

UNIT TWO – SOLVING ETHICAL DILEMMAS AND PERSONAL INTROSPECTION

SECTION 2A – BUSINESS AND ETHICS: HOW DO THEY WORK TOGETHER?

READING 2.1 – WHAT'S DIFFERENT ABOUT BUSINESS ETHICS?

- A. The Application of Moral Standards to Business Dilemmas
- B. Moral Standards are Canons of Behavior that are Neither Legislated nor Changed by Legislation
 - 1. Conflicts between law and moral issues: child labor
 - 2. Moral accountability for business conduct
- C. Some Firms Adopt Just the Law as Their Standard for Ethics
- D. Ethics Asks that We Go Beyond the Minimum Requirements of the Law
- E. Businesses Have Organizational Factors in Addition to Individual Decisions

Answers and Key Discussion Items

- 1. Use **PowerPoint Slides 45 - 47** for examples of categories for classification and the types of issues that are occurring in the workplace. Notice how those who offered these examples to me (anonymously) understood that they were involved in an ethical issue but did it anyway. And, the result is, they continue to think back on it. Students will explore the psychology behind these decisions – pressures and psychology.
- 2. These examples illustrate the desire to avoid pain (bad relatives!) or avoid cost – these examples are on the slides along with others. We are always trying to avoid something when we cross these lines, even though we see the possible harms and then continue to feel guilty about it.
- 3. Students should discuss that business ethics issues are often made to seem more complex in an effort to rationalize through the complexity or through an overarching rationalization that “Business is different.” Issues are the same and motivation to avoid pain is there, but the underlying categories of honesty, false impression, etc., are still there.

READING 2.2 – THE ETHICS OF RESPONSIBILITY

Peter Drucker

Use **PowerPoint Slide 48** – Drucker elaborates on his ethics position here.

Answers and Key Discussion Items

- 1. Dr. Drucker believes that ethics are ethics, whether in business or as an individual. The problem is that people don't change simply because they become vice president. They simply continue doing all

the things they do personally. If they lie and cheat in their personal lives, they will lie and steal in their business lives. Stiff punishments serve in personal and business lives to deter unwanted behaviors.

2. Dr. Drucker's test for ethics is "above all do no harm" (*primum non nocere*). He also believes that where much is given (as with business executives) we have a right to expect more – higher standards of behavior (as with the Eton graduate).

READING 2.3 – IS BUSINESS BLUFFING ETHICAL?

Albert Z. Carr

This piece generally finds students with strong feelings, both ways, about Mr. Carr's theories and approach to ethics. Encourage them, once again, to begin thinking about their values and whether they would be comfortable with Mr. Carr's approach. Use **PowerPoint Slides 49 - 50** to discuss some questions based on the Carr article.

Answers and Key Discussion Items

1. Have the students discuss the implications of lying during business negotiations in order to answer this question and offer their views on Carr's premise that we are all bluffing in business and so lying is acceptable. For example, what if you relied on a seller's representation that his price was the lowest and he guaranteed that price as lowest. To save yourself some time in checking around, you rely on the seller's representation. Soon you discover another seller with the same product at a lower price. What are the implications for your relationship with that seller? What is the level of trust you have with the seller? Would you continue to do business with that seller?

Also have the students discuss the implications of not knowing what is just a bluff and therefore part of the big business game and what goes too far. How do we know where to draw the line on what is part of the game and what is fraud?

Have the students note that even Friedman believes fraud must not be part of business in order for the free market to function effectively. Does Carr introduce fraud into the marketplace as an acceptable part of business?

2. Review with the students the difficulties in having individuals decide what is acceptable vs. unacceptable bluffing. What is bluffing and what is misrepresentation? If bluffing is acceptable, what will happen to legal standards misrepresentation and fraud?
3. Carr characterizes the statement as "self-serving calculation in disguise". He explains that the goal is to make more money and the statement just gives a surface explanation for what is really a strong drive for success.

Compare & Contrast

Carr, with his analysis of espionage relies on the measure of "Everybody does it." Use **PowerPoint Slide 50** again and discuss with the students the NFL issue involving the Patriots and their conduct. "I think all the teams do that. That's been going on forever." Even though all the teams "were doing it," "it" was still misconduct and the public reacted strongly to the conduct.

Drucker feels that there are absolutes in business ethics and that businesses have choices despite the pressures. Carr feels that people must succumb to pressures in business or they will never survive. Novak also rises above the either/or conundrum that Carr uses (either we bluff or we will not be successful) and calls businesses to a higher order that is not mutually exclusive with success. Carr feels you have to leave personal principles and feelings out of business. Carr proposes a sort of amoral technician mentality for business.

