

2009 Compliance and Ethics Forum

SUMMARY REPORT

Leading Thoughts and Practices

A hand is holding a silver compass. The compass face is white with a black scale around the edge, ranging from 0 to 360 degrees in increments of 20. The word 'INTEGRITY' is written in large, black, serif capital letters across the center of the compass face. The needle is pointing towards the top of the scale, which is the 0-degree mark. The background is a blurred image of a document with some text and lines.

Business Roundtable
Institute for Corporate Ethics



Today's challenging economic environment has greatly impacted many aspects of business. Companies face greater regulatory expectations and their integrity and risk controls have come under significant stress as employees feel intense pressure to deliver results.

In November 2009, Altria Group, Inc. and the Business Roundtable Institute for Corporate Ethics co-hosted a Compliance and Ethics Forum for more than 50 compliance executives and legal professionals. The Forum's theme—*Demonstrating Ethical Leadership During Challenging Economic Times*—was designed to recognize the unprecedented economic environment and focus on how leadership can positively affect an organization's commitment to ethical behavior.

The Forum provided attendees with the latest research and theory regarding the effect today's economy has on compliance and ethics programs through speakers, panels, and engaging dialogue. Participants also benefited from the opportunity to interact with other compliance executives and legal professionals, sharing innovative approaches to building a stronger culture of compliance within their organizations.

This report, *2009 Compliance and Ethics Forum: Leading Thoughts and Practices*, provides a summary of many important discussions from the Forum and identifies several key ideas and leading practices that resulted from it; as well as recommends actions for strengthening corporate ethics programs.

There is great value in extending the conversations begun at the Forum. This report was written to share its discussions, ideas, and actions.

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2009 Compliance and Ethics Forum: Leading Thoughts and Practices

BUSINESS LEADERS ARE CHALLENGED NOW MORE THAN EVER BY THE GLOBAL ECONOMIC CRISIS, which highlights the need for collaboration on issues of compliance and ethics. The Sarbanes–Oxley Act of 2002 emphasized the need for corporate regulation; however, as corporate trust waned and the economic crisis evolved, businesses sought ways to make compliance and regulations work together better. Corporate compliance professionals desired a venue to generate thoughts and ideas and a platform for sharing invaluable leading practices; therefore, an agenda was constructed that incorporated the present state of business with today’s compliance issues.



On November 2 and 3, 2009, the first Compliance and Ethics Forum convened at Altria Corporation’s Richmond campus, bringing together 50 leaders from business and academia to share leading practice and thinking in the area of compliance and ethics. Co-hosted by Altria and the Business Roundtable Institute for Corporate Ethics (the Institute), the meeting’s theme was “Demonstrating Ethical Leadership during Challenging Economic Times.”

By enlisting top-level academics, grounded in the conversation of ethical thinking, and combining their thoughts with insightful leading practices shared by some of the foremost people in business, we sought to provide an enlightening and informative conversation among academics and executives.

In the keynote address opening the conference, Martin J. Barington, Executive Vice President and Chief Compliance and Administrative Officer, Altria Group, Inc., emphasized both the importance of persistence within the ethics and compliance functions, and also the critical need for taking personal ownership and accountability within each business line of a company.

Both points were supported by research study findings presented by Dan Currell, Managing Director of the Corporate Executive Board’s (CEB) Compliance and Ethics Leadership Council. According to a CEB study, compliance risks have escalated with three recent shocks to the management system: the economic crisis; radical business change; and a very active regulatory environment.

Each of these elements and others were engaged in depth by a

panel discussion on *The Economic Climate’s Impact on Corporate Culture and Ethics*, which included Professor Robert F. Bruner, Dean of the Darden School, University of Virginia; Craig Johnson, Executive Vice President, Altria Group, Inc.; Win Swenson, Partner, Compliance Systems Legal Group; and John Castellani, President, Business Roundtable. The panelists emphasized that in order to rebuild public trust, business leaders must focus their efforts on business’ historic strength—solving problems both in business and society, and in giving public concerns more weight in business decisions.

In a thought-provoking and inspiring presentation, Keith Darcy, Executive Director, Ethics and Compliance Officer Association, challenged the group members to engage the current economic crisis as an opportunity to refocus their efforts to improve business and endow their activities with a renewed sense of purpose.

Leading the second day, Professors R. Edward Freeman and Andrew Wicks—both from the University of Virginia’s Darden School of Business, and academic advisors for the Institute—guided the group in case-based exercises to foster peer-to-peer knowledge sharing of ways to improve participants’ organizations. This knowledge sharing was further enhanced by a presentation on Altria’s compliance leadership interactive training program, delivered by Altria Client Services’ Charlie Whitaker, Senior Vice President, Human Resources and Compliance, and Vanessa D’Ambrosia, Director, Compliance & Integrity, ALCS.

The Forum concluded with a group discussion stimulated by an abridged viewing of the award-winning PBS production *In Search of the Good Corporate Citizen*, led by Andrew Wicks and Denise Swenson, Executive Producer, Light On Productions. *In Search of the Good Corporate Citizen*, which is sponsored by Altria, has aired in multiple US markets and been viewed at executive conferences and in MBA classrooms nationwide.

To supplement understanding of these topics, we have published this compliance and ethics summary report, containing highlights from the two-day Forum as well as new content, commentary, and original leading thinking. We hope this report will serve as an ongoing resource to help further the conversation of compliance and ethical leadership both inside your organization and out.

Furthermore, we plan to follow the inaugural Forum with additional meetings to promote the ongoing sharing of leading thinking and practice in ethics among business leaders, compliance executives, and academics. For further information, contact the Business Roundtable Institute for Corporate Ethics, info@corporate-ethics.org, (www.corporate-ethics.org).



The Lost Decade

By Keith T. Darcy, Executive Director, Ethics and Compliance Officer Association

The Enron Era

The tech bubble of the 1990s came to an abrupt end in early 2000. The Dow Jones Industrial Average (DJIA) peaked at 11,750 in January 2000. By October 2002, the DJIA lost 44% of its value closing at 7,286 or 38% below its peak, while the NASDAQ lost 80% of its value, falling to 1,100.¹ The dramatic decline in the equity markets exposed extraordinary accounting scandals, including Enron, Tyco, Adelphia, Rite-Aid, HealthSouth, and WorldCom. In response, Congress passed the Sarbanes-Oxley Act on July 30, 2002, the most comprehensive regulatory reform since the Great Depression.²

Other scandals already in the pipeline came to light shortly thereafter. Arthur Andersen lost its license to practice accounting in June 2002, when the DOJ indicted them for obstruction of justice. As numerous mutual funds were caught in market-timing and late trading practices, nearly \$1 trillion in client assets fled to other funds. Several major insurance brokers were involved in bid-rigging, resulting in substantial penalties and settlement costs. Wall Street firms paid \$1.4 billion to settle conflict-of-interest practices between analysts and bankers, while a number of major pharmaceuticals paid substantial penalties to regulators for egregious off-label marketing practices. In all, it was a time when our trust in leaders and their organizations fell as fast as market valuations.

The Great Recession

Despite the precipitous declines in the equity markets, our economy recovered largely due to extraordinary growth in the real estate sector. Low interest rates, combined with lax credit standards by banks and mortgage lenders (including teaser rates, 100% financing, negative equity mortgages, “liar’s loans,” i.e., no income verification, and; NINJA loans, i.e., no income and no job applications) made financing easy and attractive. Banks were able to package these mortgages into CDOs (collateralized debt obligation bonds), receive triple A ratings, and sell them to investors worldwide. By October 2007, DJIA reached a new intraday high at 14,727.

In early 2007, however, teaser rates began to expire, resulting in rising delinquencies and foreclosures. Investment banking firm Bear Stearns was forced to close two hedge funds largely invested in high risk CDOs. Demand for these investments began drying up quickly, thus forcing banks to write down the value of these bonds. Events continued to deteriorate throughout 2007. By March 2008, Bear Stearns was forced to sell to JPMorgan Chase, with assistance from the Federal Reserve Bank, which assumed \$29 billion in toxic assets.³

September 2008 was the eye of an economic “perfect storm.” In a nanosecond, AIG, Fannie Mae, and Freddie Mac became wards of the state. Lehman Brothers was forced to declare bankruptcy—the largest in history. Merrill Lynch turned itself over to Bank of

America in a hasty merger, and Washington Mutual (WAMU) became the largest bank failure in US history. Credit markets froze worldwide sending panic everywhere. In an emergency meeting with congressional leaders, Treasury Secretary Paulson requested \$700 billion from Congress to purchase troubled assets from banks (TARP). The absence of which, he said, would result in a failure of the global banking system within a week. Federal Reserve Bank Chairman Ben Bernanke agreed that if Congress did not act today, “there might not be an economy on Monday.”⁴

In October 2008, Congress passed the TARP bill and the Treasury Department injected over \$200 billion of fresh capital into banks and other financial institutions. Investment banks, along with American Express and AIG, were declared *bank holding companies* and immediately placed under the supervisory jurisdiction of the Federal Reserve Bank.

In all, it was a time when our trust in leaders and their organizations fell as fast as market valuations.

Not surprisingly, most of these financial institutions reported substantial operating losses from securities impairments and loan write-downs. Over the next several months loan delinquencies and foreclosures rose dramatically. Unemployment escalated. GDP declined (-4.8%) in the second half of 2008, and another (-6.4%) in the first quarter of 2009. General Motors and Chrysler declared bankruptcy, and the DJIA fell to 6,600 in early March 2009.⁵

Warren Buffett once said, “It’s only when the tide goes out that you learn who’s been swimming naked.”⁶ The Great Recession of 2008–2009 exposed those who had been cheating the system; just as the tech bubble uncovered so many during the Enron Era.

- In December 2008, we were stunned by the disclosure that Bernard Madoff, a money manager and former chairman of the National Association of Securities Dealers (NASD), had defrauded over 15,000 investors in a \$65 billion ponzi scheme.
- In January 2009, Ramalinga Raju, CEO of Satyam Corporation, disclosed to his board that he had defrauded this award winning corporation of \$1 billion by siphoning off money to 400 fake companies and 10,000 fictitious employees.
- Then in February 2009, the DOJ charged Robert Allen Stanford with defrauding investors of \$8 billion.

Frauds and ponzi schemes were the most visible symptoms of the corruption. Almost equally galling, however, were slightly less obvious actions:

- Former Merrill Lynch CEO, John Thain, remodeled his office at

a cost of \$1.2 million, while the company was reporting multi-billion-dollar losses.

- Citigroup was forced to cancel delivery of a new \$50 million private jet for executives in January 2009.
- Auto executives flying in private jets to Washington, D.C. begged for bailout money.
- Wall Street paid over \$20 billion in bonuses a year following toxic assets (CDOs) that crippled the global banking system and economy.

Where Do We Go From Here?

We stand at a crossroads today—enraged at the bonuses bankers are receiving yet begging to get back to business as usual ourselves. It is indeed a defining moment.

In 1835, Alexis de Tocqueville wrote a groundbreaking book *Democracy in America*, a social observation of the New World. He saw democracy as an equation that balanced freedom and equality, and he observed an equally healthy concern for the individual as well as for community.⁷ De Tocqueville saw America as a place where the coming together of people for a common purpose would bind citizens to ideals rather than self-interest. Prophetically, however, he warned that “America is great because America is good. If America ever ceases to be good, America will cease to be great.”

Today, the collective causes and consequences of the economic meltdown, combined with the rising tide of scandals, have shattered the very ideals that have made us strong. America has lost its moral leadership in the world. No longer are we the self-proclaimed tutor promoting the ideals of capitalism and democracy. We have given away our most precious asset—our reputation and the sense of integrity it was built upon. We need to get back to basics and restore the sacred trust that has been the very foundation of our market economy and political experiment. #

The Impact of the Economic Climate on Corporate Culture

By John J. Castellani, President, Business Roundtable

The economic crisis has amplified a disconnect between businesses and everyday Americans. Eighty percent of Americans are opposed to the bailouts of Wall Street; 70% are opposed to the automaker bailouts—people are mad; and that anger is what’s driving Americans’ distrust in companies today.

As a result, people are looking to the regulators, including Congress, the SEC, the Treasury Department, and others to provide the relief value for this anger. I believe, however, that there are several important ways in which companies can provide their own mechanisms for addressing the trust gap that has led to such anger.

