BERNARD I. FRIEDLANDER

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He was president of Salient Technologies Inc. and Salient Management Systems, Inc., companies that developed and marketed computer software systems for mini-computers and mainframes.

At Union Carbide Corporation he was business manager, directing the "intrapreneurial" new business activities, new business development and licensing. He joined Union Carbide in Advanced Chemical Engineering Separations Research and then he became manager of Process Engineering Research and Product Development of the Silicones Division, department head in Manufacturing and then successively licensing manager, Patents and Licensing; associate director, Patents and Licensing; director of Technology Marketing; and director of Marketing.

Before moving to the United States, he was managing director of a privately owned marketing and sales promotion company in Canada.

In 1992 he was president of the Licensing Executives Society (U.S.A. and Canada), Inc. He was chairman of the Education Committee of the Licensing Executives Society International for three years and for seven years he was co-editor of *The Law and Business of Licensing*. He has presented over 150 speeches and seminars.

Dr. Friedlander was on the Boards of Directors of the New England Trade Adjustment Assistance Center, Inc., the University of Connecticut Research and Development Corporation and the Investment Advisory Committee of the Connecticut Innovations' Eli Whitney Fund.

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ETHICS

Ethical behavior is a luxury of those with hefty profit margins. (NYT 2/12/89)

In good times being ethical or moral is difficult enough - but, in hard times, times of change, when the struggle is to survive - it is a real challenge.

Corporate CEOs believe that ethics are important. They say so all the time. They include it in mission statements and strategic plans. The CEOs are responsible for setting the moral and ethical tone and policy of the company. And in the face of all these mission statements about ethical behavior we read that the: *"values of corporate citizenship have been replaced by a sense that competing and competing aggressively, is a corporate executive's highest calling, whatever it takes"*. Any and all acts by corporate executives - in the interests of the shareholders are done with *"less reluctance, less ambivalence and frankly, less moral compunction"*. You have to do it to survive these days. "*You don't worry about it as you might once have"*. (NYT 2/12/89)

People are introduced into behavior by what is called differential association - if you join a corrupt organization pretty soon you are likely to behave in the same way unless you are one of the very few people who quit! (NYT 2/12/89)

25% of businessmen and women surveyed by a national business magazine said that pirating software is an acceptable business practice.

Males interestingly enough, have a greater tendency to behave unethically than females. (Across The Board April 1997)

Do ethics help business? A 1986 list of companies that paid dividends for 100

years tends to coincide with those companies that gave ethics a high priority.

Yet ethics is commonly joked about. *"It's better to be quotable than to be honest" - Tom Stoppard. "Any preoccupation with ideas of what is right and wrong in conduct shows an arrested intellectual development" - Oscar Wilde.*

In 1990 a poem appeared in a volume of poetry. It was entitled "The Secret, One Day"

If you rob from many 100%
There could be a moral offense
A few points more, a few points less
Morality is a question of percent

Raul Salinas

Priorities are important - Brecht said "Grub first...then ethics"

Although many writers have said that concerns about the appearance of impropriety had lain dormant until Watergate, ethics really became a hot topic in the eighties. In May 1987 Time magazine had a cover story "Ethics- Assaulted by sleaze, scandals, and hypocrisy, America searches for its moral bearings". At that time 100 of Ronald Reagan's appointments were under a cloud of impropriety having ethical and or legal charges against them. And has it changed with the party or the years? It seems to have gotten much worse. Nobody trusts the government and the politicians. Their lies are expected. The truth is not expected from our national or even our state politicians. The brokers and bankers have been shown to have no scruples either. And the guys running the Fortune 500! In a cartoon that showed corporate chieftains talking, one

said to the rest of the group "what we'd like to do, gentlemen, is to find a way to de-couple our profit issues from our ethics issues".

And most recently the questions relating to ethics are all but lost in the accounting scandals, executive stock trading scandals, executive lying, executive self serving actions from tax havens to false stock advice. It's not what is ethical but only what is not criminal. That is the standard that our glorious executives in corporate America are setting for us.

