

You might expect the major interest of a professor of business strategy and legal studies would be teaching his students to turn a profit within the bounds of the law. More and more, however, OU's Nim Razook finds himself concerned not only with what is legal but also with what is right.

An Exercise in Ethics

by Nim M. Razook

To introduce my students in the legal environment of business to contract law, I have used an actual, but extensively embellished case. The case involves two large companies, one a movie and entertainment production company, MEP (a contrived name), and the other a large automobile company, Powers Motor Company (PMC). It seems that representatives of the two companies negotiated a deal (firm handshakes and smiles all around) in which PMC promised to sponsor a series of "golf challenge matches" produced by MEP.

For PMC, the primary sponsor, two features of these matches were attractive. First, each match would include two of the best professional golfers on the tour. PMC thought viewers would be excited to see these golfing giants pitted against each other in match play. Second, the negotiators for each firm had agreed that one of the challenge matches would be played at Pebble Beach, a famous, beautiful and challenging seaside course near Monterey, California. The automobile company intended to use the Pebble Beach match to introduce a new, rather upscale, line of cars. PMC already had discussed



this possibility with an advertising firm that agreed that the course and the Pacific Ocean would provide breathtaking backdrops for its new cars.

The deal, it appeared, was perfect. MEP had its primary sponsor and could fill in the remaining commercial spots with other firms. And although PMC was enthusiastic about sponsoring a relatively novel professional golfing competition, the opportunity to use a

famous course like Pebble Beach as a site for introducing its new car line had sealed the agreement for the car maker.

The only remaining step was to reduce the agreement to written form, a relatively minor formality. The negotiators agreed that MEP lawyers would draft the written contract, send copies to PMC for confirmation and signing, obtain the signatures of MEP officials and return a copy of the final signed contract to PMC. Once completed, each side would have a signed contract on which it could depend. Or so it seemed.

Officials for both sides did sign the contract, which was nearly a restatement of the deal reached by the negotiators. But the document departed from the agreement in one very important way. Included was a provision identifying the course sites for the matches, and Pebble Beach was not among them. Further complicating this omission was the discovery by MEP that it had underestimated its costs for producing the matches and would suffer a substantial loss by transporting its remote production studio from its home in Los Angeles to Pebble Beach.

Not until the accountants at MEP began questioning whether they had to go to Pebble Beach did they discover the written contract's omission. From MEP attorneys they learned two more things. First, MEP negotiators inadvertently had given the drafters of the contract an internal list of agreed-upon match sites, a list that PMC had not approved. Second, the law likely would favor the written contract over any other agreed terms raised by PMC. The net effect was that MEP legally could refuse to produce a match at the famous course if it chose to do so.

How MEP and PMC should respond to these facts is the dilemma confronting my students. At this point, I usually divide the class into two groups: those representing MEP and those representing PMC. I ask them to represent the best interest of their company in its negotiations with the other. In addition, they must assume that the contract between the two poses a genuine business problem: MEP wants PMC to sponsor the challenge matches but does not want to lose money, and PMC wants Pebble Beach to be the site for one of the matches.

The student reaction to MEP's and PMC's problem has become fairly predictable. MEP representatives usually assume a position of power, contending that their willingness to produce a match at Pebble Beach depends upon PMC's willingness to pay more to sponsor the matches. When PMC officials remind MEP of the original agreement, the MEP officials often refer to the written contract, which, incidentally, includes the signatures of PMC officials. A representative exchange follows:

Student/PMC: You promised to go to Pebble Beach.

Student/MEP: The contract states otherwise.

[A powerful point. PMC regroup.]

Student/PMC: Who do you think you're dealing with here? I would suggest that you make some concessions; otherwise, we'll never sponsor another MEP project.

[Another powerful point. MEP reconsiders.]

Student/MEP: We may be willing to go to Pebble Beach if you will up your sponsorship fee.

[A possible settlement. Good sign?]

Student/PMC: Wait a minute. Why should we pay more when you agreed to

go to Pebble Beach at the original price?

[Oops! We're back at the beginning.]

These exchanges invariably become more heated than this dialogue suggests. MEP officials never acknowledge a prior agreement to produce a match at Pebble Beach but often offer questions such as: If you found the contract objectionable, then why did you sign it? PMC officials often will try to intimidate their MEP counterparts. Their tactics have included threats to publish a full page ad in the *Wall Street Journal*, stating that MEP fails to live

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up to its promises, or to make strategic telephone calls to other potential MEP sponsors. (“Let me tell you what MEP is trying to do to us!”)