First, companies must again become the engines of employment. Hiring employees and leading employment growth is one of the single best ways for companies to address the anger associated with the current 10% levels of unemployment.



Second, companies must continually remain diligent in striving for the highest levels of governance, ethics, and compliance programs. Key findings from Business Roundtable’s 2008 corporate governance survey of member company CEOs include the fact that 90% of corporate boards are at least 80% independent, and 75% of boards have adopted some form of majority voting for directors.⁸ Building upon these strong trends in corporate governance practices is essential to restoring trust in corporations.

Companies must also accept their portion of responsibility for the economic crisis. In some cases, leaders are not being required to share in the sacrifice borne by others. Responsibility is a complex aspect of the current crisis, and is exacerbated by the ever increasing short-term perspectives that we all encounter. In an effort to lead positive action on this front, Business Roundtable developed a set of “*Principles for Responding to the Financial Markets Crisis*” that addresses key areas such as:⁹

- Increasing access to liquidity and restoring credit flow;
- Addressing systemic risk and establishing regulators;
- Upholding state corporation laws;
- Ensuring adequate regulation of derivatives and securities;
- Reviewing accounting standards and best practices; and
- Evaluating and streamlining current regulatory institutions.

The average NYSE stock holding period is now less than one year, and the average tenure of a Business Roundtable CEO is approximately five years. These statistics reflect a shorter evaluation period for assessing the ability of companies and leaders to create the long-term economic value to which we all aspire. More balance between risk and reward over an extended time period is needed, and when leaders take their share in the risks and rewards along with their employees, investors, and other financial stakeholders, we all may begin to see a sense of trust in business restored.

Finally, companies must focus on solving problems—in business and in society. Through the centuries, companies have been the source of notable innovation in products and services. This focus needs to return to the forefront as companies are increasingly called upon to provide these same levels of innovation when addressing the pressing needs of society.

These critical problems within our financial systems must be fixed. They are not just government problems or business problems, and they don't just affect Wall Street or Main Street—these problems affect every American directly or indirectly, from stockholders to employees, from loan holders to the unemployed. We must all work together to solve these problems, and the steps outlined here provide my perspective on some ways we can get moving in the right direction to make these changes a reality.

Crises do not only magnify weaknesses, they also clarify underlying strengths. Throughout America's history, the entrepreneurs, engineers, line workers, investors, and leaders who comprise business have been an economic engine enabling millions to freely embark on the pursuit of happiness. Even amidst our current difficulties, America remains the land of opportunity. Our collective challenge is to swing the pendulum of the public's perception of business from risk back to opportunity. This perception can only be moved by the force of an underlying reality—by actions that restore confidence and build trust. #

The Core of the Current Financial Crisis

By Robert F. Bruner, Dean, Darden School of Business

How We Got Here

Periodically we rediscover the importance of taking lessons from history. Today is such a moment: historical precedent can help to make sense of the past three years. To make meaning of crises was one of the reasons that Sean Carr and I wrote a book on the Panic of 1907, an episode in which Wall Street was frozen in fear for three weeks and there were runs on many large financial institutions.¹⁰ Obvious similarities exist with the current financial crisis. The book was published in August 2007, just at the centennial of the panic and the start of the sharp slide into the cataclysm that we all remember.

My co-author and I had no particular foreknowledge of this financial crisis. We were confident, nonetheless, that sooner or later there would be a major crisis because of the regularity with which these panics occur. Despite our confidence in the probable occurrence of a crisis, the reality is that crises differ in very material ways.

The crisis we've just endured is distinguishable from prior crises such as the Panic of 1907, the Great Depression of 1929, or the Enron era scandals for the following reasons:

Speed

The velocity with which money moves across borders is now enabled and accelerated by digital communications. The phrase *hot money* has been used to describe the destabilizing effect of these financial movements. As the financial crises of the 1990s amply illustrated, rapid movements of hot money into and out of the vulnerable emerging economies can be particularly disruptive. But in 2007–2009, it was the *developed* economies that proved vulnerable to the movements of hot money.

Scale

The second important difference would be scale. Arguably, the Great Depression and the panic that occurred in the years 1931–34, were the greatest we've ever endured. But, truly, the recent crisis differed in the sheer global reach; in the destabilization of the very largest institutions; and it overshadowed previous crises in the absolute volume of value destroyed.

Complexity

The third dimension I would highlight is complexity, which matters for at least two reasons. First, growing complexity links institutions and players more intensively: the linkages tend to grow tighter, leaving less room for error. And second, complexity creates relationships that may not be manifest to the casual observer or the academician who is standing outside the financial system. Thus, complexity creates a problem of transparency. Complexity fights transparency and obscures the condition of institutions; the condition of individual players; and the condition of entire markets. Complexity makes it hard for decision makers to know what's going on.

A Way Out

In 1873, Walter Bagehot, famous memorable editor of the *Economist*, offered the following classic advice for central bankers when fighting a panic: lend liberally into markets, against good collateral and at penalty rates of interest. Central bankers have done this over the intervening 126 years. But this time around we have discovered that there's a lot more to the challenge than just creating more liquidity. We have created immense liquidity in the markets here in the United States, in Europe, Asia, and in other countries—yet the crisis has deepened and lengthened. There must be more to the problem; I think the explanation has to do with the very issue of complexity as I described.

An excellent antidote to the problems created by complexity is *transparency*. As Theodore Roosevelt and the Progressives liked to say back in the early 1900s, "Sunlight is the best disinfectant." I think that's true today. Surely in the wake of Enron and other scandals, we've come to realize the value of transparency and the ability to understand what's going on, who's doing what, and who has what at stake. Of course this is not appealing to some sectors of the financial services industry that rely on secrecy and opacity to make money—as in poker, if you reveal your cards to everyone at the table, you lose the advantage of surprise. The winds of change in Washington are blowing toward new regulations aimed at revealing more about the positions, capitalization, and interests of the players in the markets, which should do quite a bit to quell the contagion of panic.

Plainly, there's more we need to understand in the behavior of the linkages and interdependencies among firms and markets. What little we understand about this behavior motivates many government policy recommendations, some of them conflicting with others. We see debates around the concept of "Too Big to Fail" and whether firms should be reduced to a scale at which they cease to threaten the common welfare, should they collapse. Others propose the establishment of "living wills" (plans for orderly dis-

solution in the event of insolvency) for big banks and institutions.

Finally, some proposals would limit banks from activities that might amplify the risk of ruin. Ultimately, much of this crisis revolves around trust: trust among individuals; trust between individuals and the institutions that serve them; and finally, trust among the institutions themselves. Trust speaks to the issue of transparency. What is needed to dig us out and move us forward is the same thing that's succeeded in the past—leadership and innovation by a coalition of individuals who will work tirelessly to make it happen. Collective action empowered by trust is at the core of the resolution of the panic of 1907. In that case, JP Morgan organized a circle of prominent financiers to provide rescue pools of funds for major institutions. He organized syndicates for the rescue of firms and institutions by mobilizing bonds of trust. Our struggles in the current crisis revolve around the difficulty of organizing collective action based on trust. This is true locally, within the United States, and globally. In fact, the best bulwark against future crises entails international treaties that will harmonize financial regulations across the G20 countries. Recent G20 meetings have at their core the issue of collective action, forming a collective with which to respond to crises as they roll out in the future.

Trust is critical. It is a prerequisite for cooperative activity and transactions that create and add value to our lives and to society. #

Weathering the Integrity Recession

By Dan Currell, Managing Director, Corporate Executive Board

The recession brought more than just layoffs and losses; it also increased employee fraud and misconduct.

As the financial crisis unfolded in late 2008, companies were hit by a reduction in credit access, difficulty in financing projects, and a major cutback in demand for their products. By early 2009, executive teams were responding aggressively and in many cases making painful business changes to preserve earnings and set their companies on new footings. Nearly every employee was affected in some way. In the wake of the crisis, regulators became more aggressive—setting new regulatory priorities and enforcing existing rules with enhanced vigor.

In effect, such events represented three distinct shocks to the system: the economic crisis, dramatic changes to the business, and regulators on the warpath. These three shocks have impacted nearly every company in some way, touching millions of employees and their families.

Senior management teams made painful changes in response to the recession, in many cases cutting jobs. In return, employees became cynical about their companies' ethical cultures. Such cynicism has not only impacted ethical culture, but its first and most lasting effect has been widespread employee disengagement. According to Corporate Executive Board survey data that encompassed well over 100,000 employees, the proportion of

highly disengaged employees has increased from one in ten to one in five, causing declines in company-wide productivity of up to 5% (see Figure 1).

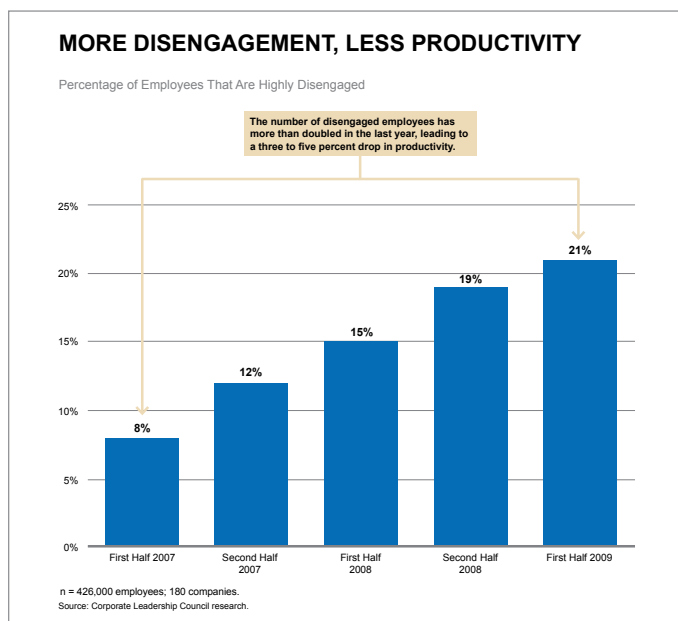


FIGURE 1 More Disengagement, Less Productivity

Because the Compliance and Ethics Leadership Council (the Council) felt such a decline deserved closer analysis, it surveyed over 200,000 employees globally using its Cultural Diagnostic Survey. The survey asked employees whether they observed any misconduct at their company in the prior year; what it was; whether it was reported; as well as a battery of questions about company culture. In recent years, this information has revealed the impact of the recession on corporate misconduct and integrity.

The survey has found that business units with the weakest cultures experience five times as much misconduct as those with the best cultures.

How has the recession impacted corporate integrity?

The recession's impact on ethical culture was immediate. Survey responses in 2008 revealed a 20% increase in observations of misconduct from the first to the second half of the year. They also presented a 5% decline in front-line employee perceptions of senior management's commitment to integrity during 2008. The

The Corporate Executive Board generated a survey with the Compliance and Ethics Leadership Council that identified major themes related to the financial instability¹¹:

- **A Difficult 2008–2009.** Companies and compliance programs endured three major shocks to the system during 2008–2009:
 1. The economic crisis
 2. Radical changes to the business (resulting from the crisis)
 3. The rise of aggressive regulation
- **Disengaged Employees.** The percentage of highly disengaged employees grew dramatically throughout 2008–2009.
- **The Integrity Recession.** In 2008, misconduct rose and integrity fell. In 2009, misconduct levels were stable but falling in some areas; however, serious misconduct (e.g., insider trading) increased substantially.
- **The Reporting Gap.** Employee reporting of misconduct was not strong in 2008–2009; in fact, it has never been strong. The vast majority is never reported to Compliance, and about half of the misconduct usually is never reported at all.
- **The Importance of Managers.** When employees do report misconduct, they are far more likely to report it to their managers than to a hotline or to compliance personnel. Most managers, unfortunately, do not know what to do with the information. Moreover, a manager's relationship with her employees is the key driver of a culture of integrity, but managers are highly inconsistent in this area.

largest movements were between the second and third quarters of 2008, a time when the financial crisis's impact was becoming clear to the public.

In 2009, misconduct leveled out in some categories and dropped in others. As always, specific results depended on the company. On average, the most troubling *types* of misconduct (e.g., insider trading) increased substantially over prior years, as indicated in Figure 2. While there were fewer instances of misconduct in 2009, the total risk created by that misconduct was perhaps greater than ever before because of the *types* of misconduct that were taking place.

