
BusinessEthicsNow
GHILLYER
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The Social Contract Approach to Management and Your Company P. 65
"Comply or Else": Good For Your Business? P. 87
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Week-01

Chapter 1

Understanding Ethics

"Ethics is about how we meet the challenge of doing the right thing when that will cost more than we want to pay"

The Josephson Institute of Ethics

What is Ethics?

How people try to live their lives according to a standard of "right" or "wrong" behaviors -- in both how we think and behave toward others and how we would like them to think and behave toward us.

Understanding Right and Wrong

We are instructed to:

- developing our own ‘Moral Compass’
- do what is “right”?
- follow our values
  - Intrinsic value – pursued for its own sake: ex. Health/happiness instrumental
  - Instrumental value – pursued to help reach another value Ex: work to buy things to be “happy”
- follow The Golden Rule

What happens if we have value conflicts? See p. 5

Ethical Theories

- Virtue Ethics – living to achieve a "clear" ideal
- Utilitarianism (Ethics for the Greater Good)
- Universal Ethics – certain universal principles should apply to all ethical judgments (Ex. Never kill, lie, steal)
- Weaknesses exist in each theory

Ethical Relativism

Where the traditions of your society, your personal opinions, and the circumstances of the present moment define your ethical principles.

This offers a degree of flexibility for different circumstances.

Week-02

Ethical Dilemmas

Sometimes the decision you must make requires you to make a ‘right’ choice knowing full well that you are:

- Leaving an equally ‘right’ choice undone.
- Likely to suffer something bad as a result of that choice.
- Contradicting a personal ethical principle in making that choice.
- Abandoning an ethical value of your community or society in making that choice.

Applied ethics is putting theory into practice. It becomes a question of what will/did you do instead of what would you do.

Resolving Ethical Dilemmas - I

- **Step One:** Analyze the consequences.
  – Consider short vs. long run
  – Consider benefit vs. harm
- **Step Two:** Analyze the actions.
  – Are they fair, equal, honest, respectful?
- **Step Three:** Make a decision.
  – Can you live with the outcome?

Resolving Ethical Dilemmas - II

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- *What are the facts?*
- *What can you guess about the facts you don't know?*
- *What do the facts mean?*
- *What does the problem look like through the eyes of the people involved?*
- *What will happen if you choose one thing rather than another?*
- *What do your feelings tell you?*
- *What will you think of yourself if you decide one thing or another?*
- *Can you explain and justify your decision to others?*

This method assumes you have time to contemplate the decision, enough information, and alternative actions to choose from.

Ethical Reasoning

Figure 1.1

Lawrence Kohlberg's Stages of Ethical Reasoning[5]

Level	Stage	Social Orientation
Preconventional	1	Obedience and punishment
	2	Individualism, instrumentalism, and exchange
Conventional	3	"Good boy/nice girl"
	4	Law and order
Post-conventional	5	Social contract
	6	Principled conscience

Chapter 2

Defining Business Ethics

Defining Business Ethics

- **Two Distinct Perspectives:**
  - A *Descriptive* summation of the customs, attitudes, and rules that are observed within a business. As such, we are simply documenting **what *is* happening**.
  - A *Normative* (or *Prescriptive*) evaluation of the degree to which the observed customs, attitudes, and rules can be said to be ethical. Here we are more interested in recommending **what *should be* happening.**

Who are the Stakeholders?

- Stakeholders are those with a share or interest in a business enterprise.

Stakeholders	*Interest in the Organization*
Stockholders or Shareholders	• Growth in the value of company stock • Dividend income
Employees	• Stable employment at a fair rate of pay • A safe and comfortable working environment
Customers	• "Fair exchange"—a product or service of acceptable value and quality for the money spent • Safe and reliable products
Suppliers/vendor partners	• Prompt payment for delivered goods • Regular orders with an acceptable profit margin
Retailers/wholesalers	• Accurate deliveries of quality products on time and at a reasonable cost • Safe and reliable products
Federal government	• Tax revenue • Operation in compliance with all relevant legislation
Creditors	• Principal and interest payments • Repayment of debt according to the agreed schedule
Community	• Employment of local residents • Economic growth • Protection of the local environment

