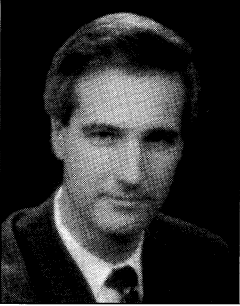


A Question of Ethics

Peter C. Kiefer



A Case of Small Town Blues

Before his famous duel with Aaron Burr, Alexander Hamilton listed all the arguments for and against accepting Burr's challenge. Did Hamilton's list of pros and cons constitute two competing sets of ethical codes and their commensurate underlying values?* Do most of us possess multiple sets of ethical codes whether we know it or not? What must we do as professionals and as responsible human beings when faced with these conflicts?

I thought we would give court administrator Bob (the star of our last two columns) a rest this issue. Let's turn to Carol, a colleague living in a small town about 50 miles from Bob's court in the big city.

Carol has worked as clerk of her one-judge court for 15 years. She, with the help of her chief deputy, supervises a staff of seven. Divorced, she barely makes ends meet while raising her preteen son on her own.

Judge Muller has been the judge of Carol's court for the last 10 years. Judge Muller, politically savvy, very well connected, and quite willful, has been known to carry a grudge for years. Many legal careers have suffered when local attorneys opposed Judge Muller's wishes.

Carol's chief deputy has recently resigned. Carol advertises for a new deputy and establishes a selection procedure following the county's personnel policies. Judge Muller comes to Carol and tells her he has encouraged Ted, his next-door neighbor's son, to apply for the job. Ted just graduated from the local community college's criminal justice program. Carol knows Judge Muller's next-door neighbor is a long-time contributor to the judge's campaigns. Carol points out to the judge that, although Ted meets the minimum qualifications, several excellent candidates with years of experience have already applied. She reminds the judge that the court might even be sued if she chooses an obviously lesser qualified candidate. The judge replies that he is sure big-city out-of-town candidates would not bother suing a small-town court; they would simply move on to the next job opening. The judge assures Carol that Ted would work out fine.

Hoping to avoid an uncomfortable situation, Carol asks the judge if he would mind sitting on the review panel. The judge replies he is much too busy to waste his time asking pointless questions to clearly unqualified applicants, especially since Ted

has applied. Carol finally asks the judge, point blank, is he ordering her to hire Ted? The judge, choosing his words carefully, says he never told Carol to hire Ted, only that he thought Ted would do an outstanding job. The judge turns on his heels to leave the office saying, "Ultimately, of course, the decision is yours, Carol."

Carol gets the message, remaining aware that she serves at Judge Muller's pleasure. She questions how she would care for her son if she lost her job. Clerking is all she knows, and the pay at the court is better than what she could expect in the private sector.

Carol convenes the review panel, on which she serves as a member. Ted comes in eighth on the final list. She decides to hire Ted. Judge Muller comes to her office the next day to congratulate her on her wise choice.

I asked Janet Cornell, judicial administrator of the Superior Court in Phoenix, Arizona, Sandra Schuyler, deputy court administrator for the Eighth District Court in Kalamazoo, Michigan, and Marsha Edwards, manager of the Dallas County Criminal Courts in Dallas, Texas, for their views on Carol, Ted, and the judge.

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Did Judge Muller act unethically expressing his opinion about Ted to Carol?

Sandra and Marsha both said the judge exerted undue influence over Carol. Janet disagreed, saying judges commonly hire employees at will. Judge Muller was merely expressing his opinion about how well Ted would fit the job.

Did Carol act unethically hiring Ted?

All three thought Carol acted unethically. Marsha pointed out that Carol is responsible for spending taxpayers' money appropriately. Both Marsha and Sandra said Carol should have gone through the normal selection process and chosen the best qualified candidate.

Did Carol violate the NACM Code of Ethics?

Both Janet and Marsha said Carol violated Article I, Section C, which requires us not to be unduly affected by kinship, position, or influence.

Was Carol following a different code of ethics in making her decision?

Janet thought Carol was following a different, probably a

more personal, ethical code. Sandra thought self-preservation is not at the same level as ethics; Carol simply acted out of self-preservation. Marsha said there is no such thing as different codes of ethics. Carol was faced with circumstances forcing her to compromise her ethics; ethical compromise does not constitute a new code.

Was Carol justified in making her decision?

No one thought Carol's decision was justified. Janet said, although she could understand why Carol made her choice, ultimately she must be able to justify her selection to both herself and others; Carol could not do that. Sandra said Carol must look to her greater responsibility of carrying out her job. Marsha said, in one sense, Carol had good reasons for making her choice, but reasons often become rationalizations. Carol was not fair and honorable in her selection, which is a better definition of a justified decision.

What could Carol have done to avoid this situation with Judge Muller?

Janet thought Carol should not have pressed the issue with the judge. Carol could have

recused herself from the selection process (however this may have made the process more difficult). Sandra thought Carol should have stood her ground. The judge would eventually get over his disappointment, but giving in would have set an even worse precedent. Carol might have been able to present the judge with the option of using Carol as the excuse for why the court did not hire Ted. Marsha thought Carol might have recruited a prominent community member to sit on the panel. The presence of a prominent citizen would have given more credibility to the process in Judge Muller's eyes. No one thought Carol should have overruled the review panel's recommendation.

I want to thank my three contributors for their reflections and ideas. Together, they engendered several new viewpoints to dealing with ethical dilemmas as this. **CM**

Note

*Robert Axelrod, "Laws of Life: How Standards of Behavior Evolve," *The Sciences*, March/April 1987, pp. 44ff.