

PROFESSIONAL ETHICS REPORT

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COVER STORY

The CMU Cyberporn Study: The Naked Truth

By Alexander Fowler

Cyberhype gave way to cyberhysteria this summer following *Time* magazine's cover story, "On a Screen Near You: Cyberporn."[\[1\]](#) The article reported on the findings of a controversial 18-month study conducted by an undergraduate in electrical engineering, Martin Rimm, at Carnegie Mellon University (CMU) and published in the *Georgetown Law Journal*.[\[2\]](#) Since its release and coverage in *Time*, the study, "Marketing Pornography on the Information Superhighway," has been the focal point of scores of articles and on-line discussions, was featured on ABC's *Nightline*, and has been entered into the *Congressional Record* by Sen. Charles E. Grassley (R-Iowa).

The purpose of the study, funded by four CMU grants, was to analyze how pornographers use computer systems to market their services; the methodology consisted of surveys of approximately 917,410 sexually explicit pictures, descriptions, short stories, animations and film clips found on adult computer bulletin board systems (BBSs) and Usenet groups. Rimm also tracked the on-line activities of fellow CMU students, staff members, and faculty members to identify which Usenet groups were being accessed and to determine the amount of "pornographic" material they downloaded.

While the *Time* article has proved advantageous for Washington policymakers already concerned with the Internet as a

pipeline for bomb-makers and hard-core pornographers, some serious questions about the integrity of the CMU study and its methodologies have arisen.

The Study's Scientific Critics

Initially, critics argued that the study blurred the line between BBSs, which often require membership fees and only can be accessed directly through modems, and the Internet, which is generally open and easily accessible. Because the study referred to the "information superhighway" but then only narrowly examined BBSs, critics contend that the prevalence of pornographic material on the Internet was overstated. The study was also criticized for employing inadequate definitions of pornography and categorizing captured images based on only written descriptions without actually looking at them. Members of the scientific community have raised concerns that the numerical results presented are difficult to understand and/or replicate.^[3]

These concerns hinge on the fact that the study was not subjected to peer-review before publication, standard practice for social science research. It has been reported that scholars were denied access to the study's findings prior to publication as a result of an embargo placed on the study by the law journal. In addition, many of the people listed as advisors to the study or contributors to the report claimed not to have seen it before publication, and were therefore unable to address the strong political overtones or its scientific shortcomings.^[4]

The Naked Truth?

A few weeks after the publication of the study, allegations were made by two researchers at Canada's York University that the CMU study used their research methodology without credit: "Rimm wasn't looking at the commercial distribution of BBS pornography until he spoke with us in November...[He] asked for a copy of my paper that I presented at a conference in November. He said Carnegie Mellon was publishing a book, and he might include my paper as a chapter if I sent it to him."^[5] The York researchers sent their paper but never heard anything from Rimm or about his research again until a colleague of theirs posted something to *Cyberlaw*, an electronic discussion group, about the controversy surrounding the *Time* article and the CMU study. They are in the process of documenting the resemblances between the two studies.

An especially troubling issue raised by the CMU study involves the analysis of the personal directories of computer users at Carnegie Mellon to determine what Usenet groups they were frequenting and the kinds of information they were downloading. *The New York Times* reported that Rimm and his faculty advisors "spied" and "surreptitiously gathered" data "on the private computer habits of nearly 3,000"^[6] members of the university community without alerting them to the study. "As far as I know, there was no announcement to the university community that an undergraduate research project was under way [to determine which BBSs] were being accessed,"^[7] stated George Duncan, Heinz School of Public Policy, an expert on ethics and the privacy of data gathering consulted by CMU. Making matters worse, several of the faculty members aware that this was happening did not raise objections to including the data in the final report. One of Rimm's chief faculty advisors was quoted as saying "I'm still not sure a human study consent form was even required,"^[8] underscoring the uncertainty many are expressing in grappling with appropriate research standards for cyberspace.