When the discussions reach diminishing returns, I intervene and ask the entire class to critique the one possible outcome that got lost in the heat of the discussion: MEP abiding by its original promise. The MEP students object; the PMC students applaud, feeling somewhat smug in their position. They knew all along that they were taking the high ground.

High ground, indeed. What is the high ground in a case such as this? Is it conceivable that MEP officials might choose to produce a match at Pebble Beach? Why would they do this? And how can the students representing PMC possibly suggest that their standards

were high when their company officials neglected to read the contract carefully, and they too were prepared to wield a heavy hand? Why are these students—our daughters and sons—so inclined to forget the negotiated terms and resort to these dubious tactics?

There are two reasons for their reaction. First, whether we are willing to admit it or not, too many of our college-bound children arrive at OU with, at best, modest ethical standards. Simply defined, ethics are prescriptions for conduct that consider those affected. We must admit that our children often defy this definition. In fact, most are decidedly self-serving, so consumed by themselves that they tend to ignore or dismiss the effects on others of all but their most outrageous conduct.

Although it may not square with your views of your own children (of course, there are exceptions), ample evidence exists to support this premise. Not only is the incidence of cheating among high school students on the rise, but recent surveys suggest that students are more inclined to admit their cheating and to defend it as an appropriate method of achieving career goals. It also appears that their willingness to cheat is not limited to academia.

In a 1989 survey of 1,093 high school seniors (*Advertising Age*, Nov. 27, 1989), 36 percent stated they would plagiarize to pass a certification exam, 67 percent said they would inflate business expense reports if given the opportunity, and 66 percent said they would lie to achieve business objectives. Far too many of our children also seem to enter their college years intolerant of the diverse groups that assemble on college campuses and with attitudes towards the opposite sex that do not foster loving, long-term relationships. Perhaps we should admit that we have exaggerated the demise of the “Me” generation.

I make these charges reluctantly and with full knowledge that my two older children will remind me of my own youthful indiscretions. (Alas, they know too much.) But maybe it is time for us to admit that something is wrong with the way we and our schools are preparing our children to be citizens, business partners, colleagues, friends and spouses and to conclude, perhaps reluctantly, that universities may offer one of the last places to respond formally to this problem.