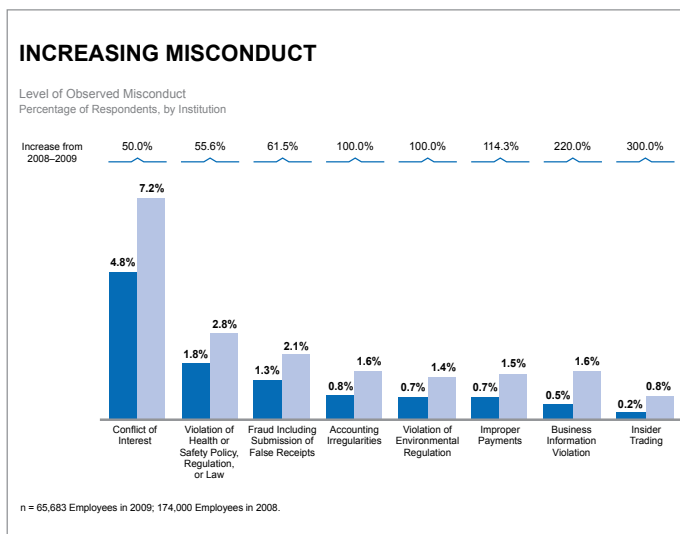


FIGURE 2 Increasing Misconduct

Unfortunately, no company is entirely safe. Different business units within the same company often have dramatically different misconduct levels. Companies with strong ethical cultures *overall* sometimes possess business units with major misconduct prob-

lems. The survey has found that business units with the weakest cultures experience five times as much misconduct as those with the best cultures.

In spite of the recession's impact, one theme remains consistent over the last five years: employees only report about half the misconduct they observe. Of the half that is reported, only a small fraction is reported to compliance departments. Most is reported to mid-level managers within the company. Such reporting would be effective if managers were consistently well-equipped to act appropriately on misconduct-related information. In most cases, they are not—our research shows very inconsistent treatment of information reported to managers (see Figure 3).

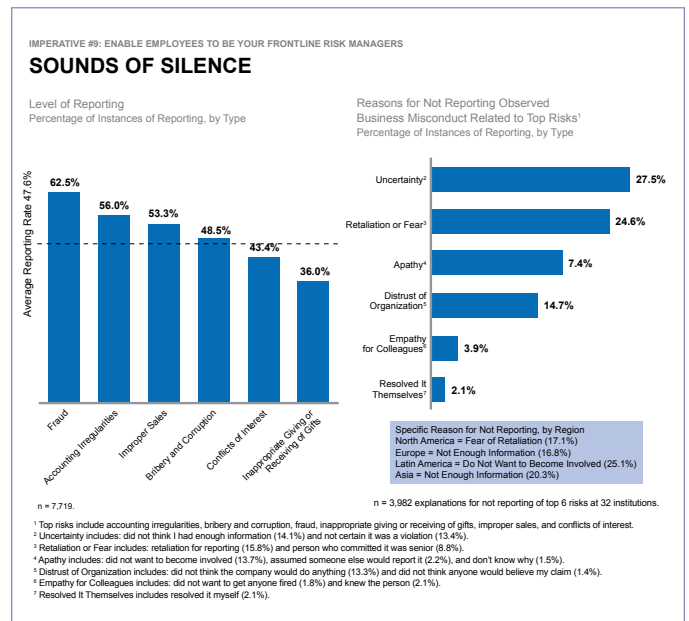


FIGURE 3 Sounds of Silence

How can executives strengthen their culture of integrity?

The Council's research throughout the recession period has shown that the key to corporate integrity and reduced misconduct is a cultural element called *organizational justice*, which exists when employees believe that management will respond appropriately to unethical behavior when it occurs. Organizational justice is ethics *in action*, embodied in a company's *response* to misconduct. Figure 4 illustrates how a downward trend in direct management leadership and tone led to a low corporate integrity score for 2008. When employees believe their company has strong organizational justice, the company's overall integrity scores rise—and misconduct drops.

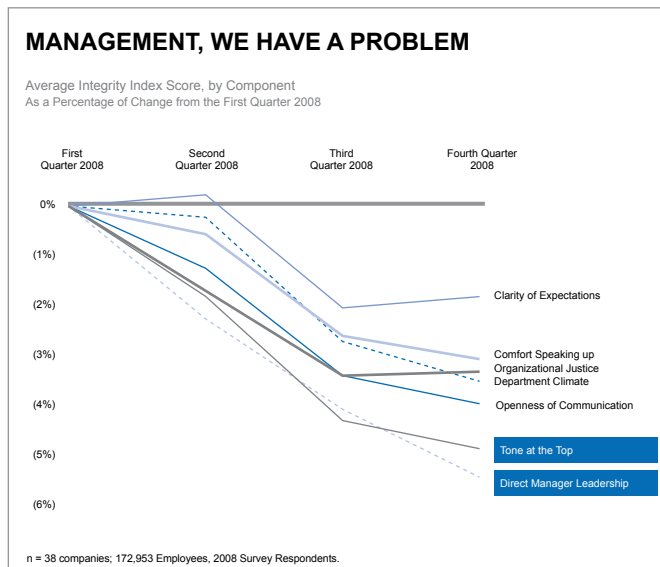


FIGURE 4 Management, We Have a Problem

In order for companies to increase their employees' sense of organizational justice, they should:

- Equip managers to deal decisively and effectively with instances of misconduct or unethical behavior;
- Show the whole employee population, using real instances from the company, how the company deals with misconduct; and
- "Close the loop" with employees who report misconduct, so that employees who report misconduct will know appropriate actions were taken.

In good times, increasing a sense of organizational justice is critical to a healthy and productive company culture. In trying times, it is an absolute necessity. #

Codes of Conduct that Inspire Integrity



By Jason L. Lunday, Principal Consultant, The Ethical Element™

The recent financial crisis, coming on the heels of many business ethics scandals since the 1980s, once again underscores the importance of strong corporate ethics and compliance. And while practically all companies today have some form of a code of conduct, we now know that it takes more than good intentions to commit to

and demonstrate institutional integrity. It also requires good education, systems, monitoring, metrics, reporting to leadership and external stakeholders—and a code can be an important part of this holistic solution.

Given all the attention on corporate ethics and compliance, it is staggering to see the number of companies with a code of conduct—the chief communication tool that conveys a company's commitment to ethics and compliance—at such a nascent stage. This is especially troubling not only because of the central role that a code plays in corporate ethics and compliance, but because the solution is so obvious and easily attainable. Because of the Sarbanes-Oxley Act, practically all public US companies post their code of conduct on their public web site. So, this core ethics and compliance communication is readily available for all to view and learn from. Best practices examples of successful codes are only a mouse-click or two away from anyone with online access.

Still, many codes do not function very effectively. For instance, they may not connect with the company's culture and operations or align with other company frameworks or initiatives. Often, they frighten instead of inspire employees, thus not inviting employees' trust. Codes are apt to treat ethics as "black & white" without any appreciation for the many gray areas in business operations. This may be because such codes are written strictly to respond to regulations (i.e., Sarbanes-Oxley) instead of meeting a company's *real* needs. These codes likely do not address the realities of human behavior or help employees with daily challenges, and they do not meaningfully convey a "tone at the top."

Codes of conduct continue to evolve. Many serve a more strategic purpose compared with those emerging from the 1980s defense procurement scandals. Today's better codes cover more topics and in greater detail; include more tools and resources to help employees with gray issues and difficult challenges; set a more aspirational and affirmative tone; better align with a company's mission, values, and culture; communicate to an increasingly global set of constituents; address a company's extended enterprise; and more effectively present the company's standards to its employees and others—among other qualities. Any company developing a new code or revising an existing one would be wise to understand the attributes of today's better codes of conduct and incorporate this insight into its current efforts. Failing to do so likely means unnecessarily learning lessons many companies have learned already.

To better identify the potential of a code of conduct and how to realize its possibilities, it is important to understand how an effective code functions. At its most basic level, all codes address legal and regulatory standards in order to prevent, detect, and respond to ethics and compliance business risks. But great codes are designed to help a company sustain a reputation of trust, promote employee loyalty and retention, safeguard that customer loyalty and retention, and strengthen relations with other stakeholders (e.g., providers, regulators, and communities, among others). Great codes also reinforce an organization's positive cultural traits and mitigate the negative ones. They support the company's mission, values, and other key objectives.

To meet these strident objectives, great codes serve a multitude of functions. First, they clarify senior leadership's approach toward business, most often articulated in the company's mission and values, but also included in leadership's other priorities. With this as a start, these codes reflect the corporate culture and, in doing so, help to reinforce it. Codes of conduct also clarify the organization's supervisory management structure, such as who is accountable for what ethics and compliance-related duties; what these duties are; and how they are to be exercised. Furthermore, these codes encourage reputation management through standards and procedures that go beyond simply mitigating criminal conduct to identifying and addressing any conduct that could harm a company's reputation for integrity. Codes establish various management controls that help management at all levels to monitor business conduct and intercede where needed. And finally, such codes foster stronger stakeholder relations by focusing employees' appreciation for and establishing their duties and commitments to the organization's many constituents.

Development of a strong code of conduct is predicated on five essential foundations. These foundations provide the underpinnings of not only a great code but also that of a successful ethics and compliance program.

- **Leadership commitment to the program** – Without senior leadership's commitment, any code initiative is unlikely to truly engage employees and demonstrate to them the "tone at the top" that is so critical to any business initiative—especially one focused on 'doing the right thing.'
- **Ethics and compliance processes** – Leadership's commitment means so much more when the organization can point to procedures and processes that support a code's standards and expectations. Otherwise, employees are right to wonder about how leadership expects to achieve adherence to the company's standards and address concerns.
- **Company culture** – A company culture focused around an enduring mission or vision and supported by lasting values sets the best foundation for a proper focus on long-term value and success. These core foundations help a code rise above a narrow focus only on the law to other commitments, promises, and aspirations that the company seeks to achieve.
- **Understanding of risk** – A company's awareness of the ethics and compliance risks that it faces is central to a code of conduct. With hundreds of possible issues that a code could address, a more targeted risk identification and assessment effort helps to focus the code's contents on those issues that are most important to the company's operations that will provide it with a higher chance of success.

- **Coordination with policies** – A company's policies often provide the detail underlying its expectations. Policies also can provide the initial framework for a new code of conduct and serve as additional resources to support a code's standards. Where policies exist, they provide important context for code development or revision efforts.

A successful code of conduct does not end with the written publication. Even the most well-developed written code will not succeed if it is not part of a broader code of conduct program designed to garner employees' awareness, appreciation, understanding, and use. An effective code of conduct program also includes a successful launch of the new or revised code; appropriate employee education to the code, its content, and use; and metrics that track the code's ongoing effectiveness.

14 Elements of a Successful Code of Conduct

An outstanding code of conduct is built around 14 elements:

1. *Exemplifies strong leadership commitment and support of the code;*
2. *Uses a publication format that fits the workforce's characteristics and needs;*
3. *Reflects and reinforces the organization's culture, such as its mission, values, and heritage;*
4. *Addresses how its standards connect with the company's operations;*
5. *Incorporates a concept that unites content and connects to culture and code's purpose;*
6. *Conveys an affirmative, aspirational, and inspirational tone;*
7. *Sets clear expectations of compliance;*
8. *Includes compelling, underlying principles of good conduct;*
9. *Addresses the organization's ethics and compliance risks;*
10. *Coordinates with the company's policies and other guidance tools;*
11. *Utilizes various tools to increase understanding of the standards, such as questions & answers or questions to ask yourself;*
12. *Includes tools to help employees with decision making;*
13. *Uses a clear, simple, and engaging writing style;*
14. *Incorporates a compelling visual style that reinforces its concept and the company's culture.*

The Ethical Element,™ is a professional services firm based in Washington, DC: <http://ethicalelement.com>.



II. Thought Leadership

Ethical Leadership in Times of Crisis

By R. Edward Freeman, Academic Director, Business Roundtable Institute for Corporate Ethics, and Elis and Signe Olsson Professor of Business Administration, Darden School of Business and Lisa Stewart, Program Manager, Business Roundtable Institute for Corporate Ethics

NOTE: This piece is based on the 2006 Business Roundtable Institute for Corporate Ethics Bridge Paper™ "Developing Ethical Leadership" by R. Edward Freeman and Lisa A. Stewart.

