

Wade L. Robison's Commentary on "The Information Due to the Customer"

Commentary On
The Information Due to the Customer

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Christine should talk with Vernon. There are two different issues that are raised by Vernon's not passing along either the savings in cost of production or the information that the custom made parts are to be made with a different material than XYZ's engineers had originally thought would be necessary.

First, as Christine points out in her original conversation with Vernon, "In most cases the performance will be virtually the same--although some parts might not last quite as long." It is unclear whether there are two problems here, or only one. Christine may be saying both that some of the parts will have a shorter lifetime than they would were they made of the other alloy and that for some of the parts, or -- and this is also unclear -- for some of the features of the parts, the performance will not be the same as it would be for those made with the other alloy. Either all the parts will be used in the same way, but the failure rate will be higher in general (perhaps because the parts are not as strong now), or, perhaps, some of the parts will be used in ways different from other parts, and they will not perform as well as ones made with the other alloy would perform. In short, the parts will be of lesser quality than those ordered, and that diminution in quality will manifest itself either in a shorter lifespan for some of the parts or in decreased performance for some of the parts, or both.

In either event, ABC will be getting an inferior product for its money. One way to come to understand whether anything moral is at issue is to ask whether a change will cause any harm, and ABC will be harmed because it will have to purchase new parts sooner than otherwise, and that will cost them more money, and/or because it will have an inferior product produced with these parts because the performance with them will be inferior to what would have been the performance expected of the

part made with the other alloy. So ABC will be harmed by changing the composition of the parts, and anytime harm occurs because of one's actions, one needs to assess whether one ought to act in that way.

One ought not to cause harm unnecessarily, and so one needs a good reason for causing it. Physicians have a good reason to cause pain to patients by inoculating them because the patients are benefited in the long term by being immune from diseases that would cause them more harm. So the question is whether XYZ has a good reason for causing harm to ABC. The answer is that it has a reason, namely, increased profits, but that is not a good reason for causing harm. Christine is right when she thinks that "the customer isn't getting what was promised." If I promise someone something, and then substitute something else, I have broken my promise, and we thus have two harms here -- the harm that comes from breaking one's promise and the harm that comes from causing ABC to spend more in the long run for the custom made parts.

The harm that comes from breaking one's promise may seem a minor harm, but think of what might happen were ABC to discover that the reason the parts it ordered have a shorter lifespan than it thought they would have is that XYZ has substituted something different from what ABC thought it ordered. Not only would ABC have the basis for a legal suit, presumably -- if the order originally included specifications for the alloy to be used--but it also would no longer have any reason to trust XYZ to deliver what was promised. Everything ordered would have to be checked, that would increase ABC's costs, and it might decide that the increased costs of doing business with XYZ were not worth it and might take its business elsewhere. Breaking one's promises often does not cost one much: if no one finds out, and one generally keeps one's promises, then no one will be the wiser. But when one is found out, the cost are usually so high as to outweigh any advantage one may have had from breaking the promise to begin with. So Vernon risks losing ABC as a customer should ABC ever find out that the parts they ordered are not exactly what they got.

But I mentioned that there were two different issues raised by Vernon's actions. The second is perhaps somewhat more problematic because it raises the question, "What is a fair profit?" Is one entitled to charge whatever the market will bear, or should one pass along any savings to one's customers and charge only what gives one a decent profit for one's work? We may bring out the issue more clearly by supposing that XYZ's suppliers find a new source for the alloy originally thought

necessary and that the price to XYZ is significantly lower than what XYZ had calculated it would be in determining that the final price should be \$75 per part. Does XYZ have an obligation to pass onto ABC the savings from their discovery? Suppose that the savings are not, say, \$2 per item, but \$35 per item. Whereas before XYZ was making a profit of, say, \$20 for every \$75 item sold, now it is making a profit of \$55 for every item. Does it make a difference how much of a profit XYZ is making?

This question raises issues that take us far beyond this case, but we can say a few things about it. One is that discovering that one can purchase something at a cheaper price is itself not without cost: one has to hunt in catalogues, presumably, talk to suppliers, make new arrangements, cancel old ones, and so on. So XYZ has incurred some costs in lowering its costs, and it should be entitled to recoup those costs. It thus is not obligated to pass on to ABC all of its savings in purchasing the alloy at a lower cost.

