



ERODING ETHICS OF EXECUTIVE SEARCH

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Management consulting at the top-management and Board levels often entails leadership assessment of inside and outside candidates by retained executive search firms. Although colloquially called "headhunters," this term is used also to describe contingency placement firms, which typically recruit and refer candidates at middle and lower management levels, and use very little assessment, if any. Conversely, retained executive search firms use relatively sophisticated tools and techniques to assess/evaluate internal and external leaders at the upper levels of management.

Significant numbers of Chief Executive's and Outside Directors are located via the services of retained executive search. Thus, every Nominating Committee, every Board Selection Committee, and every senior H.R. executive charged with selecting and overseeing their search firms should be vitally concerned about the ethics of such search activity.

BACKGROUND:

When I first entered the search consulting industry four decades ago, the retained search firms were attempting to look and act "professional," modeling their behavior after the more conservative members of the legal profession and accounting profession. In those days, conservative service firms refrained from any corporate public relations or advertising. They generally restricted their business cards to black ink on white paper. If they had any "corporate capabilities" literature, that literature was produced with extremely understated elegance-what some would affectionately call "Wall Street" vs. four-color "Madison Avenue."

Then in the early 1970's, we witnessed a significant departure from the former conservatism, vis-à-vis chains of "store-front" law offices such as Jacoby & Meyers; full-page advertising by the "Big 8" (now "Big 5") CPA firms; and four-color brochures by the upstart Korn/Ferry & Associates. In the retained search industry, Korn/Ferry was routinely scorned by the traditional search firms, but Korn/Ferry's aggressive advertising and PR proved to be effective in "stealing" measurable market share at the expense of those older, more traditional search firms. In fact, a couple of the major search firms that preceded Korn/Ferry have never regained their previous dominance of the market.

Within only a few years, Korn/Ferry succeeded in growing from a small Peat Marwick spin off to the largest retained search consulting firm. Competitors such as Heidrick and Struggles, SpencerStuart, Ward Howell (now TMP), etc., were forced to sacrifice their conservatism and basically copy Korn/Ferry's aggressive marketing approach. In so doing, they also began recruiting more aggressive "sales" staff.

I remember my "old" partners at Ward Howell who refused to initiate a sales call- they waited for the phone to ring. Gradually their client contacts retired (or died)- the phone stopped ringing, and my older partners were forced to retire themselves. In their place, I saw increasingly aggressive sales techniques, albeit some very professional, yet in my opinion some were clearly unprofessional and occasionally unethical. Paraphrasing the Dalai Lama, they were "opening their arms to change" but they simultaneously were "letting go of their values."

Today, counting the third, fourth, and fifth generation spin-off firms, approximately 5,000 search consulting organizations populate the globe, most of which have embraced modern sales and marketing techniques. As these firms intensely compete for market share, far too many of them cut corners in order to obtain assignments and/or fail to maintain the highest standards of performance, once they are awarded such assignments.

GLOBAL 1000 "CAPTAINS OF INDUSTRY" SURVEYED:

In surveying a sample of over 100 Managing Directors of Cornerstone International Group's offices around the world, we found the following ethical issues are frequent complaints from the Global 1000 senior executives and human resources professionals responsible for securing and managing the services of retained executive search firms. The majority of search consultants are innocent of the following ethical violations, but as with any profession, the search profession needs to monitor and flush out the unethical practitioners. The Cornerstone survey identified numerous complaints; however, those issues that follow were included because of the frequency of survey responses or because of the severity of the complaint itself:

1. Limits to "Off-Limits": Traditionally, professional search firms used a "Two-Year Rule," i.e., in the language found in the Guidelines of IACPR (International Association of Corporate & Professional Recruitment), these search firms agreed to "not recruit nor cause to be recruited any person from the [client] organization for a mutually agreed upon period after completion of an assignment...." and that period was historically defined as two years.

Today, the larger search firms have too many clients (from which they should not recruit candidates) in each primary industry category, thus causing them to run out of target companies for their new searches. Consequently, these larger retained search firms are trying to bend the Two Year Off-Limits Rule. Joseph McCool, Editor in Chief of our trade publication, Executive Recruiter News, was recently quoted regarding off limits, "there has been a real dilution...a number of firms simply don't take [off limits] seriously, and, unfortunately, too many client companies are ignorant of those blockage issues."

2. Confidentiality: Appalling to many CEO's is the lack of caution or concern for maintaining the identity of candidates and clients in strict confidence by some practitioners in the retained search industry (and also by their client contacts). Confidentiality must be absolute-a small leak is still a leak. Damages resulting from such leaks can be devastating to companies and especially to candidates who are currently employed. One can easily imagine the negative impact on employee morale and the stock price of a company if the news leaked out that its CEO or other high-ranking officer was considering changing companies. And yet, even recruiters entrusted with private and proprietary information can be the worst offenders.