Apparently, Rimm and his advisors were not alone in monitoring the on-line habits of their CMU peers. A computer administrator responsible for monitoring site statistics acquired the data, raising in one author's opinion, "the question of the propriety of a second party collecting and distributing information to a third party...about the aggregate viewing habits of individual users. It also suggests that the user's reading habits were not public, and scrutiny of their files required systematic surveillance that, while even if defensible for system maintenance, seems not as defensible when such data are passed to a third party who ordinarily might not be authorized to receive it."^[9]

According to three university-wide policies issued by Carnegie Mellon, it appears that, indeed, several basic tenets may have been violated by Rimm, his faculty advisors, and the network engineers, in collecting and analyzing these records:

- The *Computing and Information Resources Code of Ethics* states that "all files belong to somebody...[and] should be assumed to be private and confidential unless the owner has explicitly made them available to others...Failure to observe the code may lead to disciplinary action."^[10]

The *Statement on Individual Responsibilities in Shared Computing Environments* states that "The user must presume that the contents of any other user's directory are his or her private property just as one would presume that the contents of someone's apartment or office are personal... Even if a user's files are unprotected, it is improper for another user to read them unless the owner has given permission...Improper behavior in the use of computers is punishable under the general university policies and regulations regarding faculty, students and staff."^[11]

- And the *Data and Computer Security (Confidentiality of Administrative Data) Policy* states that "requests for access to information for multiple divisions or university-wide must be signed by the provost or appropriate vice-president. Authorization is to be granted to employees who have job responsibilities requiring the information requested... Any university employee, student...with access to administrative data who engages in unauthorized use, disclosure, alteration or destruction of data in violation of this policy will be subject to appropriate disciplinary action, including possible dismissal and/or legal action."^[12]

The CMU Response

Rimm stated that attacking the study or him is beside the point. "The fact of the matter is there is pornography out there."^[13] While this is undoubtedly true, the study's critics charge that the use of shoddy science and possibly unethical research practices have themselves helped to obscure thoughtful discussion of the central issues raised by on-line pornography.

In the meantime, Carnegie Mellon has asserted that it "is responsible for the integrity of research conducted at the university...[and] generally examines carefully issues raised concerning the propriety of research conducted by members of the university community, taking due care to protect the rights of those members,"^[14] and is currently looking into the study's research practices to determine whether university policies and research standards were violated. A three-member, faculty panel charged by CMU's Vice Provost with conducting an inquiry reported that criticism of Rimm's work warranted further investigation. According to Don Hale, CMU vice-president for university relations, an investigatory panel will be assembled and given 120 days to complete an investigation, after which the five-member panel will submit a written report to the president of the university with recommended actions from the provost.

To find out the latest on the study and the CMU response, point your World Wide Web browser to:

- **The Cyberporn Debate**, <http://www2000.ogsm.vanderbilt.edu/cyberporn.debate.cgi>;
- **The Carnegie Mellon Censorship Page**, <http://www.cs.cmu.edu/~kcf/censor/>;
- **Journoporn: Dissection of a Scandal**, <http://www.wired.com/special/pornscare/>.

Endnotes

1. Elmer-Dewitt, Philip, *Time*, July 3, 1995, p. 38.
2. *Georgetown Law Journal*, Vol. 83, 1995, p. 1834.
3. "Researcher Who Studied On-Line Pornography Gets Invitation from Congress, Criticism from Scholars," Thomas DeLoughry, *The Chronicle of Higher Education*, July 21, 1995, p. A19.
4. "New Concerns Raised Over a Computer Smut Study," Peter Lewis, *The New York Times*, July 16, 1995, p. A22.
5. "The Case of Two Cybersex Studies," Declan McCullagh, *alt.internet.media-coverage*, July 24, 1995.
6. *New York Times*, p. A22.
7. *Ibid.*
8. *Ibid.*
9. "The Ethics of Carnegie Mellons `Cyber-Porn Study," Jim Thomas, *Computer Underground Digest*, p. 8.
10. "General University Policies Affecting Community Life," *CMU Student Handbook*, Section VI, 1995.
11. *CMU Faculty Handbook*, Sixth Edition, 1993, policy adopted on September 15, 1987.
12. *Carnegie Mellon Policy Library*, Chapter 1, Volume 7, December 1994.
13. *The Chronicle of Higher Education*, op. cit., p. A19.
14. *The 8 1/2 x 11 News*, Carnegie Mellon University, Vol. 5, Num. 47, July 20, 1995.

