THE EXECUTIVE DIRECTOR CONFRONTS ETHICAL DILEMMAS

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Ethical decision making is not a single act but rather a pattern of behavior that encompasses one's character, habits, knowledge, and motivations. This article describes character traits that should be cultivated, questions that should be asked, and ways to create an agency culture that facilitate ethical decision making.

A Prince will never lack for legitimate excuses to explain away his breaches of faith. Modern history will furnish innumerable examples of this behavior, showing how the man succeeded best who knew best how to play the fox. But it is a necessary part of this nature that you must conceal it carefully; you must be a great liar and hypocrite. Men are so simple of mind, and so much dominated by their immediate needs, that a deceitful man will always find plenty who are ready to be deceived.

Machiavelli, *The Prince*

Ethics involves a code of conduct or a set of moral values that guide our lives and help us carry out our business. It is defined as principles of honor and morality, accepted rules of conduct, and the moral principles of an individual. Dr. Albert Schweitzer wrote, "Ethics is the name we give to our concern for good behavior. We feel an obligation to consider not only our own personal well-being, but also that of others and of human society as a whole."

Courses in ethics are becoming a standard part of the M.B.A. curriculum at major business schools across the country. During the past several years, we have witnessed the criminal convictions of insider traders. In the nonprofit world, we were shocked in 1993 by the scandal involving William Aramony, past president of the United Way of America. Indeed, the Jewish communal world has not been exempt from scandal. In almost all cases, these criminal convictions and scandals involved severe breaches of ethical and legal responsibility by executives at the highest levels.

Executive directors face ethical and legal dilemmas on a regular basis, but it is rare that any executive has had formal training in the process of resolving ethical problems. Since many ethical problems have no definitive solution, the area will become a fertile ground for debate for many years.

The purpose of this article is not to suggest any method by which an executive director can become a perfect model of ethical behavior. Such a formula cannot exist due to the complexity and variety of the issues involved in any situation. The intention is to bring to consciousness an awareness of the ethical implications of decisions that are made on a routine daily basis. This article first discusses specific traits of character that will aid the executive in making responsible and informed decisions. Second, several issues that are commonly encountered are discussed from an ethical and a legal perspective. Third, a series of questions that can challenge one's motivation in rendering a decision are suggested for use when confronting problems that challenge one's ethics. Finally, some recommendations are offered, both for the director and for implementation by an agency.

CHARACTER TRAITS OF USE IN MAKING RESPONSIBLE DECISIONS

The crisis in ethics today probably exists not because of an inability to distinguish between right and wrong, but from the bad

Presented at the Executive Directors Conference, Scottsdale, Arizona, February, 1995.

habits that people have cultivated throughout their lives (O'Brien, 1989, p. 4). The pressures of jobs, to achieve the bottom line, to meet the goals and objectives often lead to compromises that can make it difficult sometimes to look at ourselves in the mirror. To make ethical decisions means to create results that we can live with. In making those decisions, certain character traits must be activated. The ability to use these traits comes from developing habits that encourage us to take responsibility for our actions. There is certain behavior that we want and that must be present when we confront issues of ethical relevance.

Dr. Stephen R. Covey has written two widely acclaimed books that discuss personal responsibility and the principles intrinsic to outstanding leaders: *The Seven Habits of Highly Effective People,* and *Principle-Centered Leadership.* At least three of Covey's seven habits involve character traits that, if properly cultivated and employed, will aid in the process of making decisions involving ethical dilemmas.

Habit Two is called "Begin With The End In Mind." By having a clear sense of direction, principles, and values, you can make certain that whatever you do and whatever decision you make on any given day will not violate the criteria you have defined in your life as important (Covey, 1990, pp. 96–143). Covey advocates the development of a personal mission statement based on correct principles that becomes a standard or a constitution for your daily life. This statement then becomes the beacon for making daily decisions in the midst of conflicts and challenges. An example of such a statement includes the following language, "To be known by my associates as a fair and honest person. To the people who work for me and with me, I pledge my respect and will strive every day to earn their respect. Controlling all my actions is a strong sense of integrity, which I believe to be the most important character trait." Choices between right and wrong can often come from the heart as well as the head. Incorporating such unchanging virtues as honesty, integrity, and respect into one's daily life will surely make the process of making ethical decisions an easier task.

