

The Tribune's View

Cerner

Outsourcing or investment?

By Henry J. Waters III

Monday, October 12, 2009

The controversial contract with Cerner Corp. to take over information technology at University of Missouri Health Care is regarded by UM President Gary Forsee as an investment by Cerner and by worried MU employees as an outsourcing that threatens their jobs. Both viewpoints are valid.

The Kansas City-based technology company and the university are creating a partnership, called the Tiger Institute, that will take over MU health information services and, the parties hope, generate new revenue for both. In the process, affected university workers will become employees of Cerner, a move that worries many of them.

Forsee says Cerner is investing \$100 million in the university, an economic development boon, but the deal does involve outsourcing IT medical information services and Cerner is investing in a deal it expects to pay off for itself, as anyone should expect.

The university can benefit by outsourcing this work to a competent provider at a fair price. No one yet knows how well Cerner will perform, and university medical IT workers have legitimate reason to worry about their employment futures. Obviously, Cerner believes it can do the work more efficiently, which probably means saving money on personnel costs.

Even so, university managers should not apologize for doing the deal. Their attempts to finesse have caused them more trouble than necessary.

For months, word circulated at the medical center and beyond that the deal was in the works, but university officials kept affected parties in the dark, hoping somehow to make the change without riling employees, a faint hope made worse by the secrecy.

In cases like this, the parties should be more forthcoming much earlier. They need not reveal details of their pending arrangement, but they should be willing to announce they are considering a deal and explain potential benefits. An earlier announcement won't satisfy all parties such as MU employees, but the chance of ameliorating eventual protests is better with more and earlier

discussion. A private party like Cerner must understand a deal with a public agency requires more disclosure than they might prefer.

Just as important, disclosure removes the aura of secrecy that usually causes more trouble than anything about the actual facts of the situation.

I think most people will favor the Cerner deal, at least in principle. It could save money and enhance services and, as a bonus, provide additional revenue for the university. Understandably, employees are worried, but proper management of the institution requires their efficient use. We should give Forsee & Co. credit for seeing the benefits of outsourcing certain operations from time to time.

Mention was made that Forsee and Patterson are acquaintances from their mutual Kansas City CEO days, but no reason exists to think this relationship had anything untoward to do with the contract. Indeed, if a friendship leads to a mutually advantageous association, so much the better. That Cerner is a Missouri corporation is a plus. Disadvantageous favoritism always is worth investigating, but nothing of the sort seems apparent here.

Thus, university officials should describe what they are doing early and often, an exercise in disclosure more often practiced these days but still not quite an inherent part of UM or MU culture as it is, for instance, with the city of Columbia. Officials will treat their constituents better this way and help themselves politically as well. There is no way they can hide inherent public relations challenges bound to surface sooner or later. Their best leverage always comes sooner. By the time the *fait is accompli*, everyone almost always is more accepting, or the prospect is found to be so unpalatable it is avoided. Either outcome is better than keeping the public in the dark about public business and leaving attempted justification for too late in the game.

For public managers, facing the music means stepping on the stage and joining the band.

HJW III

Nothing is as burdensome as a secret.

— FRENCH PROVERB

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Longtime MOREnet chief quits

Original network was cutting-edge.

By Janese Heavin

Monday, October 12, 2009

Bill Mitchell has stepped down as executive director of the Missouri Research & Education Network — commonly known as MOREnet — partly because he thinks it's time for a fresh face at the helm.



Bill Mitchell

"I find myself looking in the rearview mirror more than I should," he said. "That's not good for an organization on the cutting edge of new innovations."

When Mitchell looks in that mirror, though, he can see more than three decades of implementing cutting-edge technology at the University of Missouri.

He began duties at the UM System in 1977, then moved to a computer service role at MU in the mid-1980s. That's where he helped develop a network that linked computer terminals across the four-campus system to a shared mainframe. He then helped MU connect to other research universities through a National Science Foundation network, which allowed educators to send electronic mail and share files.

Of course, nowadays it sounds like "writing with a chisel on a stone tablet," Mitchell joked, but before the Internet became commonplace, the technology was state-of-the-art.

A National Science Foundation grant helped form MOREnet in 1990, with Mitchell leading the way. The network pulled private colleges, public schools and libraries across Missouri into the electronic network.

The commercialization of the Internet prompted MOREnet to add services, but the Web became too congested to provide the high-speed services researchers and educators need. That's why Mitchell made sure Missouri was one of the first to partner with Internet2, a networking consortium that gives members a faster way to share electronic information, much like the original network universities pioneered.

