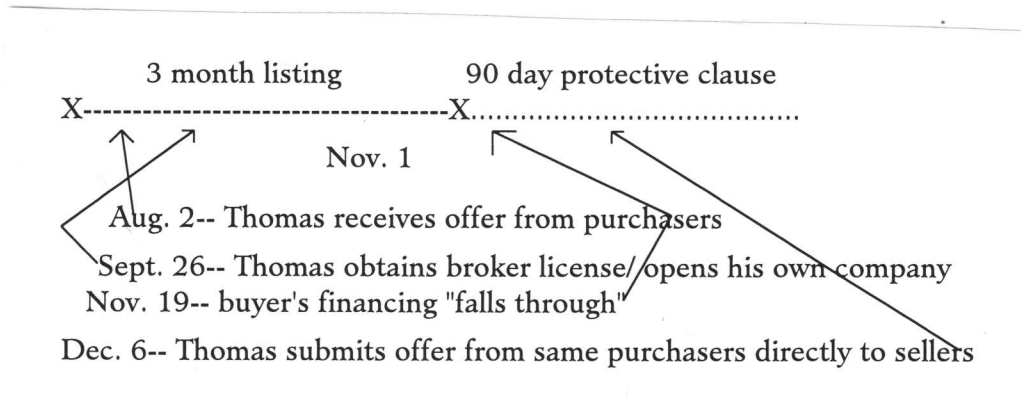


On December 6, Thomas secured a new offer from this same buyer to purchase Mrs. Martin's property---the same property and the same seller for which his original offer was made---the only difference being that Broker Thomas was no longer employed by Kaiser Realty. The offer was accepted for Mrs. Martin through her daughter and the sale closed about a month later.

The John Kaiser Company charged Thomas of breaching the Ohio Real Estate Commission regulation by having negotiated the sale, exchange, or lease of any real property directly with an owner or lessor knowing that such owner or lessor had a written outstanding contract granting exclusive agency in connection with



such property to another real estate broker.

The Court agreed that the evidence was such that Broker Thomas had directly negotiated the buyer's offer with sellers still having contractual obligations under Broker 1's listing. For this reason, Broker Thomas' license was suspended for 90 days.

Conclusion: Even though the active period of the listing had expired, Broker 1 still had rights to a commission under the 90 day protection clause if the property was sold to the buyer with whom the seller had earlier negotiated. Broker 2 had wrongfully interfered with Broker 1's rights.

IV. The ethical relationship between the agent and the customer

Overview: Our study of ethics ends with this final chapter describing the relationship between the agent and the customer. The real estate profession has come a long way from the early days of caveat emptor to the present day fair treatment regulations mandated by the real estate commission. The agent is again encouraged in this chapter to go beyond the law and give ethical services to the customer.

Learning objectives: as a result of studying this chapter, the agent will:

- ☐ know reasons for disclosing all property defects to the customer.
- ☐ know additional items for disclosure which may not be on disclosure forms.
- ☐ know reasons for making speedy repairs as a property manager.

Disclosure of "material" facts or disclosure of "All" facts about the property.

What disclosures should the agent make to a prospective purchaser? Should the agent tell the buyer of physical amenities and deficiencies and ignore such elements that may have stigmatized the property such as murders, self-inflicted woundings or “difficult neighbors?”

The ethical agent will disclose all knowledge regarding the property which is lawful to disclose. The ethical agent will disclose those facts about the property which may harm the value of the property or cause the property to be less marketable at re-sale time. Until the law condemns the actions of the agent who discloses facts about the property which may cause it to become psychologically impacted, the ethical agent will continue to disclose such information.

Reputation and history clearly have a significant effect on the value of a piece of property. “George Washington slept here” is worth something, however physically inconsequential that consideration may be. Ill-repute or bad will conversely may depress the value of property.

Failure to disclose a negative fact when it can reasonably be said to have a foreseeable depressing affect on the value of the property is tortious. Where the seller or agent knows of facts materially affecting the value or desirability of the property which are known or accessible only to him and also knows that such facts are not known to, or within the reach of the diligent attention and observation of the buyer, the seller and agent are under a duty to disclose them to the buyer.

Example:

The Kings placed their home on the market. They instructed the neighbors not to tell the buyer of the property history. A widow bought and closed on this property; shortly thereafter, the neighbors introduced themselves and disclosed the property history regarding a quadruple murder which had occurred in the property. The buyer obtained a judgment against the seller for her loss of bargain in the property.

Should the ethical agent notify the purchaser of these stunning facts about the property which could cause it to suffer a financial penalty at some future sale? Should the agent inform the buyers that their quality of life may be lower in this property because of some historical event which may bring a type of curse to its occupants? Should we instruct the buyers that they will enjoy the property more and more the longer they live in the property knowing the opposite will be true?