IN THE NEWS

PHS and NSF Rules on Conflict of Interest

On July 11, the Public Health Service released its long-awaited final rules on conflict of interest in research (*Federal Register*, 60 (132): 35810-35819, July 11, 1995). On the same day, the National Science Foundation announced technical amendments (*Federal Register*, 60 (132): 35820-35823, July 11, 1995) to its conflict of interest policy (*Federal Register*, 59(123): 33308-33312, June 28, 1994) in order to make the policy more consistent with the PHS rules. The effective date of both the PHS and NSF rules is October 1, 1995. The intent of both policies is to "ensure that there is no reasonable expectation that the design, conduct, or reporting of research will be biased by any conflicting financial interest of an Investigator." Both agencies will require that grantee institutions have in place a "written and enforced policy on conflict of interest." The institutions, not the government, will have "primary responsibility for identifying and resolving financial conflicts of interest that could directly and significantly" affect their funded research. If an institution determines that a conflict exists, it can take one or more of the following steps: publicly disclose the conflict relationship, implement outside monitoring of the research, alter the research plan, remove the scientist from the research, or require divestiture. Whatever steps are taken, the institution is required to report the conflict to the agency and state how it was resolved. Both policies set a threshold of \$10,000 or 5% ownership for researchers, their spouses, or dependent children, above which a financial interest in companies must be reported if it might affect the research. NSF and PHS are cooperating in the preparation of materials that will guide institutions in developing and implementing their policies in accordance with the new policies.

Conflicting Court Decisions for NSF and NIST

Last February, civil engineers Robert and Wanda Henke sued the National Science Foundation (NSF) and National Institute of Standards and Technology (NIST) after their applications for grants were repeatedly denied. The Henke's sought to obtain access to all records concerning their applications to reveal the names of the peer reviewers who examined their grant proposals and to check for any conflict of interest or bias that may have affected the review of their applications. On August 19, 1994, the U.S. District Court for the District of Columbia ruled in favor of the NSF, upholding its guidelines for reviewers that expressly promise confidentiality [see *PER*, VII(4), Fall 1994]. Recently, however, the same court took the side of the Henke's against NIST. On May 26, the court found that under the Privacy Act, "the information Wanda Henke seeks pertains to her, or in the alternative, is her `record,' thereby entitling her access to it." If this ruling is upheld, it will undoubtedly expose other federal agencies to similar suits. Both court rulings are being appealed.

Reports on Human Radiation Experiments

The Department of Energy recently released final information on the extent of radiation experiments conducted on human beings and sponsored by the Department and its predecessor, the Atomic Energy Commission, over the past four decades. During that time, there were 435 different experiments involving 16,000 men, women, and children, including mental patients and prisoners. Questions have been raised about whether the subjects of the research gave their informed consent to participate. A presidentially-appointed Advisory Committee on Human Radiation Experiments has explored the issue of informed consent in greater depth in its investigation of government-sponsored research. The Committee conducted in-depth interviews with just over 100 patients "who believed they were or had been research participants...." The interviews were intended to collect data on their perceptions of research and their personal research experience (99 interviews were ultimately used in this analysis). Responses collected during the interviews were cross-checked with documentation, such as patients' medical or research records, and with information gathered from researchers and staff at the institutions where the experiments took place. One of the more striking findings reported in a draft of the Committee's Subject Interview Study was that "some patients thought that they were participants in research when this participation could not be verified, and other patients reported that they were not in research even though there was evidence suggesting that they were." Moreover, "three-quarters of the patients who apparently were wrong when they reported they were not research subjects actually had signed consent forms authorizing participation in research." The report speculates on the causes of the discrepancy between patients' perceptions and the documented records, and raises the possibility that "in at least some cases valid consents initially were obtained" but there remain "questions about the meaningfulness of these patients' rights to withdraw from research." The Advisory Committee's final report is scheduled for release in late September.

The HHS Commission on Research Integrity has drafted the following definition as part of its recommendations to the Secretary of HHS. Its final report will be submitted in the Fall - Ed.

"Professional Misconduct Involving Research," The HHS Commission on Research Integrity

I. Research Misconduct

It is fundamental principle that scientists be truthful and fair in the conduct of research and the dissemination of its results. Violation of this principle is research misconduct.

Specifically, research misconduct is significant misbehavior that fails to respect the intellectual contributions or property of others, that intentionally impedes the progress of research, or that risks corrupting the scientific record (see [NOTE](#)) or compromising the integrity of scientific practices. Such behaviors are unethical and unacceptable in proposing, conducting or reporting research or in reviewing the proposals or research reports of others.