For example, in a recent issue of The Wall Street Journal, a recruiter named the CEO of another company as one of the candidates who was "very interested" in a specific CEO opening that he named in the article. That same CEO candidate is vitally needed at his current company, which is depending upon him to complete a financial turn around. The news that he was considering a premature departure was probably highly disruptive to his current company.

3. Litigation against a Client: Bringing lawsuits against client firms is a controversial subject and one that some might consider unethical. On the one hand, a "dead beat" client is not ethical if it fails to pay for services rendered. But on the other hand, if a search firm sues for unpaid fees, such legal actions may tarnish the reputation of that search firm, as well as the reputation of all search firms. Many CEO's are already reluctant to pay the significant fees charged by retained firms, knowing that those fees "are not contingent upon making a placement." The possible cost of a negative judgment plus attorney fees to defend a lawsuit could be an extra deterrent for initiating the next retained search assignment.

4. Excessive Discounting of Fees: Some would argue that deep discounting is unethical because it "cheapens" the service to everyone. Such arguments would not hold water if discounts were based on legitimate economies of scale, e.g., when multiple and/or similar assignments are conducted simultaneously. Conversely, some client firms cheapen the service themselves when they play on the "hunger" of a search firm by offering such a low fee that the recruiter assigned is unmotivated to do his or her best work.

5. Shallow Reference Checking: CEO's have complained about inaccurate or non-existent referencing of final candidates. Ironically, reference checking is probably the most important element in the entire search process, and yet our profession is too often guilty of shallow referencing. Typically, when reference checks are conducted, they entail only a couple of calls, each for less than 10 minutes, and the person initiating the reference call may "hear what he wishes to hear." Arguably, it is highly unlikely that a reference will give you "truth" in 10 minutes-friends do not wish to hurt their friends, and enemies do not wish to be sued for defamation of character-however, a search professional who is artful in the method of questioning and who invests the time to pry out the truth (at Cornerstone we may spend up to 60 minutes per reference) can often find "dirt" or at least "dust" about the candidate being referenced.

6. Referencing without Permission: According to IACPR, "Reference checking without the knowledge and permission of the candidate, while sometimes expedient, is nevertheless a disservice to the candidate, unprofessional and is also unlawful." We at Cornerstone employ an "Authorization and Release" form to obtain permission from candidates to contact references. As for academic credentials, degree verification does not require written authorization. Because commencement programs are a matter of public record, we understand that verifying degrees received is not an abridgment of the Buckley Amendment to the Family Educational Rights and Privacy Act.

7. Outplacement Combined with Retained Search: The real essence of retained executive search is not mere recruiting, but rather evaluation-comparative evaluation of all appropriate candidates. If the search firm also does outplacement, and if one of the outplacement candidates appears to match the specifications for a search assignment being conducted by the same firm, then the search firm would have a conflict of interest in comparing that candidate to other candidates. For that reason, AESC (Association of Executive Search Firms) insists that if a Member search firm wishes to have an outplacement division, there must be a "Chinese Wall" between the two divisions, i.e., the outplacement candidates must be "off limits" to the search division.

8. Contingency Combined with Retained Search: Putting aside any generalizations about the ethics (or absence of ethics) of contingency placement firms, they are generally not the same in philosophy or process. Contingency

placement firms recruit and refer; whereas, retained search firms recruit and evaluate. Consciously or unconsciously, contingency placement firms tend to "force fit" in order to get paid (their fees are contingent upon making a placement), so contingency firms tend to be employment "wedding" makers. Conversely, retained search firms are paid already, so they can look beyond the employment wedding and attempt to make an ideal employment "marriage." These two approaches are not the same and usually are not compatible.

9. Absence of Written Guarantees: Retained search firms are paid for their time and expertise in evaluating the choices of candidates, similar to a physician who is paid for his/her time and expertise (whether the patient lives or dies). Thus, the fees of retained search firms are "not contingent upon making a placement." Unfortunately, most client CEO's hire search firms because they wish to fill a position-have a placement made. So when the search firm is unable to locate a person whom the client considers satisfactory, often the CEO shoots the messenger, i.e., the client is unhappy with the search firm. For that reason, some retained search firms offer to conduct a subsequent comparable search on "an expenses-only" basis, for no additional fee, hence they guarantee their work.