Stakeholder Interests

Impact from Unethical Behavior

Stakeholders	*Interest in the Organization*
Stockholders or Shareholders	• False and misleading financial information on which to base investment decisions • Loss of stock value • Cancellation of dividends
Employees	• Loss of employment • Not enough money to pay severance packages or meet pension obligations
Customers	• Poor service quality (as WorldCom struggled to combine the different operating and billing systems of each company they acquired, for example)
Suppliers/vendor partners	• Delayed payment for delivered goods and services • Unpaid invoices when the company declared bankruptcy
Federal government	• Loss of tax revenue • Failure to comply with all relevant legislation
Creditors	• Loss of principal and interest payments • Failure to repay debt according to the agreed schedule
Community	• Unemployment of local residents • Economic decline

Stakeholder Impact from Unethical Behavior

An Ethical Crisis: Is Business Ethics an Oxymoron?

- Corporate Governance
  - The system by which business corporations are directed and controlled.
- Oxymoron
  - The combination of two contradictory terms, such as “deafening silence” or “jumbo shrimp.”
- Can business really be ethical? Page 23

An Ethical Crisis: Is Business Ethics an Oxymoron?

- Code of ethics
  - A company's written standards of ethical behavior that are designed to guide managers and employees in making the decisions and choices they face every day.
- Serves as a message to all stakeholders and a guide for employees and managers.

A Code of Ethics

The Ethics Resource Center (ERC) defines a Code of Ethics as:

"..a central guide to support day-to-day decision making at work. It clarifies the cornerstones of your organization – its mission, values and principles – helping your managers, employees and stakeholders understand how these cornerstones translate into everyday decisions, behaviors and actions. ***While some may believe codes are designed to limit one's actions, the best codes are actually structured to liberate and empower people to make more effective decisions with greater confidence."***

History of Business Ethics

Decade	Ethical Climate	Major Ethical Dilemmas	Business Ethics Developments
1960s	Social unrest. Antiwar sentiment. Employees have an adversarial relationship with management. Values shift away from loyalty to an employer to loyalty to ideas. Old values are cast aside.	• Environmental issues. • Increased employee–employer tension. • Civil rights issues dominate. • Honesty. • The work ethic changes. • Drug use escalates.	• Companies begin establishing codes of conduct and values statements. • Birth of social responsibility movement. • Corporations address ethics issues through legal or personnel departments.
1970s	Defense contractors and other major industries riddled by scandal. The economy suffers through recession. Unemployment escalates. There are heightened environmental concerns. The public pushes to make businesses accountable for ethical shortcomings.	• Employee militancy (employee versus management mentality). • Human rights issues surface (forced labor, substandard wages, unsafe practices). • Some firms choose to cover rather than correct dilemmas.	• Ethics Resource Center (ERC) founded (1977). • Compliance with laws highlighted. • Federal Corrupt Practices Act passed in 1977. • Values movement begins to move ethics away from compliance orientation to being "values centered."
1980s	The social contract between employers and employees is redefined. Defense contractors are required to conform to stringent rules. Corporations downsize and employees' attitudes about loyalty to the employer are eroded. Health care ethics emphasized.	• Bribes and illegal contracting practices. • Influence peddling. • Deceptive advertising. • Financial fraud (savings and loan scandal). • Transparency issues arise.	• ERC develops the U.S. Code of Ethics for Government Service (1980). • ERC forms first business ethics office at General Dynamics (1985). • Defense Industry Initiative established. • Some companies create ombudsman positions in addition to ethics officer roles. • False Claims Act (government contracting).

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History of Business Ethics

1990s	Global expansion brings new ethical challenges. There are major concerns about child labor, facilitation payments (bribes), and environmental issues. The emergence of the Internet challenges cultural borders. What was forbidden becomes common.	• Unsafe work practices in Third World countries. • Increased corporate liability for personal damage (cigarette companies, Dow Chemical, etc.). • Financial mismanagement and fraud.	• Federal Sentencing Guidelines (1991). • Class action lawsuits. • Global Sullivan Principles (1999). • *In re Caremark* (Delaware Chancery Court ruling re board responsibility for ethics). • IGs requiring voluntary disclosure. • ERC establishes international business ethics centers. • Royal Dutch/Shell International begins issuing annual reports on its ethical performance.
2000s		• Cyber crime. • Privacy issues (data mining). • Financial mismanagement. • International corruption. • Loss of privacy—employees versus employers. • Intellectual property theft.	• Business regulations mandate stronger ethical safeguards (Federal Sentencing Guidelines for Organizations; Sarbanes-Oxley Act of 2002). • Anticorruption efforts grow. • Shift to emphasis on corporate social responsibility and integrity management. • Formation of International ethics centers to serve the needs of global business. • OECD Convention on Bribery (1997–2000).

