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LOOKING IN FROM THE FRINGE:
A NEED FOR COMMONALITY AND ACCOUNTABILITY IN PROFESSIONAL ETHICAL STANDARDS IN FORENSICS

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Our conceptions of honesty, decency, and integrity determine who and what we are. We should ask exactly what is our concept of "right" and "wrong." As we can seldom circumvent the level of our skills, talents, or conscience, our decisions and conduct are the product of moral reference. It is suggested that education and training are the means to earn what is wanted from life, therefore, the educated man, at least ideally, doesn't have the temptation to cheat or steal. Further, it has been said, "One need not be as worried about the multiplication of sinners as with the disappearance of sin." The standards of any discipline were all once black and white, which was positive because it was easy to make "right" judgments. However, due to the growing complexity of all disciplines, forensics being no exception, there is a need for a revival in moral integrity. We must convince ourselves that it is no longer enough to say we "should," but rather we "must."

As a communications educator and a forensics coach for some twenty years, I have functioned as the majority of us do by participating in the mainstream of the discipline only marginally. Decision-making, governance, and overall responsibility has been left to those who "chose" leadership roles. As the observer, looking in from the fringe, judgments and criticisms of the system have become all too easy and often shortsighted. Likewise, this discipline that has allowed me to function, has grown to such complex proportions with divergent views and politics that all have grown shortsighted with regard to accountable ethical practices. We have come to assume too much.

At the heart of this discipline, we must rest a common ground - a universal professional code of ethics which calls for accountability at all levels. I would suggest that this is not an ideal but a necessity. Therefore, this paper will address how a system of applied philosophy functions and should be viewed, what constraints and concerns are inherent in ethical behavior, and what actions and alternatives are necessary for a code of ethics to be viable.

From the late 1960's to the present, the study of philosophy has undergone a shift in orientation that has become quite pronounced. The concerns for epistemology and metaphysics that dominated the early half of the century have given way to ethics and social and political philosophy. The expression "applied philosophy" suggests taking of a standard philosophical theory, or technique, and "applying" it to any one given area (i.e., criminal Justice, medicine, rhetoric, etc.). Yet the application is far from simple. As Allan Goldman in *The Moral Foundations of Professional Ethics* states, "standard moral principles may not, probably will not, work uniformly across all the professions" (135). However, what is "common" is the manner by which applied philosophy functions.

Applied philosophy requires a command of the details of the discipline or profession that precludes quick and easy solutions. In phenomenological

terms, the practitioner must immerse himself in the experience, suspending critical judgments. Specifically, he may attempt to describe, define, classify, and generalize the mores, customs, traditions, morals and laws which "regulate" the discipline. Or he may discuss facts, points-of-view, and the specific actions associated with a given case(s) within the discipline. However, pure imagination cannot be the only tool, as the system of "facts" surrounding the judgments must literally speak for themselves. Thus, accuracy in fact-gathering is implicitly important.

As the philosopher moves toward a critical standpoint, familiar forms of rationality--current ethical theories--turn out to be inherently problematic. Although they may serve as perspectives from which an evaluation or critique can be made, they lack finality and may need to be reworked, redesigned, and occasionally overhauled to yield their insights. For example, if we are to juxtapose a system of ethics on forensics, the standard must be established on the basis of the "reality" of the situation, current practice, and a firm understanding of the underlying assumptions by which we operate. And, perhaps most important, is to specifically identify who or what is functioning in the role of "philosopher" or the "applier/formulator" of the system. Only when the concerns of all within the discipline are at least attempted to be addressed, can the "philosopher" move toward a viable solution, or system of ethics for that particular discipline.

Reason and ethical precepts are applied to problems from different perspectives. The social scientist attempts to describe how we behave and may conclude what specific actions should be; the moralist attempts to tell us in general terms how we should think and act and attempts to "persuade" us to act in the "right" way; the ethical theorist attempts to systematically question and critically examine the underlying principles of morality; casuists attempt to draw upon moral principles, law, religion, and related areas to decide concrete cases of morality or ethical behavior. In essence, beyond the descriptive level, when "dealing with principles which establish standards for action, ethical theorists have in common with casuists and moralists an interest in the normative, that is the 'regulative' phase of ethics. Their distinctive function, however, is a 'deliberative' one, for they are interested in the examination of underlying assumptions and the critical evaluation of principles" (Albert, 4).

The above approaches may be used singularly, or in a combination, as they are not mutually exclusive. However, in the forensics community the focus has been on the "moral" or "theoretical" aspects, not on the "application" of an ethical standard. Thus, a closer scrutiny of casuistry, or "applied ethics," is warranted. As already suggested, casuistry attempts to deal with specific cases of morality or ethical behavior, matters of conscience, or conflicts of obligation. Casuists act in two capacities--"advisory" and "adjudicative." In the advisory function, the practitioner guides individuals on choices of action that

surround a given situation. For example, one might attempt to resolve the conflicting duties when the father of a starving family has no option but to steal. The practitioner also has an adjudicative function, for he must bring forth various principles that are relevant to a given case and judge the guilt and responsibility of the offender(s) by examining various aspects of the situation. In the case of the man who is faced with stealing, the practitioner must apply the principles of justice and mercy to bring balance to the demands of the particular case. Most importantly, the decision or judgment must rest on a realistic, objective, fair, consistent standard that reflects the overall constituency or discipline, of which anyone case is representative.

