

Scandal Resistant

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Nearly everything in corporate legal ethics can be measured in pre-Enron and post-Enron terms. But while everyone else with something to sell has cashed in on the Sarbanes-Oxley craze—from law firms to vendors in the publishing, CLE, and consulting businesses—the radical makeover of in-house and outside corporate counsel has largely bypassed one community: law schools.

Since the Enron affair began more than two years ago, few of the top schools other than Stanford and Georgetown have added comprehensive courses on what the scandals wrought. Elsewhere, changes in curricula have come in baby steps.

Ethics professors blame the lackluster response on schools' traditional downplaying of professional responsibility and other practice-oriented courses. At Harvard, for example, each of the core classes in the first-year curriculum [torts, civil procedure, contracts, criminal law, and property] earns five credits. Harvard requires students to take two credits in ethics to fulfill the prerequisite for professional responsibility mandated by the American Bar Association. Columbia enrolls students in a one-week immersion course to fulfill this accreditation requirement. Research by Stanford's Deborah Rhode shows that during the past decade, casebooks devoted less than 2 percent of their contents to ethical issues.

"I don't believe you can teach this material in one week," says New York University legal ethics professor Stephen Gillers [a contributing editor to *The American Lawyer*]. "It slights the subject and sends the wrong message about its importance. . . . It should be a full-semester course."

Other ethics pros agree, and say the problem has been long-standing. "Law schools don't pay any attention to [legal] ethics," says Susan Koniak of Boston University School of Law. Stanford's Rhode puts it more bluntly: "Historically, legal ethics has been viewed as the dog of law school." And Richard Zitrin, director of the Center for Applied Legal Ethics at the University of San Francisco, says, "Ask law school deans, why do we take contracts and torts for a year for multiple credits but take ethics for fewer units? We need an understanding from the top down that ethics is as important or more important than any substantive course."

So how will that change come? And how should ethics—in particular the postscandal lessons—be taught?

Rhode wants ethics integrated into all substantive courses like evidence, civil procedure, and securities. That will take attitude shifts in academia that, at best, will take time to occur.

The tone must change, too, say ethics professors. Many of the current courses turn into morality debates about rare scenarios such as clients lying as witnesses rather than teaching the rules regularly affecting practitioners in large law firms. Rhode urges professors to avoid "sermonizing" on morality. Instead, they should teach students the professional codes and potential responses to real-world problems.

Who will direct these reforms: ethics professors or administrators? Both need to play a role, say the experts. "It's not going to happen without the administration's support," says Matthew Diller,

associate dean for academic affairs at Fordham University School of Law. With backing from the Louis Stein Center for Law & Ethics, Fordham's administration has remained committed to a powerful ethics program, with courses on corporate practice, tax, and criminal advocacy.

Yet deans lack the power of CEOs. At most law schools, decision making is decentralized, and faculty members possess a great deal of autonomy, says Yale Law School's deputy dean, Kate Stith. Under this governing structure, professors often bear the responsibility for developing new courses.

That is the case at Columbia, where the vice dean, Richard Briffault, says the faculty must take the first step. Which in fact it has. Professor William Simon says that next year students will have the option of selecting a semester-length course in place of the weeklong immersion course.

Dean David Van Zandt of Northwestern sees the process as a partnership. Administrators must select "entrepreneurial" professors interested in the topic to create new courses and strengthen the ethics curriculum, says Van Zandt. The dean's office must then push through requests for additional resources [such as hiring new full-time professors] over protests from other faculty members vying for limited resources. Only through this combination will law schools catch up to the rest of the legal world-and view corporate legal ethics through the post-Enron lens.