In a lengthy article in Business Week it was said, "corporate executives argue that the United States should delink trade issues from other political issues including nuclear proliferation and ethnic cleansing". Then at the pinnacle of morality the corporate lobbyists say about themselves and their craft, "it is short sighted to call what we do lobbying - the politicians and the media and the public need to get a broader understanding of what's at stake and we tell them".

In 1992 Xerox sponsored a poll (INC. Dec 1992, p16) "Can you afford to be ethical? Everyone believes in being truthful in business. Some are just more truthful than others". 52% of those polled said that they would play by the rules, but that they would bend them to their company's advantage whenever they could. 46% said they tell the whole truth all the time. And 2% said that all's fair in love and business, as long as you don't get caught. It seems that the majority believed that "good ethics benefit everyone when most people practice them. But most don't and thus everyone felt that they were forced to participate in unfair and somewhat unethical practices in order to stay afloat and compete". Being unethical is sometimes a matter of survival, pointed out

one Fellow in the program Ethics and the Professions at Harvard. Shoddy practices become commonplace and multiply themselves. Aristotle wrote, "A bad moral state, once formed, is not easily amended"

Is the ethical person becoming an endangered species and will she be resigned to reverting to "a hunter and gatherer".

Most people are employees. They work for others. Do employees believe in the Piper's Pay Principle? He who pays the piper calls the tune. Any employer is justified in saying - it's not illegal so stifle - do it my way or get out. What should the professional piper do?

Questions of what constitutes right and wrong are very troubling. The challenge is to be ethical and get what you want! Do employees tacitly accept the dominance of the organization over personal conscience? An ethicist, at Loyola Marymount, said that unethical behavior is self destructive and generates more unethical behavior until you hit the pits.

It is interesting to examine what corporations, academic institutions, non-profits say about ethics and what do they do about ethics training for their employees and especially their professional employees.

In the early '60s the route to organizational excellence was studied and taught by increasing numbers of academics and corporate thinkers. One major discovery of the times, that was often referred to, was that management is a science rather than an art and therefore it can be learned. A popular management theory of the time used "The Managerial Grid". It was said that the Managerial Grid had demonstrated its utility

as a philosophy. (The Managerial Grid, Blake and Mouton, Gulf Publishing Co., Houston TX 1964) The word ethics does appear in the book. About ethics they explained that managers sometimes present a facade in order to achieve their own personal goals. This phony facade the authors explained is used for personal gain and short cuts are taken to achieve an end which is sometimes "not governed by commonly accepted rules for maintaining social morality". In this 350 page book there is less than 1 page - 5 paragraphs in the section on ethics. If only they included this one statement it would have been a signpost for all. There is no right way to do the wrong thing. During the period from the early '60s to the end of the 60s and the '70s the "profession of management" began to receive wide acceptance. Seminars were taught by leading consultants including Louis Allen and others. They taught management skills to CEOs and then proceeded down the food chain through the organization. The consultants had methods for developing managers and improving management methods. They carried out continuing research to systematically identify and validate the best management practices and techniques.

By the late '70s the Louis Allen Organization stated that they had educated 385 leading enterprises that included health care, educational, municipal government and religious organizations. But nowhere could be found a reference to ethical behavior. The gurus of consulting were successful in "instilling a sense of professionalism in the participating manager, in broadening his vision and sharpening his focus on the activities which he must master if he is to excel in his critical functions of P, L, O, & C". Planning, leading, organizing and controlling. Known as PLOCing! Every organization

that was taught these methods developed their strategic plans and started with "The Corporate Charter". They did include in their charter a commitment to equal opportunity and to the occupational safety and health of their employees. They said they would be good corporate citizens and respect and comply with all the laws and regulations. But there was no reference to ethics nor was there any widespread interest in or acknowledgment of ethics as a subject to be studied or principles to be taught in corporate America until well after the Watergate era of the early '70s, indeed not until the '80s.

