such a problem militates against voluntarily undertaking such a dual-role. The counselor-educator should instead make a suitable counseling referral.

Because counseling former students is a consecutive dual-role relationship, it avoids the simultaneous, discordant responsibilities discussed above. However, such relationships may have the potential to create future conflicts of interest if former students later decide to enroll in further courses taught by the same instructor. It is thus prudent for counselor-educators to explore this possibility with such clients before agreeing to counsel them. Counselors can thereby assure that such clients have given informed consent to the policy of not counseling (current) students. If a student is not prepared to consent, or if the chances that the client will (simultaneously) become a student appear significant, the counselor should provide a suitable referral.

Teaching a Client

Cases in which current or former clients enroll in the counselor-instructor's classes leave the instructor with fewer alternatives than elective dual-role

relationships do. Unlike counselors, instructors typically cannot cite conflict of interest to refuse to teach a student enrolled in a class. Instructors may be "stuck" with such a student whether they like it or not. Indeed, as instructors, they are expected to divest themselves of any relationship extrinsic to the teaching relationship that conflicts with it: "Although professors may follow subsidiary interests, these interests must never seriously hamper or compromise their freedom of inquiry." (AAUP, 1990)

When a former student comes in for psychological counseling, the counselor may well consider the possibility of having the client again as a student. When, however, a client has not yet been one's student, there may be no clear indicator of that possibility. Counselor-educators will find it harder to protect against conflicts of interest arising from having (current) clients become (simultaneously) their students. It is therefore prudent for counselors who teach (and teachers who counsel) to be "on the lookout" for possible signs of such impending dual roles before agreeing to take on a new client. They should, for example, consider whether the (prospective) client is planning to attend a university where the counselor teaches or to study a field the counselor teaches, whether the client is already enrolled in a curriculum in which the counselor teaches, and whether the client "needs" for graduation a course the counselor teaches.

Counselors should not turn down clients simply because they are someone's students. However, a counselor who, for example,

teaches a required psychology course at a local community college (serving the community in which the counselor practices) should be alert to the dangers of unwittingly getting into such problematic relationships. It is prudent for counselors who teach to make a practice of informing prospective clients of their policy against counseling (current) students.

If a counselor nevertheless winds up with a current client in class, the counselor should discuss possible alternatives with the client, including termination of counseling with an acceptable referral, and the student's withdrawal from the class. In the latter case, options such as taking the course with a different instructor or at another institution might be discussed. The counselor should inform the client of all significant risks related to maintaining the dual-role relationship and encourage the client's own autonomous resolution of the conflict. Consistent with client welfare, the counselor should decline to remain in both roles.

When one finds oneself teaching a former client, the consecutive nature of the dual roles makes it less likely that a conflict of interest will arise. However, since former clients often seek further counseling, counselors should be alert to the possibility that such clients could request further therapy when they are currently students. Should they make such a request, this potential for conflict of interest can be avoided by making a suitable referral.

"Conflict of Interest in Engineering"

Neil R. Luebke, Oklahoma State University

If we go by the number of cases considered by the Board of Ethical Review (BER) of the National Society of Professional Engineers (NSPE) between 1958 and 1993, conflict of interest is the largest category of ethical problems facing engineers, exceeding the second-place topic, advertising, by nearly 25% (43 cases to 33). But the predominance of conflict of interest is actually greater than these numbers suggest. Since the Supreme Court decision in *Bates v. Arizona State Bar* (1977), the BER has taken only a few cases concerned with advertising, while the conflict-of-interest cases have become even more common. Of course, number of cases does not necessarily correspond to total number of inquiries made to the NSPE, much less to the rate at which problems are actually experienced in the field; but the number of cases considered certainly does testify to the variety of difficult cases within a category.

