

## Where is the Ethics? Government, Financial and Health Care

### Preamble:

Thank you for inviting me today to speak to your group. There is a Vermont proverb that says "don't talk unless you can improve the silence." I don't know if I can do that, but I'm going to try.

First of all - - a little background, we funded at SMU the first all University chair, being the Maguire Chair in Ethics in December of 1985. Making it an all university chair was significant in that it treated the subject of ethics as being important for all of us and not just something necessary for business or law. Then in May of 1995 we funded the Maguire Center for Ethics and Public Responsibility at SMU to further expand the efforts on this subject. The initial director of the Maguire Center, Dr. William F. May stated, as our mission, "in shaping citizens....a university does not fully discharge its responsibility to its students and the community at large if it impacts knowledge (and the power which that knowledge eventually yields) without posing questions about its responsible users". We related it to public responsibility since we felt that this ethics effort was not going to be a marriage counselor type thing, but looking at both sides of important ethical issues in connection with our public responsibilities. The Ethics Center has had various seminars ranging from the first one, being 'Ethics in Healthcare', to 'Ethics in Philanthropy' to 'Ethics in Sports' (we don't need to kill somebody when we tackle them) and 'Ethical Responses to Terrorism' where Henry Kissinger spoke. Then later on we funded the Maguire Chair in American History and Ethics at the Library of Congress.

It was thought that we could certainly use a lot of discussion of Ethics in Washington, D.C.! The library wanted to tie it into history so that we could relate to some of the moments in our history where various leaders showed some ethical leadership, and recently we funded at the American College Ethics Center in Philadelphia the Maguire Fellowship in Applied Ethics in an attempt to improve our financial reporting.

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Benefactor of the Maguire Center for Ethics and Public Responsibility

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In addition, we funded the Shining Star Ethics Program at the Dallas Police Department. (We don't need a Rodney King type situation where the police beat up who they arrest).

George Hegel said, "education is the art of making man ethical."

So would like to touch today on the "value of telling it like it is" in just 3 areas namely government, financial and health care. However, I think these comments could apply to a great number of other areas including religion. Before we start, I think the interesting thing about Ethics is that there are always 2 or more sides to every issue. It's the process of trying to evaluate all sides of an issue and coming down on what should be the appropriate response for the general good that makes the dialogue worth while. I have to say that at the beginning there were some people who said 'well, we don't have time for this' and others who said 'what's the matter? don't you think we are ethical already?'; but as we have seen, everybody can benefit from more dialogue on the subject of ethics. Also some people said 'no, the only ethics you learn is the ethics you learn at your mother's knee'. I disagree with this, since my mother, who was very ethical, knew nothing about stem cell research, DNA, computer ethics or a host of other subjects that weren't even known at the time. Further, I would predict to you that all of your children in the future will face a lot of additional issues that you and I are not even aware of today. So I think it is an ongoing process to make ethical choices as the world spins faster and faster.

In January of **1988**, I wrote an op ed piece captioned Texaco vs. Penzoil – What Price Ethics? This dealt with the issue that Getty had agreed in writing to sell his stock to Penzoil, but then Texaco offered to pay a higher price and then guaranteed Getty on any lawsuit that might result from Getty welching on his signed deal with Penzoil. My op ed piece went on to say what happened to "a deal is a deal"? Because the jury felt that Texaco had caused Getty to welch on the deal that was already signed, the jury decided that Texcaco was guilty of torturous interference with a deal already made and because of that then issued a \$3 billion dollar judgment against Texaco which then caused Texaco to go bankrupt. While the judgment was too high, this litigation does illustrate the ethics value of keeping a deal.

## **As To Government:**

“A serious impediment to a successful marriage these days is the difficulty of supporting both the government and a wife on one small income”.

Cicero said in 55 B.C. “The budget should be balanced, the treasury should be refilled, public debt should be reduced, the arrogance of officialdom should be tempered and controlled, and the assistance to foreign lands should be curtailed lest Rome become bankrupt. People must again learn to work, instead of living on public assistance.” Good advice in 55 B.C. and still good advice in 2011!