In the late '80s ethics becomes somewhat of a hot topic. Universities begin to establish centers to study and teach ethics. It was thought that we were well along in tackling the problem at the University level and in the post university organization world. Now we are into the new millennium. Corporate charters all have an early paragraph in the mission statement that states it will operate ethically. But there are a rash of scandals. All well covered by the media. Whistle blowers in the defense industry, sexual harassment in the pharmaceutical industry, derivatives, insider trading, gigantic coverups in the financial industry, price fixing, outright racial bigotry. And what has happened. Business Week reported on "Ethics For Hire". A new cottage industry surfaced. The business is helping companies clean up their acts. These consultants include the big accounting firms, the usual management consulting firms, the leading private detective agencies, law firms and non-profits. It is now a billion dollar a year industry. The template that has emerged, however, is discouraging to say the least. Nowhere in the template does it call for training in ethics and morals. It's cosmetic. The

article goes on to describe the results of a 1995 study by the nonprofit Ethics Resource Center that found that employees at corporations with "comprehensive ethics programs know the law better than workers elsewhere and are more likely to report violations, but they also felt just as much pressure to compromise standards in order to meet business objectives and said they witnessed just as much misconduct".

One director of a corporate ethics program says that the "discussion of the subject of ethics generates discomfort among executives".

Much has been said about whistle blowers in the last few years and most companies promote or at least give lip service to their support of "whistle blowing". The facts of life are that 65% of whistle blowers are fired!

Where does one start and who should be trained? At a renowned Business School the group was made up of senior management, CEOs, CFOs, some of whom were included in a class with MBA students. In an ethical-decision making scenario, 75% of the MBA students were willing to commit fraud. 40% of the corporate controllers and 47% of the top executives were willing to OK the fraud. (Across The Board April 1997)

Perhaps ethics training should start in the public schools. "Cheating in Our Schools: A National Scandal" the Reader's Digest article proclaims and the figures are alarming. 98% copy other's work, 68% cheat on tests and exams. A survey of 3100 top high-school students showed that 78% said they cheated and 89% said cheating was common in their schools. Why? It is easy. Everybody does it. Cheating is guiltless. If one stopped he would be at a competitive disadvantage.

A change is in the wind. Schools are beginning to stress and teach the importance of moral values and ethical behavior. It is difficult to change habits formed in elementary and high school in college and harder still to change them on the job.

What is this thing called ethics, where does it come from and how do we get our hands around the subject?

DEFINITIONS

The Greek roots of the English word Philosophy refer to the love of wisdom. PHILOSOPHY is the pursuit of wisdom. Philosophy is a discipline that includes logic, ethics, metaphysics, aesthetics and epistemology.

ETHICS - the word, the noun - then refers to a certain branch of philosophic study and also the subject of that study.

ETHICS is the branch of philosophy that is concerned with what is morally good and bad, right and wrong. Ethics and morals have the same language roots. Both the Greek word "ethos" and the Latin word "mores" mean habits or customs.

The academics break the study of ethics into meta-ethics which can be defined as analyzing the meaning and nature of good and bad, like analyzing language and normative ethics - appraising, evaluating rules of what is morally right and wrong, good and bad. Normative ethics is critical morality. Normative ethics is the study of the morals of the group taking a judgmental attitude.

ETHICS is the discipline dealing with what is good and bad. ETHICS are the principles of conduct governing an individual or group. ETHICAL (an adjective) means conforming to accepted professional standards of conduct. MORAL (an adjective)

means relating to principles of right and wrong.

PROFESSIONS

A Profession is a calling requiring specialized knowledge and often long and intensive academic training. A Profession is - the whole body of persons engaged in a calling. The self-governing professions - medicine, law, engineering - have a contract with society founded on trust. The Public trusts the members of a profession to use their skills and judgement in the public interest. In return, professionals are given a protected title and scope of practice.