Given the BER experience, it is surprising that most introduction-to-the-engineering-profession textbooks ignore the topic of conflict of interest almost totally. Happily, the three most recent texts in engineering ethics, *Ethical Issues in Engineering* by Johnson (Prentice-Hall, 1991), *Engineering Ethics: Concepts and Cases* by Harris, Pritchard, and Rabins (Wadsworth, 1995) and

Ethics in Engineering by Martin & Schinzinger (3rd edition, McGraw-Hill, 1996) do cover the topic and include some discussion of cases. Probably the earliest extended discussion of conflict of interest in engineering was the CSEP module with that title, written by Wells, Jones, and Davis, and published by Kendall/Hunt in 1986. Though its focus is the ASME v. Hydrolevel case, it also discusses several BER cases.

Engineering Codes

The codes of ethics of every major engineering society say something about conflict of interest but vary a good deal in what they say. The 1984 Model Guide of the American Association of Engineering Societies requires disclosure of—rather than avoidance of—a conflict: "engineers [should] disclose to affected parties known or potential conflicts of interest or other circumstances which might influence—or appear to influence judgment -- or impair the quality of their performance." On the other hand, the most recent (1991) version of the Code of Ethics of the Institute of Electrical and Electronics Engineers includes both avoidance and disclosure in its equally brief statement: "[members agree] to avoid real or perceived conflicts of interest whenever possible, and to disclose them to affected parties when they do exist."

The emphasis on avoidance or disclosure may even vary through the history of an individual society's code. In the versions of the NSPE Code of Ethics the BER consulted from the mid-50s through 1980, one of the fifteen sections of the code dealt exclusively with conflict of

interest, counseling avoidance if possible and full disclosure if avoidance is not possible. (That code also briefly spelled out what counted as an "interest" as well as detailing special warnings for engineers in private practice who also had some position of authority in governmental bodies.) After 1980, the NSPE code, now divided into a short "Rules of Practice" section listing "Fundamental Canons", and a much longer section of "Professional Obligations," says nothing about avoidance; disclosure is now subsumed under a canon requiring engineers to "act in professional matters for each employer or client as faithful agents or trustees" (as well as the previously-mentioned paragraphs on governmental involvement). In case 85-6 (that is, case 6 in 1985), the BER even went so far as to say that the decision in an earlier case (69-13) might have gone another way if the Board had been working under the current code—with no mention of avoidance—rather than the code in effect in 1969.

Corporate Codes

Not only does the code of ethics of every major engineering society include provisions regarding conflicts of interest, but so do most codes of conduct issued by companies employing engineers. Here, too, there is variety. I will give just a few examples.

The 1994 employee manual of Hoechst Celanese, Business Conduct Policy, lists conflict of interest as the first of several sections dealing with problem areas. (Among other problem areas are inside information, political contributions, and U.S. law restricting international

trade.) After defining conflict of interest as a situation arising "when an employee's loyalty to the Company is prejudiced by actual or potential personal benefit from another source", the three-page discussion gives several examples and further specifies what is and what is not a "significant financial interest". Hoechst issues a companion Questions & Answers booklet that replies to sixteen questions concerning common conflict-of-interest situations.

A manual for Honda of America Manufacturing (HAM), Legal Compliance and Business Ethics Policy, is much briefer. It begins: "A conflict of interest occurs whenever an associate [that is, an employee] allows the possibility of direct or indirect personal gain to influence his or her judgment in the conduct of HAM's business". The manual then lists, in less than a page, five situations creating a potential conflict of interest.

Phillips Petroleum (Our Responsibility: A Code of Business Conduct and Ethics) defines "conflict of interest" more broadly than Honda does, that is, as "any situation that could cast doubt on your ability to act in an objective manner". That definition is followed by four pages illustrating such situations under four headings: (a) Competitive Relationships; (b) Relatives and Customers, Contractors, and Suppliers; (c) Misuse of Company Assets; and (d) Entertainment, Gifts, and Favors.

Finally, the current 3M Company Guidelines devote four pages to the topic, beginning with the statement: "It is 3M worldwide policy that, without prior management approval, 3M

employees should not engage in activities that conflict with or are inconsistent with 3M activities or business interests or that could cause a reasonable person to believe that their judgment, loyalty to 3M or objectivity in the conduct of their 3M business activities and assignments might be adversely influenced."