Oscar Ameringer said “politics is the gentle art of getting votes from the poor and campaign funds from the rich by promising to protect each from the other”.

Democracy says Marshall Fritz is like “two wolves and a sheep voting to decide what’s for lunch”. What we need of course is an ethical democracy.

Someone said that “governments are like dogs, always marking their territories and trying to expand them at the expense of their rivals.” A couple examples of government actions and unethical accounting.

Largely due to government actions such as keeping interest rates too low for too long, creating a fictitious sub-prime mortgage by allowing exotic derivatives and then not properly regulating the value of mortgages on the bank’s books, the end result was an enormous destruction of wealth. For example, in the real estate market alone an estimated 1.7 trillion was lost in value in 2010!

84% of state retirement plans are under-funded. There are more than 14 million people in the public sector who are owed \$2.3 trillion by more than 2,000 different cities, states and agencies. Where is the ethics for those institutions over the years to not have honest accounting that reflects their true obligations?

Observers say the real number of obligations is more like \$700 billion in arrears, because the pension plans have assumed a future 8% annual return, which is double the 4% they have actually gotten over recent years. Where is the ethics of those assumptions?

As the Washington Times observed, "The federal government is guilty of worse accounting deficiencies than those that brought down Enron."

Incidentally, the Dallas Morning News had an editorial 30 some years ago that mentioned my unsuccessful attempt to persuade President Gerald Ford to require an audit of the Federal Government using generally accepted accounting principals! Government likes to have it's own accounting and doesn't want to observe the same accounting principals required of the people.

Where is the ethics when the Secretary of Treasury during the financial crisis brings the CEO's all together of the major banks on a Saturday and tells them that day (without even allowing them to consult with own their board of directors) that they must agree that very Saturday to borrow billions of dollars from the treasury even though they don't want the money?

Where is the ethics when the government and in the congress push sub-prime mortgages onto Fannie Mae and Freddie Mac to the point where they collapse and then people around the world lose trillions of dollars due to misleading values and then both Freddie Mac and Fannie Mae fail?

Trying to clean up Fannie Mae and Freddie Mac is like trying to swim through peanut butter.

### **As To Financial:**

Speaking of accounting, the Roman empire operated with laws recorded on just 12 tablets. American accounting rules have outdone in a few years what the Romans took 13 centuries to produce.

At last count, the Generally Accepting Accounting Principals occupy 3 volumes comprising some 4,530 pages. And still where is the real

ethics of a lot of our government, universities and business accounting where we know where we really are from a financial point of view?

James Madison said "It will be of little avail to the people that laws are made by men of their choice, if the laws be so voluminous that they cannot be read, or so incoherent that they cannot be understood."

In February of **2002**, I wrote an op ed piece captioned *Moral to Enron Ethics Debacle Is, Tell It Like It Is*. I commented that when Proctor and Gamble, a soap company, lost \$300 million on a derivatives transaction and Long Term Capital nearly collapsed, that should have been a warning sign to us before Enron. So Enron started doing billions of dollars of derivative investments. The banks then loaned them billions so they could finance those investments. The banks couldn't criticize Enron's practice since the money center banks themselves were using the black box magic of derivatives for their own investments (now to the tune of trillions of dollars), and I then wrote, "If we don't clean up such practices and do something meaningful, the problem could escalate and make the savings-and-loan crisis look like a picnic" and sure enough, the next financial crisis in 2008 & 2009 started off with the collapse of the unrealistic values Wall Street was showing on it's books!

Then in December of **2007**, I wrote an op ed piece captioned "*Danger in our 401(k)'s? – Greed May Spell Trouble for Retirement Accounts*". It started off "does a future "Enron" debacle lurk in our 401(k)'s? The answer is probably yes, and this problem will continue to be a threat to our 401(k)'s until accountants change their way of reporting." It went on to say "the cause of the problem with greed among those who created "loosy goosy" derivatives in order to borrow and loan more money, and accountants allowing these investments to be carried on the financial statements at basically cost (rather than real market values) without proper reserve for possible losses". It also said "the American people need estimated value accounting, and it's not a question of "if we can afford it". Indeed, "we can afford not to have it".