The fact that a neighborhood contains an overtly hostile family who delights in tormenting their neighbors with unexpected noises or unending parties is not a matter which will ordinarily come to the attention of a buyer viewing the property at a time carefully selected by the seller to correspond with an anticipated lull in the “festivities.” The agent has a duty to disclose a neighbor’s behavior which may constitute a “pattern of offensive and noxious activities.”

Example:

The parties live in a subdivided residential area of San Diego. Because of the topography of the subdivision and the finished elevations of the houses, the developer filed a declaration of restrictions (CC&R’s) to protect the privacy of the residents and to preserve their views of the canyons and hills. Motivated by the McKnights’ failure to comply with the CC & R’s and their continuing disagreeable behavior, the Alexanders filed an action seeking equitable relief and damages alleging the McKnights violated the CC & R’s by constructing a two-story cabana (cabin; bathhouse) in their back yard, recorded an invalid amendment to the CC & R’s, constructed a deck without a building permit and engaged in various other activities constituting nuisances, all of which were contrary to the CC & R’s.

The court agreed with the plaintiffs finding the McKnights’ behavior constituted a “pattern of offensive and

noxious activities.” The McKnights violated the CC & R’s by operating a tree trimming business from their house involving the “use of a noisy tree chipper”, engaged in other activities resulting in excessive noise, e.g. late-night basketball games, parked too many cars on their property and poured motor oil on the roof of their house. The court ordered the McKnights to reduce the height of the cabana, remove the deck unless a building permit was obtained, enjoined them from pouring any more motor oil on the roof of their house and cancelled an invalid amendment to the CC & R’s which the McKnights had recorded.



Respond: Should the ethical agent make full disclosure of all physical and psychological facts to the buyer unless illegal to do so? If the state required property disclosure form does not identify certain facts which may impact property value, does the ethical agent have a duty to disclose such facts? How do you respond to this section?

Duty to repair

It requires a person to possess a real estate license to manage real property for another person for money, a commission or other valuable consideration. Property managers have responsibilities of bookkeeping, repairs, inspection of property, fire-restoration, property rehabilitation, analyzing the economic rent for the building and the surrounding marketing areas, advising the owner, trust account responsibilities, and many more. As one may observe, the responsibilities of a manager seem endless. Someone has said that it requires a person of genius I.Q. to be a professional property manager.

Even though the property manager’s job description and liability seems incredibly large, the licensed property manager is not responsible for unavoidable accidents. Light bulbs fail unpredictably. Torrential rain storms come without advance warning. Who could predict the roller skates left in a precarious location? Courts understand that many events happen and there just wasn’t much that could be done beforehand to eliminate some of those hazards.

But this is not the problem; the problem lies with deferred maintenance. It is highly unprofessional to have been told of a problem and delay in its resolution. It is one thing to have completed a check of the common area lighting over the stairs of the apartment building and to have an accident occur later that night after the light bulb has burned out. It is a great tragedy to have been warned of the absence of lighting and to hesitate - unnecessarily in correcting this condition.

How should the ethical agent respond when correcting deferred maintenance?

What action could the ethical property manager take to protect the public?

Example:

On a June morning in 1991, two men drowned in a swimming pool outside the Days Inn in Orange, Texas. One had jumped in to save the other, who seemed paralyzed and unable to save himself. But the rescuer also became paralyzed, and the two men drowned with their arms entwined. The cause? The pool was electrified.

Guests had complained about electric shocks in the water as early as 1990, but apparently management did nothing to correct the situation except to turn off the underwater lights in the pool. In June 1991 managers turned the job of fixing the pool lights over to a new member of the maintenance crew, Ahimuto Masuda Almazon, who claimed he knew something about wiring.

After the disaster, Roger Owens, an electrical engineer, examined the pool facilities on behalf of attorneys representing the plaintiffs. He found such a tangle of corroded wires that “any backyard mechanic would have seen something was wrong.”

Investigators found a broad pattern of neglect in the motel. The kitchen was infested with cockroaches, air

conditioners were always breaking down, plumbing was unreliable, carpeting and wallpaper needed replacing, and the roof leaked; and yet a Days Inns inspector had given the motel 421 out of 500 possible points on the company's quality-assurance review, which was a grade of "B." Except for the serious electricity leakage, the problems at the Orange outlet appeared rather typical of the entire Days Inn franchised chain and its neglect of basic housekeeping and maintenance standards. (above three paragraphs from: The Wall Street Journal; May 26, 1992, A.10)

Summary: Deferred maintenance can injure the public. The student was challenged to decide the ethical reaction to the situations presented in this section.