The fourth habit, "Think Win/Win," is a habit of interpersonal leadership. It involves "the exercise of each of the unique human endowments, self-awareness, imagination, conscience, and independent will, in our relationship with others. Character is the foundation of Win/Win, and everything else builds on that foundation" (Covey, 1990, pp. 205–234). In ethical terms we can ask the question, Is the decision going to be fair or will it heavily favor one party over another in either the short or long term? If the result of the decision creates a large imbalance—that is, a Win/Lose situation—an unethical decision could be made. Think Win/Win is a habit that clearly results in a stronger ability to render situations that are ethically correct and based on sound principles.

Covey's sixth habit is "Synergize." He considers this habit the essence of principle-centered leadership. Synergy means that the whole is greater than the sum of its parts. This habit takes Think Win/Win a step further. Because a leader believes in Win/Win, he or she is able to believe in a third alternative, a solution that is mutually beneficial and is better than what either party originally proposed. Valuing and understanding the mental, emotional, and psychological differences among people is the essence of synergy (Covey, 1990, pp. 262–284). The ability to adapt and live by such a philosophy can be a positive asset in confronting ethical dilemmas.

COMMONLY ENCOUNTERED ETHICAL DILEMMAS

The laws of society should also reflect its ethical standards. In reality, this is not always so. An action could be legal, yet unethical. As an example, many states allow for termination of an employee "at will," with the employee being afforded no reason for dismissal. However, by following a standard of ethics, it can be argued that an employee should only be terminated for "just cause," such as theft or incompetence.

Ethical dilemmas often have no clear-cut answers. Although law is certainly related to ethics, it is not a panacea in resolving ethical problems. Questions involving legality can always be referred to the agency attorney or to the agency personnel code or bylaws. However, ethical dilemmas are not only related to laws and regulations. Executive directors must respond to ethical issues arising from such actions as performance evaluations, sexual harassment, truthfulness in advertising and marketing, discrimination, member relations, and board relations. Consider the following areas in which an executive director might encounter problems with ethical and sometimes legal implications.

Taking Something That Does Not Belong to You

Often ethics are sacrificed for the accomplishment of a particular goal. Decisions regarding budgeting or other financial matters are a fertile ground for problems. One Jewish Community Center faced the following situation. The federation had agreed that it would cover any end-of-the-year deficit in the Center's budget up to $20,000. The executive director determined in November that the agency would most likely realize a balanced budget by year's end. Some lay leaders suggested to the director that the agency spend excess funds on needed Center supplies up to a $20,000 amount. As long as the federation had agreed to reimburse the Center, the money might as well be allocated to the Center, rather than remaining in the federation.

On first examination, the proposal had merit. The deficit would be real, and the monies spent would be used for the legitimate needs of the agency, needs that would benefit the membership and the community. However, when the director asked himself, "Is this the right thing to do? Is it fair? Is it honest?," he came up with a different answer. By maintaining objectivity, he determined that although spending the money and seeking the reimbursement would be legal, it would not be ethical because the spirit of the federation guarantee would be violated. The bottom line was that the deficit would not be real but would be falsely created to gain an increased allocation. The fact that the monies would be used for legitimate agency purposes was a rationalization that could not justify such an action. The proposal was dropped. In this case, the action was legal, but unethical.

Another similar example involves a JCC that offers classes in aerobics, ballet, or other programs that involve the use of professional music. It is easy to ignore the responsibility to pay such organizations as ASCAP for the permission to use the music. The chance of ever being monitored is slim. Yet when ethical principles are considered, a very different decision might be reached. If you copy music or videos or do not pay for the use of these items, it means that the maker of the product does not receive fair compensation. You are using the product without paying. In both examples, we are dealing from an ethical perspective with issues involving, very simply, taking something that does not belong to you.

Conflict of Interest

A conflict of interest can exist any time a director or one in authority has the ability to enrich him- or herself at the expense of the agency, a member, or the community. However, the conflict may not necessarily be limited to personal enrichment. Diverting a business opportunity to a family member, friend, or favored individual can also create a conflict. For example, the director who hires his wife's travel agency to handle the agency's travel programs may be creating a conflict of interest. Any situation that results in financial gain to the director as a result of his or her decisions would in almost all cases create a serious conflict of interest, which when revealed could result in serious problems for the director.