It is rather interesting that in the history of the law as a profession in America it was noted that there were no lawyers on the Mayflower. It was not until 10 years later that the first educated lawyer arrived in the Massachusetts Bay Colony. One Thomas Lechford began to practice law about 1637. The nation's first attorney. He didn't last long though - he was disbarred soon for jury tampering. Was GBS right when he said "All professions are a fraud upon the laity"?

Professional organizations such as the American Medical Association, American Bar Association, Society of Professional Engineers each have Rules of Professional Conduct and disciplinary proceedings may occur if a member is alleged to have broken a rule.

These codes of professional conduct or rules are a minimum standard. That is if you don't act according to the rule or standard you are guilty - you are wrong, you lose your license. It's a minimum standard below which conduct may not fall. And here is

found the justification for doing the minimum.

Professional Codes give rise to red light - green light ethics. Anything not specifically forbidden is permissible! A legalistic mentality. Moral issues involve obligations such as honesty, confidentiality, public safety, avoidance of conflict of interest - is it not unacceptable to say "but my actions were perfectly legal"?

An ethicist might define minimum standards of behavior and/or she might set targets for behavior. Targets that are well above those in the Professional code. These targets, goals or aspirations might be beyond the reach of most individuals. This level of behavior can not realistically be reached. So what is the solution - what is practical? And immediately the question is asked "are we ducking the issue by saying let's be practical"?

The Greeks - Aristotle in particular believed in the idea of a "good man" - absolute excellence. Obviously beyond which I can succeed - but something to which I can aspire. I may fail to achieve that to which I aspire - but that doesn't indicate wrongdoing. Aristotle said "*we study or read ethics not in order to know what good men are like, but in order to act as good men do*".

Professor Fuller (The Morality of Law, Rev. Ed. 1969) talks about a morality of duty (minimum standards) and morality of aspiration. He describes for us a scale running from the minimum standards to the loftiest aspirations and then he says there is an indicator marking the place where the pressure of duty leaves off and the challenge of excellence begins. Who decides where this point is on the scale? Who moves it up or down? Where is it? This is a question that is constantly being argued.

PROFESSIONALS STUDY ETHICS

Textbooks are not in short supply for law schools and lawyers nor for engineers and others. Titles such as Engineering Ethics and Professional Responsibility address the law of professional responsibility and approach the subject by examining problems and referring to or measuring against the "Rules" of the bar association or engineering society or statute and of course referring to the cases or the "Code of Ethics " of the engineering society.

But how are ethical problems or any problems solved? There are two methods that can be used. The algorithmic or the heuristic method.

The algorithmic method uses a set of steps that if followed give the correct answer. The heuristic method uses a set of steps involving systematic trial and error, insight, creativity, self-educating feed back, analytical reasoning, practice and experience. The heuristic method may help in problem solving but it does not guarantee success in a finite number of steps. *There is no known algorithmic method for solving ethical problems.*

So one can study cases and based upon the society's rules and the court's rulings or the legislature's acts determine whether actions will keep us from censure, disbarment or worse. Again the minimum.

GOALS AND OBJECTIVES

Too many times we confuse moral and ethical, right and wrong with technical competence. Negligence is defined as not carrying out the duty of care. One must take the precautions and exercise such care as would the solid citizen and a professional

must meet the higher standards yet of her profession. So we get standards of professional competence. But there will be some normal distribution curve that shows the number of people who received a certain grade and the grades between zero and one hundred. The question is where is the line drawn for the passing grade? We could imagine that there is a red light/green light ethical standard. This leads to a legalistic approach that will end up setting some minimum standard.

Query: does the standard change with the country?

We talk about market research and corporate espionage all the time. How to obtain other company's secrets by methods absolutely legal if ethically dubious. The line between unethical and illegal is very often badly drawn. From sifting garbage to stealing employees. From phony interviews to library studies. The stakes are huge. Look at some damages awarded for over zealous actions.

On a personal basis then how do I view my duties? I have a legal duty, a professional ethical duty and a general moral duty. Designing below safety limits to save dollars or kiting checks to solve temporary liquidity problems may both be violation of the law, negligence or worse. Treating others with courtesy is not a legal duty. Perhaps a professional society would find abuse a breach of professional duties and censure or rebuke the abuser.