Appendix

The History of Ethics

I. Greek and Greco-Roman Ethics

1. Socrates
2. Plato
3. Aristotle
4. Cynics and Cyrenaics
5. Stoicism
6. Epicureanism
7. Roman Stoicism and the Academy
8. Neoplatonism

II. Medieval Ethics

1. Augustine
2. Abelard
3. Bonaventura
4. Anselm

5. Thomas Aquinas

6. Roger Bacon

7. Duns Scotus

8. Ockham and the Averroists

9. Maimonides

10. Humanism and the 16th-Century Scholastics

III. Modern Ethics

A. 17th and 18th Centuries

1. Grotius
2. British Ethics
3. Utilitarianism
4. Continental European Ethics
5. The British Idealists

B. Later Theories

1. Nietzsche
2. The developments of utilitarianism and its critics
3. Ethical relativity
4. Pragmatism
5. Existentialism
6. Logical positivism and analysis

Legacy of Megan's Law

Notification complicates disclosure requirements

New laws in several states are requiring convicted sex offenders to give notice when they move into a community. For real estate professionals, that promises to further entangle already complicated disclosure requirements.

New Jersey, Washington and Oregon already have such laws, and a rapidly growing number of states are considering bills to require community notification. In late March, the Maryland Legislature's House and Senate approved separate bills that would allow some public access to registration information.

Sex-offender notification hits questions not easily answered, real estate professionals say: Is a sex offender's residing in a neighborhood a material fact that has to be disclosed? Will property values be affected by the presence of a sex offender in a neighborhood?

Strong arguments have been made on both sides of these questions in New Jersey, but a clear answer continues to elude rule-makers and real estate professionals.

The question of sex-offender notification there drew national attention in 1994 after the rape and killing of 7-year-old Megan Kanka of Hamilton, N.J. The girl's neighbor, convicted sex offender Jesse Timmendequas, was charged in the killing.

The issue is similar to that involving so-called stigmatized properties, says Dick Dillingham, CRS, immediate past president of the Residential Sales Council of the REALTORS NATIONAL MARKETING INSTITUTE.

Stigmatized properties are properties that have been psychologically impacted by events including murder, suicide and criminal activity. Examples are the "Amityville Horror House" in Amityville, NY; the Ackley "ghost house" in Nyack, NY; and the Los Angeles-area townhome of Nicole Brown Simpson.

"I think a sex offender's residing in a neighborhood would be a material fact if it is known, but state laws will have to determine what can or cannot be said," he says. "That determination would probably be based on liability and the offense," he says.

"The effect of sex-offender notification on a property's value will never be turned around into something favorable," says Dillingham, a broker with RE/MAX/Preston North Road in Dallas. "But you can overcome the problem with the right pricing."

--T.S. April 10, 1995

Norman F. Dacey and the unauthorized practice of law

Consider the celebrated Norman F. Dacey and his book, *How to Avoid Probate!* Panic gripped the legal profession when Dacey's book caught the popular fancy. Lawyers feared that the book offered the public a way of striking a blow at lawyers and saving a few dollars besides. Perhaps some lawyers did not know or did not stop to reflect that the use of a funded revocable trust to reduce the executor's commissions and attorney's fees incident to the probate process was, at the date of publication, a familiar device that had been used by lawyers and corporate fiduciaries for decades.

The New York County Lawyers' Association launched an attack on Dacey and his covey of publishers and booksellers, Crown Publishers, Inc., Doubleday & Co., Inc. and Brentano's, Inc., to have them all held in criminal contempt and enjoined from practicing law. The Supreme Court of New York permitted itself to be hustled into a holding that Dacey, by writing, publishing, and selling his book, was practicing law and could be held in contempt. The court enjoined the ordinarily injunction-proof booksellers from publishing. To

sustain its position that publishers of pernicious books may not hide behind the first amendment, under which Dacey claimed protection, the court pointed to *Ginzburg vs. United States*, in which the Supreme Court of the United States had failed to uphold the right to publish the book EROS because of its unprotected pornographic content. The appellate division somewhat more temperately affirmed the judgment with the modification that only the publishers, and not Dacey himself, were enjoined from publication and sale of How to Avoid Probate! or any form of it that induced lay persons to rely on Dacey's legal advice. Justice Stevens, the lone dissenter, put his finger on why the publication and sale of Dacey's book, even from the most traditional point of view, was not the practice of law by pointing out that there was no actual or pretended attorney-client relationship. The book consisted merely of text relating to the law of wills, trusts, and probate and a number of forms of wills and trusts purportedly designed to accomplish certain specific purposes, together with directions for their use. The only real difference between it and the form books in any law library was that Dacey's book was designed to be used by the lay public. The inescapable good sense of Justice Stevens' analysis persuaded the court of appeals, which reversed the judgment of the appellate division and dismissed the petition of the New York County Lawyers' Association. The issue was apparently so clear to the court of appeals that it did not even write an opinion. Yet two eminent courts below had been willing to go to the unseemly length of enjoining the publication and sale of books in a nation where freedom of the press gets at least lip service as one of our most vital public interests.