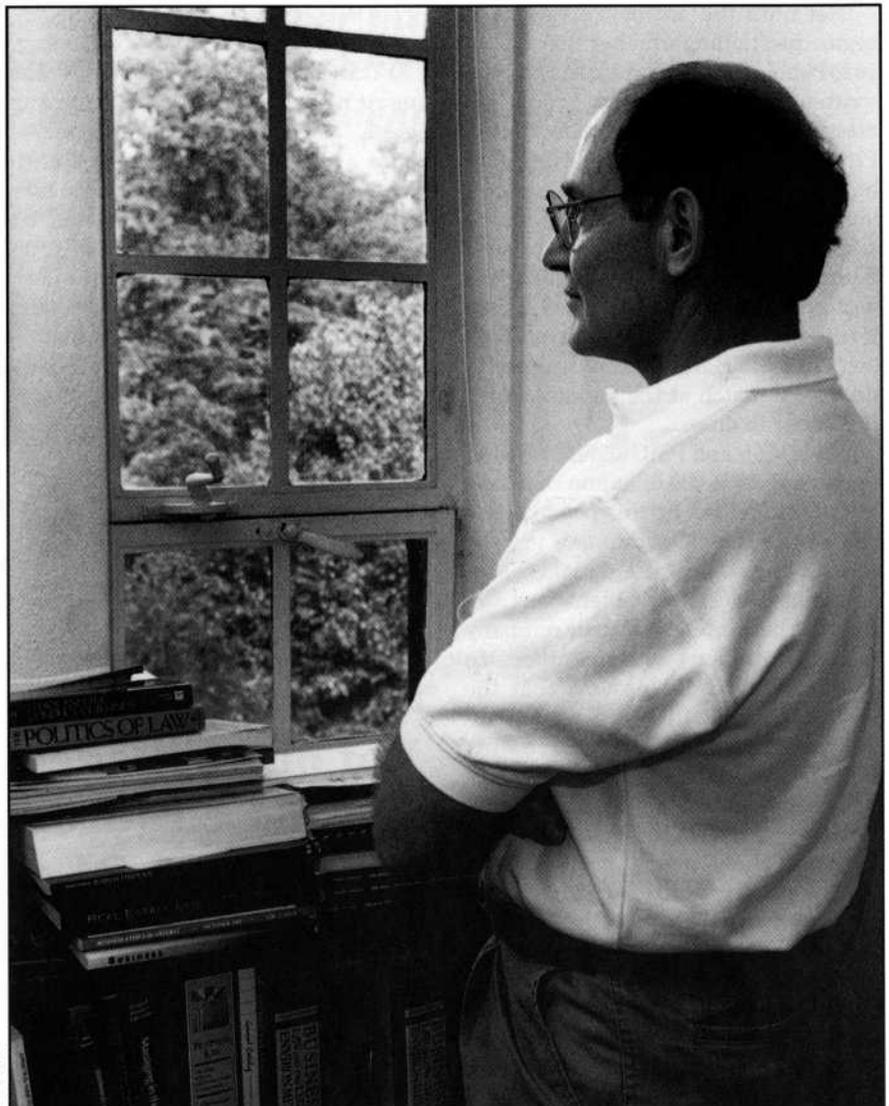
That brings me to the second reason

why my business students react the way they do to an ethical problem. The key word is "business." Most of my students, notwithstanding their moral development, seem to believe that the rules for business conduct are less rigorous than those for their personal lives. They have embraced, it seems, the axiom of self-interest most recently made famous by Milton Friedman: "The only social responsibility of business is to make a profit." Too often, they interpret Friedman's statement to mean that if it takes particularly nasty behavior to earn a profit, then so be it.

By the time they take my course (usually in their junior year), these students already have received frequent and significant reinforcement of this business ethic. They have purchased cars from salespeople whose dispositions change from personal and interested to distant and uninterested in the amount of time it takes to close the sale; witnessed and rationalized the obvious differences between many advertising assertions and the actual products or services purchased; observed the vast credibility gap between what many public figures say and do; and likely can cite far too many cases in which questionable, perhaps illegal, business tactics have gone undetected and unpunished. This barrage of contradictions has to have taken a toll on our kids. Their willingness to embrace a succeed-at-any-cost business ethic may arise as much from self-defense as from thoughtful moral choice or lack of moral development.

Although we may not intend it, business professors often reinforce this ethic by emphasizing the centrality of self-interest in our analysis of business subjects. Most of us believe that self-interest and utility maximization are powerful intellectual concepts that help us describe and analyze the conduct of managers and organizations. Occasionally lost in our analysis and lectures, however, is an examination of the long-term consequences of managerial choices and some systematic method of recognizing and resolving ethical dilemma. If we represent one of the last hopes for inculcating in our students a set of higher ethical principles, then we should re-examine what we do.

Perhaps you should decide whether we are doing enough. Yes, we



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Nim Razook, shown here at his Adams Hall office window, finds that when students approach the question of ethical conduct in business they seem to believe that the rules for business are less rigorous than those for their personal lives.

expose our students to, and provide methods for, identifying ethical issues, and some of our students choose courses, as part of their general education, that emphasize ethical analysis. But I am not convinced that we have achieved much more than to encourage a heightened level of sensitivity, an awareness that our prospective managers and accountants must consider whether their decision to endorse the audit, close the deal, market the product, resolve an employment problem or purchase the stock provokes ethical questions.

This, you may agree, is no small accomplishment in a business school, an academic setting in which the pro-

fessorate is likely more conversant in multiple regression, time series analysis and integral calculus than in the moral philosophies of Aquinas, Kant, Austin, Locke and Bentham. What we tend to forget, however, is that the intellectual foundations of business scholarship have their roots in the literature of moral philosophy and psychology. Perhaps we should remind ourselves that Adam Smith's moral philosophy balanced self-interest and the welfare of others and that perhaps Friedman's prescription for business, notwithstanding his intent, is consistent with an inquiry into the ethics of business decisions.

When we ask our students to con-

sider the effects of their business decisions on others, we are, I would argue, true to Smith's design. If they apply some rudimentary form of utilitarian ethics to their decisions, weighing their action against its effect on others, then they have entered the realm of ethical decision making, an important first step and one that encourages decision makers to consider both the short- and long-term consequences of their actions. One must wonder whether or to what extent Michael Milken, the master of junk bonds, inserted this step into his decision calculus.

But accepting utilitarian ethics as the analytical tool of choice, primarily because it dovetails with economic analysis, may be one of our shortcomings. Of course we want our students to embrace an enlightened self-interest in which they consider and compare the long-term effects of their actions and their effects on others. Yet we also want them to appreciate the multitude of cases in which utilitarianism may yield or has yielded undesirable results, often because actors undervalue or ignore the rights of those affected.

