CHAPTER 9 Ethics

Setting the example is probably the most important leadership skill.

Instructions for Ethics Forum

These activities can be used to discuss ethical standards and dilemmas that apply to the interest area of your Venturing crew. You can conduct them as single activities during one crew meeting or you can use several meetings to explore the ethical issues in depth.

The model for these activities is adapted from *Creative Conflict*, by D. W. Johnson and R. T. Johnson (Interaction Book Company, Minneapolis, Minnesota, 1987).

Introduction

Ethical judgments are a part of every profession, vocation, hobby, and recreational activity, as well as every relationship. The ethics forum and the ethical controversies are program resources that assist you in encouraging thought and discussion about ethical questions relevant to relationships or interest areas. For example:

- Is it right to accept a gift from a supplier who is bidding for an account when you are responsible for choosing the supplier?
- Should it be legal for a police officer to accept a second job?
- What do you do when your boss does something illegal?
- Is it right to refuse jury duty?
- When is censorship okay?

The ethics forum and ethical controversy activities help your crew discuss these and other issues in an interesting, organized, and active way. The forum and activities can easily be adapted to your particular interests.

The Ethics Forum

An ethics forum is simply a crew meeting devoted to learning about the ethical issues in your crew's career or interest area. You might invite one or more individuals with expertise in the area to speak to your crew. The presenters can describe the ethical standards for their profession that are upheld by corporations, trade associations, unions, or other organizations. It is best if they give examples of how those standards are used, explain the consequences of breaking the rules, and explain why the rules are important.

The presenters also can give examples of the ethical dilemmas that arise in their professions. These could be dilemmas for which ethical standards have not been written or for which it is difficult to understand how to apply standards.

Instructions for Ethical Controversies

Ethical controversies, found on pages 200 through 228 are dilemmas without easy answers, dilemmas in which each side might have valid arguments. The following situation is an example.

You have been summoned for jury duty in your county. One of the cases on the docket is the well-publicized prosecution of a man for a series of assaults that occurred within a five-mile radius of your house. These were especially brutal crimes that occurred over several months. The assailant entered the open windows of the homes of the victims and assaulted and robbed them.

Because you live in the area where the robberies occurred and where the defendant lives, you are concerned about your safety during and after the trial. You also are concerned about your ability to be entirely fair and objective as a juror. Your choices (position statements) are as follows:

- To avoid any possibility of revenge or intimidation, you ask to be excused from participation on the jury, or
- You serve on the jury anyway since you believe it is your civic and moral obligation to serve, and that attempting to avoid jury duty would be shirking your responsibility.

Instructions

To use the above opposing positions as learning activities for your crew, follow these instructions.

Organize the Activity

Divide the crew into groups of four. Include Advisors and any other adults present. If possible, divide into groups so that Venturers work with people they don't know very well.

Divide each group of four into two groups of two. Give each pair a copy of a position statement. Be sure to assign the pairs opposing sides. It does not matter whether the participants agree with their assigned position.

Conduct the Activity

An ethical controversy activity has five simple steps. Describe and conduct them one at a time. Allow enough time to complete each step before moving on. All groups of four should work on each step at the same time. The entire activity takes from 45 minutes to two hours.

1. **Learn the position.** With your partner, develop as many arguments as possible to support your assigned position. You also can work with a pair from another group that has the same topic and position.
2. **Present your position.** Present your arguments to the other pair. In turn, listen closely to their position, making sure you understand their arguments. Clarify your understanding by restating what others say.
3. **Discuss the issue.** Defend your position and critique the opposition. Try to persuade the opposing pair that you are correct, then listen to their defense and critique. Remember to be critical of ideas, not people.
4. **Reverse positions.** Switch positions with the other pair. Take a few minutes with your partner to review your new position. Present and defend your new position as if you really believed in it.
5. **Try to reach consensus.** Work toward finding a position that all four believe is the correct one. This may be a position already discussed or a completely new one. Change your mind only when you are convinced by rational arguments.

Follow Up

After the activity is over, discuss it as a large group. Ask each group of four how they arrived at their final position. Compare the positions chosen and the arguments used to support them. Reflect on the process, discussing both the activity and how group members related with each other.

Prepared Ethical Controversies

A collection of prepared ethical controversies, starting on page 200, may be used to practice the process until you are comfortable with it.

Applying the Ethical Controversy Process to Your Own Interest Area

When you are comfortable with the ethical controversy process, you can use it with ethical dilemmas chosen by you, selected by crew members, or suggested during an ethics forum. The process is exactly the same, except that you will need to either write or explain the dilemma for the groups.

As explained previously, you can do this in one crew meeting or several. For example, you could assign positions at one crew meeting and conduct the actual ethical controversy activity one or two weeks later. Between meetings, the partners could gather information from libraries or professionals in the field to support their position. They could use this information to prepare a convincing argument.

Use With Crew Dilemmas

Every crew has problems or dilemmas that are difficult to solve. The ethical controversy process can be used to help crew members discuss solutions. Just as you have done before, assign positions to opposing team members, regardless of whether they agree with the position, and have them develop supporting arguments. Follow the steps to help them reach consensus.

The Adversary System

Position One: Keep His Confidence

You are a lawyer in Houston, Texas, who specializes in criminal defense. Jim has asked you to represent him. He says that the police have searched his home and found evidence making him a suspect in a rape case. He admits to you that he committed the rape. However, he wants to plead not guilty.

In investigating the circumstances, you discover that the police obtained the evidence illegally. On Friday evening they could not find a judge to give them a search warrant. Afraid that Jim would destroy the evidence, they decided to search his home without a warrant and found some clothing that was worn during the rape.

