



CONSTRUCTION ANALYSIS AND PLANNING, LLC

Manipulating the Definition of Ethics

Throughout my career, and especially since commencing my crusade for greater ethics in the construction industry, I have encountered countless people within our industry who have distorted and manipulated the definition of ethics to suit their own financial needs. This is actually something that has disturbed me from the moment I graduated college and entered my career in “Corporate America”. The contents of this article may irritate many people, but I’ll be completely up front – if you find this article is disconcerting or upsetting, it means you are the type of person it is aimed at.

The Encarta dictionary describes ethics as “a system of moral principles governing the appropriate conduct for a person or group”, but that’s a little vague and too bland for my taste. My personal definition of ethics is simply that we all carry out our lives, both personally and professionally, such that we do not take unfair advantage of others. We must strive to succeed and enjoy our successes, but success cannot be attained at the unfair expense of another.

Let’s go through some examples.

Human Nature

Some will argue that being selfish and self-centered is an innate human quality and, like it or not, just part of human nature. They believe that like a hungry dog fights for his bone with no regard for other dogs that may be hungry, people fight for their money with little or no regard to other people. Well, I won’t beat around the bush - this is pure baloney.

What separates us from the animals is the ability for rational thought. We know the difference between right and wrong. The people who argue that selfishness is an innate human quality are doing nothing more than making excuses for their own unethical actions and behavior. An unfortunate fact of “Corporate America” is that there are many-many of these people out there and they all work together like a massive support group who reinforce each other’s bad behavior. If you find yourself in this group I encourage you to break away from the pack.

“It’s just business”

When the label of a “business decision” is applied to a decision or action people seem to feel far less personal accountability. People in all walks of life have a tendency to lie, cheat and steal when under the perceived shelter of their business world, as they truly believe that they can walk cleanly away from their actions and decisions at the end of each work day. In our society this is an unbelievably common belief, yet a belief I find absolutely absurd.

When unfairly cheating another with a decision, action or business deal it isn’t just business – it’s very personal. The person who is capitalizing on the unethical activity does so for a monetary benefit, whether it is for themselves or the owners of their company. If they are unfairly taking advantage of another for the benefit of their company the motivation is for a better raise, promotion or even just a pat on the back. This is a personal motivation, thus the decision to perform an unethical act is in fact personal.

These actions are obviously very personal to the person or group of people being cheated as well. This person or company is unfairly paying a higher price. This is taking money out of their pocket. I don’t know anyone who doesn’t take personal offense to being cheated out of their own money. Of course some find relief when under the perception that they aren’t cheating a person, only a company. Well, the fact is that there isn’t a company in the world that isn’t owned by a person or group of people. When their money is unfairly taken it is very personal for them.

“Everyone else is doing it”

This actually goes far beyond the obvious explanation; let’s delve into an example and discuss how this impacts bidding. In the traditional hard bid public market contractors routinely employ predatory bidding practices, such as identifying change order opportunities during the bidding process and factoring that projected income into their base bid estimates. The problem here is that “everyone else is doing it”, so if an honest contractor doesn’t look for these sorts of opportunities to reduce their base bid value the result would inevitably be that they wouldn’t win the project. This is especially true in today’s market where public project bidders lists are seemingly endless. What I’d really like to see are honest contractors identifying change order opportunities in the same manner as any other pre-bid question – send in an RFI. This way the design team can address the problems prior to bid day and by issuing the clarification we can be assured that all of the bidders include the respective work in their base bids. In doing this the change order opportunities are stripped away from their unscrupulous competition.

As another example let’s look at this from the perspective of a design team. Architects and their sub-consultants are commonly awarded projects based upon the lowest cost. Many design teams will approach a project by bidding the absolute minimum amount of design work necessary to attain a permit and that’s it. So, honest design teams who include enough money in their bids for a complete set of documents (i.e. include all design work necessary for both bidding and construction purposes in addition to the bare minimum necessary for permitting) doesn’t stand a chance at winning the project. This is an increasingly hot topic in the industry. The best way to tackle this problem is for an owner to inform all design teams bidding a project that a thorough Constructability Review will be completed at the 90% CD

milestone by an independent third party and that all work associated with those comments will need to be accounted for under the design team's base contract. This will both level the playing field and, of course, help ensure a high quality set of documents are produced.

"It's company policy"

Just because a company might be able to get away with something legally it doesn't mean it's ethical. Company employees feel very little, if any, personal accountability enforcing unethical company policies even when they know the policies are unfair. They claim that it's just their job. Well, I hate to tell you company employees, but you chose your job and even more importantly you choose to continue working there, so you are in fact personally accountable. Obviously the job market is very poor at the current time and we all have to take care of ourselves and our families first. But, if you are being asked to perform duties you find unethical it's time to get your resume back into circulation.