Dr. Drucker demands a higher standard as well – we should not hurt anyone. Carr feels that sometimes we have to hurt people if we are to stay in business. Carr advocates a sort of detached approach to business whereas Drucker asks that we have the same ethics in business as we do in our personal lives. Drucker demands more caring and feeling as a way to ensure that business survives and thrives. Carr deals with his perception of the reality of doing business – do or die.

SECTION 2B – WHAT GETS IN THE WAY OF ETHICAL DECISIONS IN BUSINESS?

READING 2.4 – HOW LEADERS LOSE THEIR WAY: WHAT PRICE HUBRIS?

Use *PowerPoint Slides 51 and 52*.

Answers and Key Discussion Items

1. The credo keeps you grounded. Andersen's credo was that he would never certify statements that were not accurate and yet the firm lost its way by being willing to sign off on Enron because they were willing to do so in order to keep the consulting train going. Also, the credo is a self-imposed set of rules that keeps leaders from ignoring the rules. They are willing to comply with their own rules even if they perceive others' rules to be not very important or valuable to their leadership.
2. Things that would help – get feedback from front-line employees and allow it to be anonymous so that employees can speak candidly. A focus on things outside of work can distract from the materialism that consumes leaders who do not keep values with them. They should also work on developing leaders within the organization in order to keep the purpose of leadership clear. Leaders should also think back to the last time they admitted they made a mistake in order to get around invincibility. They could do the exercise with speeding from Unit One – are there areas in their business lives in which they have shifted the norm but are really pushing the envelope in terms of legality.
3. Mr. McCoy lost his way when the goal and achievement became the sole means of measuring his success and whether his experience was worthwhile. When he stepped back he realized that he had memorable experiences that had more staying power when he did not climb than when he did. Mr. McCoy also discounted the very basic value of respect for human life in the name of a numbers goal.

Compare & Contrast

There are some obvious differences. Mr. Wilberforce's grounding came from his involvement in things other than just Parliament. That power was not the end-all to his existence. He had a purpose for his position and political power – he had a moral goal that he wanted to accomplish and he pursued that, not political power. Indeed, his career shows that he was willing to give up the trappings if he could accomplish his goal. Those around him knew him as principled and were willing to work with him because they also understood the purpose of his leadership.

READING 2.5 – MORAL RELATIVISM AND THE EITHER/OR CONUNDRUM

Use *PowerPoint Slide 53*.

Discuss with the students the dangers of framing an issue by “Either I do this or _____” with the “or” spelling out some awful fate.

Answers and Key Discussion Items

1. Students often fall into, "Either I get the homework from someone else or my grade is ruined." "Either I get this job interview or my life is over." "Either I get this GPA or I can't get into law school." We define the issue in such a way that we get the answer we want because we have predicted the outcome, regardless of whether it will actually come to pass.
2. One of the lessons from Ikea's experience is that there are some countries in which you do business that the corruption is so rampant that you have to face the reality that doing business there will be a constant battle with the government as well as with employees who can be led astray by the atmosphere of corruption.

READING 2.6 – $P = f(x)$ THE PROBABILITY OF AN ETHICAL OUTCOME IS A FUNCTION OF THE AMOUNT OF MONEY INVOLVED: PRESSURE

Use **PowerPoint Slide 54**.

Discuss the research that shows a company's vulnerability to ethical missteps if the company has been on an earnings roll.

High aspirations, high expectations, and prominence are indicators of illegality.

Discuss the U-Haul truck and the eaves example.

Answers and Key Discussion Items

1. You could draw on the example of J.P. Hayes from Unit One – Use **PowerPoint Slide 16**. John Adams, second U.S. president noted, "When conscience claps, let the world hiss." Other examples include pointing out damage on a rental car. Telling a clerk that you have been given too much change. Pointing out to the hotel desk clerk that you were not billed for your extra charges on your bill. Disclosing on a mortgage application when you are about to experience a salary reduction at work.
2. Tourre felt the pressure of his salary/compensation. He was paid \$2,000,000 per year so he was unwilling to rock the boat. He had been designated to handle an important client and a large offering – he needed to be a client pleaser. If Tourre did not perform up to expectations, then the firm might not advance him to partner. He was trying to attain a partnership.
3. Your credo helps you determine in advance what you would or would not do in a particular situation. Because you have thought about it in advance, you are not as vulnerable when the pressure hits. You are better able to resist the pressure because you have already thought through all the potential risks and that it is "so not worth it."