Doing The Right Thing

A series of clichés:

- Consult the Company Code of Ethics
- Do what's right for the Organizations Stakeholders
- Do what's legal
- Do what you think is best ('use your best judgment')
- Do the right thing.

- Consider the scenarios on page 28.

Resolving Ethical Dilemmas - I

Truth versus Loyalty

- Do you tell the truth or remain loyal to the person or organization that is asking you not to reveal that truth?

Short-Term versus Long-Term

- Does your decision have a short-term consequence or a longer-term consequence?

Justice versus Mercy

- Do you perceive this issue as a question of dispensing Justice or Mercy? (and which one are you more comfortable with?).

Individual versus Community

- Will your choice impact one individual or a wider group or community?

Resolving an Ethical Dilemma - II

Three Resolution Principles:

- *'Ends-Based'*- which decision would provide the greatest good for the greatest number of people?
- *'Rules-Based'*- what would happen if everyone made the same decision as you?
- *'The Golden Rule'* – 'do unto others as you would have them do unto you'.

Rationalizations for Unethical Behavior

1. A belief that the activity is within reasonable ethical and legal limits – that is, that it is not "really" illegal or immoral.
2. A belief that the activity is in the individual's or the corporation's best interests – that the individual would somehow be expected to undertake the activity.
3. A belief that the activity is "safe" because it will never be found out or publicized; the classic crime-and-punishment issue of discovery.
4. A belief that because the activity helps the company, the company will condone it and even protect the person who engages in it.

Building & Operating an Ethical Business

- Requires a great deal more than simply doing the right thing
- Must devote time to the development of a detailed code of ethics that offers "guidance with traction"
- Offer support to employees when they are faced with an ethical dilemma
- Creating and maintaining a corporate culture of trust

Chapter 3

Organizational Ethics

Defining Organizational Ethics

- Business Ethics separate from General Ethics for 2 reasons:
  - Other parties have a vested interest in the ethical performance of an organization
  - In a work environment, you may be placed in a situation where your personal value system may clash with the ethical standards of the organization’s operating culture

Defining Organizational Ethics

- Organizational culture – the values, beliefs, and norms that all the employees of that organization share
- Value chain – the key functional inputs that an organization provides in the transformation of raw materials into a delivered product or service

Defining Organizational Ethics

- Key Functions
  - Research & Development
  - Manufacturing
  - Marketing (and advertising)
  - Sales
  - Customer service

Organizational Ethics

Figure 3.1
A Representative Company Value Chain[1]

Ethics in R & D

- Directly involved in future growth
  - Without new products to sell, organizations can lose their customers to competitors who are offering products that are 'better, faster, cheaper'
- Critical commitment to product quality, safety, and reliability

Ethics in R & D

- ‘Better, cheaper, faster’ mean compromises have to be made in functionality or manufacturing in order to meet a targeted cost figure
- Too many features out - marketing and advertising have no story to tell - sales people will face difficulties in selling against competition.
- Too few changes made - company won’t be able to generate a profit.

Ethics in R & D

- Do we use the best materials available or the second best to save some money?
- Do we run a full battery of tests?

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Ethics in Manufacturing

- Now it falls to the manufacturing team to actually get the thing built.
- "Do you want it built fast, or do you want it built right?"
- From an organizational perspective, you want both.
- Compromise - which corners can be cut and by how much.

Ethics in Marketing

- Marketers see themselves as providing products (or services) to customers who have already expressed a need for and a desire to purchase those products.
- Critics of marketing see it as a more manipulative process whereby unsuspecting customers are induced to buy products they don't really need and could quite easily live without by 'slick' commercials and advertisements.