When the New York County Lawyers' Association commenced its proceedings against Dacey, he countered with an action in federal court to restrain the Association from pursuing him and to hold it liable for damages. His theory was that the embattled lawyers were depriving him of his rights of free speech and press for which he was entitled to appropriate statutory remedies. When Dacey achieved his victory in the Court of Appeals of New York so that the injunctive relief was no longer necessary, he continued the federal court action for damages. The district court denied him relief on the ground that because of its quasi-prosecutorial role in the pursuit of Dacey, the lawyers' association enjoyed the same absolute immunity from suit as a prosecutor. Alternatively, if the Association did not have such immunity, then any remedy in the nature of malicious prosecution under section 1983 was barred because Dacey could not show that the Association lacked probable cause in taking up the cudgels against him. The Court of Appeals for the Second Circuit rejected the Association's contentions on the issue of immunity but decided that the Association did have probable cause to proceed against Dacey. The probable cause was shown by the fact that the Supreme Court of New York had initially enjoined Dacey and his cohorts, even though the merits were ultimately decided in Dacey's favor.

Dacey did not fare so well in Connecticut, where his activities were not exclusively literary. In the Connecticut phase of his operations he gave his prospects a text and form book dealing with wills and trusts. If the prospect's interest was aroused, he was invited to tell Dacey how he wanted his property to descend after his death. Dacey then showed the customer executed copies of wills and trusts, which were either reproductions of the forms in the book or such variations on them as Dacey thought best. Dacey supervised the execution of the wills and trusts and orally supplemented the advice in his book with information on the tax consequences of the instruments. Dacey therefore not only discussed the effect of property and tax law on the property of his prospect but also produced the instruments constituting the arrangement for the devolution of his customer's property. The court held this practice to be the practice of law. No American court would do otherwise. (from: *University of Fla. Law Review* Vol. XXIX, page 654, Clarence F. Hyrne, author)

Ethics code sometimes turns CPAs against employers

The code is designed to let shareholders know of misleading financial statements

(Wall Street Journal; reprint in The Orlando Sentinel, Sunday, August 6, 1995)

Corporate accountants are facing a new ethical quandary: A change in their professional code of ethics could turn them into whistle-blowers.

Robert C. Reeves Jr., a certified public accountant, says he was recruited by Aetna Life and Casualty Co. to help clean up its troubled real-estate mortgage portfolio in 1993. But in January, Aetna fired him for making too many waves about the big insurer's failure to disclose a shortfall in its mortgage-portfolio reserves, Reeves said.

In May, the 35-year-old accountant filed a lawsuit in state court in Hartford, Conn., alleging that Aetna forced him to violate his professional code of conduct.

The spat might have never reached the courts if the 328,000 member American Institute of Certified Public Accountants hadn't quietly bolstered its ethics code two years ago. Under the new code, if corporate accountants discover that a company's financial statements are "materially misstated," they should consider reporting their concerns to their superiors. If their higher-ups fail to act, the code states, accountants should consider reporting the misstatements to outside auditors and regulators such as the Securities and Exchange Commission.

Under the new code, industry CPAs could lose their state licenses "if they go along with a scheme to cover up a company's financial reporting problems," said Douglas Carmichael, an accounting professor at the City University of New York's Baruch College.

CPAs who don't follow the code could be personally sued by shareholders of companies where they work if they fail to flag some misstatements in financial reports, say attorneys. Such suits are "a real possibility," said Thomas Dyckman, an accounting professor at Cornell University.

Before the revision in the code, these standards applied only to accountants working at CPA firms. But industry accountants weren't always sure if their first obligation was to their employer or to the profession's ethics code.

Institute officials say they were persuaded to toughen the code by the swelling ranks of in-house CPAs. Over the past two decades, the number of member CPAs employed by businesses has risen much faster than the number of CPAs at accounting firms.

Reeves, the former Aetna accountant, says following the code cost him his job.

The accountant charges that Aetna fired him "to prevent the stockholders from learning that losses in excess of reserves had been calculated but never disclosed."

Aetna sharply disagrees with Reeves' conclusions. Spokesman Michael Bazinet says the charges were investigated and "found to be totally without merit."