Thus far, a valid professional standard of ethics, or "code" of ethics, requires a systematic basis for its development, should be based on an objective set of "facts" that represents the mainstream of current practices within the discipline, and at least has the potential for mandating responsibility and accountability on the part of the members of the discipline. It is the opinion of this writer that effort should be focused toward the implementation of a mechanism to insure the accountability of participants within the forensics community. However, concern and constraints that limit and determine one's compliance with a professional code of ethics must first be considered.

According to Joseph W. Towle in his article, "Moral Issues in American Business," generally people fail to ascribe to a professional code for various reasons. First, one might view the standard as a conflict of interest which occurs when the professional standard is not in sync with personal beliefs. Second, ignorance of an ethical standard, or confusion in the intent of the standard, can inadvertently render the individual incapable of complying with the system. Third, the individual might view the standard as having bias toward one faction of the profession or the individual has lack of empathy for the rationale behind the standard. In either case one sees one's self as separate from the main body of the profession. Fourth, the standard is viewed as inadequate to meet the perceived needs of the individual within the profession. Finally, failure to abide by an ethical standard is often due to the lack of any "real" consequences if the standard is not followed. When no accountability exists, the individual often views the standard of ethical behavior as being irrelevant, or lacking worth. It is this last reason that is seen to be the most negative condition (3-21). By contrast, the individual is most likely to abide by a professional code of ethics when the code is clearly defined, universal, and consequential. Thus, the need to establish policy reflecting current practices is vital to the implementation of a professional standard of ethical behavior.

Within the forensics community obligatory compliance with any binding, ethical code is virtually non-existent. This places the burden of professional, ethical behavior on the individual. In the ideal sense, we argue that the only valid system of ethics occurs when the individual "truly" and "objectively"

recognizes the moral "goodness" or "badness" of his/her actions. If we establish "truthful," consistent arguments for moral behavior, then the theoretical precepts should insure "good," moral choices. This stand has merit when we concentrate on defining how individual choices are made in the world where the primary pursuit of truth is paramount; however, reality profoundly complicates matters.

Primary conflicts surface when we are forced to behave according to the way the world "is" rather than the way the world "should" be! The conflicts further escalate when we attempt to balance "doing what is right" and "being happy." In attempting to grapple with these extremes, no absolute can be defined, but supposedly solace can be found in our ability to use "principles" as the basis for behavior. However, the confusion does not end, for now we must consider "who's principles"?! ...

As professionals in the forensics community, we must deal with the constraints and pragmatics of the real world. Simply put, if we were afforded the luxury of stoically resting under the bell jar of the ideal, there would be no need to pursue accountability as it would be the presumed end. Unfortunately, we can't. Further, as already seen, choices of individual behavior are left to individuals without any sense of consequence. This can and will result in ethical behavior too often punctuated with compromised shades of gray - "It doesn't really matter. . .", "It might not be the right thing to do, but. . .", "I do the right thing most of the time. . ." Rather than working toward a valid objective choice, we compromise ourselves and thus the profession. In addition, all too often the situation determines the ethical behavior rather than the standard, or code of ethics, determining the choices within the situation. In the practical, gristmill pragmatics of competition, budget constraints, recruitment, tacky motels, one too many stops at McDonald's, the pure unadulterated need to win, and plain survival, we have all been guilty of some form of unprofessional, unethical, immoral indiscretion of some degree. Still, we are accountable.

As the constraints grow profoundly complex, all too often rather than act, we simply choose not to because it is extremely difficult and many times very painful. Since there is no punitive aspect for inaction or unethical behavior, we choose not to recognize or deal with breaches of ethical behavior as it appears to be trivial, useless, and/or inconsequential. Again, we concentrate on the "moral" and "theoretical" aspects of what we should do, but deny accountability and responsibility for what we do.

At this point I must emphasize that this paper is not an indictment of any individual or particular faction in or around the forensics community, but rather a call for closer attention to what we are not doing, to questions we are not asking, to responsibility we are not taking both as individuals and as a discipline, to alternatives that will begin to address a need or a systematic ap-

proach to accountability as an intrinsic part of our code of ethics. However, it is pertinent to establish what has been done in recent years to address the question of ethics in forensics.

In 1984, the Second Developmental Conference in Forensics was held in an attempt to establish cooperation among various forensics organizations. Two specific committees dealt at least in part with the question of ethics. A resolution proposed by the Committee on Interorganization Cooperation established a "Council of Forensics Organizations" under the direction of the Speech Communication Association. The council was to coordinate activities and professional goals of various forensics organizations. One recommended action was to "develop a Code of Ethics applicable to all forensics organizations," though no action of the Council would be binding on individual organizations (Parsons, 49-52).