10. Runaway Expense Changes: Our survey found that many CEO's are displeased with the large and unexpected expense charges that accompany retained search billings. One solution would be to ask before authorizing the search firm to begin, if it would quote a range of expenses anticipated per month during the active portion of the search. During dormant periods of the search, such as when a search is placed on hold, expenses should decline proportionally. To be fair to the search firm, if the client is a "shopper" and repeatedly rejects round after round of qualified candidates, then the search firm may be entitled to an additional installment of fee and expenses, frequently called a "excessive continuance" charge.

11. Lack of Courtesy/Dignity towards Job Seekers: The majority of executives, whether CEO's or not, have at some time in their career experienced the challenge of making a job transition that entailed looking for a new employer. During such transitions, the "job seekers" who contacted retained search firms (that do not find jobs for people) probably received no response or a "cold" response from the search firms. The reason for this "cold shoulder" from the search firms is that the headhunters are bombarded by literally thousands of unsolicited job seekers of whom only a small fraction are at all matching current searches. However, this reason does NOT justify the search firms treating such job seekers with less than reasonable courtesy and dignity.

12. Sourcing Using False Pretense: The lazy way to overcome the obstacles of finding and contacting possible candidates is to use false pretense to get past the secretaries or other "gatekeepers." Our survey indicated that such deception gives a terrible name to recruiters and it may "turn off" the best candidates once

such deceit has been used to reach the targeted individual(s). More experienced (and professional) recruiters must work a little harder to find and attract the hard-to-get desired candidates, but they reach their goal successfully without false pretense.

13. **Illegal Discrimination:** Most CEO's and other hiring authorities find such behavior to be simply stupid. Not only is discrimination illegal, it's not good business. Today, most companies are trying their best to achieve a minority and gender balance, because such balance better equips them to understand their customer's needs and wants-those customers being diversified themselves. Search firms need to have the backbone to decline (or resign if already initiated) any searches that entail discrimination, either expressed or implied. The exception would be searches specifically designed to bring diversified balance to a client organization. For that reason, Cornerstone International Group has a full-time, multiple-office Diversified Search Division that conducts searches for qualified candidates who are female and/or minority individuals. However, in that context, we prefer the dictionary definition of "diversity" that entails ALL individuals, not excluding white males.

14. **Parallel Processing of Candidates:** CEO's resent losing a favorite candidate to a competitive organization, especially when the competitive firm was given the same candidate simultaneously by the search firm. Disgruntled CEO's feel that the world is big enough for the search firm to find alternate candidates instead of parallel processing the same candidate.

15. **Wholesale Client Identification:** As mentioned under the above caption of "Confidentiality," CEO's are reluctant to use search firms that are too quick to identify their clients. First, a search may entail the fact that one or more pre-existing employees are losing their jobs, a fact that may not be known to the specific employees and/or not known to their colleagues. Second, if the market place becomes familiar with an on-going relationship between a specific employer and a specific search firm (especially if the search firm has an "exclusive" relationship), then when a truly sensitive and secret search is being conducted, most observers will easily surmise who is being replaced.

Another example of unwise client identification was the practice of a "Big 10" search firm to openly identify in its position specifications the specific name of each client. Such disclosure can sometimes jeopardize current employee morale and/or remove the advantage of curiosity when approaching reluctant outside candidates (who might otherwise "listen" due to curiosity). Also, the "news" that a firm is seeking to add or replace a key executive may result in an avalanche of undesirable calls directly to that client firm.

16. **Disparaging Other Competitors:** The Code of Ethics of NAER (National Association of Executive Recruiters) includes the following statement:

"NAER and its members encourage fair competition among executive search consultants. We hold that these professionals should compete on merit and not by attempts at discrediting or disparaging a competitor, or its work, directly or by inference, or by circulating unwarranted claims about another organization...."

Again, our survey found that this practice of "knocking" the competition is not only less effective, it may have a negative effect in obtaining assignments from client organizations. CEO's usually have been exposed to the various service professions preaching, "it's not professional to cut down the competition." So when search firms fail to practice what is preached, the CEO's are unimpressed (or negatively impressed).

17. Misrepresentations to Clients or Candidates: If retained search firms are supposed to look beyond the employment "wedding" and attempt to make a lasting and harmonious employment "marriage," then any misrepresentations to either the client organizations or to the candidates is counter-productive (and of course, highly unethical). Such misrepresentations are forbidden by most professional associations in their bylaws and rules of conduct, but are such rules enforced?

18. "Perfect" Candidates without Any Faults: Some search firms are so "careful" to present an ideal image, they may be guilty of presenting only the strengths of candidates; whereas, every candidate has strengths and weaknesses. The habit of presenting all semi-final candidates as "superstars" is especially annoying to CEO's such as Charles B. West, Jr., Chairman & CEO of Westcorp Software Systems. He states, "I can't believe that all applicants from search firms have such stellar backgrounds."