An Opportunity to Reflect

Times of crisis and tragic loss bring values into focus. Often people reflect during these moments on purpose and values and on making sense of bigger issues. *If I make it through this crisis, what is next?* When someone experiences the loss of a loved one, for example, she may ask herself: *What should I be doing with my life? What is my higher purpose?* As companies face the current economic crisis, leaders throughout organizations should ask these types of questions about their firms as well.

In the short term, a crisis-oriented focus on values helps to rally people together. As we have seen in reactions to prior humanitarian crises such as Hurricane Katrina or Haiti's earthquake, the focus on values helped to bring out resources for addressing immediate, short-term needs; therefore, questions often lingered about the longer-term concerns. As many companies work to weather the recent severe economic storms, even for companies that refocus themselves around core values and purpose, there is a danger these efforts will not stick during stronger financial times.

Ethical leaders, however, can work to capture the essence of a crisis-generated focus. They can learn how to create these types of value-oriented conversations with employees and then enact them in an everyday business context. Hierarchy won't solve all the issues during a crisis; however, the more conversations that occur about values *before* a crisis hits, the more likely that the people across an organization will truly understand what their firm stands for and act appropriately during times of crisis. Values and organizational culture become real to employees across all levels if they are encouraged to deeply understand, live, and challenge the firm's values: *If we believe X, then why are we doing Y over here?* This conversation needs to happen before, during, and after times of crisis to foster an organizational culture where employees deeply connect with the firm's values and purpose.

Characteristics of Ethical Leaders

Ethical leadership empowers leaders to incorporate and be explicit about their own values and ethics. The following list, written from the perspective of the leader, provides a framework for developing ethical leadership.

Ethical Leaders:

1. Articulate and embody the purpose and values of the organization.

Leaders must tell compelling and morally rich stories. Ethical leaders must also embody and live these stories—a difficult task in today's business environment where everyone lives in a fishbowl, on public display.

2. Focus on organizational success rather than on personal ego.

Ethical leaders understand their place within the larger network of constituents and stakeholders. It is not about the leader as an individual; it is about something bigger—the goals and dreams of the organization. Ethical leaders recognize that value is in the success of the people in the organization.

3. Find the best people and develop them.

Ethical leaders pay special attention to finding and developing the best people because they see it as a moral imperative—helping them to lead better lives that create more value for themselves and for others. Finding the best people involves taking ethics and character into account in the selection process.

4. Create a living conversation about ethics, values, and the creation of value for stakeholders.

In organizations that have a live conversation about ethics and values, people hold each other responsible and accountable for truly living the values. And they expect the leaders of the organization to do the same. Bringing such a conversation to life means that people must have knowledge of alternatives and must choose every day to stay with the organization and its purpose because it is important and inspires them. Making a strong commitment to bringing this conversation to life is essential if one is to lead ethically.

5. Create mechanisms of dissent.

Most people will obey what they perceive to be legitimate authority, even if there is no cost for disobedience. Having an established and explicit way for employees to "push back" if someone thinks a particular market, region, or internal process is out of line leads to better decisions, more engaged employees, and an increased likelihood of avoiding damaging mistakes. In a company that takes its purpose or values seriously, mechanisms of expressing dissent must be implemented to avoid values becoming stale and lifeless.

6. Take a charitable understanding of others' values.

Ethical leaders can understand why different people make different choices and still maintain a strong grasp on what they would do and why. Instead of seeing ethical leadership as preventing people from doing the wrong thing, it should be viewed as enabling people to do the right thing.

7. Make tough calls while being imaginative.

Ethical leaders inevitably make difficult decisions, from reorienting the company's strategy and basic value proposition to personnel issues such as working with employees exiting the organization. The ethical leader consistently unites "doing the right thing" with "doing the right thing for the business." This leadership is required within the ranks of organizations just as often as at the highest CEO and board levels.

8. Know the limits of the values and ethical principles they live.

Ethical leaders have an acute sense of the limits of their values and wield solid reasons to defend their chosen course of action. Limits for certain values may be related to the context or audience in which they are being used. Problems can arise when managers do not understand the limits of certain values. Ethics is no differ-

ent from other aspects of our lives: there is no substitute for good judgment, sound advice, practical sense, or conversations with those affected by our actions.

9. Frame actions in ethical terms.

Ethical leaders take responsibility for using sound moral judgment by taking seriously the rights claims of others; considering the effects of one's actions on others (stakeholders); and understanding how acting or leading in a certain way affects one's character and the character of others. Ethical leaders recognize that their own values may sometimes turn out to be a poor guidepost.

Ethical leadership requires an attitude of humility rather than righteousness: a commitment to one's own principles, and at the same time, openness to learning and having conversations with others who may have a different way of seeing the world. When framing actions in ethical terms, one can be perceived as "righteous;" many people view ethics as universal, inviolable principles that are carved into stone. Principles, values, cultures, and individual differences often conflict. A more workable option is to start with principles and values and then figure out how they can be applied in today's complex global business environment.

Ethics is best viewed as an open conversation about those values and issues that are most important to us and to our business. It is a continual discovery and reaffirmation of our own principles and values and a realization that we can improve through encountering new ideas.

10. Connect the basic value proposition to stakeholder support and societal legitimacy.

Ethical leaders must think in terms of enterprise strategy, not separating "the business" from "the ethics." Linking the basic *raison d'être* of the enterprise with the way that value gets created and society's expectations is a gargantuan task. The ethical leader never hides behind the excuse, "it's just business." Ethical leaders raise the bar, helping people to realize their hopes and dreams, creating value for stakeholders, and doing these tasks with the intensity and importance that "ethics" connotes. Room must be made for mistakes, humor, and for a humanity that is sometimes missing in our current leaders. Ethical leaders are ordinary people who are living their lives as examples of making the world a better place. They speak to us about our identity: what we are and what we can become, how we live and how we can live better.

Becoming an Ethical Leader

What ethical leaders have in common at the core is a profound and deep sense of principles, values, and character. They view their job as making others better, thus enabling others to pursue their hopes and dreams. Ethical leaders are able to get things done in complicated organizations and societies. It is their ethical core that pervades their relationships with followers, the skills and processes they use in leading them, their analysis of the contexts, and their own sense of self.

Becoming an ethical leader requires a commitment to examining one's own behavior and values and the willingness and strength

to accept responsibility for the effects of one's actions on others, as well as on oneself. Ethical leaders must consider and take responsibility for the effects of their actions on customers, suppliers, employees, communities, and other stakeholders. If business were simply concerned with shareholder value, then this acceptance of responsibility would be unnecessary outside of the responsibility to the shareholders.

Developing Ethical Leaders

Organizations can help to develop ethical leaders by engaging in ongoing conversations about these types of questions on a regular basis:

1. What are my most important values and principles?
2. Does my calendar—how I spend my time and attention—reflect these values?
3. What would my subordinates and peers say my values are?
4. What mechanisms and processes have I designed to be sure that the people who work for me can push back against my authority?
5. What could this organization do or ask me to do that would cause me to resign for ethical reasons?
6. What do I want to accomplish with my leadership?
7. What do I want people to say about my leadership when I am gone?
8. Can I go home at the end of the day and tell my children (or a loved one) about my leadership and use my day's work to teach them to be ethical leaders?

Viewing business simultaneously in economic and ethical terms sends the message that ethics is not just an important set of rules that shouldn't be violated, but it is an integral part of what it means to work at an organization in good times and in bad. Leaders can nurture ongoing conversations about how a firm benefits its stakeholders and about understanding an organization's values.

Values, purposes, principles, and an enterprise approach—all deliver a disciplined way to think about how to make the business better and more effective, and they help to develop pride in the organization. Ethical leaders can utilize the crisis-generated focus on values to deepen these connections to values within their own firms. #

Building a Community of Trust



By Brian Moriarty, Associate Director for Communications and Leader of the Public Trust in Business Project, Business Roundtable Institute for Corporate Ethics

Leading Ethics and Compliance Officers recognize that helping to build an ethical culture within their organizations is one of their most critical responsibilities. Having the right organizational rules and controls in place is necessary, but as those engaged in ethics and compliance issues well know, they alone are insufficient unless they are embodied within a vibrant ethical culture and a community of trust.

Building a community of trust may seem like a daunting task, but great progress can be made by leaders who are able to translate academic knowledge about trust into the operations of their organizations.

For example, academic research reveals that, on average, when a person hears an opinion expressed three times she will believe it to be widely held. This is true even when the original sources are not especially credible, for studies indicate that people tend to quickly disassociate opinions from their source.

Experiments by the psychologist Solomon Asch further indicate why this matters to organizations. Asch demonstrated that opinions perceived to be widespread shape how we see the world, even in cases where the incorrectness of these opinions should be obvious. By planting conspirators who would identify two straight lines of unequal lengths as equal, Asch was able to show that many people would ignore the evidence before their own eyes and follow the opinion of the crowd. In Asch's lab, popular opinion defeated the basic rules of geometry a stunning 37% percent of the time.¹²

So what does this mean for an ethics and compliance professional building communities of trust?

First, it highlights the great value of conducting a company-wide cultural audit to see which opinions are believed to be widely held by employees. Do employees trust their manager or team leader? Do they trust the products and services the company produces enough to recommend them to a friend? You won't really know the answers to these important questions unless you ask.

Second, it suggests that having a management team that takes serious action when misconduct is reported is, on its own, unlikely to move the dial on the high rates of under-reporting of observed wrongdoing that characterize most organizations. Before they risk speaking up, employees need to trust that their actions will have an impact. This underscores the need for leadership to communicate about the levying of organizational justice across the enterprise, even if some of the case-specific details must be removed for legal reasons.

Lastly, it indicates there are concrete benefits to building a culture where ideas and opinions can be challenged in a common pursuit of excellence. Leaders who welcome such dialogue and give critics a fair hearing will build trust which, in turn, encourages the risk-taking and knowledge sharing that are the hallmarks of innovative companies built to last.

Developing Ethical Culture - Frameworks for Decision Making

By Andrew C. Wicks, Academic Advisor, Business Roundtable Institute for Corporate Ethics, and Director of the Olsson Center for Applied Ethics, Darden School of Business

Have you ever experienced regret over a business decision made solely on a gut moral intuition? Businesses make decisions every day that affect customers, employees, financiers, the community, and the world in which we live. Business leaders are highly and often solely accountable for decisions made on behalf of their companies; therefore, it is desirable that leaders consult well-considered ethical frameworks in their decision-making process and not just their own intuition before taking action.

Ethical frameworks are important even in organizations where managers frequently engage in conversation with others regarding

ethics, as disagreement about ethics can often occur. Good ethical frameworks can help both parties identify the areas of disagreement.

Well-meaning people frequently disagree about the facts of a case or situation or the values and principles involved. Additionally, they may disagree about the language used to describe a situation or about the way a situation or decision is being contextualized by others. Ethical frameworks help managers understand and analyze the moral dimensions of a given situation by raising important questions and providing a basis for making an informed decision that is in alignment with organizational values.

Traditions of Ethical Theory

Leadership decisions involve weighing the harms and benefits to stakeholders, considering core principles, and asking questions about character. These three facets of leadership decisions cor-

respond to the three main traditions of ethical theory: *Principles*; *Character*; and *Consequences*.¹³ Considered together, they help provide an ethical framework that serves as a check to rash decisions that could cause harm or even lead to disaster.

Principles

Principles focus on the *actions* people take and try to determine whether a given act is ethically acceptable without considering the consequences the action will have. For example, if a manager is deciding whether to lie to someone, the issue is whether lying—as such—is morally wrong, not whether lying to the person will create a desirable or undesirable outcome. In most moral dilemmas, the conflict is between two compelling, morally *good* actions rather than between good and evil.

Leadership decisions involve weighing the harms and benefits to stakeholders, considering core principles, and asking questions about character.

When adhering to principles, managers should try to understand and respect the standards of conduct where they do business. Terms such as *promise keeping*, *non-maleficence* (not harming), *trust*, *beneficence* (providing help or aid to others), *respect for property*, *personal freedom/autonomy*, and *fairness* are often used when discussing standards of conduct. All of these expressions can be used to frame managerial situations in moral terms, isolate particular problems, and discuss whether decisions match the organization's stated principles.