How-to-succeed books teach people the small ethical compromises that fester into corruption.

(Waterloo Courier, Sunday, July 30, 1995, E. Scott Reckard, AP Business Writer Los Angeles)

Robert Barker reacted predictably when his daughter went sweet on Barry Minkow, the former carpet-cleaning boy wonder whose ZZZ Best was one of the 1980s' most celebrated swindles.

"I got a bruised forehead out of it, from bouncing off the ceiling," the Phoenix businessman recalls. "Don't even mention his name around me!" he told daughter Teresa, 22, when she asked to visit Minkow at federal prison.

But she was adamant. And Minkow, now an evangelist who says he wants to repay victims \$26 million, is singularly persuasive.

How many other 20-year-olds from modest San Fernando Valley backgrounds could have conned talk shows, Wall Street and top accountants into believing ZZZ Best --built on lies, embezzling, check kiting and mob money-- was worth \$240 million?

Freed last December from Lompoc, Calif., federal prison after 87 months behind bars-- more than financial felons Michael Milken, Ivan Boesky and Leona Helmsley combined-- he holds himself up as a lesson in how small compromises spiral into webs of deceit.

Believers include Barker, some victims and his former prosecutor.

"It takes a strong person to sit and look right at you and not turn his head away when you ask the kind of questions an angry father can ask," says Barker, who wound up blessing his daughter's marriage to Minkow.

"He is a man I have come to respect."

Minkow, 29 and out of a halfway house since April, is one of the busier ex-cons. He was billed as the star speaker Thursday at a bank fraud seminar sponsored by the FHI's Los Angeles office. Minkow will not be paid.

In conversation, he pours out persuading floods of words, locks eyes, offers a reassuring knee pat. Minkow, who once demanded his parents call him "mister," seems to reveal the effects of prison by saying "sir" when answering tough questions.

He says *how-to-succeed books* teach people the small ethical compromises that fester into corruption.

"I didn't start out to cheat anyone. I told myself that all I was doing was making my payroll."

Starting at age 16 in his parents' garage with his mother as his first

employee, Minkow aimed to become the General Motors of carpet cleaning. He was about to buy Sears' national business when his scams collapsed.

In 1988, he was convicted of 57 counts of defrauding investors and banks in a classic Ponzi scheme, using money from new investors to pay old debts. His biggest scam was persuading everyone he made millions of dollars restoring fire- and water-damaged businesses. There were no such jobs.

Minkow now earns some money running errands for the lawyer who represented him and meets with Christian groups while establishing his new business: giving "Fraudo Dynamics" seminars and marketing videotapes nationwide to help accountants and corporate directors spot scams.

Earnings go to a trust fund audited by an arm of the big accounting firm Coopers and Lybrand that, you can bet, will be on guard this time.

Minkow and his bride will get enough to live on, with the rest going to his victims. Details have yet to be arranged. But probation officers say Minkow, who once drove a red Ferrari with ZZZBST plates and owned a \$700,000 home, won't be buying new cars or a house any time soon.

All the profits from a book written over three years in prison, "Clean Sweep," already are going toward his \$26 million restitution order.

"Dear Jim," wrote Minkow in a copy of the book for James Asperger, former head of federal fraud prosecutions in Los Angeles who won Minkow's conviction. "Thanks for pointing me in the right direction."

He says his goal is becoming a full-time preacher after repaying victims over three to five years. He says he has controlled the ego and craving for attention that once led him to crime and to nearly kill himself by taking steroids to pump up his body. He's glad he won't be tempted by touching his earnings himself, he adds.

Roberta Clancy, who lost \$75,000 she had invested in ZZZ Best, believes in the new Minkow.

"He began to talk to his victims, including me, and apologize verbally and in writing," she said Wednesday. "He took steps that the average prisoner doesn't have to take and the average conman wouldn't bother to take."

Not everyone is convinced.

U.S. District Judge Dickran Tevrizian, who accused Minkow of spreading "toro poo-poo" when he described his remorse at his 1989 sentencing hearing, laughs at how Asperger and Barker now support him.

"Jim is soft," the judge says of the former prosecutor. "I've been doing this too long to expect any change. (Minkow) doesn't know right from wrong--he's an alchemist."

OPINION

Mike Royko

Sat., September 5, 1987

The Des Moines Register/ 11A

As a recent immigrant to this country, my friend Vasnik wanted to learn our ways, so he asked me if I would take him to a baseball game and explain it to him.

We settled into our seats as the first pitch was being thrown. And almost instantly, the umpire had stepped forward and was shaking his finger sternly at the pitcher.

"Vas dot?" Vasnik asked.

I explained that the pitcher had touched his fingers to his lips before throwing the ball.