Examples of research misconduct include but are not limited to the following:

1. **Misappropriation:** An investigator or reviewer shall not intentionally or recklessly
 - a) plagiarize, which shall be understood to mean the presentation of the words or ideas of another as his or her own, without attribution appropriate for the medium or presentation; or
 - b) make use of any information in breach of any duty of confidentiality.
2. **Interference:** An investigator or reviewer shall not intentionally and without authorization take or sequester or materially damage any research-related property of another, including without limitation the apparatus, reagents, biological materials, writings, data, hardware, software, or any other substance or device used or produced in the conduct of research.
3. **Misrepresentation:** An investigator or reviewer shall not with intent to deceive, or in reckless disregard for the truth,
 - a) State or present a material or significant falsehood; or
 - b) Omit a fact so that what is stated or presented as a whole states or presents a material or significant falsehood.

These behaviors are a subset of the professional misconduct that is the responsibility of institutions where research is conducted.

II. Obstruction Of Investigations Of Research Misconduct

As part of its interest in research misconduct, the Federal Government also has an important interest in protecting the integrity of investigations into reported incidents of research misconduct. Accordingly, obstruction of investigations of research misconduct related to federal funding also constitutes misconduct that undermines the interests of the public, the scientific community, and the Federal Government.

Prohibited obstruction of investigations of research misconduct consists of intentionally withholding or destroying evidence in violation of a duty to disclose or preserve; falsifying evidence; subornation or giving of false testimony; and attempting to intimidate or retaliate against persons who are witnesses, potential witnesses, or potential leads to witnesses or evidence before, during, or after the commencement of any formal or informal proceeding.

III. Noncompliance With Research Regulations

Responsible conduct in research includes compliance with applicable federal research regulations. Regulations of this type include (but are not limited to) those governing the use of biohazardous materials and human and animal

subjects in research.

Serious noncompliance, after notice, with such regulations undermines the interests of the public, the scientific community, and the Federal Government and constitutes misconduct.

NOTE : The record encompasses any documentation or presentation of research, oral or written, published or unpublished.

NSF Decides Not To Follow HHS Misconduct Policy

The Department of Health and Human Services (HHS) policy on publicly disseminating the identities of persons involved in cases of confirmed scientific misconduct has not influenced the National Science Foundation (NSF) to respond similarly. Two situations stemming from HHS' action face NSF: (1) if an individual who has previously been found by HHS to have committed misconduct in science, but who did not receive any government-wide sanction, applies to NSF for an award, what should NSF do?; and (2) if NSF discovers that individuals have committed misconduct in science, should their identity be disclosed? NSF's Deputy Director was asked to consult with the Office of General Counsel "...to obtain guidance on what actions, if any, NSF should take with regard to the individuals who were the subject of these non-disbarment HHS misconduct cases..." Subsequently, NSF's Deputy Director reported that it had been concluded that no further action by NSF was necessary.

Researcher Asked to Return Indian Remains

A year after being praised by the scientific community for his technique of recovering ancient hairs, Rob Bonnicksen, the director of the Center for the First Americans at Oregon State University, is now faced with a demand by the Bureau of Land Management (BLM), the government agency responsible for enforcing the Native American Graves Protection and Repatriation Act (NAGPRA), to return the hair samples he collected. According to Gary Smith, the archaeologist for the BLM in Montana, "In their culture, hair is very sacred, even that which we think of as randomly shed," they consider the hair as human remains. From the perspective of many Native Americans, as well as the NAGPRA Review Committee, whether or not the remains and funeral goods can be identified with a specific tribe, the material belongs to their ancestors and should rightfully remain in their possession. The Department of the Interior's NAGPRA Review Committee recently developed draft recommendations for the disposition of culturally unidentifiable Native American remains which include the following two provisions:

1. any "unidentifiable human remains" known to be ancestral Native Americans, even if the specific tribal connection is unknown, should be treated "according to the wishes of the Native American community," and
2. although the Committee recognizes the potential for scientific, medical, and humanistic value gained from analysis of Native American remains, it places more emphasis on the spiritual and cultural connections the Native American people have to these remains, and places decisions about treatment and disposition of those remains in their hands.

Should the draft recommendations become official, other disputes similar to this one may arise over the tens of thousands of scientifically valuable and culturally sacred objects that remain in the possession of museums, universities, and other federally funded institutions. Anyone wishing to comment on the recommendations should submit their comments to: The NAGPRA Review Committee, c/o Archaeological Assistance Division, National Park Service, Box 37127, Suite 210, Washington, DC, 20013-7127 by September 30, 1995, when the Review Committee will revisit the draft.