Two cases come immediately to mind. For almost 40 years during this century, Tuskegee Project researchers refused to provide antibiotic treatment to their African American subjects infected with syphilis, and, by so doing, systematically subordinated the rights of human beings to whatever scientific information they could extract about the long-term health effects of the disease. And Ford Motor Company's decision to market the Ford Pinto, despite its poorly designed gas tank system, relied on a cost-benefit analysis that assigned a value of \$200,000 per life lost and a cost of \$11 per car to fix the

gas tank. Ford concluded that the cost of repairing every Pinto exceeded the costs of accidents arising from rear-end collisions in which people might be killed or injured. (Incidentally, the gas tank's design complied with applicable federal safety standards at the time.)

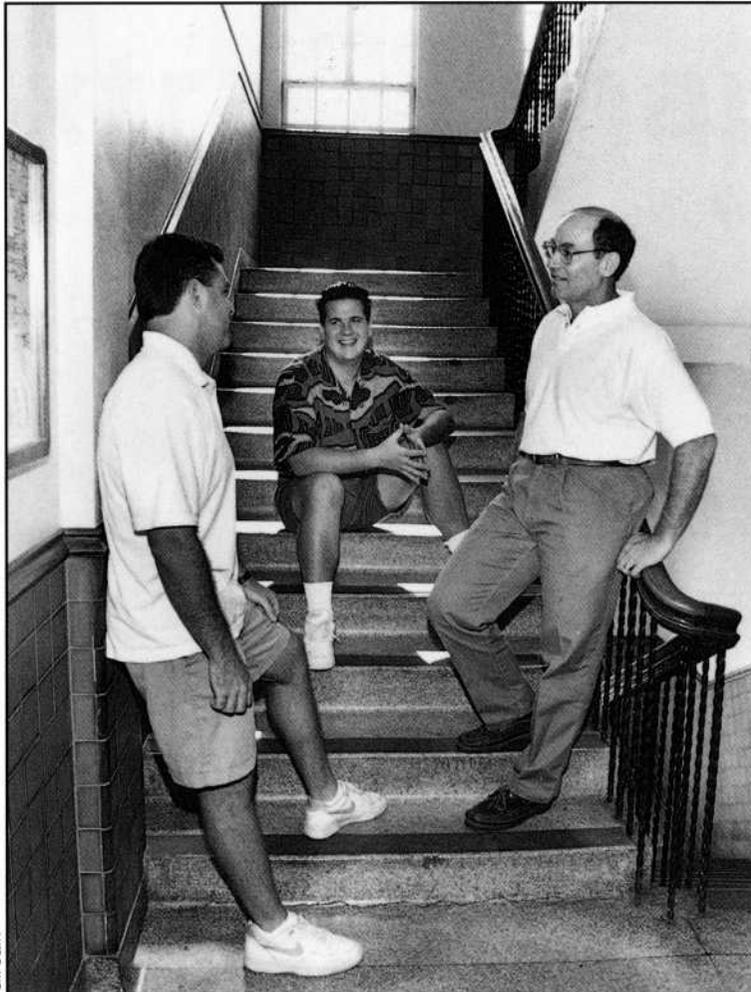
A more thoughtful ethical analysis might start with utilitarian notions

Enlightened self-interest and utilitarianism fail, not for lack of theoretical or intellectual appeal, but because they often invite rationalizations like those of the Tuskegee researchers and Ford. The result is sloppy, haphazard and short-sighted analyses and conclusions. Do these concepts help managers analyze ethical questions? Yes. But if these analytical tools are going to continue to enjoy a place in business school curricula, we should refine and add to them. In the continuing process of reconciling business and ethical goals, I believe we will identify cases in which managers should yield to the rights of those affected, notwithstanding the vagaries of enlightened self-interest or the problems of measurement inherent in, or the subjectivity of, utilitarianism.

For now, can we agree that such cases *do* exist; that we probably spend too much of our collective time picking up the pieces after business decision makers have relied exclusively on self-interest, applicable law, or utilitarian ethics; that those infected with a disease have the right to know that an effective treatment exists; that, despite cost-benefit analyses, car purchasers have a right to know whether and to what extent their car poses potential dangers; that,

notwithstanding contract rules, agreeing parties have a right to depend on each others' promises; and that, despite their shortcomings, business schools are appropriate places to engage in these discussions?

These are a few of the issues in what appears to be a high-stakes deliberation. Who should compute the long-term costs of answering these questions incorrectly? 



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Above with graduate students Vance Lesseig, left, and Richard Vlasimsky, center, Razook sees the application of utilitarian ethics to business decisions as a first step in weighing an action against its effect on others.

but would be more thorough in its effort to identify affected parties, their rights and possible alternatives. Such analysis would not have guaranteed that the Tuskegee researchers would have administered curative drugs to those in need, that Ford managers would have decided to upgrade or not to market the Pinto or that MEP officials would decide to do what they promised to do, but it very likely would have increased the probability of each.