CASE 2.7 – MF GLOBAL, JON CORZINE, AND A BANKRUPTCY

Use **PowerPoint Slides 55 - 58**.

There are two pieces of good news in MF Global's collapse. The first is that MF Global was a small enough firm that its demise was not the stuff of market destruction. The second is that a financial firm was allowed to collapse based on its high-risk, misguided investment strategy. There is some small comfort in knowing that the market is, on occasion, permitted to discipline those who do not perform well through consequences, including failure.

However, there is also bad news in the MF Global collapse. Despite all the post-2008 market collapse

regulation, there are neither rules nor regulatory oversight in place to catch these behaviors before the losses.

The behaviors at MF Global reflect an unwillingness to internalize the lessons of 2008. The highly leveraged, risky strategies of Wall Street have continued despite the pain of 2008 and amidst the ever-growing body of evidence.

The qualitative tool that remains untapped by investors in evaluating companies, portfolios, and developing problems is the ethical culture of companies. The culture of a company is as determinative of returns (indeed, perhaps more so) than anything an Excel spreadsheet can produce for *pro forma* optimism. Quantitative optimism should be tempered by qualitative ethical culture factors whenever we evaluate a company, an investment firm, or the leadership skills of those running either.

The MF Global collapse reflects a pattern similar to that of other collapsed companies on Wall Street. The pattern has repeated yet again and another company has collapsed as it attempted to defy logic, reason, and the inevitability that its failure to disclose bad news would be its downfall. However, the bright spot is that we can learn from MF Global the same lessons that we should have learnt from the era of the savings and loans collapses, the dot-com fraud, the Enron period, and the 2008 collapses.

1. If the numbers sound too good to be true, indeed if they defy market reasoning, they are too good to be true. Knowing the numbers is not enough – how did they get those numbers and what patterns are emerging in the reporting of those numbers are two critical pieces of information in assessing performance.
2. Always question the icon. Past performance and recognition are never good determinants of success going forward.
3. Watch the philanthropy. Remember the adage of Ralph Waldo Emerson, “The louder he spoke of his honor, the faster we counted our spoons.”
4. Follow board meetings, board agendas, board activity, and board involvement. Be certain the board is questioning the icon.
5. Check relationships between and among board members and regulators – the closer the relationships and the more relationships there are, the more slack the company may have. MF Global helps us to realize that regulatory slack does not always serve investors or customers well in terms of risk and protection of funds. Conflicts matter because they affect judgment.
6. How are we performing at a level so much better than others? Why do we pursue aggressive accounting practices? Do we fancy ourselves different from others? Above the fray? Not subject to the ordinary requirements and rules of business?

As a result, MF Global customers are left in limbo, unable to withdraw their funds and unclear about whether they even have any funds to withdraw.

When there are conflicts of interest present between and among those responsible for regulation or oversight of a company (whether board member or public official), the result is less scrutiny, favoritism, and a diagnosis bias that prevents an objective look at what is really happening at the company and examination of vulnerabilities. Conflicts of interest do not always produce the eye-popping self-enrichment. Often the more damaging conflicts of interest are those in which regulators and board members choose to think the best, despite signals to the contrary. Those charged with oversight simply conclude, “Oh, Jon is a friend. He would never do such a thing.” That conclusion ends the inquiries that are needed, particularly with high-risk companies.

Take a gander at the money management skills at former Senator Jon Corzine’s MF Global firm and you witness activities that give a whole new meaning to the term “shell game.” What has emerged about the frantic transfers of funds during MF Global’s final days before bankruptcy is disturbing on so many levels, but there are two shining exemplars amongst the rubble and now emerging ruffian tactics of the firm taking money from Peter to pay Paul, even as Peter was clueless about the use of his funds. Oh, what backbone was demonstrated amongst the desperation!

As MF Global tried to transfer funds to settle accounts with trading partners, the folks at JPMorgan Chase put out a big, “Whoa, partner!” and questioned the source of the funds being used. The bank with a backbone inquired as to whether MF Global was using customer account funds in violation of CFTC rules. JPMorgan wouldn’t even take the assurances of a backroom flunky that MF Global responded with; it wanted Mr. Corzine to provide a written guarantee that the funds were not coming from customer accounts. That wily chairman Corzine handed the request for a written guarantee off to MF Global’s general counsel, Laurie Ferber. Ms. Ferber refused such assurances on the grounds that MF Global did not provide such special assurances.