WMO Reaches Consensus on Accessibility of Global Weather Data

The World Meteorological Organization (WMO) reached a compromise on how to protect the commercial value of meteorological data as well as permit its unrestricted access to researchers and educators. The consensus, which reflects the views of both developed and developing countries, was reached following several hours of negotiations during the June session of the World Meteorological Congress. The international debate between the member countries revolved around efforts necessary to preserve the exchange of weather and climate data and products to prevent

adverse impacts on the operation of their Meteorological and Hydrological Services while simultaneously safeguarding the economic interests of individual members. The new policy requires WMO members to provide unrestricted access to the essential meteorological data and products required for the protection of life, property and well-being of all nations as well as for the continuation of WMO programs at the global, regional and national levels. The policy also requires free and unrestricted access to all global weather data and products exchanged under the auspices for WMO to the research and education communities for non-commercial purposes.

England Regulates Human Genetic Research

Britain's House of Commons Select Committee on Science and Technology has issued its recommendations after an eight-month study of human genetic research and its applications. It has recommended that a Human Genetics Commission be established by law to assume regulatory responsibilities that would encompass such powers as the approval of genetic screening programs and the licensing of private companies offering various genetic services to advising local ethics committees on proposed genetic research and proposing changes in patent law. The Select Committee took the initiative in suggesting ways to reform Britain's patent law. With respect to the patenting of human gene sequences, the subject of considerable dispute in the U.S., the Committee proposed that patent protection be restricted to a specific application of the sequence; separate applications would be eligible for separate patents. In the area of employment, the Commission proposed allowing genetic screening in those cases where there is reason to believe that people may be at risk in their work, or are a risk to others because of their genetic endowment. In the case of insurance, the Committee punted ² at least for the immediate future. It proposed giving the insurance industry a year to develop a plan for regulating the industry acceptable to Parliament; if nothing is forthcoming, the Commission favors a legislative solution. As part of the Committee's study, its members and staff visited the U.S. in February 1995 to confer with a broad spectrum of individuals and groups, public and private.

NAS Conference on Xenotransplants

The National Academy of Sciences Institute of Medicine sponsored a conference on June 25 - 27 to address the scientific, social and public policy issues surrounding xenotransplants²the transplantation of animal organs into humans. The conference was intended to contribute to the development of guidelines on the use of animal organs in humans. The meeting began with presentations on recent clinical trials and experiments conducted in xenograft transplantation, acknowledging that the research is still in a preliminary phase. The discussion highlighted the critical shortage of human organs available for kidney, liver, heart, and lung transplants as the primary motivation for research into xenotransplantation. The shortage could be alleviated since "[Cross-species] transplantation presents an unlimited supply of donor organs," according to Suzanne Ildstad, professor of surgery at the University of Pittsburgh. Ethicists like Renee Fox, University of Pennsylvania, and David Rothman, Columbia College of Physicians and Surgeons, warned that, although such organ transplants might solve the organ shortage, they blur the societal boundaries created between people and animals. They urged caution in proceeding with xenograft research and clinical trials. Much of the conference was devoted to discussing the potential risks of cross-species transplantation. Many researchers voiced concern that xenotransplants could potentially transfer viruses from animal species into humans and spark new epidemics. Jonathan Allen, a retrovirologist from the Southwest Foundation for Biomedical Research in San Antonio warned, "The real risk is the unknown viruses," referring to several agents of human disease that have evolved from viruses that first infected other species. Other researchers, like Susan Ildstad, said that the likelihood of introducing new diseases with this technique is speculative. Thomas Starzl, a pioneer surgeon in xenotransplantation at the University of Pittsburgh, added that xenotransplant recipients are not "walking time bombs," decrying the notion that such patients will cause an explosive spread of disease. At the heart of the debate was the decision made in April by the Food and Drug Administration (FDA), citing safety reasons, to block an experiment where bone marrow from a baboon was to be transplanted to an AIDS patient in an attempt to bolster the immune system. Philip Noguchi, director of the FDA's division of cellular and genetic therapies, emphasized that the decision was aimed at preventing the spread of infectious diseases and not to hinder any promising results of the therapy. A federal advisory panel subsequently recommended that the experiment be allowed to proceed, noting that strong precautions are being taken to prevent cross-species infection, and the FDA has given its approval. The conference concluded with a closed meeting of Institute of Medicine committee members, intent on developing a set of guide-lines regarding xenotransplantation, while considering the opinions and information shared over the duration of the conference.