Investors, recipients of 401(k)'s, pension owners, everybody needs to know the real value of their assets not just the original cost. The accountants can do this. They can put a footnote showing how the estimated value was arrived at. I know this because I have had my own personal books audited, and personal audits require both a cost column and an estimated value column, but the accounting profession had not

wanted to do the same thing for businesses as for personal statements, on the theory that they would probably get sued more if they did;

however the irony is that the accounting profession (witness Arthur Andersen's collapse) has been sued a lot more for the misleading numbers than if they had made an attempt at value accounting which they are finally now getting around to. My pitch is somebody doesn't lose \$50 billion overnight. It's just the management and accountants didn't have the courage or the ethics to recognize it gradually as the losses occurred. The accountants are now making some slow progress in getting value accounting started.

I and my company, Maguire Oil Company, were large borrowers, so I got to see what banks require from the borrower and how the banks then keep their own books. Now you all know that when you borrow money, banks require you to furnish financials which reflect the market value of your assets, and that of course, is fine and ethically appropriate. However, the banks themselves don't like to keep the books the same way. So if they have \$100 million of treasuries for example, and the market value is only \$75 million, or an unrealized loss of \$25 million, they still want to show the value at \$100 million on the theory that holding them to maturity is part of their long term investments plans.

What we later learned in Dallas is that this bit about holding the investment to maturity doesn't always work. The banks, like everyone else, had immediate unforeseen cash needs. The end result was that all three major banks in Dallas went under.

I also remember the story where we owed the bank \$15 million on an oil loan, but we had approximately \$10 million of deposits at the bank. I then called the bank and asked if they could agree if the \$15 million we owed them could be offset by the \$10 million that they had of ours if the bank ran into some problems which I and others thought would be an ethical solution to the problem. The bank said no, so we quickly withdrew the \$10 million and then several weeks later the bank went under. Since the deposits at the time were only insured for \$100,000, that could have been a huge loss to us if we had not withdrawn the money quickly. Luckily we escaped that one!

Recently, the New York City Comptroller stated that "there is a fundamental problem in the banks' procedures that endangers not just home owners, but shareholders and local economies", when he was referring to their mortgage procedures. The heads of the Connecticut Retirement Plans, the Illinois State Board of Investment, the North Carolina Retirement system, the Oregon State Treasury, etc. Together they own \$5.6 billion of stock in the top four banks and overseas \$430 billion in assets, and the comptroller wanted to have an outside audit of the banks procedures. Commentators have stated that "banks have understated the liabilities for possible loan repurchases (or mortgages) that they were supposed to have recorded in recent years, and that "the gain of that sale is supposed to be reduced by a amount reflecting the possibility that some loans will have to be bought back later. So where is the ethics in all this accounting?

### **As To Health Care:**

The very first ethical seminar we had at SMU dealt with "The Ethics of Health Care", and it described a case where a man's doctor had recommended 6-8 days for amputating a leg to avoid gangrene but the insurance bureaucrats said no, we'll just give you 4 days, and then the man lost his leg due to not having enough time for the procedure. So where was the ethics there in that health care?

We have boondoggled this health care problem up to where the latest Obama health care bill is some 2,000 pages long, which nobody read at the time the bill was passed because it was passed in a rush, and even now nobody fully understands what is in it. Now they are talking about possible committees to advise people on when to die. Of course, that would be to the financial benefit of the government because it needs that in order to keep the overall costs down. Where is the ethics in passing important legislature without giving our members of congress adequate time to study the bill?

Where is the ethics involving pharmaceutical companies pushing drugs? If the drug is really worth while, the doctor should just be able to recommend it; however, the companies instead want to create a market where the people will request the drug. Now we have a huge number of teenagers taking drugs also and so most of the population is on drugs. Every day in the paper we read about how some drug is being pulled off the market after years of testing. For example, my wife was prescribed Actonel for osteoporosis and just recently the FDA said you shouldn't take it after 5 years of use due to the weakening of your bones. Wish we had known that sooner since after her first hip operation, we had to have a second emergency operation because her leg bone was weak and broke. You don't learn these things until many years later. It's like the estrogen that was prescribed for breast cancer. Then twenty years later we learn that a lot of that medication could be causing tumors rather than fixing them. When you stop to think about it, God came up with a very remarkable immune system for the human being, and I don't think we are smart enough yet to understand all of the side effects and complications of all these chemicals we put into our body.

