

Editor's Comment. When a business ethics expert like Stuart Gillman talks about lawyer ethics, you should listen. Dr. Gilman is president of the prestigious Ethics Resource Center (ERC). Before that he spent a decade as a university professor and then a 17 - year career in the federal government where he was a senior official at the United States Office of Government Ethics (OGE) Dr. Gilman has served with nationally and internationally with such groups as the President's Council on Integrity and Efficiency, the Organization for Economic Co-operation and Development (OECD), Council of Europe, the World Bank, the International Development Bank, the Organization for Security and Co-operation in Europe and the Rio Group. He is widely quoted in the press as an expert on organizational ethics, most recently in the Washington Post, Wall Street Journal and Financial Times. Every lawyer should read what he has to say about what business and government expect lawyers ethics to be (not necessarily the same as what bar grievance committees expect).

The Importance of Workplace Ethics

By Stuart Gilman

The news isn't pretty. Headlines over the past few years have been filled with references to accounting scandals, unethical behavior and the outrageous lack of fiscal control at Enron, Tyco, World-Com, and various financial institutions.

One result of this attention has been an increased focus on "making" business ethical. The Sarbanes-Oxley Act of 2002 (SOX), revisions to the U.S. Sentencing Commission's Federal Sentencing Guidelines for Organizations (FSGO), enhanced Securities Exchange Commission rules, and changes to Internal Revenue Service tax opinion letters are just a few of the regulatory changes enacted, strengthened or put under the microscope in the past three years.

Many of the recent measures go beyond fixing lists of right and wrong. Cultural change has become an imperative. Organizations are being forced to move from a position in which they maximize their profits at any cost to one in which they protect the interests of stockholders, employees, and others.

In this new era, attorneys may find themselves called upon to provide advice and counsel regarding the legality of planned corporate actions, defend an organization for questionable practices or interpret the provisions of the above regulations. It appears that attorneys may also come under greater scrutiny when they advise or condone courses of action which are later found to be detrimental to an organization, to its many stakeholders -- from investors through retired employees -- and even to the communities where the organizations operate. In addition, most lawyers, regardless of whether they represent or oppose organizational clients, will be looked upon as leaders and role models in their own firms and will be responsible for establishing the ethical climate within those organizations.

Despite what role they play, attorneys need to be mindful of ethics – over and above compliance with external written codes of professional conduct.



Today's Ethics Climate

The large number of scandals at many corporations has created an impression that corporate America as a whole is gravely challenged on the ethics front.

The Ethics Resource Center's 2003 National Business Ethics Survey (NBES) ¹, however, provides some evidence that ethical confidence has not been shattered – at least on the part of employees. Instead there has been –what we refer to as the “Enron Effect:” – that is, an increased awareness of ethical concerns among employees and greater willingness to discuss ethical concerns. And where some corporations have failed due to ethical violations, their negative examples may help others to make better choices in the future. As difficult as it may be, this is often how people learn and how organizations improve.

According to the NBES, perceptions of employees regarding ethics within their own organizations are generally positive – and the percentage of people who feel this way has increased since the ERC published its 2000 National Business Ethics Survey.

Two key indicators of ethics-related problems in the workplace have declined since the 2000 Survey. "Observed misconduct" dropped from 31% in 2000 to 22% in 2003, while "pressure to compromise ethical standards" fell from 13% to 10% during this time period. In addition, reporting of misconduct by employees has increased steadily in the surveys conducted in 1994 (48%), 2000 (57%) and 2003 (65%).

Other findings of the 2003 National Business Ethics Survey, however, –show that significant vulnerabilities and challenges remain — especially within some specific employee groups and organizations.

- Employees in transitioning organizations — those undergoing mergers, acquisitions or restructurings — observe misconduct and feel pressure at rates that are nearly double those in more stable organizations.
- Compared with other employees, younger managers (under age 30) with low tenure in their organizations (less than 3 years) are twice as likely to feel pressure to compromise ethics standards (21% versus 10%).
- Younger employees with low tenure are also among the least likely to report misconduct (43% as compared with 69% for all other employees). Furthermore, they are among the most likely to feel that management and coworkers will view them negatively if they report.
- Despite an overall increase in reporting of misconduct, nearly half of all non-management employees (44%) still do not report the misconduct they observe. The top two reasons given for not reporting misconduct are: (1) a belief that no corrective action will be taken and (2) fear that the report will not be kept confidential.
- Nearly a third of respondents say their coworkers condone questionable ethics practices

by showing respect for those who achieve success using them.