ETHICS, LAW AND PUBLIC POLICY

The Courts Test Limitation of Liability Provisions for Engineering Contracts

By Arthur Schwartz

Two recent decisions - one by a California appeals court and the other by a federal appeals court - illustrate the continuing dilemma engineers face when they attempt to use limitation of liability provisions in their professional services contracts with their clients. At the very same time that a federal appeals court in Pennsylvania found a limitation of liability provision valid under Pennsylvania law, a California appeals court was ruling that a limitation of liability clause in an Owner-Engineer agreement was "unconscionable," and therefore void.

In *Valhal Corporation v. Sullivan Associates, Inc.*, the federal appeals court decision upholding the limitation of liability provision, a design professional, Sullivan Associates, Inc. was retained by the Valhal Corporation to prepare a feasibility study for the potential purchase of property for the construction of a residential tower. Relying upon the study, Valhal entered into an agreement of sale for the property. However, in performing the study, Sullivan Associates, Inc. failed to note that the property was subject to certain height restrictions, thereby making construction infeasible.

Following the completion of services by the design professional, the owner filed a negligence action in the federal district court. In its defense, Sullivan Associates, Inc. alleged that at the time the firm contracted to perform the services, it and Valhal Corporation had agreed to a provision limiting design liability to \$50,000 or to the total fee for services. In reply, Valhal Corporation noted that no formal contract containing the liability provision was ever executed by the parties and that the provision was a violation of Pennsylvania's anti-indemnification statute, which is similar to the statutes of other states. The statute makes void contractual provisions in agreements between (1) owners, contractor, subcontractors or suppliers and (2) engineers, architects or surveyors that indemnify or hold harmless the latter group for their negligence as against public policy.

Following the trial, the district court determined that the provision was "a part of the contract entered into by the parties." Nevertheless, the court ruled that the provision "contravened the express policy of the Commonwealth of Pennsylvania," and was therefore invalid.

In reversing the district court decision, the federal appeals court reviewed a long list of Pennsylvania court decisions upholding limitation of liability provisions in the commercial sphere. It concluded that limitation of liability clauses were not disfavored under Pennsylvania law, especially when contained in contracts between informed business entities dealing at arm's length, and where there has been no injury to person or property. Said the court, "such clauses are not subject to the same stringent standards applied to exculpatory and indemnity clauses. Limitation of liability clauses are a way of allocating unknown or indeterminable risks and are a fact of everyday, business and commercial life. So long as the limitation which is established is reasonable and not so drastic as to remove the incentive to perform with due care, Pennsylvania courts uphold the limitation."

Also of significance to the court was the fact that the design professional in question was exposed to liability which was seven times the amount of the remuneration under its contract with the client. The court noted that this fact indicated a reasonable allocation of risk between two sophisticated parties.

The contrasting California decision, *Viner v. Brockway*, which through out the limitation of liability provision, arose out of deficiencies in a repair plan implemented by Engineers to stabilize a slope supporting two Owners' property. The Owners, two home owners (Owner A & B), were neighbors who jointly owned a slope in Los Angeles. The Owners each contracted with Engineer X in 1980 to provide geotechnical assistance for the implementation of a gabion repair intended to stabilize a slope. The Owners also separately contracted with Engineer Y to provide civil engineering services and project management for the repair.

The contract between Engineer X and Owner A was signed by Owner A, negotiated by Owner A's attorneys and contained a limitation of liability provision limiting Engineer's liability to the fee or \$25,000 whichever is greater. The contract between Engineer X and Owner B contained a limitation of liability clause and was negotiated by Owner B's attorney, but was never signed by Owner B, although all of the terms of the contract were performed.

The "Engineer Y 2 Owner A" and the "Engineer Y 2 Owner B" contracts also contained limitation of liability provisions. The contract between "Engineer Y and Owner B" was renegotiated by Owner B's attorney to increase the liability limit. All engineering services were performed and both Engineer X and Engineer Y were paid.

In 1983, the gabion system shifted downslope during heavy rains. Engineer X sought to repair the gabion system but approval was withheld by the Department of Public Works. The department demanded a code requiring repair at an estimated cost of nearly \$1 million. Engineer X asserted that this new repair was outside the scope of the original repair. After a stalemate, Owners A and B sued Engineers X & Y.

