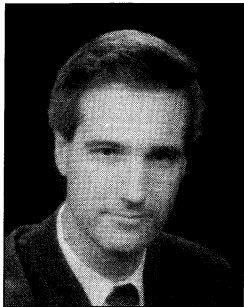


# A Question of Ethics

*Peter Kiefer*



## Keeping the Customer Satisfied

Court administrator Bob has worked for years to develop a sophisticated computer system for his court called BUBCUS (**B**ob's **U**n**B**elievable **C**omp**U**ter **S**ystem). BUBCUS is the envy of the state. In many presentations over the years, Bob has claimed BUBCUS can track virtually any aspect of court work. Among its features, BUBCUS automatically produces criminal sentences and tracks each judge's probationers.

A planning committee of two judges, the court's programmer/analyst, the criminal supervisor, civil supervisor, and (of course) Bob, decides on BUBCUS development requests. Bob's programmer/analyst and his two supervisors basically always vote with Bob; the two judges are very busy and often cannot devote as much attention to computer issues as they would like.

Bob is committed to improving public service through Total Quality Management (TQM). He has previously modified BUBCUS to adapt to some public demands. Attorney firms, title companies, credit agencies, and bail bondsmen pay a nominal charge for display access. Public agencies, such as the DA, police, and sheriff pay nothing for access. Access fees from the paying agencies supplement a healthy data processing budget for BUBCUS.

The DA's Victim's Assistance Office asks Bob for a report on

sentencings and case dispositions by judge. The local public defender's office and court watcher's group support the request. Finally, an attorney who has declared plans to run against one of the judges in Bob's court, offers to pay for the programming.

When Bob tells the BUBCUS planning committee of the request, the committee's two judges vehemently object to producing the report. They point out that political opponents could misuse the data. For example, the DA's overcharging policy (used as a plea bargaining tactic) often results in judges' accepting dismissals on a large number of charges. Reports showing a high dismissal rate could make judges look soft on crime when, in fact, they are only accepting the deal struck between prosecution and defense. Bob, and the rest of the committee, vote against producing the report.

Bob tells the groups that the committee voted against their request. The groups counter that Bob has an ethical obligation under the TQM philosophy to develop the report. They argue the public wants it, has a right to it, and the data is unquestionably available. Cost is not an object. Bob is clearly not responding to public demands.

Bob responds that he is bound by the committee's decision; the matter is out of his

hands. The committee has voted, and that is the end of it.

I asked Zelda DeBoyes, court administrator for the Aurora (Colorado) Municipal Court, and Mike Planet, court administrator for the King County (Seattle, Washington) Superior Court, to talk about Bob, BUBCUS, and the committee.

### **Was Bob acting unethically?**

Mike did not think the question was really a matter of ethics. Bob had to make his decision based upon the court's previous practice and procedures regarding the release of information. Zelda saw the question as more than simply a request for information. The attorney requesting the information was also possibly being unethical in his request.

### **Was Bob violating the NACM code of ethics?**

Mike thought Bob was actually upholding Article II, Section A, of the NACM Code, regarding the disclosure of confidential information. Bob needed to think carefully about whether any of the requested information was confidential. Mike thought Bob was also supporting Article IV, Section E, regarding the protection of the independent judicial branch of government; the court has the absolute right to control its information.

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## A Question of Ethics, *continued from page 5*

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### **Was the BUBCUS planning committee acting unethically?**

Zelda thought any committee member bringing an outside agenda to committee meetings was questionable. People should be open and above board in their committee dealings.

### **How far should a court go in satisfying the public's demand for information?**

Mike thought that Bob followed the established process; Bob's actions were completely appropriate. Courts are not obligated to answer every information request posed to them. Bob also had to ask himself what would not get done if he diverted resources to this project. Bob was not depriving anyone of access. If the information was only available by asking Bob and going through BUBCUS, it might be another question; however, the

requesting attorney could come to court and research the information manually if he had the desire. Zelda emphasized that whatever information Bob disseminates must be complete and accurate.

### **What responsibility does a court have concerning how outside groups use information the court provides?**

Although Zelda noted that the attorney's request was suspect, people had asked for and received detailed information in the past. It is inappropriate for the court to reject a request based upon what other people might do with it. The courts have an obligation to public accountability.

### **What could Bob have done differently to prevent this situation from occurring?**

Both Mike and Zelda recommended that Bob review his

state's laws regarding the court's public records obligation. Zelda observed that in Colorado, her court's legal counsel noted there is a general obligation to provide information. Mike pointed out that this would be a good practical lesson for all courts answering the questions, "What is covered under the public records act?" and "Does your staff know what is and is not covered?"

I want to thank Zelda and Mike for their ideas and impressions. This is a difficult issue that shows every indication of affecting more and more courts in the future. If you have an interesting ethical issue you would like to share, be sure to send it to me in care of the *Court Manager*. **CM**

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## Editor's Notes, *continued from page 3*

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to jury management. Guaranteed. His columns and articles read the same way. He has one of each in this issue. Read both.

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My court desperately needs a new home. The only thing clear about the next courthouse is that the state does not intend to pay for it. These are times that promote innovation. Creative financing schemes and new design approaches are receiving serious consideration.

A new courthouse will soon open in San Martin (Santa Clara County), California. David

Hobstetter describes how Value Design was applied to the project to save money and reengineer the look of a court structure.

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For too many years, the courts have been processing plants for drug-involved offenders. The police nail 'em, we jail 'em. With the advent of drug courts in the last several years, the courts are beginning to exercise leadership in what has so far been a failed enterprise. A crucial part of establishing a drug court is the building of relationships with the drug treatment community or

promoting the development of drug treatment capability where there was none. Lila Cox and Richard Dove report how the courts in Ohio are taking a leadership role with respect to treatment.

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Complex litigation. One case can involve more than 100 attorneys, all serving paper on each other for years. It may take ten years before it is ready for trial. How are a judge and court to manage this ugly beast? Elizabeth Lipscomb has some answers. **CM**