Character

Ethics deals with more than right and wrong actions. It also addresses issues of character—the personal traits and qualities that define an individual. Firms and managers need not only identify key purposes or goals, but also the character qualities or traits (e.g., virtues and vices) they wish to develop to help them achieve those goals. In other words, there are habits, practices, and ways of doing business that will help them achieve their goals over time, such as taking care of their customers or employees or being a trustworthy and reliable partner with suppliers. Some important character traits include decency, (self) *respect*, *fairness*, *trustworthiness*, *integrity*, *compassion/concern for others*, and *prudence*.

Firms must walk-the-talk and find ways of doing business that enable them to embody the traits to which they aspire. Here we should look at much more than the rhetoric of the firm and focus on what we learn from the habits of managers and ways of doing

business that are common within the firm. Maintaining significant levels of *mutual trust*, *respect*, *cooperation*, *teamwork*, and *effective communication* within relationships is important both morally and strategically. It is necessary to practice and make reference to these traits within relationships. Should they fall from view, significant problems may result which can lead to critical organizational problems, such as chronic distrust, disregard for leadership, low morale, abuse, vandalism, sabotage, or theft.

Consequences

Consequences focus on the moral importance of the *purposes* or “ends” one sets and the need to try to achieve them through actions. Do our actions create more good than harm in terms of realizing the goals or purposes set forth (i.e., winning a war; creating profits; helping others)? If so, the actions can be defended in terms of their consequences; if not, then these actions are unjustified on consequential grounds.

Purposes and consequences are central to managers and the core stakeholders connected to the firm. A large part of what managers do is focusing on the hard and often dirty work of getting things done, not just espousing noble intentions. Creating favorable consequences for key stakeholders highlights the moral importance of practicality for managers—finishing projects, creating jobs, and making profits.

Developing Ethical Frameworks

One of the key elements for developing an ethical framework is to ask questions from the three main traditions of ethical theory. This requires having a dialogue—not only with others, but also internally, with one's self. Ethical frameworks tend to work best when they are complementary to—not separate from—other modes of business analysis and decision making, such as finance, accounting, and marketing, and when they correspond with a company's particular culture.

Questions about Principles:

- *What are the basic rules my company has for how it does business?*
- *What are the rules set by society and other stakeholders involved in this case?*
- *What rules do I hold for myself?*
- *What rules or principles are embedded in the conflict of this case?*

Questions about Character:

- *What character traits should the firm or its managers embody in order to be successful over time?*
- *To what extent do particular actions reflect the character traits that the firm desires? Are they the basis for excellent organizational performance over time?*
- *How might reputation be an issue in this case? What is at stake for the firm, and what can be done to protect its reputation?*

Questions about Consequences:

- *Who are the stakeholders? Who is affected by this situation and how? What does each party have at stake?*

- *What priorities would you create among stakeholders or interests? How do those priorities impact your stakeholder groups?*
- *How is each stakeholder harmed or benefited by options that might be considered? What options allow me to create the most value for my stakeholders and avoid trade-offs among them?*

Questions from each of these traditions of ethical theory raise important ideas for decision making. While these three traditions have distinctive characteristics in practice, they often contain critical tensions and interconnections. Leaders who continue to ask questions and maintain ongoing conversations in board meetings, management team meetings, and throughout daily interactions with employees, will find it easier to develop ethical frameworks for decision making that work for both themselves and the firm. Business management takes place in the context of human relationships; therefore, leaders who exercise their goals and core principles for action, while exemplifying the character traits embraced by their company, are much more likely to create organizational excellence. 🌱

When the Government Knocks – The Role of Corporate Compliance/Ethics Programs in Enforcement

By Win Swenson
Partner, Compliance Systems Legal Group

Over the course of many years working as an adviser on corporate compliance/ethics—and formerly in my role with the US Sentencing Commission where, as deputy general counsel, I led the development of the organizational sentencing guidelines—I have seen close-up the role that compliance/ethics (“C&E”) programs play when companies get “in trouble.” Here is what I have learned from these experiences.

Do C&E Programs Matter?

As most companies are now aware, the Federal Sentencing Guidelines for Organizations promise a significant reduction in penalties for a company convicted of a crime *if it has a qualifying C&E program*.¹⁴ The US Department of Justice (DOJ) also says prosecutors should weigh a company’s C&E program before making a decision on whether to charge that company criminally. Various agencies from Health and Human Services (through the Office of Inspector General Guidance Practices¹⁵), to the Department of Commerce (see its guidance on the formation of an Export Management Compliance Program¹⁶), say that C&E programs are important.

But are compliance/ethics programs *actually* important when, as some of these government pronouncements explicitly say and others imply, a company has a compliance problem? Does the government really give credit for programs or is all of this just talk?

Different Governmental Personnel, Different Approaches

It is important to keep in mind that the government is not THE GOVERNMENT—by which I mean that enforcement is not conducted by a monolithic entity. Enforcement approaches vary from agency to agency. Even within the Justice Department, its various divisions take differing approaches—some are more pro-C&E programs than others.

Within the Justice Department, the Environment Division is perhaps most specific that having a good C&E program can mean the difference between an administrative and a criminal case. The Antitrust Division, at the other end of the spectrum, says that a C&E program will not be considered in resolving a case; voluntary disclosure—being the first one in the door to divulge the conspiracy—is all that matters. The Criminal Division plays it in the middle, saying prosecutors should *consider* before making a charging decision what kind of C&E program the company had in place at the time of the offense.

Publicly Available Evidence Is Limited, but C&E Programs Can Play Important Roles

The Conference Board recently produced a study, *Ethics and Compliance Enforcement Decisions—the Information Gap*,¹⁷ that sheds light on what prosecutors actually do. The study found that if the government is taking pre-offense C&E programs into account as promised by the Criminal Division—that is, if it is evaluating the C&E program a company had in place at the time of the offense before making a charging decision—this activity is opaque at best. There are few cases or even press releases that evidence the Justice Department’s crediting C&E programs.

Although public information is spotty at best, my personal experience is that C&E programs do matter to the government but are more likely to shape the contours of a settlement than prevent criminal charges entirely (although I am aware of a few non-public cases where this has happened). Given the paucity of public information, however, it would be helpful if the Justice Department *said* more about what it does in considering C&E programs.

The most obvious example of a case where a US prosecutor took a C&E program into account at the pre-charging stage involved Mellon Bank. In 2004, I was hired by the US Attorney for Pittsburgh to evaluate Mellon’s C&E program expressly for this purpose. Ultimately, Mellon was not criminally charged, and the deferred prosecution agreement (DPA) that was agreed to required specific, compliance program-related remedial actions that were based on our review.

Most of my experience in this area comes from being retained as a monitor or “independent consultant” (the terms can vary, agreement to agreement) pursuant to a DPA or consent agreement that the company has entered into with the government. In these cases, I evaluate the company’s C&E program (or a portion of it—e.g., FCPA compliance) and report back to the government on where things stand. What I have seen in these kinds of cases is:

- The quality of the company’s C&E program can significantly influence the agreement’s terms in the first place; and

- Even if a company ends up with a DPA and a monitor, how difficult the experience of having a monitor is for the company will depend hugely on how good (or bad) its C&E program is when the third-party monitor/consultant begins work.

The C&E Program Can Shape Settlement Terms

With respect to the first point—that the nature of the existing C&E program can influence the terms of the settlement—one can see how this works from some publicly available agreements. For example, in the GE/Invision case, GE was merely required to extend its *already existing* FCPA program to its newly acquired business, Invision.¹⁸ Similarly, Costco’s 2009 settlement on options backdating reflects an understanding of some of the details of its C&E program, as does the Wabtec settlement in 2008, with respect to that company’s C&E program.

Moreover, Dennis McInerney, the Chief of the Fraud Section at DOJ’s Criminal Division—the section responsible for the Foreign Corrupt Practices Act and other corporate crime enforcement—confirmed this principle with respect to the appointment of monitors under settlements with his section. At a May 24, 2010, conference McInerney said, “People shouldn’t assume that if you have a DPA or an NPA that you automatically get a monitor. I’d say about 50 percent of our deferred prosecution agreements in the Fraud Section required a monitor being appointed, and about 30 percent of the non-prosecution agreements involved a monitor.” Why? He explained, “If you have already established an excellent compliance program, then it will be less likely that we’ll install a compliance monitor, which can come at some cost to the company.”¹⁹

The Department of Justice’s charging policy, in which it says pre-offense C&E programs should be considered, states that efforts to strengthen the program *following* the discovery of the misconduct should also be considered, and I have seen this happen. For example, in an FCPA matter in which I currently serve as an “independent consultant” under an agreement with the SEC, the company was able to keep the matter a non-criminal one, and under the jurisdiction of the SEC rather than the DOJ, in part because it made a strong initial showing that it had revamped its FCPA compliance program to be best in class since the events underpinning the offense first became known.

How the Monitor Views the Existing C&E Programs Will Determine How Difficult the Monitorship Experience Is for the Company

Even companies with strong C&E programs may end up with a DPA or consent agreement requiring a third-party review, but the experience that follows can be night and day depending on what kind of shape the C&E program is in once the monitor walks through the door. In one case with which I am familiar, the monitor saw that the C&E program had not penetrated the workforce at all. It was, to him, window dressing, and it led to a nightmare for senior management, occupying huge amounts of their time, and ultimately to an extension of the monitorship.

In other cases in which I have been involved, the C&E program is in excellent shape, and the third-party review becomes a very positive experience whereby the company’s good work is documented for a potentially skeptical prosecutor or regulator, and the only recommendations made are ways to further refine and sometimes even streamline an already strong effort.

What Does the Government Look For?

As noted, the government is not a monolith—different agencies, divisions within the Department of Justice, and—here let us add—individual prosecutors, do not operate in lockstep. They have their own approaches to C&E programs. As a result, what the government “looks for” in a C&E program can vary. A good rule of thumb in presenting the company’s C&E program to the government when an issue has come about is to follow the framework in the Federal Sentencing Guidelines²⁰ (FSG)—it is a familiar framework for many agencies. It is adopted by reference in the DOJ charging policy and does a good job of capturing a holistic C&E approach.

This approach obviously needs to be modified if the company is in front of an agency that has its own model (for example the Commerce Department’s standards for export control), though the models followed by a number of agencies build on the FSG; therefore, adapting is not hard.

Attention also needs to focus on the nature of the misconduct in question. If the issue is Medicare billing, compliance controls to ensure accurate billing are obviously relevant; if it is the Foreign Corrupt Practices Act, the government will want to see that your company has best practice controls relating to FCPA.

Design, Implementation, and Impact Reviews

At this point, we should consider how the government learns about the C&E program. There are three levels of possible evaluation—*design*, *implementation* and *impact* (or effectiveness). With a design review, the government looks at a description of how the program works and judges its comprehensiveness but doesn’t get into whether the company is actually implementing this design (implementation analysis), let alone whether any of it is really working (impact analysis).

Many C&E program presentations to the government seem to stay at this design-only level—they consist of the company’s description of how the program works. At a pre-settlement stage, this may be all that the government is willing to get into. But if your company has evidence that helps show that the program is actually being implemented and, much more importantly, is having an impact, this can significantly advance your cause because prosecutors are professionally inclined to be skeptical, and evidence along these lines can counter that expectable skepticism. Benchmarking survey data, audit results bearing on the topic at issue, or a C&E program evaluation by a credible third-party can be very useful. Counsel may be reluctant to share this kind of information, however, especially if it is protected under attorney/client privilege; but it can be influential because it goes beyond requiring the prosecutor to rely on the company’s mere say-so as to the effectiveness of its C&E program.

In the Mellon case, discussed above, I was hired to analyze the company's C&E program to help the US Attorney decide whether to charge the company criminally for what was certainly criminal misconduct by some of its employees. We did this review through interviews and document reviews. It allowed us to get a good appreciation of the program's design, some feel for how well the design was being implemented, and perhaps only an impression of actual effectiveness (an impression created inferentially from the information we gleaned on design and implementation).

The Mellon case notwithstanding, most pre-settlement evaluations to date have not involved a third-party review—although perhaps this will change in the future. Most likely, the government's understanding of your program at the pre-settlement stage will derive from your company's presentation of it.

A company presentation like this can persuade the government to drop the case if the matter is not deemed very serious or is a bit obscure. For example, in one case with which I am familiar, a company's presentation of its C&E program led the prosecutor to drop potential charges over a minor error under the Endangered Species Act. If the charges are more serious, the C&E program usually will only shape the terms of eventual settlement, not eliminate the issue altogether. Still, this can be very important with respect to the settlement's impact on the company—it can mean the difference between having a true “monitor” or a less invasive “independent consultant.” And it can mean the difference between a wide-open mandate for the third-party evaluator and a much narrower one.