And last is the general moral duty. How can it be enforced? Bring the dirty dog before the bar of moral justice somehow. Talk to him and make him feel remorse, guilt, shame. Make him apologize. Or do we bring him to the attention of the community and let the community act.

Is it my duty to maximize my own good(ness) or is it my duty to promote the maximum good for everybody in the community - the general good? Consider the HIV infected person who discloses their ailment in confidence to the therapist and admits that they are continuing to have intimate contact with others. Does the therapist alert the community? What if it were the ebola virus? Was a little bit of ethnic cleansing in the Balkans? When does the indicator start to approach a holocaust? Does doing business with human rights violators and do joint ventures in dictatorships cause any concern?

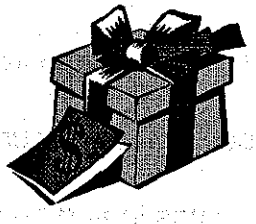
These are all troubling questions of individual and group morality. How do you determine if it's ethical? Perhaps one of the best tests: Is it honest? Is it fair? Can I justify it publicly?

"Dad, what is ethics?", asked the youngster. The father, a prosperous merchant pondered for a few moments and then said, "Well son, you know that your uncle and I are in business together. Suppose one of my customers comes in and buys something worth ten dollars but by mistake gives me a twenty dollar bill and leaves without waiting for his change. If I split the extra ten dollars with your uncle - well that's ethics.

Ethics

- No thanks, we have them all
- They're in the corporate charter
- We only use them outside of business

Gifts and Considerations



Men nearly always follow the tracks made by others and proceed in their affairs by imitation, even though they cannot entirely keep to the tracks of others or emulate the prowess of their model. So a prudent man should always follow in the footsteps of great men and imitate those who have been outstanding."

Machiavelli

"It's better to be quotable than to be honest."

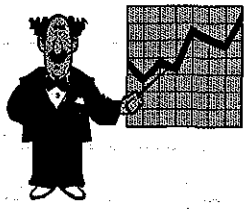
Tom Stoppard

"Grub first...then ethics."

Bertolt Brecht

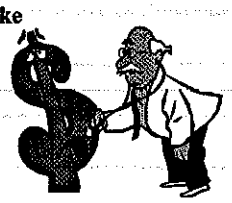
Corporate Dilemma

How to decouple the profit issues from the ethical issues



Can you afford to be ethical?

- 52% play by the rules
- 46% bend the rules to take advantage



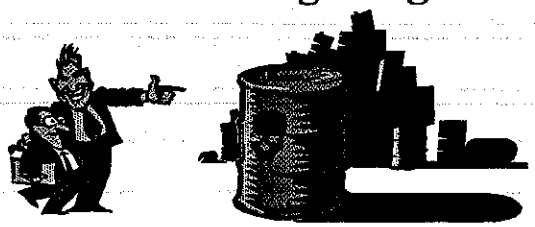
"A bad moral state, once formed, is not easily amended."

Aristotle

"Moral virtues, like crafts, are acquired by practice and habituation."

Aristotle

There is no right way to do the wrong thing



Philosophy

The pursuit of wisdom

Ethics

The discipline dealing with what is good and bad

Ethical

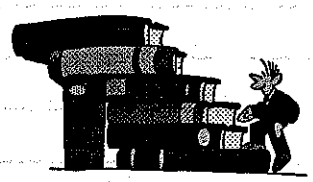
- Conforming to accepted professional standards of conduct

Moral

- Relating to principles of right and wrong
- Conforming to a standard of right behavior

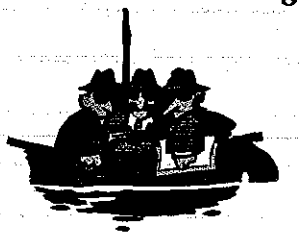
Profession

A calling requiring specialized knowledge and long and intensive academic training



All professions are a fraud upon the laity

George Bernard Shaw

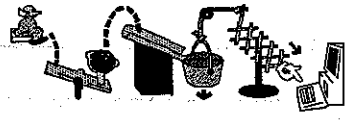


"We study or read ethics not in order to know what good men are like, but in order to act as good men do."