Many professional organizations have

adapted specific rules regarding conflicts of interest. The Code of Professional Responsibility of the American Bar Association (ABA CPR) includes a specific canon regarding conflicts of interest. It states, "A lawyer should exercise independent professional judgment on behalf of a client" (ABA CPR Canon 5, 1988). The disciplinary rules that follow all refer to various areas in which an attorney can become involved in a conflict of interest. These include, among others, the responsibility to refuse employment when the interests of the lawyer may impede his or her professional judgment, limiting business relations with a client, and avoiding influence by others than the client (ABA CPR Canon 5). Some agencies have board member code of ethics as well. The Toledo Board of Jewish Education has such a policy that states, "As a member of the Board of TBJE, I will...declare conflicts of interest between my personal life and my position on the board, and abstain from voting when appropriate" (TBJE Code of Ethics, 1992). An executive director should be held equally accountable.

It is important to note that a conflict of interest in and of itself might not be illegal. The important considerations in all such cases are the elements of concealment and disclosure. *Legally, a conflict of interest does not exist if the individual makes a full disclosure regarding the elements that create the potential for conflicts.* It is not necessarily inappropriate for a director to be involved in decisions that may benefit him- or herself or a family member so long as the nature of the situation is disclosed to the proper individuals (Wolf, 1990).

In the example cited above, if the director reveals in advance to the board that the travel agency he plans to hire is owned by his wife, there would not be conflict. This is not to say that the action does not demonstrate poor judgment; rather, only that it is not illegal and does not constitute a conflict of interest (assuming the bid process was followed according to procedure and law).

Although the Association of Jewish Community Organization Personnel (AJCOP) Code of Ethics does not include a clause specifically relating to conflict of interest; Principle 9 of that document arguably covers the point. It states, *"I will distinguish clearly, in public, between my statements and actions as an individual and as a representative of my organization"* (AJCOP Code). It is suggested that the rule of thumb should be that the professional judgments and decisions of the executive director should be exercised, within the bounds of law, solely for the benefit of his or her agency, and free of compromising influences and loyalties. This paraphrase from Canon 5, Ethical Consideration 5-1 of the ABA CPR is clearly applicable to the executive director.

Confidentiality

The childhood verse that says, "Sticks and stones may break my bones, but words will never hurt me," is far from the truth. The fact is that words can create damage and injury that can last for a long time. Words that violate confidentiality or privacy can not only be unethical, but illegal as well. Canon 4 of the ABA CPR states, "A lawyer should preserve the confidences and secrets of a client." The attorney, with few exceptions, is allowed to reveal the confidences of a client when he or she has received the consent of the client affected and only after full disclosure. The rule can be applicable to the executive director as well.

The AJCOP Code of Ethics, Principle 10 states, "I will respect the confidentiality, viewpoints, and privacy of persons served by my organization and of volunteer associates and colleagues." It is incumbent upon a director to ensure that all information that is privileged is not disclosed outside the JCC. If there is any doubt as to the need to respect confidentiality, that doubt should be resolved in favor of respecting the confidentiality. If in doubt, and the situation is serious, consult an attorney.

If confidential information is received, and there has been an understanding that the information is in fact confidential, unauthorized disclosure to a third party might not only be unethical or illegal, but might be a breach of contract and subject the agency to damages in a civil suit.

Terminating Employees

Legally, termination of an employee is either based on just cause or is at will. In those jurisdictions in which the termination must be based upon just cause, discrimination cannot be used as justification. Most state statutes clearly delineate the grounds upon which a termination may be based. Any director would be wise to consult an attorney or the laws of the state before terminating an employee. For, although a state may allow for termination at will (i.e., at the employer's discretion), doing so may raise strong ethical considerations. It may be argued that allowing an employee due process and terminating only for cause is the ethical principle, regardless of the law of the state.

Many ethical dilemmas can arise from hiring and firing decisions, performance appraisals, and other areas of personnel management. One such dilemma arises where a director decides that a long-time staff member is no longer effective or contributing to the mission of the agency. Due to the longevity of the individual's employment, it is not politically feasible to terminate him. In one case, the decision was reached to make the work environment so uncomfortable that it would eventually cause the staff person to quit. This was done by downgrading the position and changing the work hours. It can be argued that this solution was really no more than a devious way for the director to accomplish his goal of terminating the employee. Should the staff person have been fired or at least placed in a part-time status? The deviousness of the situation certainly calls into question ethical considerations.