- In many areas, views of ethics remain "rosier at the top." For example, senior and middle managers have less fear of reporting misconduct and are more satisfied with the response of their organizations. They also feel that honesty and respect are practiced more frequently than do lower level employees.

Modeling a Commitment to Ethics

One of the major themes woven throughout the ERC's programs is the importance of ethical leadership. Ultimately, the ethical effectiveness of an organization rests on the decisions and actions of those in a leadership role. Their behavior becomes the model for what the organization requires and expects from its employees, partners, and clients.

Employees listen to their leadership's messages, and watch and model their behavior. According to ERC research and experience:

- When employees see top management performing four key ethics-related actions (talking about ethics at work, keeping their commitments, keeping employees informed and modeling ethical behavior), they express greater satisfaction with their organization overall.
- Employees who see top management performing ethics-related actions are also more likely to feel that those who violate their organization's ethics standards are held accountable.
- Employees perceive executives who are both moral people (personally prizing ethics) and moral managers (making business decisions based upon corporate values) to be ethical leaders.
- When top management keeps promises and commitments, employees view them and the organization as being more ethical.
- Employees who perceive that managers respond to reports of misconduct immediately and appropriately are far more likely to believe that commitment to ethical conduct is real.
- Unless leaders actively communicate and live out a set of ethics, they will be perceived as morally neutral, which is an undesirable condition where ethical conduct is not perceived to be a personal or organizational priority. On the other hand, managers who "walk the talk" send the message that ethics are not just nice to talk about, but are at the core of how business is to be conducted.

The good news from the NBES is that employee perceptions that top management talks about the importance of ethics, keeps promises, and models ethical behavior, have all increased since 2000. For example, 82% of employees in 2003 said that top management in their organizations keeps promises and commitments, as compared with 77% in 2000.

As executives are increasingly called upon to "certify" the integrity of their organizations², they will also assume greater responsibility for the actions of their employees. Leaders who model a commitment to ethical conduct can play a large part in setting the tone for the organization and reducing the risk that the actions of one or more employees eventually will compromise their companies.

Formal Ethics Programs

Effective formal ethics programs make a difference in maintaining a good ethical climate and ensuring compliance with regulations and the law and reducing corporate vulnerability.

The NBES asked respondents about four elements of formal ethics programs in their organizations: (1) written standards of conduct, (2) ethics training, (3) ethics advice lines/offices and (4) systems for anonymous reporting of misconduct. The findings showed that:

- The presence of ethics program elements is associated with increased reporting of misconduct by employees. Specifically, employees are most likely to report in organizations with all four program elements in place (78%). Employee reporting declines steadily in organizations with fewer program elements such as: written standards plus (67%), written standards only (52%) or none (39%).
- Ethics programs are associated with higher perceptions that employees are held accountable for ethics violations.

Where leaders, supervisors and coworkers talk about ethics and set the right example, employees have taken notice. Where systems are in place to help make ethics a priority, employees respond. In both cases, organizations appear to benefit.

Beyond Compliance

It seems like ethics should be easy, but creating an effective ethics program actually takes a lot of hard work. Unfortunately, in today's strident ethical environment, where CEOs and whole companies seem to disappear in the quicksand of integrity issues, many organizations that feel pressed to "do something" about ethics don't take the time to understand what makes a program effective. The temptation is great to create paper programs that fulfill the letter of the law instead of developing programs that actually work.

Ethics programs are complicated. They not only require codes of conduct, policies, commitment, and comportment with the law, they also require effective implementation through structures, programs, resources, communication strategies, program evaluation and training. Communications about ethics should become a routine part of performance discussions, staff meetings, and one-on-one conversations. Constant reminder to do the right thing is one of the few truly effective ways to help promote prudent and ethical decision-making. -In the end, organizations that are truly interested in getting good results must provide employees with a safe environment that encourages them to ask ethics questions and helps them to get the right answers.

Attorneys who are also ethical leaders can help organizations change their corporate cultures to reduce unethical conduct. They can be both role models and resources for organizational leaders who want to change their ethos of what is right or wrong from mere legality to something beyond.

End Notes

¹ “Ethics Resource Center’s 2003 National Business Ethics Survey,” Ethics Resource Center, Washington, D.C. Survey available at www.ethics.org

² This requirement is built into Sarbanes-Oxley for CEOs certifying financial statements, but many organizations – such as Royal Dutch Shell – are requiring cascading certifications on the effectiveness of their ethics programs.