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## TROUBLED TIMES: PROFESSIONAL ETHICS

By Richard Schulte

*“real, honest, ethical leadership matters”*

Jeff Immelt, Chairman and Chief Executive Officer, General Electric Company

These times certainly seem to be troubled—a deep recession in the building construction industry in the US, looming defaults by several European nations and also several large cities and states in the United States and a massive oil spill off the Louisiana coast.

Perhaps even more troubling than these massive problems is the public corruption trial of a former governor of the State of Illinois, Rod Blagojevich. The former governor is charged with, among other things, attempting to sell a vacant seat in the United States Senate. Other charges against the former governor include what is known as “pay to play”—the practice of awarding no-bid state government contracts in exchange for political contributions and the threat of withholding state government funding for projects unless political contributions are made.

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Compared with the default of several European nations and a massive oil spill, how could anyone consider a corruption trial to be even more troubling? There is a rather simple answer to that question—the corruption of public officials undermines the public’s trust in government and, without public trust in government, solving major problems is made even more difficult. In other words, the public’s trust in government is the foundation on which our society is built.

Of course, undermining the confidence in the process is not unique to the field of government. It seems that a similar problem has also developed in the fire protection/fire safety field. With recent rulings by the Society of Fire Protection Engineers (SFPE) and by the International Code Council (ICC) that their ethics policies do not apply to testimony in building code development hearings and in other codes and standards development venues, it would seem that the confidence in the code development process is also being undermined.

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With respect to the Society of Fire Protection Engineers' interpretation of its ethics policies, the issue came to light over an ethics complaint filed in late July 2008 regarding assertions of the "validation" of the Fire Dynamics Simulator (FDS) by Dr. Craig Beyler. Within two weeks, the SFPE Ethics Committee ruled that SFPE Canon of Ethics does not apply to testimony made during the course of codes and standards development and dismissed the complaint. After an appeal of the Ethics Committee's ruling, the SFPE's Executive Board returned the complaint to the Ethics Committee for further consideration. With an additional 6 months of further consideration, the Ethics Committee ruled that insufficient evidence of a violation was submitted with the complaint.

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With respect to the International Code Council, an ethics complaint over William Koffel's testimony on code change proposal F144-09/10 at the code development hearings held in Baltimore in late October 2009 was filed on January 20, 2010. In this case, the ICC Executive Board did not even bother to respond to the complaint. ICC's response to the complaint was in the form of a Staff Comment on Public Comment 1 on code change proposal F144-09/10 published in April 2010. Once again, the response was that the ethics policies do not apply to testimony provided in the code development process.

Given that the provisions contained in buildings codes and standards affect both building safety and construction costs, it is my opinion that the code development process should be considered to be "sacred".

While both the SFPE's and the ICC's rulings on the application of their ethics policies were essentially the same, neither the SFPE, nor the ICC provided a clear explanation of why misleading and false testimony in codes and standards development is exempted from the application of their ethics policies. Given that the provisions contained in buildings codes and standards affect both building safety and construction costs, it is my opinion that the code development process should be considered to be "sacred". In other words, intentionally making misleading and false statements in testimony involved in the development of public safety standards should not only be covered by the ethics policies, but should be considered to be a grievous offense by both the SFPE and the ICC.

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What did Dr. Craig Beyler and William Koffel do that were such grievous offenses to the code development process? In Beyler's case, Beyler/Hughes Associates utilized the Fire Dynamics Simulator in a modeling study of the concept of the "ganged" operation of roof vents in industrial/storage buildings protected by a sprinkler system. The modeling was used to demonstrate that the opening of multiple roof vents 60 seconds after the water flow indicating device in the sprinkler system is activated would not have an adverse effect on the capability of a (control mode) sprinkler system to control a fire. Obviously, the entire study hinged on the capability of the fire model to reliably and accurately predict the activation times of multiple sprinklers and the total number of sprinklers which would activate.

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When questions regarding the “validation” issue were raised after presentations on the “ganged” operation of roof vents were made to the ICC Code Technology Committee, Beyler attempted to use his “renowned expert” status to “bully” his way around the issue, however, if Beyler had done the “validation” work that should have been done, he would have been able to respond to the question with reams of data analysis. Instead, Beyler’s response was essentially to ignore the issue. It wasn’t until months later, when no one in the profession stood up to support Beyler’s assertion that it became quite clear that the Beyler/Hughes Associates’ fire modeling study of the “ganged” roof vent concept was just “junk science” (*i.e.*, b.s.). In March 2009, Dr. Beyler’s client, the AAMA Smoke Vent Task Group, characterized the Beyler/Hughes Associates’ study as “worthless”.

Beyler attempted to use his “renowned expert” status to “bully” his way around the issue, however, if Beyler had done the “validation” work that should have been done, he would have been able to respond to the question with reams of data analysis. Instead, Beyler’s response was essentially to ignore the issue.