You are successful in getting the evidence excluded from the trial because of the illegal search, and get a not guilty verdict from the jury, even though you know Jim is really guilty of several rapes.

The *Model Code of Professional Responsibility* says:

> Both the fiduciary relationship existing between lawyer and client and the proper functioning of the legal system require the preservation by the lawyer of confidences and secrets of one who has employed or sought to employ him. A client must feel free to discuss whatever he wishes with his lawyer. . . .

According to the *Model Code of Professional Responsibility,* did you do the right thing?

Yes, we did the right thing. The code clearly instructs us to protect the best interests of our client. While it is unfortunate that a guilty man was acquitted, it is more unfortunate that the police didn't do their job correctly. If we allowed Jim to be convicted on the basis of illegal evidence, it would give the government the freedom to gather illegal evidence anytime, even against innocent people.

It is not our job within the adversarial legal system to be the judge. The lawyer who refuses to render professional services because, in his or her judgment, the case is unjust and indefensible usurps the functions of both the judge and jury.[1] By defending Jim we were doing our job. It is the legal system's responsibility to deliver justice. It is the lawyer's responsibility to serve the client.

Murray Schwartz says that there are two principles for lawyers in an adversary system:

- **Principle of Nonaccountability**
  When acting as an advocate for a client . . . a lawyer is neither legally, professionally, nor morally accountable for the means used or the ends achieved.
- **Principle of Professionalism**
  When acting as an advocate, a lawyer must, within the established constraints upon professional behavior, maximize the likelihood that the client will prevail.[2]

According to these principles and the model code we took the correct action.

The adversary system is the best way to find out the truth, if everyone follows the rules. Freedman said,

> . . . the best way to ascertain the truth is to present to an impartial judge or jury a confrontation between the proponents of conflicting views, assigning to each the task of marshaling and presenting the evidence in as thorough and persuasive a way as possible. . . . Thus, the judge or jury is given the strongest possible view of each side, and is put in the best possible position to make an accurate and fair judgment.[3]

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[1] George Sharswood, cited in Luban, D. (1984). The Adversary System Excuse. In Luban, D. (ed.), *The Good Lawyer,* (83-122). Totowa, New Jersey: Roman & Allenheld, p. 84.

[2] Ibid, p. 84.

[3] Freedman, M. (1989). Where the Bodies are Buried. In Katsh, M. & Ethan. (eds.), Taking Sides: Clashing Views on Controversial Legal Issues, (12–18). Guilford, Connecticut: Dushkin Publishing, p. 15.

Position Two: Protect Society

You are a lawyer in Houston, Texas, who specializes in criminal defense. Jim has asked you to represent him. He says that the police have searched his home and found evidence making him a suspect in a rape case. He admits to you that he committed the rape. However, he wants to plead not guilty.

In investigating the circumstances, you discover that the police obtained the evidence illegally. On Friday evening they could not find a judge to give them a search warrant. Afraid that Jim would destroy the evidence, they decided to search his home without a warrant and found some clothing that was worn during the rape.

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According to the *Model Code of Professional Responsibility,* did you do the right thing?

The lawyer's responsibility is to seek justice. In this case justice was not well served, since an obviously guilty man was released. Knowing that this man was guilty of this rape obligates us to protect society, either by allowing the illegal evidence or by convincing our client to plead guilty, even if on a lesser charge. Samuel Taylor Coleridge said in 1831:

> There is undoubtedly a limit to the exertions of an advocate [lawyer◆ for his client. The advocate has no right, nor is it his duty, to do that for his client which his client . . . has no right to do for himself.

Something is wrong with the adversarial legal system if lawyers are obligated to obstruct justice. Too often lawyers are encouraged to do things for their clients that are clearly undesirable, like hiding the truth. "Lawyers themselves do not see the point of what they do as defending their clients' legal rights, but as using the law to get their clients what they want."[4]

A lawyer ". . . will waste a lot of time if he goes with an open mind. . . . He fixes on the conclusion which will best serve his client's interests, and then he sets out to persuade others to agree."[5]

The two adversary attorneys, moreover, are each under an obligation to present the facts in the manner most consistent with their clients' positions—to prevent the introduction of unfavorable evidence, to undermine the credibility of opposing witnesses. . . . The assumption is that the two such accounts will cancel out, leaving the truth. . . . But there is no earthly reason to think this is so; they may simply pile up the confusion.[6]

The likelihood of winning a case often depends more on the skills of the lawyer than on the facts of the case. Much of a lawyer's training is not how to best find the truth, but how to win a case, for example, by using techniques that undermine witnesses' credibility.

No matter how clear, how logical, how concise, or how honest a witness may be or make his testimony appear, there is always some way, if you are ingenious enough, to cast suspicion on it; to weaken its effect.[7]

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[4] Luban, D. (1984). The Adversary System Excuse. In Luban, D. (ed.), The Good Lawyer, (83–122). Totowa, New Jersey: Roman & Allenheld, p. 99.

[5] Charles Curtis, cited in Strick, Ann. (1989). Requiem for the Adversary System. In Katsh, M. Ethan, (eds.), Taking Sides: Clashing Views on Controversial Legal Issues. (4–11). Guilford, Connecticut: Dushkin Publishing, p. 7.

[6] Luban, D. (1984). The Adversary System Excuse. In Luban, David, (ed.), The Good Lawyer, (83–122). Totowa, New Jersey: Rowman and Allenheld, p. 94.

[7] Lewis Lake, cited in Strick, Ann. (1989). Requiem for the Adversary System. In Katsh, M. Ethan, (eds.), Taking Sides: Clashing Views on Controversial Legal Issues. (4–11). Guilford, Connecticut: Dushkin Publishing, p. 7.