Letters

Ethics, Law, and the Universities

Two lawyers, Joe H. Munster, Jr., and Justin C. Smith, get down to brass tacks in discussing the *Wohlegemuth* case, concerning valuable secret knowledge, and the rights to such, on and off the campus ("Savants, sandwiches, and space suits," 18 Sept., p. 1276). Lawyers have a neat way of analyzing man's behavior as its stands, apparently on the thesis that ethics cannot be subjected to legislation. For a business firm to hire an unethical person seems unwise, if for no other reason than that the advantages gained from learning the secrets of competitors may be offset by a rebound. Thus ethics is placed on a pragmatic basis.

Possibly it is time to reexamine that stuff barely mentioned since grandfather died, integrity. Scientists like to regard themselves as masters of integrity, with their presumably objective viewpoints, but the evidence is strongly against them; and now the humanities are trying to get into their act. The allusion in Munster and Smith's article to "at least one" university's exorbitant charges for overhead, payable from grants for research, is mild compared to those they might have made. Business, government, and now the universities become ever more ruthless in their attitudes toward that ever assailable victim, the consumer-taxpayer. We *know* that there is a vast amount of distortion and weaseling, varying from the abuse of franking privileges to unjustifiable travel on research funds, and we shrug our shoulders.

The law is entirely formal and ignores the imponderables of ethics. In our consciences we know that ethics and integrity ought to be more powerful than laws. Do we have to give up? Is it not possible to reward integrity modestly? Is it not possible to make the unethical moves on all sides a little more risky, a little less popular? Can we not, by example, inculcate integrity in graduate students, instead of heading them insidiously toward political manipulation?

Lawyers apparently have no wish to attempt definitions of integrity and ethics. But will they not join us in some semblance of reaction in favor of an intangible integrity and ineffable ethics?

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. . . The article was far more alarming and prophesied far more dangers than the case of *B. F. Goodrich Company v. Wohlgemuth* warrants. (The decisions may be found in *137 United States Patent Quarterly*, 389 and 804.) The authors imply that research workers are in grave danger of being prohibited from using knowledge gained in earlier employment. But the court on appeal specifically said, "We have no doubt that Wohlgemuth had the right to take employment in a competitive business, and to use his knowledge (other than trade secrets) and experience, for the benefit of his new employer." This principle is well established and is the universal view. In fact, a contract prohibiting entry into a competing business is generally regarded as against public policy and therefore void. In California, for example, it is provided that "every contract by which anyone is restrained from engaging in a lawful profession, trade or business of any kind is to that extent void" (*Business and Professional Code, Section 16600*).

The *Wohlgemuth* case did not establish a new rule of law, as might appear from the article. Rather, the decisions emphasize the fact that the jurisdiction was in *equity*. Law is based on an established set of rules upon which future conduct can be based. Equity, on the other hand, is intended to reach a fair and just result without being strictly bound by judicial precedents at law. The case was in equity, pure and simple, and there is no rule of the case to be expanded and viewed with alarm.

Rightly or wrongly, the courts found that Wohlgemuth, a young chemist, had made a meteoric rise in space-suit technology in 6 years with B. F. Goodrich Company. He had, they found, no moral compunctions against disclosing Goodrich secrets when he left that company's employ. The appellate court twice spoke of his "attitude" and quoted him as saying that "loyalty and ethics had their price; insofar as he was concerned, Internation Latex was paying the price." He said that "once he was a member of the Latex team, he would expect to use all of the knowledge that he had to their benefit." Apparently some of these secrets he had obtained simply by virtue of his employment with Goodrich; he would have no rights as the creator of these secrets if others had created them.

The lower court was more concerned with what it considered wrongful conduct on the part of International Latex in luring Wohlgemuth away from Goodrich. It found that "the attitude of the International Latex Corporation through one of the witnesses in this case would not lead the B. F. Goodrich Company to any other conclusion but that the company intended to induce, if possible, the defendant (Wohlgemuth) in this case to give them the benefit of every kind of information he had." (The court was unable, however, to prevent such attempts by International Latex, because that corporation was not within the state.

It was these attitudes on the part of the enticing employer and the enticed employee that caused the court to order an injunction to prevent disclosure of secrets that were the property of B. F. Goodrich Company. "Public policy," said the Court of Appeals, "demands commercial morality and courts of equity are empowered to enforce it by enjoining an improper disclosure of trade secrets." The *Wohlgemuth* case simply prevented a theft from occurring. It represents no new restriction on research scholars. It only requires that they be moral and ethical individuals.

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World Trade in Technology

Waterman's editorial, "International competition and cooperation" (18 Sept., p. 1261), brings out the importance of increasing international cooperation in science and technology.