What Do Monitors Do?

If you do end up with a settlement and a third-party evaluator, the obvious next question is, how does the monitor evaluate your program?

Because different agencies and prosecutors have differing approaches, the terms of settlements can vary too. In many health-care related agreements, a series of audits will be required. In some cases—and this can sometimes be negotiated for—the terms will be narrow and the evaluation will be almost a check the box exercise. In one case where I served as an independent third-party under an agreement with the Agency for International Development, the task was split. Part One was a check the box undertaking to verify that certain policies had been put in place. Part Two was much more open-ended. We had to evaluate the adequacy and effectiveness of the company's overall C&E program. In short, this latter part involved design, implementation, and impact analysis.

And in my experience—doing reviews under agreements with DOJ, the SEC, the US Air Force and others—the likelihood that the review will involve some testing of whether the program is *actually working* (impact analysis) is fairly high.

I use a variety of techniques to do this kind of evaluation, including document reviews, audits of files, scheduled and unscheduled confidential interviews (the latter occur when we are on site in a business location and we simply pick people out of an organiza-

tional chart to interview, based on job function without advance warning) and confidential focus groups.

Being Prepared—What If the Government Does Knock on Your Door?

How can you be ready if your company finds itself dealing with the government across the table over a non-compliance issue?

Let's start with what they say. Prosecutors and regulators routinely say at conferences and even in the Department of Justice corporate charging policy (in the US Attorneys Manual²¹) that they will credit only “real” programs—not “paper ones.” As my colleague Joe Murphy has said, though, it can take a lot of paper to prove you don't have a paper program.

So, one initial word of advice is, think ahead about how you would evidence your C&E program if you ever needed to. You can assume that the “presentation” of the program during negotiations would most likely occur through documents and a few “witnesses” (the use of witnesses will be strongly influenced by the advice of your company's own counsel). I would focus preparedness in these three areas:

- The basic details of the program. Following the federal sentencing guidelines framework as a point of reference, how does your program work?
- Why is your program “best practice”? Even if the government's review of your program stays at the “design” only stage, they still will want to be convinced that your program compares well with what other leading companies are doing. A company I recently worked for as a third-party reviewer under a consent decree involving FCPA issues found that at the pre-settlement stage prosecutors were well aware of the kind of FCPA practices other companies had.
- Why do you think it is working? To the extent your lawyers will let you show some of the potentially sensitive information that bears witness to your program's effectiveness (e.g., audits, survey results, a report by a credible third-party), this can be particularly persuasive because it helps demonstrate your assertions about the program.

Keep in mind that two time periods are relevant. First, what was in place at the *time of the offense*? Second, what have you done to improve the program *since*? The first piece can be trickier to prove because negotiations with the government sometimes occur years after the events in question took place, but both time periods may be important to the government—both are potentially important in the US Attorneys Manual, which contains the DOJ charging policy (the Federal Sentencing Guidelines also say both time periods are relevant—the first time period relates to potential fines and the second to the need for imposing corporate “probation.”)

Another thing prosecutors routinely say is that they expect tough discipline of wrongdoers. This is not surprising. Prosecutors are, after all, people who work professionally to hold others accountable through punishment. For them, it is intuitive that the program is “real” if it is enforced. The US Attorneys Manual comments extensively on the importance of discipline for C&E

infractions. A paragraph discusses this in §9-28.900 (Restitution and Remediation) of the Manual²² at some length but it comes up elsewhere, too. I wouldn't necessarily change your company's approach to discipline because of this, but I certainly would be prepared to show how you discipline violators, especially those involved in the instant offense. (For better or worse, prosecutors are more apt to be swayed by toughness toward code of conduct violations than by compassion.)

Another key issue for many prosecutors is the hierarchical status and positioning of the chief ethics and compliance officer (CECO). It is hard to ignore the fact that many settlements require that the CECO report at the highest level of the company—often to the board. The same thinking that drives these settlement terms also applies to how the government will look at your existing program. There may be little that you as an incumbent CECO can do about this, but the operative equation is this: Higher up = Better. If you are in healthcare, the HHS OIG Guidances indicate that many, if not most, government prosecutors disfavor having the CECO report to the general counsel.

Despite a good showing on the C&E program at the negotiation stage, a deferred prosecution agreement of some kind is likely if the case involves serious misconduct. The terms can be positively influenced by a strong C&E program, but a DPA may result nonetheless, and this frequently means some kind of third-party review. As discussed, third-party reviews vary—some are check the box and some involve technical auditing.

But many entail the kind of *implementation* and *impact* review of the C&E program (or relevant aspect of it—e.g., FCPA) described above. If this is your lot, here is what you should know.

- This is the moment when the degree to which your program has really taken hold—has permeated your company's culture—will truly matter. A third-party reviewer—if he or she is following the intent of the US Attorneys Manual and the FSG—virtually will be required to get to the bottom of this question.
- During the process, be helpful but not pushy; explain what you think, but don't be defensive. If the evaluator is going to make recommendations, they will be “softer” and the process easier if the evaluator believes that the company is only too eager to improve.

Evaluate Your C&E Program

Understanding how C&E programs come into play when companies get into “trouble” makes a strong argument for formally evaluating one's C&E program NOW—before trouble ever hits. The sentencing guidelines already require program evaluation for creditworthy programs—which is another reason to do it—but the benefits go beyond simply meeting the guidelines.

A pre-offense evaluation provides evidence, if it is ever needed, to prove at the settlement stage that the program is not just paper, but that it really works. A pre-offense evaluation also helps a company avoid unhappy surprises if a monitor is appointed and required to test the C&E program. When I have a monitor-type

WHAT TO KNOW BEFORE THE GOVERNMENT KNOCKS: The Role of Compliance and Ethics Programs

Ten Key Observations

1. Government pronouncements say C&E programs matter to enforcement outcomes, but little public data is available and non-public experience shows actual practice is more complex than these pronouncements may suggest.
2. Enforcement approaches to C&E programs vary among—and even within—government agencies.
3. C&E programs do matter to the government but are more likely to influence the details of a settlement than prevent criminal charges entirely; although sometimes—especially in less serious cases—charges can be avoided with a persuasive showing.
4. The company's C&E program, both as it existed at the time of the offense and how it has been strengthened since the offense, may influence the severity of the DPA's terms.
5. Even a company with a strong C&E program may end up with a DPA and monitor, but the quality of the C&E program can affect how onerous the monitoring experience is for the company.
6. The type of information the government may consider in evaluating C&E programs can vary.
7. Three kinds of C&E program evaluation potentially can be relevant in an enforcement context: Design, Implementation, and Impact.
8. Prosecutors often consider discipline for code of conduct violations and the positioning of the Chief Ethics and Compliance Officer as indicators of the C&E program's validity.
9. Consider in advance how to demonstrate the efficacy of your company's C&E program.
10. A company that has not previously evaluated its C&E program can be susceptible to unpleasant surprises if a monitor is appointed to do just that.

role, I am hoping that what I find will help get the company out of the difficulty that my being there represents; I am hoping for positive findings. But when a monitor finds that mid-level managers don't support the C&E program; that the training is, in fact, not well received; that there is a star culture in which some people seem to get a pass for not playing by the rules; and so on; the company is the one that bears the burden. Knowing how the C&E program is truly functioning—before trouble ever strikes—helps avoid unexpected findings like these.

A final word to the wise. Recently, organizations (some that sound as though they are non-profits, but aren't) have been conferring highly publicized corporate “ethics awards” to dozens of companies without any actual testing of the recipient companies' C&E programs.²³ Unfortunately, I have seen firsthand that winning such an award can create false comfort within management that all is well. An award is not a substitute for actual program testing. I would not view such an award as evidence of anything were I operating as a monitor, and I don't recommend waiting till the government is at the door to learn that the basis for your company's award was, in fact, paper thin. #

Issues on the Horizon



By Jacqueline E. Brevard, Esq.,
Vice President, Chief Ethics Officer
Merck & Co., Inc.; Office of Ethics

What is one specific issue that Corporate Ethics and Compliance Officers should be concerned about over the next few years?

In the Pharmaceutical Industry, we already know one of the biggest issues that Corporate Ethics and Compliance Officers (CECOs) will be facing. Lanny Breuer, Esq., Head of the

Criminal Division at the US Department of Justice (DOJ), laid out a large part of our agenda during his speech at the November 2009 Pharmaceutical Regulatory and Compliance Congress in Washington. “We will be intensely focused on rooting out foreign bribery in your industry,” he remarked. “That will mean investigation and, if warranted, prosecution of corporations to be sure, but also investigation and prosecution of senior executives.”²⁴ In fact, companies have already seen this focus in action. The number of charges, the size of the fines, and the number of DOJ prosecutions have increased, as has the level of determination and zeal for criminal prosecutions in this arena.

The Foreign Corrupt Practices Act (FCPA) sections on bribery and corruption provide a large area of exposure for US companies that operate internationally. Not that US companies engage in more of this type of criminal behavior, but because these issues are far more complex than they appear. CECOs must ask: how might these issues play out within my own organization? Are our employees across the globe educated enough to understand how their conduct can injure the company?

In many countries outside of the US, health care is centrally controlled by the government. In many of these countries, in order to be an approved and reimbursable treatment option, pharmaceutical products must be listed on the government’s formulary, or approved list of products. Often a government official, such as the ministry of health, will make the determination of which product out of several choices in a particular category will be listed on the formulary. Doing business with these government officials in charge of these programs becomes a public—and no longer a private—matter. Therefore, these activities are regulated under the FCPA.

Bribery doesn’t always look like handing someone “a big wad of cash.” According to Breuer, “the types of corrupt payments that violate the FCPA because they are given to obtain or retain business in other countries are not any different than the items of value that would violate the Anti-Kickback Statute if given within the United States—cash, gifts, charitable donations, travel, meals, entertainment, grants, speaking fees, honoraria, and consultant arrangements, to name a few.”²⁵

Consider the following hypothetical situation: You work for a US pharmaceutical company doing business in a foreign country, and the ministry of health is currently considering vaccines for protecting their population against the H1N1 virus. Your company produces this particular vaccine, and you want to get connected to the person heading this program to inform them about your product. Well, how do you go about doing that; how do you get to know that person? What might seem to some like typical ways of conducting business may in fact be illegal. If you invite the ministry of health official to lunch or to a free round of golf, and if you have a product you want to have listed on the government formulary, you have now likely violated the FCPA. “The FCPA prohibits paying, offering, promising to pay (or authorizing to pay or offer) money or anything of value.” So, how then? How can you convince the ministry of health official that your product is the best choice for the formulary? You can present information that it has the best efficacy, is the most cost effective, can be produced quickly, and so forth.

Furthermore, these issues extend even beyond your company’s own employees. Your company’s third party suppliers need to also be selected with great care, and you need to be very careful about who you enter into these types of relationships with.

These issues are delicate, complex, and sophisticated. The answers are not obvious.

Other Key Issues

This is not an “issue on the horizon” because everyone should have figured this one out by now, but it is still critically important nonetheless. Companies need to look at their own corporate culture. There is both a formal culture and an informal culture within an organization. In the formal culture, companies can say all the right things and have all the appropriate infrastructures in place. The informal culture is what actually happens within the company, how people behave, how they are rewarded, which rules are followed and which are not. Look at whistleblowers and the huge amounts of money they receive for going to the government with inside information about corporate misconduct. CECOs are in the business of striving to make the culture in the organization encouraging of those same whistleblowers to report to us instead. Companies on the leading edge are those who make a variety of resources available to employees, and provide a confidential and safe environment for employees to raise issues and concerns, and to seek guidance.

We need to nurture a culture of ethics, not just a culture of compliance. Compliance, alone, is not going to get you there. We need for people in our companies not to just do what is legal, but to do what is right. This all starts with an ethical culture.



III. Practice Leadership

A Television Producer's Insights about Business Ethics

By Denny Swenson, Executive Producer, "In Search of the Good Corporate Citizen"—airing on public television stations across the country.