"He like taste fingers? He have colonel chicken for lunch?"

No, he was putting saliva on his fingers to make the ball wet. The umpire warned him not to do it again.

"Why no spit? Germs?"

No, because a spitball tends to act erratically and is more difficult to hit. It's considered cheating.

"So why he do dat?"

Because if he can get away with it, he has an advantage over the hitter.

"Oh. So speet on ball is good if you no get caught by man in black suit?"

The next inning, the umpire went out to the mound and asked the pitcher to empty his pockets.

"What they do, rob heem?"

No, they are checking to see if he has any sandpaper in his pockets.

"Oh, they want fix woodwork?"

No, they suspect that he is using sandpaper to scuff the baseball, which would make it more difficult to hit.

"Ees good?"

No, that is also considered cheating.

"But ees good if you no get caught?"

Correct.

A couple of innings later, the umpires went out and looked at another pitcher's cap.

"What they do?"

They are checking to see if he has Vaseline on the bill of his cap.

"Make hair look nice?"

No, it is another way of altering the flight of the ball.

"Ees cheat?"

Yes, I'm afraid so.

"All dees people cheat all time?"

Nobody knows for sure, since cheating is difficult to detect.

"But rules say is OK cheat if you no get caught?"

No, the rules say you are not supposed to cheat.

"Then why they cheat if rules say no cheat?"

Well, to circumvent the rules is considered a special skill and is much admired by other players, their managers, many of the fans and the commentators.

"So ees good to cheat?"

No, it is wrong.

"If you get caught, ees wrong."

That's right.

"If you no get caught ees all right?"

Not exactly.

"Is confuse Vasnik."

Well, you have to understand that it is considered a tradition.

"Cheat is tradition?"

Yes, sort of.

"Then why you no make cheat legal?"

Well, you can't make a rule that says that breaking

the rules is legal.

“But if cheat OK, why no make it no cheat? Then is OK.”

Because they don’t want to give the pitcher an unfair advantage.

“Oh. Then only pitcher who know how cheat have unfair advantage. Dumb pitcher who no cheat, ees honest, he no got advantage.”

That’s correct.

“So ees smarter to cheat than no cheat?”

I suppose it works out that way.

We were interrupted when the batter swung, his bat shattered, and the umpire again examining the fragments. Then the umpire motioned for the hitter to leave the field.

“He get trouble for break stick? Stick cost lots money, HUH?”

No, they have discovered that there is cork inside the bat.

“Why put cork in stick? Is keep wine in stick?”

No, by putting cork inside the bat, the bat becomes livelier and the ball can be hit a great distance.

“Oh, boyki, ees more cheat?”

I’m afraid so.

Just then a peanut-vendor walked by. While his head was turned, Vasnik snatched a bag of peanuts from the tray and stuffed it in his pocket.

I reached for my wallet, but Vasnik restrained by arm and whispered: “No worry. He no see.”

Vasnik, either pay for the peanuts or put them back.

“Why? No get caught. Ees OK.”

Vasnik, you don’t understand. What you did isn’t right.

“Shoo ees right. I cheat, but I no get caught, so ees OK.”

Vasnik, that is not the way we do things in this country. That is not the American way.

“You know what Vasnik think?”

What?

“Vasnik think maybe you the foreigner.”

Mike Royko of the Chicago Tribune wrote a syndicated column.

Ethics and Health Club Abuses

Over the last few decades, more and more Americans have turned to the pursuit of physical fitness, which is promoted as a means to a more attractive and satisfactory lifestyle and also as an assurance of healthy longevity. Many people have joined health clubs for the equipment and expertise to pursue such healthy lifestyles and for the social encouragement that they need to persevere in these efforts. Alas, some health clubs have failed their dedicated fitness seekers. Some have evinced outright fraud in their solicitation of memberships; most have shown the extremes of high-pressure selling; others have been built on flimsy financial structures and have closed, taking the money of members who have paid advance fees or leaving them no alternative memberships.

Some health clubs have fraudulently solicited memberships with the intention to fold their tents and slink away when sufficient funds are gained, leaving their erstwhile patrons with little recourse while the promoters count their gains. But it is a thin line between such scams and the enterprise that is poorly funded, poorly planned, and cannot survive and thus presents its patrons with the same consequences, even though the intent may not have been quite so evil.

Business Atlanta pointed out such problems in the Atlanta area where health clubs folded and left their members stranded. For example, the two largest facilities in the area, Richard Simmons Anatomy Asylum and Mademoiselle Spa Figure and Fitness, together generated 1500 complaints to the state Office of Consumer Affairs. Four smaller clubs also went under for a total of 57 clubs that closed, out of 122 listed in the yellow pages.