But should, again, ABC ever become aware that XYZ made a profit of \$55 on every \$75 item--and one must realize that, among others, salespersons talk--then XYZ will get a reputation for gouging. That is, they will become known as a company that will make as much money as they can whenever they can. This will have its effects on their business, for instance. Companies will bargain that much the harder to lower the price, thinking that XYZ will be making enough profit even with a lower price, and XYZ will find itself having to mark up items in order to have a bargaining position. It will thus price itself out of the market for some potential customers, who will see the price and not realize that XYZ is willing to bargain. But even those who bargain with XYZ and come up with a contract will be left not being completely sure that they came up with a good contract. They will still wonder if, perhaps, XYZ has not still made a big profit and will hunt around for other suppliers. So XYZ will perhaps lose customers, who will feel no loyalty to a supplier who will gouge when it can.

So, by all means, Christine ought to talk further with Vernon. He is taking a short-sighted view -- take the profits upfront and do not worry about the potential long-term consequences -- and is causing harm to ABC when that is wrong.

If Christine's entire further conversation with Vernon is as reported and all he says is, effectively, that he is just doing good business, then she ought to press the point further. He presumably thinks he is doing "good business" because he is making more money for the company from this contract than he would if he passed along the savings to ABC, but he is making more money only because he is supplying a different product to ABC than was originally contracted for. Whether the contract itself specifies the content of the part or not, it was presumably presumed by both during the negotiations that a particular alloy would be used. Or, to put the point perhaps less contentiously, XYZ presumed it, and ABC would have no reason for thinking any other alloy would be used. It is not good business to cheat a customer, and that is effectively what Vernon is doing.

He is also assuming, without evidence, that ABC will be a satisfied customer. But if the parts are not as long-lived as it thought they would be, and if there is a higher rate of failure in some functions than it would there would be, ABC may well not be a satisfied customer and may look elsewhere for a supplier next time. It is not good business to encourage customers to go elsewhere the next time they have to purchase parts.



If the original contract specifies that the parts are made from the alloy originally chosen, then Christine cannot sign a report "verifying that the specifications for the part have been met." They have not been met, and it is her professional obligation to make sure that what is produced is what was contracted for.

In addition, if the original contract is as indicated, then it is probable that Vernon knew that all along. He is thus not just taking advantage of a loophole in the contract by substituting one alloy for another when the contact did not make it clear what was necessary, but clearly breaking the contract in order to increase the profits to the company. So, whereas one might just think him slightly sleazy in trying to wring as much money as he can from the contract, now one must think him criminal in not only breaking the contract himself, but also urging someone else in the firm to do the same--and to cover for him. For if Christine signs the report, Vernon can always claim, in his defense should things come to that, that he just took the word of the engineer here, that she is the professional who ought to know

about such matters, and that he is just the salesperson, or whatever, and certainly not professionally competent to make such judgments.

So Christine cannot sign the report. That would break a contract with XYZ, and it would open her to the legal repercussions if XYZ should find out and sue, as they would be entitled to do.

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If Vernon is able to get another engineer to sign the report, Christine is in an awkward position because now, should she act further, she will not only get Vernon, but also a fellow engineer in trouble.

But she has an obligation to take the matter higher if for no other reason than that the company may be sued by XYZ. It is not enough morally just to act within the law, but it is always a mistake not to act within the law. One pays in so many ways -- monetarily, by having to pay damages as well as for the original difference in costs, and politically, as it were, by being presented publicly as a company willing to cheat its clients for extra profit.

That a fellow engineer may well be harmed is unfortunate, but if he had a good reason for signing the report, despite the discrepancy, he will give it, and if he did not, it is not up to Christine to protect him when the company as a whole may be harmed by his and Vernon's actions. One is not obligated to protect a fellow profession from his or her own mistakes, and the obligation is especially weakened when others may be harmed by those mistakes. Christine now only has to be concerned about the harm being done to XYZ, but also the harm that may be done to ABC.

In addition, she may be harmed, knowing all this, and yet not acting. We are sometimes in the unfortunate position of coming to know something that necessitates our acting when we would prefer not acting. Seeing a parent abuse a child, for instance, creates a *prima facie* obligation to do something, and one must at least consider what one ought to do in such a case, perhaps investigating whether the abuse is longstanding or not. Here the harm is clear, and that Christine is no longer in the chain of authorization for its occurrence is not important. What matters now is that she knows it. To prevent harm she must act.