Ethics in HR - I

The HR Relationship:

- The creation of the job description for the position.
- The recruitment and selection of the right candidate for the position.
- The orientation of the newly hired employee
- The efficient management of payroll and benefits for the (hopefully) happy and productive employee.
- The documentation of periodic performance reviews.
- The documentation of disciplinary behavior and remedial training if needed.
- The creation of a career development program for the employee.
- Coordination of final paperwork - severance benefits and Exit Interview.

Ethics in HR - II

1. *HR professionals must help ensure that ethics is a top organizational priority.*
2. *HR must ensure that the leadership selection and development processes include an ethics component.*
3. *HR is responsible for ensuring that the right programs and policies are in place.*
4. *HR must stay abreast of ethics issues (and in particular the changing legislations and sentencing guidelines for unethical conduct).*

Ethics in Finance - I

Ethics must be practiced in three areas in finance:

- Financial Transactions
- The Accounting Function
- The Auditing Function

Ethics in Finance - II

Ethical Challenges:

- GAAP
  - The generally accepted accounting principles that govern the accounting profession – not a set of laws and established legal precedents, but rather a set of standard operating procedures within the profession
  - A set of accurate financial statements that present an organization as financial stable, operationally efficient, and positioned for strong future growth can do a great deal to enhance the reputation and goodwill of an organization

Ethics in Finance - II

Ethical Challenges:

- Creative Bookkeeping Techniques
  - It is legal to defer receipts from one quarter to the next to manage your tax liability
- Conflicts of Interest
  - A situation where one relationship or obligation places you in direct conflict with an existing relationship or obligation