People complaining about useless health club contracts say their spas showed no hint of impending disaster. For example, Nancy George got little use out of her \$500 Richard Simmons membership before that center folded. She said to reporters, "I was cheated out of a lot of money, and it just closed down on me with no warning. I was worried, too, because one of the other clubs had been in trouble, so I asked the managers who ran my club about it. They assured me it would not close." But close it did, with no warning.

Barry Reid, administrator of the governor's Office of Consumer Affairs, noted that a major problem was that spas asked for large amounts of money in advance. While they operated under the guise of legitimacy, some clubs were set up from the beginning as a scam.

In many instances of a failed and/or closed health club, the members still owed money on their contracts. It would seem an easy solution for members simply to refuse to make any further payments. Alas, this solution was not that simple. Invariably, the health clubs had sold the contracts to a third party, a loan company, now supposedly an innocent holder in due course that was entitled to full recompense. Customers were threatened with the loss of their credit ratings if they did not continue paying for the defunct membership.

Defenders of the larger health club chains pointed out that they were operating completely within the law. Existing corporate rules permit a chain to set up many stores, each as an individual entity, so that the potential failure of one does not drag down the others. Therefore, the other units of a chain are insulated from the incompetencies and inefficiencies of some outlets.

Quotes on Ethics

During my eighty-seven years I have witnessed a whole succession of technological revolutions. But none of them has done away with the need for character in the individual or the ability to think.

Bernard Mannes Baruch, 1870-1965
presidential advisor and financial analyst
My Own Story (Henry Holt, 1957)

The world has achieved brilliance without conscience. Ours is a world of nuclear giants and ethical infants.

Omar Nelson Bradley, 1893-1981
Permanent Chairman, Joint Chiefs of Staff
Armistice Day speech, 1948

I think it's unethical to take money for poor quality performance.

Alvin Burger
Founder, "Bugs" Burger Bug Killers, Inc.
Inc. Magazine, June 1984

Business leaders today can't shrink from their obligation to set a moral example.

Willard C. Butcher
Chairman, The Chase Manhattan corp.
Speech, New Orleans, May 15, 1987

Truth is the safest lie.

Maxwell Carver
Contributing Editor, Discover
Discover, April 1988

An honest man's word is as good as his bond.

Miguel de Cervantes, 1547-1616
Spanish novelist
Don Quixote

Honesty is the best policy.

Miguel de Cervantes, 1547-1616
Spanish novelist
Don Quixote

The Code of Ethics of Government Service, passed by both the House and the Senate, starts with the principle that every employee of the government should put loyalty to the highest moral principles and to country above loyalty to persons, parties, or government department.... To believe that the government cannot run unless one puts the President above everything else is a formula for a dictatorship, and not for a republic.

Daniel Ellsberg
Former Rand Corp. analyst

Peters and Branch, *Blowing the Whistle*
(Praeger, 1972)

In a free society there is one and only one social responsibility to business--to use its resources and engage in activities designed to increase profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud.

Milton Friedman
Nobel laureate in economics
capitalism and freedom

In matters of conscience, the law of the majority has no place.

Mohandas K. Gandhi, 1869-1948
Indian religious and political leader
Reader's Digest, December, 1987

When in doubt, don't.

Saul W. Gellerman
University of Dallas School of Management
Harvard Business Review, July/August 1986

The practice of declaring codes of ethics and teaching them to managers is not enough to deter unethical conduct.

Saul W. Gellerman
University of Dallas School of Management
Harvard Business Review, July/August 1986

Everybody has a little bit of Watergate in him.

Billy Graham
American evangelist
Remark, February 3, 1974

The most dangerous of all moral dilemmas: when we are obliged to conceal truth in order to help the truth to be victorious. If this should at any time become our duty in the role assigned us by fate, how straight must be our path at all times if we are not to perish.

Dag Hammarskjold, 1905-1961
Secretary-General of the United Nations
Markings

The 1975 statement of principles [of the American Society of Newspaper Editors]... exhorts the society's members to adhere to "the highest ethical and professional" standards, to avoid "impropriety" and, in general, to be upright citizens. But those standards are nowhere defined. Therefore, in a practical sense, they do not exist. If they do not exist, they can't be violated, and in that Catch-22 situation there are no sinners among us.

Richard Harwood
Ombudsman, the Washington Post
The Washington Post, April 3, 1988

As a small business-person, you have no greater leverage than the truth.

Paul Hawken
Founder, Smith & Hawken
Inc. Magazine, August 1987

If managers are careless about basic things--telling the truth, respecting moral codes, proper professional conduct--who can believe them on other issues?