Now, the author realizes that Ms. Ferber’s response was both code and protective language because no lawyer with an IQ over 30 would have signed his or her name to such an assurance when said counsel had probably figured out that MF Global’s books and records would have finished first over Berford’s Gas and Guzzle in a contest for seat-of-the-pants efforts on cash-flow accuracy and internal controls. MF Global filed for bankruptcy two days after the Ferber refusal. Be that as it may, when an elephant flies, you don’t fault it for not staying up in the air long enough.

The bottom line is that both JPMorgan Chase and Ms. Ferber did the right thing – they refused to allow transactions to go through that might be in violation of the law – transactions that would result in the depletion of customer accounts. They both showed backbone and stood up to Mr. Corzine, a powerful political and Wall Street figure. Through their actions they threw down the penalty flag and stopped the game. When we are treated to a witness of backbone, hope springs eternal for market trust. Next time, just throw down the flag a bit earlier so that Peter doesn’t lose so much.

Answers and Key Discussion Items

1. The decision points and conduct:
 - a. Corzine overriding the risk officer and his input.
 - b. The risk officer being fired for raising questions.
 - c. The new risk officer being relegated to being quiet.
 - d. The weakness of the board in responding to Corzine.
 - e. Lobbying the government for changes to increase risk.
 - f. Putting pressure on employees to cover the source of the funds.
 - g. The rapid decision process on the use of funds.
 - h. The willingness to cover up what was done.
 - i. In a way, Corzine’s conduct at Goldman was a decision point for how he would conduct business in the future.
 - j. The failure of a conflicted regulator to step in and step up and ask questions.
 - k. The compensation system being tied to the stock resulted in some of the behaviors that crossed ethical lines.
 - l. Gary Gensler – the chairman of the CFTC did not take a strong position against the kinds of activities that Corzine and MF Global were engaged in – his conflict and relationship with Corzine found him restrained as a regulator.
 - m. The board – they did not provide oversight for Mr. Corzine and let him do what he wanted – the board is there to rein in CEOs. The board did not follow the changes in debt levels.
2. Michael Roseman, risk officer who raised issues to the board and left the company when no one would heed his warnings about risk. Laurie Ferber, MF Global’s general counsel who would not certify the sources of the cash in writing because she knew that would be falsification. Edith O’Brien was willing to break the rules to cover the cash needed, but did sound the warning of illegality through her e-mails. Regulators who were trying to pass risk limits and change practices.
3. When there appears to be no methods in place to stop the misuse of customer funds.
4. With Mr. Corzine – he was following a strategy and trading practices that others were warning him against, but he could not bring himself to heed their advice. In fact, he did the opposite and got rid of

those who were dissenters. Or he threatened the board when members asked questions about his strategy. His career and track record led him to believe that he was invincible and he lost touch with reality.

CASE 2.8 – ON SAYING ONE THING AND DOING ANOTHER: PUBLIC PERCEPTION AND DECEPTION COVERING FOR THE CEO

Apple's position is that health is a private matter. Analysts' position is that if Jobs leaves then Apple's stock drops 25%. The SEC's position is that companies must disclose material information. And so we swirl. "None of your business," is not the stuff that puts rumors to rest. Maybe a firm, "You can't handle the truth," would be less controversial. Or maybe Apple needs to escape the either/or conundrum. The either/or conundrum arises when we have two good values in conflicts. Here, one value is telling the truth about the health of a CEO. Another good value is preserving shareholder value. Apple assumes that by keeping mum about the health issue that it can walk a fine line and honor both conflicting values. But "mumness" can be deceptive. And Apple has been blinded by assumptions as well as by its failure to think along the lines of succession planning. If all Apple now has is tied directly to Jobs, the company has not done its work in terms of creating a culture founded on the Jobs' principles. Jobs' departure, for whatever reason, will be a death knell if all Apple has is Jobs. Perhaps, though, Apple could use a little self-confidence. Perhaps it could also begin communicating that part of the story to shareholders and the market, to wit – We really can sally forth without Jobs. Maybe Jobs could even lend his voice to acknowledge that Apple can and will go on, post-Jobs.