During the trial, the judge precluded the defense from offering any evidence regarding the existence of the limitation of liability clauses. At the close of evidence, the judge declined to enforce the limitation of liability clauses and offered no basis for his ruling, this despite uncontroverted evidence that the clauses were negotiated with the assistance of counsel and had been adjusted upwards as a result of those negotiations. Following the judge's ruling, the jury awarded the Owners approximately \$.9 million in damages. The decision was then appealed by the engineers to the California Court of Appeals.

In ruling for the homeowners, the California appeals court held that, while the homeowners were represented by attorneys in negotiating their contract with the engineers, and had an opportunity to accept, modify or reject the limitation of liability clauses, the clauses were nevertheless unconscionable. The court responded that the contracts in question were for highly specialized services requiring expertise in the design, planning and construction of slope stabilization methods and the homeowners' attorneys were not qualified in the fields of civil or soils engineering.

Of particular concern to the engineering community is that the Court of Appeals decision could serve to undermine the protection which design professionals have enjoyed as a result of *Markborough California v. Superior Court*. In that case, the California Court of Appeals affirmed the validity of limitation of liability provisions in design professional agreements. It is anticipated that the engineers in the case will petition for a rehearing in the court of appeals, and, if unsuccessful, for review by the California Supreme Court.

In view of the continuing division that exists among the states that have addressed the issue (e.g., California, Pennsylvania, Alaska, Missouri, South Carolina), it may be some time before a clear picture emerges regarding the enforceability of limitation of liability provisions in design professional contracts.

RESOURCES

In Print

Scientific Integrity: An Introductory Text with Cases, by Francis L. Macrina, March 1995 (ASM Press, P.O. Box 605, Herndon VA 22070; \$24.95 per copy; toll-free number 1-800-546-2416). This publication is intended to provide a text for courses and seminars on scientific research and integrity targeted primarily at pre- and postdoctoral trainees conducting research in the biomedical and natural sciences. The chapters cover issues on mentoring, scientific record keeping, authorship and peer review, use of animals and humans in biomedical research, conflict of interest, ownership of data and intellectual property, and genetic technology and scientific integrity. Case studies have been included "to offer the readers an opportunity to debate the complex issues facing contemporary biomedical researchers" and "to illustrate the diversity of issues that have been identified under the umbrella of scientific integrity."

Ethical Guidelines in the Conduct, Dissemination, and Implementation of Nursing Research and Annotated Bibliography, 1995 (American Nurses Publishing, 600 Maryland Avenue, SW, Suite 100 West, Washington DC 20024-2571; \$30.00 for both books). The *Guidelines* are intended to "help nurses... to become more aware of the ethics of nursing research and the societal context that helped shape them." It is directed primarily toward "expert nurse researchers, beginning nurse researchers, nursing students, and others interested in ethics of nursing research." The *Guidelines* focus on the nine principles that cover such topics as research and cultural diversity; capacity issues and research; the use of concealment and deception in research; research with pregnant women, and persons with AIDS; the use of incentives in research; ethical implications of the use of computers in research; scientific, institutional, and dissemination checks and balances, including issues of scientific integrity and misconduct; and

nursing research and animal experimentation. The accompanying *Annotated Bibliography* provides "a current and select descriptive review of the literature on expository and empirical writings that affect the conduct, dissemination, and implementation of nursing research."

On-Line

There are several new ethics resources on the World Wide Web that are under development. The [Centre for Applied Ethics](#), The University of British Columbia, has developed a homepage featuring a useful collection of links to other WWW resources. The [Massachusetts Institute of Technology](#) has created an ethics homepage including sections on research ethics, 7 codes of ethics, and 13 National Society of Professional Engineers cases. The [DePaul University Institute for Business and Professional Ethics](#) homepage is still under development, but will include a calendar of events, summaries of ethics-related articles and books, as well as numerous other professional and ethics resources. The [National Center for Genome Resources](#) (NCGR) has announced new Web pages regarding the Ethical, Legal, and Social Implications (ELSI) of biotechnology and includes a bibliography of ELSI related references to provide starting points for further reading and a series of "Scopes Notes" that provides full text overviews of ELSI topics.