Companies Need to Rebuild the Trust That Has Been Lost

While setting up the studio shoot and booking talent and remote interviews for "In Search of the Good Corporate Citizen," something completely unanticipated was unfolding around us—the economy was in freefall, and companies were being faced with the universal challenge of rebuilding trust that had been lost.

Trust had been hurt on many fronts: the internal trust between leadership, middle management, and employees that binds a single company together; shareholder trust and the trust of community stakeholders, whose commitment is necessary for a company to operate; and finally, the trust of the marketplace that creates a willingness for companies and customers to do business with one another. All at once the webs of trust that had been holding companies and the economy together seemed to evaporate.

In the events leading up to the mortgage-lending crisis, the "everyone is doing it" notion had been spreading throughout companies—and indeed an entire industry—almost like a cancer. Think about all the loans and mortgages that were pitched to people who couldn't afford them and all the people in various companies who processed and approved those loans. Finally, consider the people involved in bundling those bad loans and passing them along to other institutions without honestly seeming to care whether the resulting financial instruments were sound.

It makes me scratch my head and wonder: *How did all these people on the frontlines of this issue sleep at night? Why didn't they speak up, or if they did, how come they weren't heard?* Most of the companies these people worked for had codes of conduct and other policies that would not condone the kind of activities and values that underpinned the problem. Most of these companies had hotlines people could use to flag these sorts of issues.

Against this backdrop, we, as television producers, had been faced with an incredible opportunity, and by walking onto this new landscape, we could ask a central question: *How do companies rebuild the trust that has been lost in light of what has happened?*

"In Search of the Good Corporate Citizen's" producers wanted to find someone who could talk about the mortgage-lending crisis from the frontline perspective—ideally a whistleblower—someone who had tried to raise concerns and could describe the kind of conversations and thinking that was going on at the time.

Unfortunately, most credible whistleblowers who are dismissed

from a company get a package on the way out and sign an agreement that doesn't allow them to talk about their company experiences.

Luckily, we found Paul Moore, a former risk manager at HBOS in London. He saw the risks and sounded the alarm with his senior management and the board. (See a video clip of Moore's story: http://www.lightonpro.com/hitting_the_numbers.)

From talking with other whistleblowers and their attorneys, we found Moore's story to be a typical one: his superiors were receiving positive information from the analysts, the Street, and the investors, so when Moore came to the table with negative information, he was looked upon as a nuisance.

The particularly troubling part of Moore's story is that he was the bank's *risk manager*, and as he explained, it was his job to raise these issues. "It was a formal part of my accountability to identify actual or potential breaches of law or regulation."

In response to a question about why others didn't come forward, Moore said, "They were like lemmings going behind the pied pipers of the chief executives who were being paid to take them all over the end of the cliff. A herd instinct creates such an energy that virtually nobody is going to have the courage to say stop because they will just get trampled."

I wish I could say this story had a happier ending. Paul Moore ended up getting fired after warning the bank about unethical selling that would lead HBOS, like scores of other financial institutions, into financial crisis. It turned out he was right, and HBOS ended

up collapsing (much like Lehman Brothers) and was acquired by Lloyds Bank.

If we want to rebuild lost trust, we need to ask ourselves: "Would someone like Paul Moore be heard at my company?" Why or why not? What qualities of culture and leadership would enable Moore's concerns to be heard? Leaders found fostering such qualities should be identified and rewarded.

Ben Heineman, former general counsel for GE, may have stated it best when he told "In Search of the Good Corporate Citizen":

I believe we need to change the definition of what a CEO does and we have to start there. The CEO has...to fuse performance with integrity. That is not the way the CEO is defined now; we have to redefine it, change the training, change the compensation, and change the board oversight. That is a tall order. That is a major change in the way we govern corporations today. So we have a cause for distrust of what has happened in the last few years. The only cause for optimism is if people buy into a different vision.

For more information on the show: <http://www.lightonpro.com/index.html>. To receive updates on broadcast scheduling in your area, become a fan of "In Search of the Good Corporate Citizen" on Facebook. #



Understanding and Respecting Workplace Confidentiality



By Kimberly Strong, Senior Vice President, Chief Ethics & Compliance Officer; AOL Inc.

Understanding and Respecting Workplace Confidentiality

A growing issue for Corporate Ethics and Compliance Officers (CECOs) is figuring out how to manage their employees' understanding and respect for confidentiality in the workplace. This is an increasing chal-

lenge due to the ever-growing use of social media. Over the past several years, the rapid rise of social media tools and usage has increased significantly. Social norms and clear understanding of workplace conduct with regard to managing the concept of confidentiality have lagged these technological innovations. This gap creates challenges for CECOs as they consider how it may impact corporate brand and intellectual property or give rise to allegations of contributing to insider trading.

Employees entering the workforce today have grown up in an open world, full of constant communication about anything and everything involving all aspects of their daily lives. Corporate Ethics and Compliance Officers have the challenge of communicating expectations of confidentiality to an employee audience that is used to immediately sharing and distributing information without filters. The use of social media is also global, and global cultural differences add to the complexity of the issue.

Given the number of employees and the fact they are human beings who accidentally make mistakes and occasionally act with bad intentions, it is to be expected that there are employees somewhere doing things employers don't want them to do. By developing a strong ethical culture within an organization, hopefully, there will be another employee nearby who will notice poor decision-making or intentional misconduct and contact a manager or the CECO's office to share that concern.

Unfortunately, many recent examples of unintended harm, caused by the use of various forms of social media, exist today. The issue is not isolated to high-tech companies; but rather, it may affect any company in any industry. In April 2009, for example, two Domino's Pizza employees using poor judgment created a prank video of themselves inappropriately altering food products and then posted the video on YouTube.²⁶ Domino's has since publicly apologized and fired the offending employees; nevertheless, some damage to its corporate reputation has been sustained. In another instance, both Cisco Systems and an employee blogger were sued in a defamation case based on a comment the employee posted on a blog.²⁷ Recently, The NFL attempted to protect its television revenue by imposing restrictions on its players', coaches', and fans' use of social media when commenting on live games.²⁸ In another instance, with potentially life-threatening consequences, a soldier in Israel was court-martialed for using social media to discuss a planned military maneuver.²⁹

One thing is certain—communication mediums will continue to evolve at a rate that outpaces corporate policies. Some companies have developed employee policies for each instance of social media only to find that another new technology has evolved and is being widely adopted.

Our efforts as CECOs need to focus not solely on rules and compliance measures, but on figuring out how to alter the informal culture that it is okay to share all information with everyone. We need to ensure that managers are reinforcing the cultural expectation of confidentiality as well as developing communications and training on the specific policies. Managers have tremendous influence on employee conduct, as do co-workers.

Corporate Ethics and Compliance Officers have the challenge of communicating expectations of confidentiality to an employee audience that is used to immediately sharing and distributing information without filters.

We must tap into the internal corporate social network to have conversations with employees and set expectations about professional etiquette with regard to confidentiality and identifying the appropriate personal and professional boundaries. It is essential that employees understand the consequences to the company when these boundaries are not respected. We must help employees think about how their individual actions within various social media spaces—even when they have no ill intent—can potentially cause great harm to the company and possibly to their own careers.

The Japanese proverb—*the reputation of a thousand years may be determined by the conduct of one hour*³⁰—has phenomenal meaning in the world of social media when a video, audio recording, photo, or 140-character comment can travel the world virally in less time than it takes to create it.

Altria's Compliance Leadership Training Program

By Vanessa D'Ambrosia, Director, Compliance & Integrity, ALCS

What shortcuts are okay to help get a product to the market faster? Is it ever okay? These are some of the many questions Altria Group used during a series of internal business ethics simulations for senior management. Altria Group shared this program with participants at the Compliance & Ethics Forum.

Program Objectives

Altria's program was designed to explore compliance leadership and accountability at all levels of management for promoting an organizational culture of compliance and ethics. The course focused on two important elements—how to identify and model compliance leadership behaviors; and, how to integrate compliance and business priorities to act in the best interest of the corporation. “We designed a compliance training program for senior management that focused on compliance leadership,” explained Charlie Whitaker, Senior Vice President, Human Resources & Compliance. “Most employees take their cues from the actions—not just the words—of senior leaders. Therefore, a compliance leadership course was tailored to this audience.”

Altria's program was designed to explore compliance leadership and accountability at all levels of management for promoting an organizational culture of compliance and ethics.

Experiential training

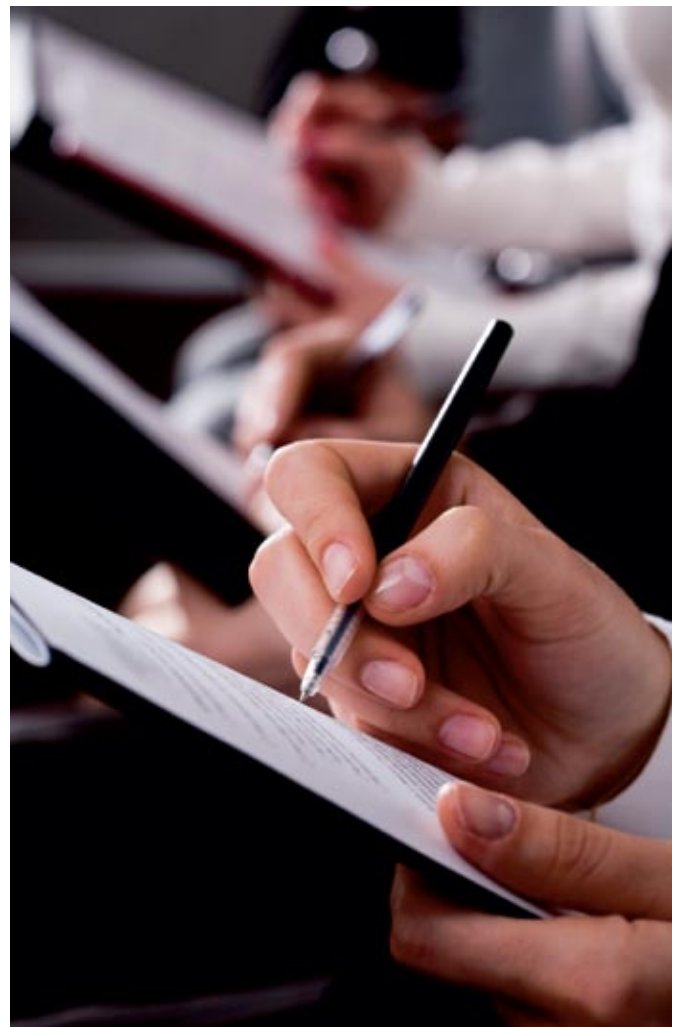
Since the most effective training involves experiential learning, Altria developed a case study that included professional actors playing the roles of CEO, internal peers and external colleagues. The case study reinforced the dangers of a “business success comes first” mentality. “Participants started their day with a business simulation where they were thrust into the role of senior vice president of New Products for a fictitious company,” explained Vanessa D'Ambrosia, Director, Compliance & Integrity, ALCS. “The exercise forced participants to balance the desire for commercial success with the need for compliance—a challenge familiar to many leaders today.”

Results

In 2009, Altria conducted five “live” sessions, training a total of 79 officers. Post session surveys indicated all participants thought

the course was relevant and a good use of their time. “This is one of the best trainings I've been through. Not only what you covered, but how you covered it,” said Craig Johnson, then President, PM USA. “The interaction from the group was positive with different points of view. I enjoyed hearing others' perspectives on difficult situations that can occur,” he added. Due to the positive feedback received, the company then created a “meeting-in-a-box” version of the training, complete with a CD of training materials, a DVD featuring the actors, and a Leader's Facilitation Guide.