Despite the differences, the companies all seem to regard conflict of interest as a threat to the ability of employees to exercise their best judgment on behalf of the company. They all see financial, family, or private business interests as sources of threats. Disclosure of the situation to appropriate company officials is recommended as the minimum response, with prior avoidance generally considered preferable when possible.

Typical Conflicts

Typical conflicts of interest that arise in engineering include: (a) having a financial interest such as a significant amount of stock in a supplier that could benefit from one's professional decisions; (b) having family members or business associates who could benefit from favoritism in one's professional decisions; (c) having a position of authority on a public or governmental body that might allow one selectively to benefit business associates, one's employer, family members, or one's own financial interests; and (d) working for a competitor or for competing clients at the same time. One common version of situation (a) involves a gift to an engineer from a vendor (either a personal gift or 'free' engineering assistance such as software). Companies often limit the dollar amount of permissible gifts that may be received and, less

frequently, may specify the amount of stock an employee may hold in a supplier or competitor.

Some companies, mistakenly in my opinion, also categorize the following as conflict of interest situations: use of company information for private gain, unauthorized use of company equipment for private purposes, noncompetitive moonlighting, using the company affiliation to promote one's own business, supporting a public cause the company regards as hostile, or purchasing goods or services from a competitor. While some or all of these practices may be unprofessional or even immoral, they do not seem to me to be cases of professional trust being threatened by an objective interest in the sense of a financial or family relationship. They seem, in contrast, to involve only a subjective (or psychological) interest that may or may not arise out of the objective situation. There is, however, well-founded disagreement on this point, with those including subjective interests more likely to stress the threat to loyalty or independent judgment as the key condemnatory factor.

Options

Measures usually recommended for dealing with a conflict of interest, or even an appearance of a conflict, are (a) avoidance if possible (for example, refusing gifts from vendors), (b) divestment (for example, selling one's stock in a supplier), (c) resignation (for example, leaving a public board that often considers contracts involving your company), (d) nonparticipation (for example, removing oneself from the evaluation of potential subcontractors if a relative is one

of the candidates), and (e) disclosure of the facts of one's situation to some or all parties concerned (for example, a university might require a professor to report financial interests related to research). The choice of the most appropriate measure is usually made on the basis of what is necessary to preserve trust on the part of the client, employer, or public and the parties' confidence in the objectivity of an engineer's professional judgment.

"Announcements"

Ethics Across The Curriculum:

A Practical Workshop
During the last two weeks of July 1997 (July 21-29), IIT will be offering a workshop on how to integrate ethics into technical courses (anything from calculus to thermodynamics, from technical writing to genetics). The emphasis will be on practice, on what works in class and what doesn't, not on theory. This workshop is similar to those we offered our own faculty 1991-93 and to faculty at other schools in 1994.

Our funding, which comes from the National Science Foundation, should pay for most reasonable expenses, plus \$500 in stipend, on condition that your institution puts up another \$1000. This condition has at least two purposes:

First, it is our way of assuring that your institution will want to get its money's worth out of you when you get back.

Second, the \$1500 stipend should be large enough to make it

financially possible for the faculty who consult, teach, or otherwise earn money during the summer to take ten days off in Chicago and devote significant time after they get back to working on ethics across the curriculum.

Attending the workshop commits you to: a) devoting seven days (full time) to the workshop (and related activities)-with a weekend off; b) integrating professional ethics into one of your technical courses in the fall by using what you prepared in the summer workshop; c) doing a course evaluation of that material; and d) writing a report describing what you did and what happened. You will not have "graduated" from the workshop until you have done all that. Once you have done all that, you will, we believe, be ready to help faculty at your institution integrate ethics into their technical courses.

To apply, you need only send us: a) a short letter describing your reasons for wanted to take the workshop, your background, and the courses you will be teaching next fall; b) a cv; and c) a letter of commitment from the appropriate administrator indicating that your institution will pay its share of the \$1500 stipend if you are accepted.