The fact that Dr. Craig Beyler was unable to produce documentation that his use of the Fire Dynamics Simulator to reliably and accurately predict sprinkler activation times and the number of sprinklers which would operate in 2008 also served to demonstrate that his sworn testimony in the litigation known as Ian David McAuslin, et al v. Grinnell Corporation, et al in 1999 was false. In this litigation, Beyler acted as an expert witness for the plaintiffs and utilized what was referred to at the time as the LES3D fire model to not only predict sprinkler activation times and the number of sprinklers which would activate, but also the effects of sprinkler spray discharge on a fire in storage racks. Since there is agreement in the profession that it is not possible for the FDS to predict the effect of sprinkler spray discharge on a fire in 2010, Beyler’s use of the LES3D model in the McAuslin v. Grinnell litigation in 1998/1999 can also be best characterized as “junk science” (*i.e.*, hogwash).

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What do you do with a “renowned expert” in the field who feels no compunction about utilizing “junk science” to support his opinions in litigation where tens of millions of dollars are at stake?

Given the record of Beyler’s misuse of the FDS on two separate occasions as outlined above, you have to wonder how often Dr. Beyler has done the same thing in other instances, but just wasn’t caught. It is my opinion that Beyler’s antics outlined above call into question his entire body of work over the last 30 years or so. An expert doesn’t have to resort to b.s. to support his opinions. Given this, it’s my opinion that Dr. Craig Beyler is more of a charlatan than an expert. In fact, based upon my experience with Beyler’s work, he sort of reminds me of the “Wizard of Oz”.

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In William Koffel’s testimony on code change proposal F144-09/10, Koffel stated that NFPA 13 contained new provisions which specifically addressed the installation of roof vents in buildings protected by a sprinkler system. Koffel further stated that “*the 13 committee recognizes that this [referring to roof vents] is a viable technology in sprinklered buildings.*”

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Koffel is correct in his statement that the 2010 edition of NFPA 13 contains provisions which address the use of roof vents in sprinklered buildings, however, the actual intent of the new roof vent provisions is 180° opposite of Koffel’s assertion of the intent. Given that the NFPA 13 committee has opposed the use of roof vents in sprinklered buildings for over 30 years and that Koffel is a long time member of the NFPA 13 committee, it would be difficult for Koffel to say that he was unaware of the committee’s opposition to the use of roof vents. Once again, we have a case where a “renowned expert” used his status in the profession to intentionally mislead.

Like Beyler, this is not the first time that William Koffel has been involved in such skulduggery. Recall that William Koffel was the source of the statistic that sprinkler systems fail in one out of every 6 fires large enough to activate sprinklers back in 2005. In this case, Koffel utilized information from a report on sprinkler system performance developed by the National Fire Protection Association without assessing the reliability of the data contained in the report. In other words, “garbage in, garbage out”, except that Koffel’s client in this case, the Alliance for Fire and Smoke Containment and Control (AFSCC), took Koffel’s statistic and proceeded to use the statistic to attempt to ram through code change proposals to eliminate many of the reductions in passive fire protection permitted when sprinkler protection is provided. Shortly thereafter, Koffel’s sprinkler failure statistic was discredited, but the damage was done.

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Both Beyler’s and Koffel’s ethical lapses present a serious problem for the Society of Fire Protection Engineers. William Koffel is a former president of the Society, while Dr. Beyler was awarded the Arthur B. Guise Medal by the Society in 2000. The SFPE website describes the Guise Medal award as follows:

Both Beyler’s and Koffel’s ethical lapses present a serious problem for the Society of Fire Protection Engineers. William Koffel is a former president of the Society, while Dr. Beyler was awarded the Arthur B. Guise Medal by the Society in 2000. The SFPE website describes the Guise Medal award as follows:

*“The Arthur B. Guise Medal recognizes eminent achievement in the advancement of the science and technology of fire protection engineering and is named in memory of the achievements of Arthur Guise.”*

SFPE’s timing in awarding Beyler with the Guise Medal in 2000 couldn’t have been much worse given his false sworn testimony regarding the “validation” of the LES3D fire model in the McAuslin, et al v. Grinnell Corporation, et al litigation in 1999.

SFPE’s timing in awarding Beyler with the Guise Medal in 2000 couldn’t have been much worse given his false sworn testimony regarding the “validation” of the LES3D fire model in the McAuslin, et al v. Grinnell Corporation, et al litigation in 1999.

Will the SFPE strip Beyler of the Guise Medal award based upon the revelation that he provided false sworn testimony in the McAuslin v. Grinnell case? I guess we'll soon see whether or not the SFPE agrees with the Chairman and Chief Executive Officer of the General Electric Company that "*real, honest, ethical leadership matters*".

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**Editor's Note:** Excerpts from Dr. Craig Beyler's deposition in the Ian David McAuslin, et al v. Grinnell Corporation, et al case can be found in the Commentary webpage on this website. Schulte & Associates' letter to the SFPE regarding Dr. Beyler's testimony in this case dated August 20, 2009 can also be found on the Commentary webpage.

**Editor's Note:** Schulte was an expert for one of the defendants, Broadmoor Corporation, the design-building contractor who designed and constructed the McFrugal's Warehouse, in the Ian David McAuslin, et al v. Grinnell Corporation, et al litigation. Schulte also provided building code consulting services to Broadmoor Corporation on the design of the McFrugal's Warehouse. As such, Schulte was involved in both the design of the building and also reviewed both Dr. Beyler's expert report and his deposition as part of his work on this case in 1999.

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