Rather than mucking about in the "health is a private matter and not material" arguments about its close-to-the-vest approach, Apple might try the release of information that is not private but is material. That information would be that the company has a succession plan in place, that its culture is strong, and that it will go on to preserve the Jobs' legacy. The stock drop assumption exists not because Jobs would leave a void but, rather, because investors, shareholders, and analysts believe there is no "Carry on!" in place. Dispelling that rumor is the heart of the issue, not the "to disclose or not disclose" whether Jobs is ill. When we fall into the either/or conundrum, it is almost always because we have not addressed an underlying problem. The either/or conundrum is the symptom of being caught between a rock and a hard place, or, trying to preserve two good values by breaching another.

Answers and Key Discussion Items

1. In the cases listed, the reasons given for departure gave a false impression because the conduct of the departing officers after the departure belied the reason. The family reason does eliminate questions about what was really happening at the company and may preserve the value of the stock. However, have the students think through the consequences for the company, if only from the perspective that the company is not really facing up to the issues it faces. Also, there is an impact on the culture when the company makes statements employees know not to be true about the reasons for the executive's departure. The reasons save face for the executive and the company. The share price does not drop if there is a "soft" reason as opposed to weak management or perhaps some evolving financial concerns and issues.

Yes, the family-time statements do preserve dignity, but there's that emotion getting in the way of what really is a clear test: Is this information true? Is it misleading? Why are you using a different reason? Why are you using a partial explanation? There is deception or false impression being used to preserve dignity – the classic either/or conundrum is at work here.

2. The legal issue here is whether the statement is intentionally false. If the executive agrees to the statement, it would be difficult to establish fraud because there was, at the time, at least some truth to the statement. However, in the classic ethical sense, shareholders and markets are misled about the true reasons as well as the true condition of the management structure and success at the company. However, SEC rules do not specify instructions on content of press releases. The key portion of the

law is disclosure of an executive's departure. The statements perhaps violated the spirit of the securities law disclosure requirements.

3. Those who occupy high political office or high business positions or are famous athletes or actors or singers are watched for their examples. This reality may not be popular, but it is a reality nonetheless. Personal lives are inextricably intertwined. They want to believe that information can be managed, but too many people are watching; too many photographers are out and about; and their personal conduct matters to those who have lionized them.
4. The belief is that the reasons given save face for those involved as well as their companies or sponsors. However, as noted in all of these situations, the truth does eventually percolate and then the lionized figure is faced with two problems: the conduct and the dissipation of trust that results from having not been forthcoming.

Compare & Contrast

In comparing his conduct with the CEOs, there are remarkable similarities – both are trying to keep negative information from becoming public. Both are facing some issues that is embarrassing for them or could affect their future earnings. Both are also powerful and been used to a great deal of adulation. They assume they can continue with whatever.

SECTION 2C – RESOLVING ETHICAL DILEMMAS IN BUSINESS

READING 2.9 – FRAMING ISSUES CAREFULLY: A STRUCTURED APPROACH FOR SOLVING ETHICAL DILEMMAS AND TRYING OUT YOUR ETHICAL SKILLS ON SOME BUSINESS CASES

Use **PowerPoint Slide 59** – “Steps in Ethical Analysis.”

1. Do your numbers – figure out costs of doing something and not doing something – including longer term impacts. Be sure to consider the impact on those not specifically mentioned in the case. For example, product safety issues don't involve just engineers' careers and company profits, shareholders, customers, customers' families and even communities supported by the business are affected by a business decision on what to do about a product and its safety issue.
2. Recall the categories and apply the categories to be sure you have spotted the issues.
3. Apply all the questions to see what you might have missed in analyzing.
4. Check for those warm language labels and rationalizations that may find you overlooking an issue as you find comfort in avoiding real analysis.
5. Be sure to consider other cases you have or will study and whether those historical precedents might be of help in analyzing your present situation and dilemma.
6. Bring in other areas of business to be sure you are looking at the ethical issue fully. For example, consider any strategic advantages in your decision. Be sure to apply economic principles to proposed actions. Think through the organizational behavior implications of your decision. In other words, integrate what you know about business as you analyze from an ethical perspective.
7. Watch the framing of the issue. Make sure that you are zeroing in on the issue itself and not what you see as consequences for public disclosure of the issue.

CASE 2.10 – GALLEON HEDGE FUND: EXPERT NETWORKS, FRIENDLY DISCUSSIONS OR INSIDER TRADING?

Legal Issues

The legal issue here is whether these so-called “expert networks” were really a form of insider trading. In this case, most were convicted or entered guilty pleas, so they did cross that line into obtaining non-public information from company insiders.