Gifts and Personal Gain

Any gift has some value; therefore, it can be used to obtain an unfair advantage. What is considered stepping over that line in this area can differ from organization to organization. Some do not allow a staff member to receive any gifts of any sort. Some allow the receipt of nominal gifts, with some monetary limit placed on the gift so that "nominal" is clearly defined. A gift worth less than $25 is an example of a nominal gift. Such a gift is arguably legitimate when a staff member is given a "tip" for conducting an out-of-town trip. Nominal speaker gratuities could fit in this category as well. In any policy regarding gifts and gratuities, it should be clearly stated that no gift can ever be accepted if the purpose of that gift is to influence policies or business decisions of the JCC.

Leapfrogging the Waiting List

Commonly an affluent member requests to leap frog his or her child on a waiting list or receive some other benefit that would not be afforded to others. It is incumbent upon the director to ensure that such requests are not granted. A common failure of executives is to neglect to set standards. The director cannot say one thing and do another. If directors do not set proper ethical standards in decision making, not only do they fail to impose high standards on their staff but if they compromise their ethical standards for one situation they will probably compromise those standards in another.

If the above situation occurs it might be necessary for the director to convene the executive committee or board to discuss this issue so that he or she is not acting unilaterally and placing his or her job in jeopardy. It is important to impress upon the leadership that there is a special duty to uphold the integrity of the agency and that a proper ethical response is consistent with the agency mission and Jewish values. To allow the leap frog situation is patently unfair to those on the waiting list and this is unethical. If the board does not agree with the director he or she is put in the difficult situation of compromising ethical principles or seeking employment elsewhere.

Professional Impropriety

An important rule in dealing with ethical dilemmas can be borrowed from the ABA CPR, Canon 9, which states: "A lawyer should avoid even the appearance of professional impropriety." The ethical considerations following this Canon can basically be summarized in one statement: Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. Ethical Consideration 9-6 states, "Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof." This canon can be restated simply: *An executive director should avoid even the appearance of professional impropriety.* The leader of the agency may indeed have a greater responsibility to avoid the appearance of impropriety than do other staff.

On occasion, ethical conduct of an executive director may be perceived by laypeople to be unethical. An example involves a director who developed a habit of taking Center property to his home, purportedly for the purpose of repair and eventual return to the agency. The property could include small items or even such large items as a Xerox machine. With proper disclosure to the appropriate parties, this conduct is arguably in and of itself not unethical. The appearance of impropriety became apparent when many of the items would remain in the director's home for what some perceived as an inordinate length of time. The situation became more complicated when the director alleged that he was using his own funds to repair the items and was thus acquiring a proprietary interest in the property. The situation became a crisis when a board member learned of a significant piece of Center property that had been in the director's possession for over a year, with no disclosure having been made to anyone. When confronted, the director argued that he had put enough of his own time and money into the repair of the item that he had earned ownership. The Executive Board considered the property to have been wrongfully appropriated, and the incident became part of the justification for disciplinary action against the director.

This director placed himself in jeopardy in several ways. By taking home the Center's property on a regular basis, he did not avoid the appearance of professional impropriety. He never disclosed his intentions to other staff or lay leaders, thus again failing to avoid the appearance of impropriety. He kept the property a length of time that caused his actions to be suspect when they were discovered. In repairing property and then claiming ownership, he created a situation in which he was able to personally benefit. It is irrelevant whether the property could have been valuable to the agency had he not repaired it. The appearance of impropriety was clear. Only the director would have had the ability to take property to his home with no internal accountability. This also raised issues of propriety.

The above example is cited to demonstrate the importance of the director striving to avoid not only professional impropriety but also the appearance of impropriety. As in the legal profession, executive directors must, through their actions, recognize that they have a special duty to uphold the honor and integrity of the profession. That duty may be more incumbent upon the director by virtue of his or her respected position in the community than upon other agency staff.

QUESTIONS THAT CAN FACILITATE ETHICAL DECISION MAKING

The ability to make correct ethical choices is most likely not one with which we are born. During any day, we are challenged by issues that require a balancing of emotions and values. To make the correct ethical choices, it is important to develop a sensitive and proactive method. Adopting a philosophy that is principle centered such as that suggested by Dr. Stephen Covey is one method. His three habits—"Begin With The End In Mind; Think Win-Win, and

Synergize," are not only principles intrinsic to outstanding leaders but also ones that can help guide a leader in the resolution of ethical dilemmas.