DEADLINE FOR APPLICATION IS FRIDAY, FEBRUARY 28, 1997. We will have funds for no more than twenty faculty. So, don't delay. We will try to notify applicants by March 17. For more information, contact: Michael Davis, Senior Research Associate, Center for the Study of Ethics in the Professions, Illinois Institute of Technology, 10 W. 31st Street, Room 102, Stuart Building, Chicago, IL 60616-3793, ph. 312-567-3017, fx. 312-567-3016, e-mail cse@charlie.cns.iit.edu

CALL FOR PAPERS: A special issue of *Research in Marketing* on marketing ethics and consumer ethics is seeing manuscripts presenting empirical research, theoretical or conceptual analysis, or insightful literature reviews. Potential topics include ethical issues in strategic planning, methods for measuring ethics-related variables, ethics in personal selling, and ethics in advertising. Deadline for submission: January 30, 1998. Contact: Scott J. Vitell, School of Business Administration, University of Mississippi, University, MS 38677. Tel: 601-232-5468, Fax: 601-232-5821. E-mail: vitell@bus.olemiss.edu

CONFERENCES: *Moral Education in a Diverse Society*, a

conference sponsored by the Kenan Ethics Program at Duke University, February 20-22, 1998, will consider both the means and ends of moral education. What should our goals be when we teach ethics—to refine students' reasoning abilities, to inspire moral sensitivity and imagination, to foster virtues (and if so, which ones?), or to encourage civil engagement? How can we articulate and defend a vision of moral education in the face of moral, religious, political, and cultural differences and disagreements? How can case studies, literature, service-learning, or peer education be used to teach ethics? What helps young people to negotiate moral complexity and disagreement? How do we model a commitment to integrity and examined life? Is it appropriate for teachers to take a moral stand—and if so, when and how? Contact: Mindy Bankey, conference planner, Moral Education Conference, Kenan Ethics Program, Duke

University, Box 90432, Durham, NC 27708, tel: 910-228-1602 or toll-free 888-226-4307.

Association for Practical and Professional Ethics Annual Meeting, February 26-28, 1998, Dallas Texas, will include: a keynote address "Ethical Systems and Public Policy: The National Bioethics Advisory Commission Experience" (Harold Shapiro, President, Princeton University); a "mini-conference" on Ethics in the Accounting Profession; the Fourth Annual Intercollegiate Ethics Bowl; and a conference sponsored by the Cary Maquire Center for Ethics and Public Responsibility, The Ethics Contract and other Promises. Contact: APPE, 410 north Park Avenue, Bloomington, IN 47405; tel: 812-855-6450; fax: 812-855-3315; email: appe@indiana.edu

COURSES: *Teaching the Ethical, Legal, and Social Implications of the Human Genome Project: A Model College Course*, a faculty institute, will be held at Dartmouth College, over eight weeks during the summer of 1998. The course is designed to allow participants to collaborate with leading experts on the social implications of the HGP, to examine cutting-edge social issues in human genetic research, to learn skills of multi-disciplinary teaching, to acquire knowledge, material and support to teaching such a course successfully, and to experience a summer in one of New England's classic college towns. To offset costs at least partially, each participant will receive \$2500 toward travel, room, and meals. Additional support from the participant's home institution will be needed. Contact: Barbara J. Hillinger,

6031 Parker House, Dartmouth College, Hanover, NH 03755. Tel: 603-646-1263; fax: 603-646-2652; e-mail: Barbara.hillinger@dartmouth.edu

Ethics and Palliative Care, an Advanced European Bioethics Course, will be offered April 2-4, 1998, in Nijmegen, the Netherlands. Subjects include evolution of palliative care, ethics and pain management, limits of palliative care, futility of medical treatment, and palliative care and euthanasia. Contact: B. Gordijn, Ph.D. Catholic University of Nijmegen, 232 Dept. of Ethics, Philosophy, and History of Medicine, P.O. Box 9101, 6500 HB Nijmegen, The Netherlands, Tel: 0031-24-3615320, Fax: 0031-24-3540254, e-mail: b.gordijn@efg.kun.nl

The Center for the Study of Ethics in the Professions (CSEP) was established in 1976 for the purpose of promoting education and scholarship relating to ethical and policy issues of the professions. *Perspectives on the Professions* is one of the means the Center has of achieving that purpose.

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