ANNOUNCEMENTS

The ORI is making available the proceedings of the **1993 ORI/AAAS Conference on Plagiarism and Theft of Ideas** via modem on the OASH Bulletin Board or on computer diskette upon request. The two-day public conference focused on the institutional handling of allegations of plagiarism and their societal context. To retrieve the document via modem, dial (202) 690-5423 and make the following selections: (2) File Area; (2) Health Related Files Area (non-AIDS); File Area #6...Office of Research Integrity; and download one of the three files to your hard drive. [Note: you will need to use PKUNZIP to decompress the file before opening it.] To order the diskette version, contact Karen Gorirossi, ORI, 5515 Security Lane, Suite 700; Rockville, MD, 20852; (301) 443-5330; Fax (301) 594-0039; E-mail kgoriros@oash.ssw.dhhs.gov.

The Davies Group Publishers is seeking multidisciplinary cases that can be used in a classroom setting to promote **Ethical Reasoning and Ethical Decision Making**. All cases accepted for publication will be cataloged and promoted for classroom adoption and use as single cases for selection in a proposed series of combined text and case books or in custom-assembled course packs. The ten most distinguished cases submitted each year will be selected for publication in an annual anthology of *Cases in Ethical Reasoning and Decision Making*. Deadline for submission of cases to be included in the 1996 edition is November 1, 1995. For more information, contact the Editor, The Davies Group, Publishers, P.O. Box 440140, Aurora, CO, 80044; (303) 750-8374; Fax (303) 337-0952.

The **Association for Practical and Professional Ethics** invites submissions for its Fifth Annual Meeting, to be held February 29 - March 2, 1996 in Saint Louis, Missouri. Submissions of papers, pedagogical demonstrations, posters, case studies, and members' nominations of recently-published books for Breakfast with the Authors are invited to address ethical concerns in fields such as administration, law, the environment, accounting, engineering, computer science, research ethics, business, medicine, journalism, the academy, as well as those that cut across professions. Demonstration in ethics teaching, discussion, or moral education, and curriculum development are welcome. Deadline for Breakfast with an Author nominations is September 15, 1995; deadline for presentation submissions is October 31, 1995. Contact the APPE, 410 North Park Avenue, Bloomington, IN, 47405; (812) 855-6450; Fax (812) 855-3315; E-mail appe@indiana.edu.

The Harvard University Program in Ethics and the Professions invites applications for resident **Fellowships in Ethics** for the academic year 1996-97. Several Fellowships will be awarded to outstanding teachers and scholars who wish to develop their competence to teach and write about ethics issues in business, government, law, medicine, public policy, and social science. Fellows participate in the weekly seminar of the program, attend courses in one of the professional schools or in the Graduate School of Arts and Sciences, and conduct their own research on ethics. The Fellowship extends from September through June. Deadline for application is December 21, 1995. Contact the Program in Ethics and the Professions, Harvard University, 79 Kennedy Street, Cambridge, MA, 02138; (617) 495-1336/3990; Fax (617) 496-9053; E-mail hhawkins@fas.harvard.edu or ssandy@fas.harvard.edu.

The first conference on bioethics in East Asia will be held on November 3-5, 1995, in Beijing, China. Sponsored by the East Asian Association of Bioethics (EAAB), the **East Asian Conference on Bioethics** will address a range of bioethical issues facing East Asia. For more information, contact Qiu Renzong, EACB95, Program in Bioethics, Institute of Philosophy, CASS, 5 Jianguomennei Avenue, Beijing 100732, China; Tel/Fax (86 10) 512-2025; E-mail chenqiu@bepc2.ihep.ac.cn.

Ethical Issues in Research Relationships Between Universities and Industry is being sponsored by the University of Maryland at Baltimore, Center for Biomedical Ethics on November 3-4, 1995. The conference will address biomedical research arrangements between biotechnology and pharmaceutical corporations and universities. Contact the School of Nursing, University of Maryland at Baltimore, 655 West Lombard Street, Baltimore, MD, 21201; (410) 706-3767; Fax (410) 706-0018.

Princeton's University Center for Human Values is inviting applications for **Laurance S. Rockefeller Visiting Fellowships for 1996-97**. The Fellowships are for scholars and teachers interested in devoting a year in residence at Princeton to writing about ethics and human values. Deadline for application materials is December 15, 1995. For more information, contact Helen Nissenbaum, University Center for Human Values, Louis Marx Hall, Princeton University, Princeton, NJ, 08544; (609) 258-4798.

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