UM President Gary Forsee last week acknowledged Mitchell's role in Internet2 at the consortium's annual meeting in San Antonio.

"Bill's participation in this forum and what that has meant back to our state and the University of Missouri is something we're very proud of," Forsee said in the keynote address, which was videostreamed.

Although his career has been in computer networks, Mitchell said he's most proud of the network of people he's built at MOREnet.

"The technology is cool and neat, but it's the people," he said, "the hundreds of folks who have come through MOREnet as a career, just being able to teach them."

Although Mitchell is technically retiring, he's not giving up the Net just yet. He has begun duties as part-time director of the Great Plains Network, a consortium of universities in Missouri and six surrounding states that use advanced network technology. And once his replacement is hired, Mitchell will help train that person.

Mitchell plans to stay in Columbia for now but is eyeing a future move to Kansas City to be closer to his sons and grandchildren. He also hopes giving up duties at MOREnet will mean more time for other hobbies, such as fishing and hiking.

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The New York Times

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The Rise and Fall of Academic Abstention

As recently as 1979, legal academics Virginia Nordin and Harry Edwards were able to say that “historically American courts have adhered fairly consistently to the doctrine of academic abstention in order to avoid excessive judicial oversight of academic institutions” (Higher Education and the Law). Academic abstention is the doctrine (never formally promulgated) that courts should defer to colleges and universities when it comes to matters like promotions, curricula, admission policies, grading, tenure, etc. The reasoning is that courts lack the competence to monitor academic behavior; they should get out of the way and let the professionals do the job. “Courts are particularly ill-equipped,” Chief Justice Rehnquist declared in 1978, “to evaluate academic performance.” **(Board of Curators of the University of Missouri v. Horowitz)**

In 2009, courts still pay lip service to this doctrine but in practice, Amy Gajda tells us in her terrific new book, “The Trials of Academe,” they now boldly go where their predecessors feared to tread. Once, “if a student or faculty member had the temerity to bring a grievance to court, it was likely to be bounced out in short order.” Now, however, “courts feel free to enter . . . from the ground up, parceling out the right and obligations of each disputant down to the last dollar.” Indeed, “litigation and ‘rights talk’ have permeated every crease and wrinkle of academic life.”

There are still landmark cases that support the older view, if only by the narrowest of margins. Gajda cites *Grutter v. Bollinger* (2003), a case in which the Supreme Court by a 5-4 vote upheld the University of Michigan Law School’s practice of considering an applicant’s race among many other factors in the admissions process. Justice O’Connor, writing for the majority, cited “educational autonomy” and the law school’s “compelling interest in a diverse student body” as sufficient counterweights to the usual prohibition against using race to determine the distribution of rewards by public institutions.

J. Peter Byrne, an authority on academic freedom, acknowledges that this limitation on a state’s ability “to control the admissions policy of its state university” is “surprising” [1]. But he cites as justification “the special values of free scholarship” that must, he claims, be “protected from control by a democratic state or electorate because they involve scholarly, educational, and

scientific judgments that most of us cannot competently make most of the time.”

This was precisely the reasoning rejected by the dissenters in *Grutter*. Chief Justice Rehnquist declined “to apply more lenient review based on the particular setting in which race is being used.” Just because it’s a university rather than a construction company doesn’t mean that practices otherwise unconstitutional should be permitted. Justice Thomas was even more sweeping in his scorn for the notion that the Constitution authorizes or commands a “special” respect for academic practices: the law school may believe “in the benefits of racial discrimination,” but that belief is not “entitled to any sort of deference, grounded in the First Amendment or anywhere else.” Thomas is appalled by “the idea that the First Amendment authorizes a public university to do what would otherwise violate the Equal Protection Clause.”

As Gajda notes, the majority and minority opinions in *Grutter* starkly present the opposing positions on the relationship between the academy and the law: “respect for universities as uniquely public minded against a demand for unbridled public accountability through law.”

“Uniquely public minded” nicely captures the nature of the claim being made while at the same time hinting at its vulnerability. What makes universities more public minded than hospitals or national parks or public radio stations? What exactly is so “unique” about institutions of higher education? These questions are sometimes answered by invoking phrases like “the life of the mind” or “the intellectual life,” which suggest a mysterious realm of value accessible only to an elite few.