When a company makes an ethically questionable act company policy the overall integrity of the company comes into question. For instance, there are general contractors out there who have a company policy of giving subcontractors many more forms to fill out than necessary and withhold payment for even the tiniest omission. Furthermore, and this is the truly unethical part, they will not inform subcontractors when their paperwork is deficient. This is just one tactic general contractors have been known to employ so they can hold the subcontractors money as long as possible, which subsequently increases their cash flow. At the same time the subcontractors are incurring interest charges. I'll continue with my bluntness to tell you that when ethically questionable behavior is made a part of company policy it makes me question the integrity of the company as a whole. In fact, I immediately begin wondering what other unscrupulous behavior those guys might be up to.

"It's just how the game is played"

This is another saying that many people use to justify their unethical behavior. People in all industries have been known to take deliberate and unfair advantage of others with absolutely no regard for the difference between right and wrong by convincing themselves that business is just a game and if another person puts himself in a position for which he can be taken advantage of, well then it's his own fault for making himself vulnerable. This belief is as common as it is despicable.

I've recently heard a self-centered stance stated as "what's good for me, is good for me" and to my amazement this person actually had himself convinced that this was an ethical belief. On the contrary, this is actually a great definition for unethical and dishonorable behavior. For instance, a person with this mentality will make every attempt possible to get as much money as he can for an item of work, even if the work in question is performed under a monopoly. In other words, when a subcontractor jacks up change order pricing because they know the GC and Owner have no choice but to utilize them for the work it is not "a good business decision" as many convince themselves – it is "extortion", plain and simple.

The art of finger-pointing

- A) Employee: "I only did it because my boss told me to"
- B) Employer: "My subordinate did it, I only mentioned it"

People tend to feel a great sense of relief when performing an unethical act if they have someone else to blame. For instance, let's consider the common situation when a project manager tells a project engineer to inflate change order pricing they are submitting to the owner. The project engineer may feel little or no guilt because he's just doing what his boss told him to do. Likewise, the project manager may feel little or no guilt after convincing himself that since the project engineer is actually committing the unethical act, his hands are clean. Clearly, these are both feeble excuses.

The reality is that the project manager and project engineer are both guilty, as they conspired to steal from the owner. Of course the project engineer is in a rather difficult situation because he doesn't want to upset his boss and jeopardize his employment. However, there are ways the project engineer could get out of performing these sorts of unethical acts. (With brevity in mind I won't stray off topic in this article to discuss these methods, but am willing to offer advice individually to any readers out there in need of some help). Subordinates in this situation usually do have a way out, and when they find a way out their bosses will be forced to perform the unethical acts themselves. A very intriguing fact is that when a superior is faced with performing an unethical act that they were attempting to pawn off on a subordinate they usually chicken-out.

A Professor's duty to the students

There are some Professors, but thankfully only a small minority, who believe their job is "solely" the business of teaching and molding kids into what the hiring companies desire as employees. They believe their job is solely to get the students employed straight out of college and for the highest salaries possible. This is what "Corporate America" wants and therefore what some professors believe is the sole purpose of their role as an educator. In fact, a very well respected Professor once adamantly professed to me that he did not want to teach the subject of ethics because it's not what the employers wanted and it was his job to mold the kids into what the employers in fact desired. Of course this Professor wasn't going to teach unethical practices, it just meant that he was going to skip the topic of ethics altogether. Needless to say, hearing of this negligence absolutely disgusted me. Luckily, unlike the corporate world, I've found that in the academic world people of this character are few and far between.

Although it is an educator's job to teach and mold students such that they are well prepared for the business world, it is not their "sole" responsibility. Nor is it a responsibility they have to the employers - it is a responsibility they have to the students. Furthermore, Professors and other educators have a moral duty to teach the students how to succeed in an ethical manner. They have an obligation to emblazon the difference between right and wrong into the kid's heads before "Corporate America" ever gets a chance to corrupt them. Universities should not create worker-drones willing to sell their souls for the good of a company. In addition to creating intelligent individuals who are well prepared for the business world, educators must also ensure the individuals they feed into "Corporate America" are good, decent and ethical human beings. Honestly, I believe the latter is the more important mandate for a University.

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In conclusion, there are people who convince themselves that “bending the rules” (which is just a nice way of saying “lie, cheat and steal”) is necessary to advance and succeed in their careers. If they don’t take liberties with the truth and unfair advantage of others they quite simply won’t make as much money. My response to this argument is simple math. The difference between the income these people would make in an honest living and their income by “bending the rules” is the price they have sold their integrity for.

When someone is asked if they believe they lead their life, both personally and professionally, in an ethical manner only a rare few will reply “no”. In reality, experience has shown that when people are posed with questions such as those described in this article the vast majority will immediately begin squirming in their boots. If this article has made you squirm please take a good look in the mirror and spend a little time reassessing how you are living your life, both personally and professionally.

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** A Linked-In group titled “Construction Industry Ethical Professionals” has been created for those of us who agree with ideals such as these and are interested in both attaining and sharing information and instructional materials on the subject of ethics. Everyone is encouraged to join.