The Committee on Ethical Advocacy was commissioned by the Steering Committee of the '84 Conference "to develop a broad, thoughtful, philosophical statement of the ethical responsibilities of forensics participants" (13). It was stressed, however, that "this statement [was] not meant to replace existing ethical codes; rather it [was] designed as a supplement to those codes" (13). However, the report suggested that the existing codes of various organizations were limited, only "listed" prohibited behavior, and provided little or no justification for their existence. What resulted was the document entitled "The Ethics of Forensics" (15-19).

Since that time it is clearly recognizable that overall there has been valid, sincere effort to abide by ethical practices and to embrace and encourage dialogue to improve ethical standards. However, simply put, it has not been enough and one problem exists. As suggested throughout this paper, we have dealt with "moral" and "theoretical" aspects of applied philosophy but not with that which addresses accountability, namely casuistry. One statement is "The Ethics of Forensics" focuses on this area, "Appropriate sanctions for unethical behavior also should be applied where needed" (17). Moreover, we are still a group of relatively segmented bodies on various levels that operate separately and have no obligation to abide by any universal code of ethics. Thus, we are "safe" from formal accountability and responsibility.

Before addressing the issue of applied ethics further, a distinction should be made. Within the framework of forensics, each organization is free to "practice" the craft within the parameters of the "policies" set forth by the individual governance system. However, each is still part of the whole forensics discipline. A professional code of ethics must serve as the universal cornerstone for participation in the discipline. It should not supplement an individual organization's code of ethics; the individual organization's code should supplement the universal code. What is a breach of professional ethical behavior by one organization must be recognized, judged, and condemned by all organi-

zations. Most importantly, the ethical standard should be consistent with and representative of the current forensics discipline.

In order to firmly establish an acceptable basis for a professional code of ethics, the challenge comes in stimulating meaningful questions rather than in establishing finite answers. Therefore, a dynamic, systematic approach is necessary. Piecemeal research must be discouraged by establishing an agenda of priority research questions. The process of applied philosophy requires a systematic analysis of the "universe" being considered; only through research can specifics be recognized as to what is needed and desired by the overall discipline. In other words, we must define the "real" world, or what exists.

To address the question of accountability within a professional standard, there must be a willingness to see the code of ethics as universal and consistent with the "real" world. Further, a sense of consequence is pertinent to one's participation. Over the years a variety of situations involving both individuals and groups of individuals have run the spectrum in degrees of seriousness. It is my firm belief that many were serious enough to demand close scrutiny and judgment by the forensics community; however, there is generally reaction rather than action. This can inherently weaken an ethical system. As stated the current forensics code calls for "sanctions" but provides no means for "sanctions" to be imposed. Therefore, for purposes of discussion, I propose the establishment of a competent, impartial board of inquiry representative of the entire forensics discipline that would be empowered to examine, evaluate, and judge individual cases. Even though the proposal is extreme, it warrants examination as an alternative that actively pursues accountability. (Please note the practicality and means of implementation are deleted, as consideration of this proposal is meant only as a starting point for discussion.) Individually we pride ourselves as being "ethical", "moral", etc., yet as a profession we are faced with the necessity of producing a means to enforce a professional code. Perhaps the ultimate test of accountability is that viable, individual, ethical behavior should stand the scrutiny of a competent, impartial board of inquiry at all times.

In conclusion, constantly expanding horizons demonstrate that moral recommendations have to be offered from a comprehensive perspective which, at best, is difficult to achieve. Applied philosophy, specifically ethics, establishes the basis for establishing viable, comprehensive policy to insure the maintenance of forensics standard. In particular, representation from all factions of the discipline can prove effective in identifying and appraising the basic assumptions underlying policy, in clarifying language, in testing the rationality of arguments, and in locating the basic principles on which agreement must be secured. Piecemeal proposals run the perpetual danger of having good intentions thwarted by those who fail to view accountability and responsibility as an integral part of professional ethical practice. Consequently, as a

discipline in constant tension from a wide range of vested interests, rehashing what is in place and/or total revolution is at times both necessary and desirable. Clearly, ongoing, philosophical dialogue leads to the creation and implementation of fair, consistent, and defensible policies for the protection and continued growth of the forensics community as a whole.

WORKS CITED

- Albert, Ethel M., Theodora C. Demose. Sheldon P. Peterfreund. Great Traditions In Ethics (6th ed.). Belmont, California: Wadsworth, 1988.
- Goldman, Allan. The Moral Foundations of Professional Ethics. Totowa, NJ: Littlefield Adams, 1980.
- Parson, Dann (Ed.) American Forensics in Perspective: Papers from the Second National Conference on Forensics, Annandale, VA: Speech Communication Association, 1984.
- Towle, Joseph #W. "Moral Issues in American Business", Ethics and Standards in American Business, Ed. Joseph W. Toole. Boston: Houghton Mifflin, 1974.
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