Chapter 5

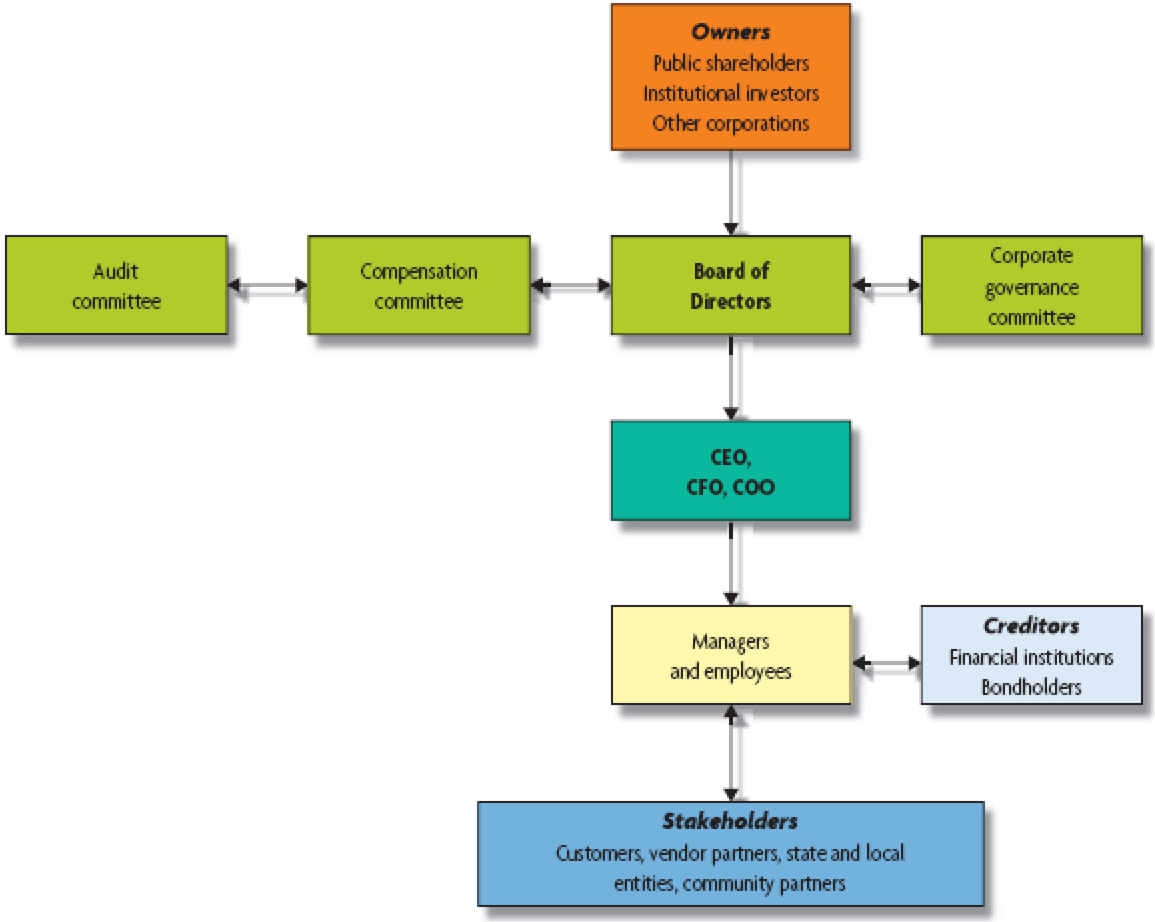
Corporate Governance

Defining Corporate Governance

- The system by which business corporations are directed and controlled
- Managers accountable to:
  - Owners
  - Public interest or stakeholders

Governance of the Modern Corporation

FIG. 5.1 Governance of the Modern Corporation



Source: Adapted from Fred R. Kaen, *A Blueprint for Corporate Governance* (New York: AMACOM, 2003).

Two Governance Methodologies

- Comply or Explain (from the Cadbury report)
- Comply or Else (from the Sarbanes Oxley Act)

The Chairman and The CEO

- First step in disregarding the corporate governance model – merge the roles of chief executive officer (CEO) and chairman of the board into one individual
- People in favor of merging say it promotes efficiency and minimizes conflict
- People opposed to merging say governance needs checks and balances

Effective Corporate Governance

1. Create a climate of trust and candor
2. Foster a culture of open dissent
3. Mix up roles
4. Ensure individual accountability
5. Let the Board assess leadership talent
6. Evaluate the Board’s performance

22 Questions for Diagnosing Your Board…

1. **Are there three or more outside directors for every insider?**
2. Are the insiders limited to the CEO, the COO, and the CFO?
3. Do your directors routinely speak to senior managers who are not represented on the board?
4. Is your board **the right size** (8 to 15 members)?
5. Does your audit committee, not management, have the authority to approve the partner in charge of auditing company?
6. Does your audit committee routinely review ‘high exposure’ areas?

22 Questions for Diagnosing Your Board…

7. Do compensation consultants report to your compensation committee rather than to the company's human resources officers?
8. **Has your compensation committee shown the courage to establish formulas for CEO compensation based on long-term results – even if formulas differ from industry norms?**

22 Questions for Diagnosing Your Board…

9. Are the activities of your executive committee sufficiently contained to prevent the emergence of a ‘two-tier’ board?
10. Do outside directors annually review succession plans for senior management?
11. **Do outside directors formally evaluate your CEO’s strengths, weaknesses, objectives, personal plans and performance every year?**

22 Questions for Diagnosing Your Board…

12. **Does your nominating committee rather than the CEO direct the search for new board members and invite candidates to stand for election?**
13. Is there a way for outside directors to alter the meeting agenda set by your CEO?
14. Does the company help directors prepare for meetings by sending relevant routine information, as well as analyses of key agendas ahead of time?

22 Questions for Diagnosing Your Board…

15. **Is there sufficient meeting time for thoughtful discussion in addition to management monologues?**
16. Do the outside directors meet without management on a regular basis?
17. Is your board actively involved in formulating long-range business strategy from the start of the planning cycle?

22 Questions for Diagnosing Your Board…

18. Does your board, rather than the incumbent CEO, select the new chief executive – in fact as well as in theory?

19. **Is at least some of the director's pay linked to corporate performance?**

20. Is the performance of each of your directors periodically reviewed?

21. Are directors who are no longer pulling their weight discouraged from standing for reelection?

22. Do you take the right measures to build trust among directors?

A checklist might not be enough….

Enron had all their governance boxes checked:

- They separated the roles of Chairman (Kenneth Lay) and Chief Executive Officer (Jeffrey Skilling) – at least until Skilling's surprise resignation.
- They maintained a roster of independent directors with flawless résumés.
- They maintained an Audit Committee consisting exclusively of non-executives.

A checklist might not be enough…

The true picture of Enron's Corporate Governance:

- Many of the 'independent' directors were affiliated with organizations that benefited directly from Enron's operations.