19. Slow or Non-Existing Interim Communications: Believing that the client CEO or hiring authority fully understands the time required to thoroughly exhaust a logical universe of perhaps hundreds of candidates, often the search consultant assumes that he or she will not be conspicuous in waiting four to six weeks before reporting his/her preliminary results. Such belief has been the cause of significant (yet avoidable) grief on the part of the client contacts. Albeit the CEO/hiring authority would not have authorized the significant expense of a search fee without believing sufficiently in the value of the search firms efforts and process, that same CEO/hiring authority tends to resent being "left in the dark." CEO's prefer search consultants who keep them informed frequently, in most cases on a weekly basis.

20. "Ringers" to Complete the Semi-Finalist Panel: As with the tendency of search firms to present "perfect" superstar candidates, likewise, our survey found that CEO's dislike the habit of some search firms to round out the semi-final panel with totally unqualified candidates or candidates who do not fit the job specifications. Even if such "filler" candidates have excellent credentials including

brand-name employers and ivy-league colleges, CEO's are not fooled if those candidates are a poor fit. Ken Arnold, President of UK-based Invensys Environmental Group remarked, "There is a real preoccupation with having at least five people for the employer when clearly some are not really suitable for the position."

21. Not Disclosing Potential Conflicts of Interest: CEO's justifiably complain when they learn, after the fact, that the search firm failed to disclose a conflict of interest. AESC's "Professional Standards and Ethics" clearly requires member search firms to "disclose to present and prospective clients information known to the member about relationships, circumstances or interests that might create actual or potential conflicts of interest, and accept potential assignments only if all affected parties have expressly agreed to waive any conflict." That says it all.

22. One Size Fits All: Counterpoint to specialization, some of the larger search firms have attempted to convince their clients that they are a "one stop shop" for all recruiting, including executive search, contingency placement, temporary or interim placement, etc. from the president level clear down to the secretary level. Some hiring authorities find this "one size fits all" approach is unbelievable. Peter C. Smith, Senior Vice President of Human Resources at AutoNation, Inc., remarked that he was not a fan of "vertical search work" where the recruiting firm claims it can find secretaries and it can find executives. He states without hesitation, "I don't buy it!"

23. Overlooking Hard-to-Attract Candidates: As most good researches will argue, too many search consultants are penny-wise-dollar-foolish by not investing in professional research support. A well-trained researcher knows how to identify the "hidden" candidates, including the "passive" candidates who may actually be more qualified than those candidates who are active seekers of better employment. Truly A+ candidates tend to have been already promoted or recruited into the better jobs within the better companies, and they may be resistant to considering an employment change. Thus if a client organization has retained a search firm to identify the crème de la crème candidates (i.e., A+ candidates), that search firm may fail to fulfill its responsibility if relies too heavily on superficial recruiting via the internet or only looks at individuals listed in directories. CEO's are demanding search firms that look deeper to find the hard-to-attract candidates.

24. Square Peg for a Square Hole: Cornerstone's survey also found that client contacts were beginning to "think outside the box." Most clients seem to believe that their industry is unique and therefore they demand candidates from the same industry or closely related industries. But to avoid "inbreeding," an increasing number of clients is beginning to seek talent from outside these narrow walls. Dr. Carol Geffner, Senior Vice President of Freedom Communications, stated she desired more strategic thinking where "the search

professional could help the client to think about his/her organizational needs...broaden the view of desired competencies."

25. "Protection" (Extortion) Rackets: According to an industry expert, "There is at least one big global [search] firm...walking into companies saying, 'If you pay us \$1 million retainer per year, we will not ...recruit anyone away from your company.'" Needless to say, CEO's find this form of "blackmail" to be highly unethical and undoubtedly illegal. Brent Ballard, AT&T's Human Resources Executive Staffing Director stated, "I have had recent negotiations with some of the larger search firms where...they make very clear that they would really not be able to extend us the off-limits...we desire unless there was...a commitment to a significant volume of work."

In Summary:

Many fine search professionals are genuinely deserving of the term "professional." They strive to follow the letter and the spirit of professionalism with all the legal, moral, and ethical implications that word entails. Hopefully they are matched with client firm decision makers who value that professionalism enough to separate the gold from the fool's gold-to look beneath the surface of fancy, four-color brochures and ask the hard questions that might ferret out the pretenders who claim to be ethical and then show their true colors after the search has been awarded. Caveat emptor!