Justice Stevens is more helpful (and less mystical) in *Michigan v. Ewing* (1985) when he proffers a distinction between issues that are “genuinely academic” and issues that one might encounter in any workplace. “When judges are asked to review the substance of a genuinely academic decision . . . they should show great respect for the faculty’s professional judgment.” The challenge is to demarcate the area in which professional judgments are to hold sway from the areas in which what goes on in colleges and universities is no different from what goes on elsewhere and is no less subject to legal scrutiny. In the story Gajda tells, the area in which university activities are shielded by the law is increasingly narrowed to the point that it is in danger of vanishing.

A key moment in that story came in 1990, when the Supreme Court decided that the practice of peer review along with its safeguard of confidentiality must

give way to the “compelling interest” of “ferreting out invidious discrimination” (University of Pennsylvania v. EEOC, 1990.) Acknowledging “the importance of avoiding second guessing of legitimate academic decisions,” the court nevertheless declared that the superior authority of the Civil Rights Act of 1964 made it necessary “to expose tenure determinations to the same enforcement procedures applicable to other employment decisions.” At a stroke courts that had previously been so wary of interfering with academic processes now took upon themselves the task of awarding or withholding tenure. In the wake of the University of Pennsylvania decision, Gajda observes, “courts have increasingly appeared ready to set aside their qualms and wade into the murky waters of academic evaluation.”

What followed was a series of cases in which courts reached conclusions that can only be described as incredible, if not bizarre, especially in the context of the long tradition of academic abstention. My favorite (and Gajda’s, too) involves a student in osteopathic medicine who, after failing an important rotation, was dismissed because “he didn’t have the basic understanding that he should have as a fourth-year medical student.” The student sued on the grounds that he had been promised a degree by a phrase in a student handbook that described the program he was enrolled in as “a four-year curriculum leading to the DO degree.”

Anyone with the slightest familiarity with the way universities work would know that “leading to” included the qualification “provided that the requirements for graduating were met” — a medical degree is not equivalent to the certificate you get for having completed six weeks of a summer camp — but the courts were persuaded to a more literal (and perverse) reading and awarded the plaintiff a partial tuition reimbursement. But he wanted more and he got it by arguing that he should receive an amount commensurate with the earnings he would have accumulated had the “promised” degree been conferred. Jurors ordered the medical school to pay him \$4.3 million dollars.

If that doesn’t take your breath away, consider the case of the faculty member who, having been denied tenure because of a documented history of poor teaching, argued, successfully, that the decision was arbitrary and capricious because the faculty handbook specified “classroom visitations” by senior scholars as one of the many mechanisms of evaluation, and he had only been visited a single time by the department chair. Gajda comments: “An apparently multi-layered tenure evaluation, taking into account multiple forms of student feedback, faculty peer review, and the chair’s own classroom

evaluations was deemed legally defective on the basis of an 's' in a single sentence in the faculty handbook."

Or how about the student whose claim that his professor was negligent in his method of handing back graded exams was recognized by a court of appeals as constituting a legitimate cause of action? Or the associate professor who declared himself defamed when an external review committee found that he "does not appear to be meeting the standard for a tenured university professor." It was of course the committee's job to make such judgments and if by doing that job the members of the committee opened themselves up to future litigation, anyone asked to serve in a similar capacity would have to think twice. As Gajda observes, the willingness of courts to entertain this suit "might serve as a major new pathway for judicial scrutiny of tenure standards," a pathway that, if extended far enough, would bring the judicial system into every department meeting, where it often already seems to be.

In a way the academic world is reaping what it has sown. Colleges and universities turned to the courts, Gajda reminds us, "in the gloom of the Cold War when the menace to academic freedom took the stark . . . form of a prosecutorial inquisition" from the outside. (I should note that the external threat has by no means disappeared.) And many academics were pleased to see the courts intervening to overturn long standing practices of discrimination (against Marxists, Jews, blacks, women, gays) that had been shielded by the doctrine of academic abstention. The problem is that once the door to judicial intervention is opened, it can't be closed.

These days "the government's insinuation into the intellectual life of the university" is "more prosaic" than it was in the '50s but it is also, as Gajda documents, more extensive and intrusive and therefore more "worrisome" in part because it is often initiated by those on the inside. It is a nice Foucauldian point — the legalization of the academy may finally be more destructive of its values than any number of direct assaults — and only one of many Gajda makes in a book that delivers everything it promises and more. (No breach of contract here.)

Gajda acknowledges that "there is obviously no way to put the genie of campus litigation back in the bottle." Nor does she wish to. Instead, she says, we should take up the task "of setting a balance point between the value of accountability through the courts and the value of limiting intrusions on the autonomy of academic communities." But by the evidence she herself marshals that balance has already tipped, and the strategies she urges —

educating courts to a better “understanding of the nature of academic judgment” and restoring a sense of community in a way that might make academics less likely to litigate — seem more pious than practical.