A checklist might not be enough

- They also enjoyed substantial ‘benefits’ that continued to grow as Enron’s fortunes grew.
- Their role as directors of Enron, guaranteed them positions as directors for other companies – a career package that would be placed in jeopardy if they chose to ask too many awkward questions and gain reputations as troublemakers.

A Fiduciary Responsibility

- Corporate governance is about managers fulfilling a fiduciary responsibility to the owners of their companies
- Fiduciary responsibility - based on trust
- How do we inspire trust?

A Fiduciary Responsibility

- Key Safeguards
  - Properly constituted boards
  - Separation of the functions of chairperson and CEO
  - Audit committees
  - Vigilant shareholders
  - Financial reporting and auditing systems

Effective Corporate Governance

"No system of corporate governance can be totally proof against fraud or incompetence. The test is how far such aberrations can be discouraged and how quickly they can be brought to light. The risks can be reduced by making the participants in the governance process as effectively accountable as possible. The key safeguards are properly constituted boards, separation of the functions of chairman and of chief executive, audit committees, vigilant shareholders, and financial reporting and auditing systems which provide full and timely disclosure."

Chapter 6

The Role of Government

The Values Tournament

When organizations are unable to demonstrate commitment to a strong ethical culture, the legal and regulatory environment will initiate incentives to promote ethical behavior or penalties for those who fail to adopt the desired behaviors.

Key Legislation

- The Foreign Corrupt Practices Act (1977)
- The U.S. Federal Sentencing Guidelines for Organizations (1991)
- The Sarbanes-Oxley Act (2002)
- The Revised Federal Sentencing Guidelines for Organizations (2004)
- The Dodd-Frank Wall Street Reform and Consumer Protection Act (2010)

The Foreign Corrupt Practices Act (FCPA)

- Created to control bribery and other forms of payment to foreign governments.
- FCPA is enforced jointly by the US Department of Justice (DOJ) and the Securities and Exchange Commission (SEC).
- Prior to this law, the illegality of paying bribes was punishable only through disjointed sources of legislation including the rules of the SEC, the Bank Secrecy Act, and the Mail Fraud Act

The Foreign Corrupt Practices Act (FCPA)

The ACT focused on two areas:

- ***Disclosure*** – the Act required corporations to fully disclose any and all transactions conducted with foreign officials and politicians, in line with the SEC provisions.
- ***Prohibition*** – the Act incorporated the wording of the Bank Secrecy Act and the Mail Fraud Act to prohibit the movement of funds overseas for the express purpose of conducting a fraudulent scheme.
- Penalty for illegal activity could include millions in fines and imprisonment.

Criticism of the FCPA

- Fine line between illegal/legal activity
- FCPA approves of “facilitation payments” that expedite or secure the performance of **routine governmental actions** including providing permits, processing papers, providing utilities, etc.
- Bribery would occur if the government entity was involved in awarding new business or working outside their lawful duty.
- See examples on p 111

The U.S. Federal Sentencing Guidelines For Organizations (FSGO) 1991

- Holds organizations liable for the criminal acts of their employees and agents including fraud, bribery, tax evasion, insider trading, and copyright infringement.
- Requires organizations to be self-monitoring
- Penalties under FSGO included:
  - Monetary fines
  - Organizational probation
  - The implementation of an operational program to bring the organization into compliance with FSGO standards

The U.S. Federal Sentencing Guidelines For Organizations (FSGO) 1991

<u>MONETARY FINES</u>

If an organization is sentenced under FSGO, the calculation of the fine is determined through a three-step process:

1. **The determination of the 'base fine' according to the nature of the crime ($6000 – 72.5 million)**
2. **The "Culpability Score" according to the degree of blame (multiplier up to 4x)**
3. **The total fine amount = Base fine multiplied times culpability score**

Death penalty may be imposed to immediately take all assets.

Aggravating Your Culpability Score

- High level personnel involved in/tolerating criminal activity
- Willful obstruction of justice
- Prior history of similar misconduct
- Violation of current judicial order, injunction, or probationary status

Mitigating Your Culpability Score

- Scores can be reduced by showing that you have compliance programs in place to detect and prevent violations of law.
- Programs should include management oversight, policy, communication, compliance, consistent corrective action including self-reporting violations.