Posing certain questions when making decisions can help an executive director render decisions with ethical implications. Perhaps the simplest questions were stated by Kenneth Blanchard and Norman Vincent Peale in their 1988 work, *The Power of Ethical Management.*

1. Is it legal? Is the decision going to violate any civil or criminal law? If so, the director might not have to answer any other question in making a decision.
2. Is it balanced? This could be paraphrased, Is it fair to all parties? Does it promote a Win-Win situation, or is one party a loser?
3. How will it make me feel about myself? Can I point to this decision with pride? (Blanchard & Peal, 1988, p. 20).

A fourth question could be, "How would I feel if my decision were published in the newspaper, or how would I feel if my conversation were recorded for later playback to the board or some other responsible body?" For a director of a Jewish Community Center, a fifth question could be, "Is my decision consistent with Jewish values and *halachah*?" Finally, in business negotiations it is fair to ask, "Does a contract address ethical as well as legal concerns?" Consulting with rabbis, attorneys, or other professionals can aid in the decision process when deemed appropriate.

RECOMMENDATIONS TO ENHANCE ETHICAL DECISION MAKING

Ethical decision making is not a single act or process like the steps in planning a program. It is a pattern of behavior, questions and answers that encompasses our character, our habits, our knowledge and wisdom, and our motivations. The particular skill of an executive director, combined with the resources of the agency, can aid him or her to exercise influence in an ethical manner. The following are recommendations that an agency might adopt to help create an atmosphere that fosters positive ethical and moral standards. This list is not definitive. Each agency and director must forge their own process and systems to ensure that the highest ethical standards are being maintained throughout the agency.

- Develop a professional relationship with an attorney versed in personnel law. When in doubt, ask.
- Develop a JCC Code of Ethics that contains provisions for staff, board members, and volunteers. All appropriate individuals should be signatories to the Code. The document should clearly state agency policy in areas including but not limited to conflict of interest, privacy, nepotism, personal gain, and vendor relations.
- Develop and implement a personnel code that takes into account issues involving ethics. It could include policies regarding outside employment, performance evaluation, and alternative dispute resolution.
- As an executive director, avoid all appearances of impropriety.
- Adopt a list of "test questions," similar to those suggested above, to aid in the resolution of ethical dilemmas.
- Adopt an agency mission statement that encompasses ethical principles.
- Adopt a personal mission statement that encompasses ethical principles.

CONCLUSION

Executive directors must contend with ethical dilemmas ranging from the blatant and obvious to the subtle. Such issues as performance appraisals, discrimination, member and board relations, and disciplinary procedures can require sensitive decision-making skills. The numerous laws and regulations only add to the complexity of the problems.

There can be no doubt that the Jewish Community Center provides an environment in which ethical dilemmas can be plentiful. As one executive director succinctly stated, "In the execution of its services, particularly owing to its universalistic philosophy, it (the JCC) is faced with many ethical and normative dilemmas which must be resolved in the form of policy decisions and professional procedures" (Dubin, 1987, p. 194). He goes on to state, "Further, their complexity becomes even more marked as we attempt to remain faithful to our mission, to be nonjudgmental and yet have convictions, to be moral and to be practical, to be all accepting and to be discerning, to be legal and to be realistic, to be honest and to be political, and *most importantly, to be ethical and to be successful"* (emphasis added; Dubin, 1987, p. 194).

In order to avoid the wrong decisions in ethical situations, the director must be able to recognize and properly process the ethical dilemma when it arises. A director is surrounded daily by various opportunities and constraints. The level of authority of the director can range from independent and autonomous to restricted and dependent, depending on the nature of the agency. These factors also come into play when an ethical dilemma rises. Adopting various unmoving principles and habits, such as those suggested by Dr. Stephen Covey, will aid the executive in making the appropriate decision.

It has not been the intention of this article to discuss ethical situations from a religious perspective. Nevertheless, it should be incumbent upon every director to maintain for him- or herself and the agency the highest ethical standards consistent with Jewish values. A Jew is not considered religious if he or she observes Jewish laws between man and God, but not between man and man. When we try to follow the principles and laws of the Torah, and the teachings and values of the sages, we bring value, honesty, and ethics not only to ourselves, but to our workplace.

> The Torah is to the soul of man what rain is to the soil: rain makes any seed put into the soil grow, producing nourishing as well as poisonous plants. The Torah also helps him who is striving for self-perfection, while it increases the impurity of the heart of those that remain uncultivated.
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> Elijah, the Gaon of Vilna, in his commentary of Proverbs 24:31 and 25:4.

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