That training tool, shared with all Forum participants, recently has been extended to director-level employees within the Altria family of companies. In 2010, the company is encouraging use of the tool during departmental meetings within its operating companies. The goal is to generate further discussion about compliance leadership and strengthen its culture of compliance. #



Developing Great Leaders through Experiential Learning



By Tony Naidu, Founder and Group Enterprise Leader of Biz-LX™

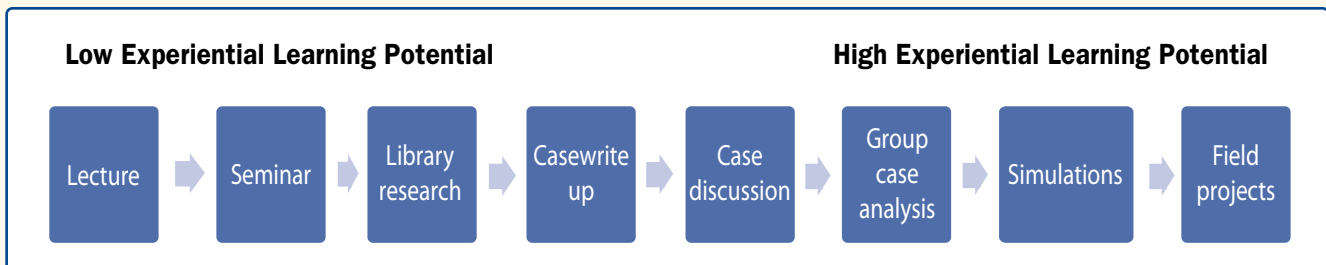
“For the things we have to learn before we can do them, we learn by doing them.”

- Aristotle

Simulations give current and future leaders an opportunity to experience decision making in a virtual environment, where they can learn and develop confidence without damaging consequences. Although simulations were first developed for business in the 1950s, it wasn't until the late 1990s—when the Internet became widespread and simulations became web based—that business simulations really flourished.³¹

Attend any academic conference around the world, and you will find numerous presentations in support of the idea that people learn best by doing. The leading accreditation organization for business schools, the Association to Advance Collegiate Schools of Business (AACSB), states that “passive learning is ineffective” and advises faculty to “adopt active learning methodologies.”³²

Executive education and corporate training events typically involve some form of experiential activity to keep participants engaged. Busy executives have little time to waste on non-effective learning techniques. By using simulations they have an opportunity to face real life situations, sink their teeth into the analysis, and then see the results of their decisions.



Leaders develop through experience; therefore, “ethics lectures” alone do not give leaders the insight they need to have when faced with uncertainty. Participation in simulated situations, where there is no obvious “right” answer—where there are consequences for their decisions—both in economic terms and from stakeholders, gives leaders an opportunity to reflect on the experience. Through this process of experience and reflection comes real learning.

Simulations can't replicate every situation; however, they do offer the ability to develop the leadership toolkit required for facing real-life uncertainty.

Biz-LX provides cutting edge online learning experiences that challenge leaders with the complex and ethically-charged nature of managerial decision making in a global economy: (www.biz-lx.com).

Conclusion

The Economic Crisis: Three Opportunities for Leaders in Challenging Times

SINCE THE NOVEMBER 2009 COMPLIANCE AND ETHICS FORUM, the US and global economies continue to impact both directly and indirectly corporate compliance activities and collective efforts to strengthen ethical cultures within organizations. Several economic indicators continue to show signs of positive improvement, i.e., the 2010 first quarter Business Roundtable CEO Economic Outlook Survey index expanded to 88.9, which is a 17.4-point increase over the 2009 fourth quarter index of 71.5 and a near-doubling of the 2009 third quarter index (44.9) present during the November 2009 Forum event.³³

A legacy resulting from the economic crisis shall be internally-driven activities and new regulatory changes—a combination that will impact compliance and ethics programs dramatically. On the regulatory front, for example, amendments to the US Federal Sentencing Guidelines, which were unanimously approved in April 2010, further clarify and strengthen requirements of an “effective compliance and ethics program.”³⁴

While regulatory changes and the deliberations leading up to them tend to focus on the challenges that an economic crisis presents for organizations and their leaders, the 2009 Compliance and Ethics Forum was designed for attendees to focus equally on opportunities for sharing leading thinking and practices intended to build stronger compliance and ethics programs. In this regard, the Forum insights center on ways in which the economic crisis presents at least three opportunities for leaders.

First, while economic crises historically tend to create an environment of heightened risk for misconduct, leading companies are able to use such periods to build stronger ethics practices. The 2009 National Business Ethics Survey concludes that “ethical culture is the single biggest factor determining the amount of misconduct that will take place in a business.”³⁵ Examples of building stronger practices include increased ethics training at all levels of organizations, sharing leading practices with peers, strengthening the core business model, and renewing focus on the organization’s mission.

Second, trying economic times highlight the importance of building trust at all business levels and across stakeholder groups. At an organizational level, trust must be restored by companies that better demonstrate appropriate responsibility for business decisions and risk-taking, and refocus on innovation and problem solving. Similarly, within organizations, processes must provide structure, resources, and incentives so that, as Craig Johnson, Executive

Vice President, Altria Group, Inc., remarked, “We have people at every level of the company who can carry out the values of the company.” Leading research clearly indicates that trust has a positive impact on employee performance, customer acquisition and retention, and the type of knowledge sharing within companies that leads to innovation.³⁶

Finally, a challenging economic environment reinforces the need to maintain a strong focus on compliance and ethics, not only with respect to managing risk, but also with regard to creating value. This was the primary intent in designing and holding the initial 2009 Compliance and Ethics Forum. By conducting such events; sharing leading practices; and delivering new research in settings where leaders may network and exchange ideas, it further strengthens everyone’s compliance and ethics programs.

As Charlie Whitaker, Senior Vice President, Human Resources and Compliance, of Altria Client Services suggested, “Compliance and Ethics is a function in which there is no competitive advantage in not sharing leading practices.” We anticipate this report will contribute to the sharing of practices and knowledge, and hope that it will encourage other leaders and organizations to continue focusing and engaging in this critically important endeavor.



INTEGRITY

BUSINESS

Notes

1. Dow Jones Industrial Average information accessed from <http://press.djindexes.com/>, and NASDAQ information acquired from <http://www.nasdaq.com/>.
2. <http://www.sarbanes-oxley.com/section.php>.
3. Robin Sidel, Dennis K. Berman, & Kate Kelly, "J.P. Morgan Buys Bear in Fire Sale, As Fed Widens Credit to Avert Crisis," *The Wall Street Journal*, 17 March 2008.
4. Joe Nocera, "As Credit Crisis Spiraled, Alarm Led to Action," *The New York Times*, 10 October 2008.
5. Gross Domestic Product information obtained from the Bureau of Economic Analysis, <http://www.bea.gov/index.htm>.
6. Classic quote from Warren Buffet, originating in his *Letter to the Shareholders*, Berkshire Hathaway Inc., March 1, 1993.
7. Alexis de Tocqueville, *Democracy in America* (London: Saunders and Otley, 1835).
8. *Business Roundtable Corporate Governance Survey Trends Fact Sheet*, <http://www.businessroundtable.org/sites/default/files/2008%20Corp%20Gov%20Survey%20Trends.pdf>, (accessed 17 February 2010).
9. Business Roundtable News Release, May 21, 2009, *Business Roundtable Unveils Principles for Responding to the Financial Markets Crisis* http://www.businessroundtable.org/sites/default/files/Financial_Markets_Crisis_Principles_Release_FINAL.pdf, (accessed 17 February 2010).
10. Robert F. Bruner and Sean D. Carr, *The Panic of 1907: Lessons Learned from the Market's Perfect Storm* (Hoboken, NY: John Wiley and Sons, August 31, 2007).
11. Corporate Executive Board, *Managing through Volatility in 2009: Key Compliance Imperatives for Senior Management and the Board*, a survey prepared for the Compliance and Ethics Leadership Council™.
12. Solomon Asch, "Opinions and Social Pressure," *Scientific American* 193, no. 5 (1955): 31–35.
13. R. Edward Freeman, Patricia H. Werhane, Andrew C. Wicks, and Kirsten E. Martin, *Business Ethics: A Managerial Approach*, (Upper Saddle River, New Jersey: Pearson/Prentice Hall, 2010).
14. United States Sentencing Commission, <http://www.uscc.gov/orgguide.htm>, (accessed 16 March 2010).
15. US Department of Health and Human Services, Office of Inspector General Guidance Practices, <http://oig.hhs.gov/guidancepractices.asp>, (accessed 16 March 2010).
16. US Department of Commerce, Bureau of Industry and Security, <http://www.bis.doc.gov/complianceand enforcement/emcp.htm>, (accessed 16 March 2010).
17. Ronald E. Berenbeim and Jeffery Kaplan, "Ethics and Compliance Enforcement Decisions – the Information Gap," *The Conference Board* (June 2009).
18. US Securities and Exchange Commission, <http://www.sec.gov/litigation/admin/34-51199.htm>, (accessed 16 March 2010).
19. Christopher Matthews, "Fraud Chief: Effective Compliance Programs Can Prevent Monitors," *Main Justice*, (May 24, 2010), <http://www.mainjustice.com/2010/05/24/fraud-section-chief-effective-compliance-programs-can-prevent-monitors>.
20. United States Sentencing Guidelines §8B2.1. <http://www.uscc.gov/orgguide.htm>.
21. US Attorneys' Manual, http://www.justice.gov/usao/eousa/foia_reading_room/usam/, (accessed 16 March 2010).
22. US Attorneys' Manual, http://www.justice.gov/usao/eousa/foia_reading_room/usam/, (accessed 16 March 2010).
23. "It's All Good—Beware of Consulting Firms Offering Awards for Corporate Ethics," *Slate*, March 19, 2010, <http://www.slate.com/id/2248033/>.
24. Main Justice: Politics, Policy and the Law website, Criminal Division Chief Breuer's FCPA Pharma Speech, <http://www.mainjustice.com/2009/11/12/criminal-division-chief-breuers-fcpa-pharma-speech/>, (accessed 2 March 2010).
25. <http://www.mainjustice.com/2009/11/12/criminal-division-chief-breuers-fcpa-pharma-speech/>, (accessed 2 March 2010).
26. Henry Blodget, "Dominos' YouTube Nightmare," *Business Insider*, *Silicon Alley Insider*, April 16, 2009, <http://www.businessinsider.com/henry-blodget-dominos-2009-4>, (accessed 4 March 2010).
27. Johnette Hassell, Ph.D., "Employee Blogs: The Risks and Rewards," *Computer Forensics & E-Discovery Blog*, September 23, 2008; <http://www.computerforensicsdiscovery.com/2008/09/articles-1/esi-policy/employee-blogs-the-risks-and-rewards/>, (accessed 4 March 2010).
28. Evan Hessel, "Why Twitter Scares the NFL," *Forbes.com*, September 2, 2009, <http://www.forbes.com/2009/09/02/nfl-pro-football-business-sportsmoney-nfl-football-values-09-twitter.html>, (accessed 4 March 2010).
29. "Israeli Raid Called Off After Facebook Slip," CBS News.com, March 3, 2010, <http://www.cbsnews.com/stories/2010/03/03/ap/middleeast/main6262795.shtml>, (accessed March 11, 2010).
30. Source Unknown.
31. Jean Rehkop Renshaw and Annette Heuston, *The Game Monopologs* by Rand Corporation, (July 17, 1957), http://www.rand.org/pubs/research_memoranda/2007/RM1917-1.pdf, and Anthony J. Faria, David Hutchinson, William J. Wellington, & Steven Gold, "Developments in Business Gaming," *Simulation and Gaming*, 40, no.4 (August 2009): 464–487.
32. *AACSB Eligibility Procedures and Accreditation Standards for Business Accreditation*, (Adopted: April 25, 2003): 54–55, <http://www.aacsb.edu/accreditation/business/STANDARDS.pdf>.
33. 2010 CEO *Economic Outlook Survey*, Business Roundtable, 7 April 2010, http://www.businessroundtable.org/sites/default/files/Q1%20CEO%20Survey%20Press%20Release_FINAL.PDF.
34. News Release, US Sentencing Commission, 19 April 2010, <http://www.uscc.gov/PRESS/rel20100419.htm>.
35. *2009 National Business Ethics Survey*, Ethics Resource Center, 2009, 41.
36. Moriarty et al, *The Dynamics of Public Trust in Business—Emerging Opportunities for Leaders* (Business Roundtable Institute for Corporate Ethics), 2009, 14. http://www.corporate-ethics.org/pdf/public_trust_in_business.pdf.

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The Business Roundtable Institute for Corporate Ethics (www.corporate-ethics.org) is an independent business ethics center established in partnership with Business Roundtable—an association of chief executive officers of leading US companies with nearly \$6 trillion in annual revenues and more than 12 million employees—and leading academics from America’s best business schools. The Institute, which is housed at the University of Virginia’s Darden Graduate School of Business Administration, brings together leaders from business and academia to fulfill its mission to renew and enhance the link between ethical behavior and business practice through executive education programs, practitioner-focused research, and outreach.



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