Revised FSGO 2004

- Formally adopted in November, 2004
- Three key changes
    - Companies required to **periodically evaluate the effectiveness** of their compliance programs on the assumption that there was a substantial risk that any program was capable of failing
    - The revised guidelines required evidence of an **active promotion of ethical conduct** rather than just compliance with legal obligations.
    - **Accountability** was more clearly defined in the revised guidelines

Sarbanes-Oxley Act

- Created in response to corporate accounting scandals of 2001 in order to restore investor confidence.
- Some say it is the most important piece of legislation governing accounting practice.
- Others say it is the most controversial piece of corporate legislation in recent history.

Sarbanes-Oxley Act (SOX)

- Created Public Company Accounting Oversight Board (PCAOB)
- Enforced Auditor Independence
- Established Corporate Responsibility
- Enhanced Financial Disclosures
- Addressed Conflict of Interest on the part of securities analysts promoting stocks
- Initiated reports on accounting and investment firms
- Established criminal penalty for Corporate Fraud and attempts at white collar crime
- Maintained that the CEO must sign Corporate Tax Returns

Dodd-Frank Wall Street Reform 2010

- AIG scandal led to Dodd-Frank reform. (See p. 117 &119)
- Includes 2300 pages of legislation for Wall Street.
- Created Consumer Financial Protection Bureau (CFPB) to regulate financial products and services
- Created Financial Stability Oversight Council (FSOC) which has the ability to take preventive actions if a large bank with more than $50 billion in assets poses a grave threat to the stability of the US.
- Created The Volcker Rule which limits the ability to trade on their own accounts. It limits the bank from promoting trades to their clients that they are unwilling to hold for themselves.

Chapter 7

Blowing the Whistle

What is Whistle-Blowing?

Whistleblower

- An employee who discovers corporate misconduct and chooses to bring it to the attention of others.

Internal Whistle-blowing

- When an employee discovers corporate misconduct and brings it to the attention of his supervisor, who then follows established procedures to address the misconduct within the organization.

External Whistle-blowing

- When an employee discovers corporate misconduct and chooses to bring it to the attention of law enforcement agencies and/or the media.

When is Whistle-Blowing Ethical?

Ethical whistle-blowing must meet 5 conditions:

1. When the company, through a product or decision, will **cause serious and considerable harm to the public** (as consumers or bystanders), or break existing laws, the employee should report the organization.
2. When the employee identifies a serious **threat of harm**, he or she should report it and state his or her moral concern.
3. When the employee's immediate supervisor does not act, the employee should exhaust the internal procedures and **chain of command** to the board of directors.
4. The employee must have **documented evidence** that is convincing to a reasonable, impartial observer that his or her view of the situation is accurate, and evidence that the firm's practice, product or policy seriously threatens and puts in danger the public or product user.
5. The employee must have valid reasons to believe that **revealing the wrongdoing to the public will result in the changes** necessary to remedy the situation.

When is Whistle-Blowing Unethical?

- Whistle-blowing must be questioned if:
  - Motivation is the opportunity for financial gain or media attention
  - Employee is carrying out a vendetta against the company
- Key point - be sure of your facts and evidence before blowing the whistle

Qui Tam Lawsuits

- A lawsuit brought on behalf of the federal government by a whistle-blower under the False Claims Act of 1863 (also called Lincoln's Law)
- Entitles whistleblowers to 10-30% of amount recovered by government
- Since 1986, these lawsuits have recovered $2 billion for the government

The Whistleblower Protection Act

- Addressed the issue of retaliation **against federal employees**
- Imposed specific processing deadlines of complaints
- Guaranteed anonymity of the whistle-blower
- Required prompt payment of any portion of the settlement entitled to the whistle-blower

Sarbanes-Oxley Act

- Applies to employees of public companies
- Prohibits retaliation against whistleblowers
- Entitles whistleblowers to damages, which may include:
  - Reinstatement to the same seniority status
  - Back pay
  - Interest
  - All compensatory damages to make the employee whole
  - "Special damages" including litigation costs

Addressing the Needs of Whistleblowers

- Mechanisms that employers need to put in place:
  - A well-defined process to document how such complaints are handled
  - An employee hotline to file such complaints
  - A prompt and thorough investigation of all complaints
  - A detailed report of all investigations