When I began teaching in 1962 at the University of California in Berkeley, I asked older colleagues about the decorums and rules of the classroom. In response, I was given the Myron Brightfield rule. Brightfield was then a very senior member of the department. His rule (and I paraphrase) was, *When you close the door, there’s nothing they can do to you.* Those were the days, and they had their injustices as well as their advantages. Now we have justice, or at least the demand for justice, all the time and it may, Gajda suggests, be killing us.

FOOTNOTE

[1]. “Constitutional Academic Freedom After Grutter,” Georgetown Law Faculty Working Papers, 2006.

Integrity needs to return to college athletics MU MENTION PG. 2

By J Karl Miller

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The recent intramural fracas between players from the University of Kansas football and basketball teams can no longer be considered an isolated incident, nor can it be dismissed as a product of raging hormones and male marking of territory. Nor is the ill-advised posting of a Facebook account of the brawl and resulting injury by one of the KU athletes brushed off – we can be reasonably certain the player was chastised for broadcasting his foolishness nationwide.

The obligatory regrets and apologies have been issued by KU's athletics director and representatives of the football and basketball teams, all pledging mutual support for one another and an undying dedication to “Jayhawk” pride. The set-to could be dismissed as a normal, but unappreciated, macho “boys will be boys” atmosphere; however, the frequency of misconduct and violence by college athletes shows no signs of diminishing.

Admittedly, the nefarious actions of athletes will get more ink than will members of the student body at large as a proverbial fall from grace is infinitely more newsworthy. In addition to the almost weekly published travails of star players busted for drugs, rape, burglary, theft or similar transgressions, the small print sections of the sports page carry continuing sagas of lesser athletes arrested, incarcerated or dismissed from school.

Inasmuch as anyone who follows sports would be quick to recognize the culprits, it serves no purpose to rehash the litany of names and misdeeds. Nevertheless, it would be remiss to omit the roles of the college and university administrations in general and the athletics departments in particular in recognizing their roles in recruiting malpractice and lowered educational and individual discipline standards.

Among Big 12 coaches who have beclouded the integrity of university athletics was former University of Oklahoma and Indiana's Kelvin Sampson. Although a charismatic and winning basketball mentor, Sampson was reprimanded for recruiting violations at Oklahoma and fired by Indiana along with sanctioning by the NCAA for repeat violations. Meanwhile, Memphis

University and former coach John Calipari are under fire for allegations of a stand-in taking the SAT for a star player, now in the NBA.

Lest we snicker too loudly over the misfortunes of arch rival Kansas, it behooves us to recall the frailties of similar programs in our recent past. **Before coaches Gary Pinkel and Mike Anderson, Mizzou's football and basketball programs were marked by poor reputes in performance and discipline as seen in departures and police blotters.**

The worst-case scenario involved basketball player Ricky Clemons, a talented but troubled young man. The aftermath of a domestic assault on his girlfriend and allegations of improper activities by assistant coaches raised some red flags as to his eligibility.

Subsequent hiring of coaches whose interest in their players on and off the field and added scrutiny of integrity and moral character in recruiting have done us proud at Mizzou. Minor infractions are handled by counseling and internal discipline while moral turpitude offenders are shown the door.

A large measure of misconduct by college athletes can be avoided by stringent background investigation of prospective recruits. Admittedly, that would shrink the pool of available athletes of potential greatness; however, one who is constantly at odds with accepted social practices while in high school or a consistent "D" or "F" student is hardly destined to color dear old alma mater with distinction on the field of play or in the classroom.

Hand in hand with raising the bar in recruiting athletes, college and university administrators should bite the bullet and return to pre-1972 NCAA standard of freshmen ineligibility for football and basketball. Intercollegiate sports are vital, however, the freshman year should be one of scholarship and attending class. And, as precious few graduate in 4 years, there would be no loss of eligibility – the "red shirt" still applies.

That "one and done" performer who attends class for one semester as a stepping stone to the professional ranks has no place in an institution of higher learning.

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St. Louis Business Journal

Sale at Mizzou

Commerce Bank recently served as financial adviser to the **University of Missouri** in the sale of a \$332 million bond issue, with the proceeds to be used for improvements throughout the four-campus system. The bond issue combined Build America Bonds, authorized by the Congressional Stimulus Act, and traditional tax-exempt bonds to achieve a 30-year fixed-rate cost of financing of 3.84 percent. David Kemper is Commerce chairman, president and CEO.