James L. Hayes
President, American Management Association
Memos for Management: Leadership
(AMACOM, 1983)

Ethics must begin at the top of an organization. It is a leadership issue and the chief executive must set the example.

Edward L. Hennessy, Jr.
CEO, Allied Signal, Inc.
The New York Times, January 3, 1988

First, there is the law. It must be obeyed. But the law is the minimum. You must act ethically.

IBM
Business Guidelines for Employees

You are not to do evil that good may come of it.

[Non faciat malum, ut inde veniat bonum.]
Legal maxim

I desire so to conduct the affairs of this administration that if at the end, when I come to lay down the reins of power, I have lost every other friend on earth, I shall at least have one friend left, and that friend shall be down inside of me.

Abraham Lincoln, 1809-1865
Sixteenth President of the United States
Speech to the Missouri Committee of Seventy, 1864

I can remember senior officials without a smile of their faces saying, "Well, Minister, we have studied the contract with great care and we see no way in which we can get out of it."

They do not grasp that in business a reputation for keeping absolutely to the letter and spirit of an agreement, even when it is unfavorable, is the most precious of assets, although it is not entered in the balance sheets.

Oliver Lyttleton
(Viscount Chandos), 1893-1980
English banking and metals executive
Memoirs of Lord Chandos
(New American Library, 1963)

Unless a man feels he has a good enough memory, he should never venture to lie.

Michel Eyquem de Montaigne, 1533-1592
French philosopher and essayist
Essays

It is not enough to do good; one must do it the right way.

John Morley, 1838-1923
English statesman and man of letters
On Compromise

The market is full of hucksters, promoting quick-fix ethics programs.

Mark J. Pastin
Director, Lincoln Center For Ethics
Business Week, February 15, 1988

False scales are an abomination to the Lord; But a just weight is his delight.

Old Testament, Proverbs 11:1

No man is justified in doing evil on the grounds of expediency.

Theodore Roosevelt, 1858-1919
Twenty-sixth President of the United States
The Strenuous Life

The critical issue in the Nuremberg trials was the question of responsibility. Men who ceded themselves to the organization had lost their moral being: they were willing to profit or suffer by the decisions of the organization, and they were willing to do anything. Once a totalitarian organization has destroyed the moral equilibrium of those it controls, the will of the organization becomes absolute.

Earl Shorris
Manager and writer
the Oppressed Middle
(Anchor/Doubleday, 1981)

People of the same trade seldom meet together. But [when they do] the conversation ends in a conspiracy against the public, or in some diversion to raise prices.

Adam Smith, 1723-1790
Scottish political economist
Inquiry into the ... Wealth of Nations

Greatness is not manifested by unlimited pragmatism, which places such a high premium on the end justifying any means and any methods.

Margaret Chase Smith
U.S. Senator
Address to National Republican Women,
April 16, 1962

There is no evil in the atom; only in men's souls.

Adlai Ewing Stevenson, 1900-1965
U.S. Ambassador to the United Nations and Governor of Illinois
Speech, Hartford, Connecticut, 1952

A person who is fundamentally honest doesn't need a code of ethics. The Ten Commandments and The Sermon on the Mount

are all the ethical codes anybody needs.

Harry S. Truman, 1884-1972
Thirty-third President of the United States
Remark, July 10, 1958

What do I care about the law. H'aint I got the Power?

Cornelius Vanderbilt, 1794-1877
American shipping and railroad magnate
Josephson, The Robber Barons
(Harcourt Brace, 1934)

I would sooner be esteemed an ignoramus than a liar.

Benedetto Varchi, c. 1502-1565
Italian poet and historian
L'Ercolano

Despite the codes of ethics, the ethics programs, and the special departments--corporations don't make the ultimate decisions about ethics. Ethical choices are made by individuals.

M. Euel Wade, Jr.
Senior Vice President,
Southern Company Services, Inc.
Speech, University of Georgia,
November 5, 1987

All those men have their price.

Robert Walpole, 1676-1745
English politician and writer
Coxe, Memoirs of Walpole

To me, one of the most vivid proofs that there is a moral governance in the universe is the fact that when men or governments work intelligently and far-sightedly for the good of others, they achieve their own prosperity too.

Barbara Ward, 1914-1981
English economist, writer, and educator
The Rich Nations and the Poor Nations

Few men have virtue to withstand the highest bidder.

George Washington, 1732-1799

First President of the United States

Letter to Robert Howe, August 17, 1779

There is a time when integrity should take the rudder from team loyalty.

Thomas J. Watson, Jr.
CEO, IBM, and U.S. Ambassador to Russia
Fortune, 1977

Do what you have to do. Just don't tell me about it.

Anonymous manager
Personnel Journal, November 1987