Whistle Blowing As a Last Resort

- Becoming a whistle-blower and taking a story public should be last resort
- After blowing the whistle on fraud:
  - 90 percent were fired or demoted
  - 27 percent faced lawsuits
  - 26 percent had to seek psychiatric or physical care
  - 25 percent suffered alcohol abuse
  - 17 percent lost their homes
  - 15 percent got divorced
  - 10 percent attempted suicide
  - 8 percent were bankrupted

Chapter 8

Ethics & Technology

"Big Brother is Watching You"

George Orwell, '1984',

Ethics & Technology

- Advantages of technology in the workplace:
  - Intranet
  - Extranet
  - Telecommuting

- Promised “ease of access”, “ease of use”, and “increased worker productivity”

Ethics & Technology

- Loss of privacy
  - Companies have ability to send customers' personal data anywhere in the world
  - Thru employee monitoring companies can see any email you send or website viewed

The Promise of Increased Worker Productivity

The Employer Position:

- As an employee of the organization, your allotted shift or normal work period are at the discretion of the company.
- Other than lunch and any scheduled breaks, all your activity should be work-related, and any monitoring of that activity should not be regarded as an infringement of your privacy.
- If you want to do something in private don't do it at work.
- It is part of the organization's obligation to its stakeholders to operate as efficiently as possible.

The Promise of Increased Worker Productivity

The Employee Position:

- My agreement should not intrude upon my civil rights as an individual – I am an employee, not a servant.
- I should be notified of any electronic surveillance and the purpose of that surveillance.
- The actions of a small number of employees in breaking company rules should not be used as a justification to take away everyone's civil rights.
- Electronic monitoring implies that we can't be trusted to do our jobs – and if you can't trust us, why are you employing us in the first place?

When Are You "at Work"?

- Computer technology allows the capability of <u>telecommuting</u> – working from anywhere by logging into your company's network remotely
  - Availability now being defined as accessibility. Boss can reach you anywhere, anytime.
  - So, does this flexibility apply to employees "at work"?

Employee Consent

THIN CONSENT

If an employee receives formal notification that the company will be monitoring all email and web activity – either at the time of hire or during employment – and it is made clear in that notification that his or her continued employment with the company will be dependent on the employee's agreement to abide by that monitoring, then the employee may be said to have given 'thin' consent. In other words, there are two options – agree to the monitoring or 'pursue other employment opportunities'.

Employee Consent

THICK CONSENT

If employment conditions are at the other end of the scale – i.e. jobs are plentiful and the employee would have no difficulty in finding another position – then the consent given to the monitoring policy could be classified as 'thick' since the employee has a realistic alternative if he or she finds the policy to be unacceptable.

The Dangers of Leaving a Paper Trail

- Employees may be able to monitor every keystroke on computers, but the documents written on the machines do the most harm
  - "Offensive" email postings
  - Viewing inappropriate Web sites
- Internet communication:
  - Damage from electronic trail of emails

Vicarious Liability

- "…a legal concept that means that a party may be held responsible for injury or damage, when in reality they were not actively involved in the incident. Parties that may be charged with vicarious liability are generally in a supervisory role over the person or parties personally responsible for the injury/damage. The implications of vicarious liability are that the party charged is responsible for the actions of their subordinates."
- Cyberliability– is vicarious liability connected with technology

Ten Commandments of Computer Ethics

FIG. 8.1 Ten Commandments of Computer Ethics

1. Thou Shalt Not Use a Computer to Harm Other People.
2. Thou Shalt Not Interfere with Other People's Computer Work.
3. Thou Shalt Not Snoop Around in Other People's Computer Files.
4. Thou Shalt Not Use a Computer to Steal.
5. Thou Shalt Not Use a Computer to Bear False Witness.
6. Thou Shalt Not Copy or Use Proprietary Software for Which You Have Not Paid.
7. Thou Shalt Not Use Other People's Computer Resources without Authorization or Proper Compensation.
8. Thou Shalt Not Appropriate Other People's Intellectual Output.
9. Thou Shalt Think about the Social Consequences of the Program You Are Writing or the System You Are Designing.
10. Thou Shalt Always Use a Computer in Ways That Ensure Consideration and Respect for Your Fellow Humans.

Source: Computer Ethics Institute, "Ten Commandments of Computer Ethics," Computer Professionals for Social Responsibility, http://cpsr.org/issues/ethics/cei.