"Litigation now costs the U.S. economy more than \$245 billion a year". We are not going to be able to reduce health care costs unless we do something about tort reform.

Since 3,600 B.C. there have been 14,531 known wars resulting in 3.6 billion deaths. Surely we can find a better way for health care than wars!

Does anybody think a committee in Washington, D.C. after spending \$10 billion dollars is going to come up with a formula better than what would be produced from a free market system? Where is the ethics here? Rather than spending billions of dollars with some mind boggling proposed solution, the better ethical solution would be to let patient's make their own choices.

Why can't the government cut down on its spending? It forced the rest of us to cut down on ours.

Speaking of cutting down costs, did you hear the dentist's solution? The patient had said "how much to have a tooth pulled?" The dentist

replied "\$100". The patient said "\$100 for just a few minutes of work?" The dentist then said "well I can extract the tooth very slowly if you like?"

It seems to me that the proposed health care solutions are like slowly pulling a tooth!

### **Some Ethical Issues in Other Areas:**

The killing of a congressman and a federal judge is currently in the news. Where is the ethics of the left in the media in trying to imply that the killing was caused by the conservatives without waiting for any details about the psychopath? As an employer I've had some experience with mental illness and can tell you that a paranoid schizophrenic is in his or her own world and is not trying to make some logical political statement. It seems like a more ethical response would be that we need more resources for mental health rather than try to blame it on some political group.

### **Political Correctness at Universities:**

I attended the Wharton School of Finance at the University of Pennsylvania. Well after I left, some clown in my fraternity dropped a water bomb on a black girl walking by the fraternity. Most of us would agree that we don't want discrimination, but the faculty in its zeal to defend the blacks at the University then closed down the whole fraternity Where is the ethics of that political correctness? Would the faculty have closed the fraternity if a black had dropped a water bomb on a white girl?

Another example of University political correctness is when faculties urge non-discrimination against gays and push for benefits for their partners while at the same time ignore benefits for heterosexual partners. Where is the ethics in that?

### **Conclusion:**

I am currently reading Ron Chernow's book on George Washington's life which illustrated a lot of the ethical choices that our founders had to make as we formed our country. Interestingly, Washington expressed concern about those who were weakening the currency at the continental government at the time, and he expressed the concern that weakening the currency and weakening a country's ability to pay its debt could only have horrendous consequences.

He said we need "to render complete justice to all the public creditors", that restoration of American credit was the foremost political need and said "we must consult our means rather than our wishes". Pretty good advice at the founding of our country, and yet here we are trying to solve the same problems by printing more money! Where is the ethics of that?

Speaking of printing too much money, my son sent me yesterday the following excerpts from a blog pointing out the difference since 1913 when both the IRS and Federal Reserve were created:

#1 If the U.S. government had been issuing debt-free money all this time, the U.S. government could conceivably have a national debt of zero dollars. Instead we currently have a national debt that is over 14 trillion dollars.

#2 If the U.S. government had been issuing debt-free money all this time, the U.S. government would likely not be spending one penny on interest payments. Instead, the U.S. government spent over 413 billion dollars on interest on the national debt during fiscal 2010.

#3 Since the Federal Reserve was created, the U.S. dollar has lost well over 95% of its purchasing power.

#4 Back in **1913**, the total U.S. national debt was just under 3 billion dollars. Today the U.S. government is spending approximately 6.85 million dollars per minute, and the U.S. national debt is increasing by over 4 billion dollars per day.

So we will continue to have to make a lot of important choices and the purpose of these remarks is to suggest that if we try to weigh the ethical pluses and minuses of those decisions from a public responsibility point of view and that we "tell it like it is" - - then we will make better decisions. Edmund Burke said it is not what a lawyer tells me I may do, but what humanity, reason and justice tells me I ought to do. Pretty good advice! Thank you for listening.