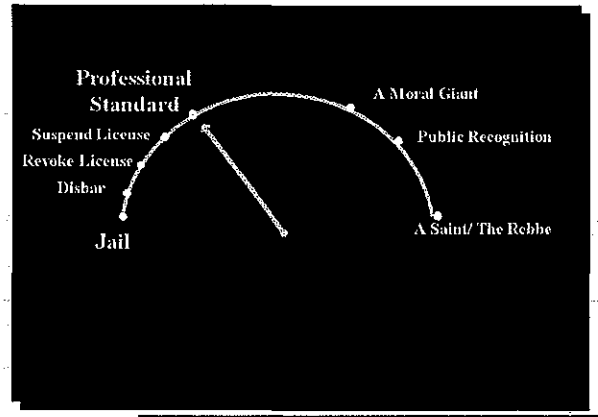
Aristotle

Problem Solving Methods

Algorithmic



Heuristic



"People will swim through shit if you put a few bob in it."

Peter Sellers

Ethics Test

- **Is it honest?**
- **Is it fair?**
- **Can I justify it publicly?**

Nice guys may appear to finish last, but usually they're running a different race.

CASE III

TO THINE OWN SELF BE TRUE
ONLY IF IT DOESN'T COST

Jerry Jenius is an orthopedic technician. His wife, Joy is a paralegal in the patent department at Goliath Corporation. The family income is sufficient to provide for summer camp and several vacations each year.

Jerry has always been a creative guy. His wife Joy always complained about her hair dryer. She couldn't see the back of her head and she needed three hands.

Jerry has invented a Rube Goldberg device that does everything Joy wants it to do. Jerry knows that each year there are 11 million hair dryers sold in the United States and almost 3 million curling irons. He believes that the appliance manufacturers could sell these JJ BOBS by the millions or even give them away as premiums. His neighbors think it is a great idea. He has a great idea for a trademark and he has sketched a series of cartoons that he thinks would be great for magazine and television ads and for the instruction manual. He is certain that by investing their savings and with a little hard work his invention will pay off better than winning the lottery.

Jerry has heard and seen ads on the radio and TV for a company that helps inventors commercialize their inventions. He has received the inventors' kit and before he can do anything Joy tells him that she's talked Tony Terrific the head of her patent section and he said that Jerry should see a patent attorney and/or a consultant. He gave her several names.

Jerry Jenius and Joy call your office. They use Tony Terrific's name and explain what they think they want to see you about.

CASE IV

NO ASK, NO TELL

You are about to license your company's process and product patents to manufacture GOOP. Your company operates Process A.

Process A has been in operation for more than 9 years. It meets the requirements for maximum emissions of toxic substances put in place 10 years ago. The company's plants are well maintained and toxic emissions are always below the maximum acceptable standard.

Some of your technical people have reported to you that their research shows that the cumulative effect of these emissions might be a risk to public health. If the FDA were to learn of the research findings it is likely that they would modify the regulations.

A change to a new Process B that has been internally developed would be expensive. Your company would have to permanently shut down one of the existing plants and you would have significant layoffs in a town where you are the biggest employer.

CASE V

RUBBER ISN'T JUST FOR ERASERS

The Springback Rubber Company makes tires for the OEMs and the after market

There are some engineering studies showing a potential problem with tread separation on one line of tires, the Outback™ tire, sold as original equipment on a single model of the world's largest selling SUV, "Goliath™". Only a handful of people in the company, including you, know anything about these studies.

The tire technology is licensed outside the United States to third party manufacturers who supply it for use on the Goliath™ made and distributed outside the US.

You are the Licensing Director or the inside counsel (lawyer) of Springback.

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