Answers and Key Discussion Items

1. The Raj, as he was known, had trouble seeing the difference between acquiring inside/proprietary information and information he could get from the financial press. Leaks are still inside information and his quote indicates that he could not see the distinction. In addition, he tried to cultivate insiders and could not see that such a strategy was a dangerous one in terms of crossing legal lines. If he had considered the long-term consequences of his behavior – 26 indictments and the end of his company are high prices to pay for crossing some ethical lines. What is most interesting is that no one disagrees that they all crossed legal and ethical lines. In other words, there were no close calls here yet he remained, through his sentencing reports, somewhat stunned that he was charged.
2. The employee went to get legal advice and asked a very simple question – Was what he was doing legal? – if the answer was “no,” and the lawyer told him that at best he was “bending the ethics bar,” then you have your answer.
3. The Lululemon story indicates how intimidated employees were that they would participate in such an activity and be willing to subject themselves to such humiliation. The CFO had strength to resist group think and did not fall victim to the bystander effect – he was willing to end the meeting because the conduct was so unprofessional and bizarre and humiliating for those involved.

CASE 2.11 – WHAT WAS UP WITH WALL STREET? THE GOLDMAN STANDARD AND SHADES OF GRAY

Use *PowerPoint Slides 60 - 90*.

Legal Issues

Sophisticated investor: Goldman used the area of sophisticated investor – the definition to escape full disclosure to its client. Their offerings were made to “sophisticated investors” and Goldman did not disclose the full extent of its position in the investment or market. The Dodd-Frank Wall Street Reform Act has clarified the definition of “sophisticated investor” so that firms are less able to withhold information from investors.

Analysts and two opinions: Goldman did not follow the rules on consistency between the analysts’ internal discussions and communications and external recommendations as the SEC rules require because it referred to a certain group as strategists. If they were not analysts in name then the rules did not apply to them.

Auction rate securities: Interestingly, on the auction rate securities issue, it took state law to result in a settlement of these issues. The SEC struggled with applying laws and regs to this practice of bidding up the price and then not buying. The nondisclosure to clients was that Goldman was bidding on the securities, but Goldman’s and others’ position was that there are always investment houses bidding in such auctions.

IPO allocation and structure of the market: The IPO structure was also eventually settled, but for relatively small fines with new rules on IPO allocations and agreements between clients on second-wave arrangements to buy more.

IPO profitability changes prior to IPO: The change in the profitability standard to one quarter was an interesting legal issue because the information on these dot-coms was always disclosed – the financials were there for investors to see. However, Goldman did not disclose its gradual drift from three years of profit to one year to one quarter. Investors assumed the vetting that had existed in the past.

Partnership to corporation structure: The change at Goldman from partnership structure, where the principals put everything they owned on the line, to corporation, by which they were shielded from liability, was one that allowed for greater risk with little downside for the principals. The new legal structure with limited liability resulted in the riskier strategies that the firm took.

Answers and Key Discussion Items

1. See the legal issues listed above under "Legal Issues" and discuss how Goldman fell into the gray. Also discuss how folks were misled.
2. Most of the issues involved nondisclosure of facts that an investor would have deemed important in making their investment decisions. The category, for the most part, was false impression because the investors were not aware of Goldman's positions in the market or that it had found a way around candor about its internal discussions on risk and the quality of instruments as well as the direction of the market. There is also a good point to discuss "moral hazard" and how allowing AIG to be bailed out provided cover for Goldman on its activities. The "too big to fail" issue arises in this discussion because investors lost money, but Goldman was protected. The front-page-of-the-newspaper test is a good one here because the headlines were not flattering to Goldman. The questions of the senators reflect the struggle with people trying to understand how what Goldman did could comply with the law but still seem so deceptive. The law is but one part of ethical analysis. Over the long term, Goldman failed to think through the consequences of additional regulations, the fines, and the loss of clients because of the perception that Goldman could not be trusted and may not always be acting in its clients' best interests.
3. Those affected by Goldman strategies and gray areas: investors, the market, the U.S. economy and the global economy, AIG, AIG investors, employees of AIG and other companies and investment banks that had to be dissolved or acquired or reduced in size, employees of dot-coms, beneficiaries of donations by companies and investment bankers (nonprofits) (also affected because they had their endowment funds invested), real estate market because of the impact in value, all those affected by a downturn in the real estate market including real estate agents and brokers, contractors, furniture and window covering companies, decorators, landscapers, etc. Students can create flow charts to show the ripple effect of these behaviors.
4. The factors that influenced their decisions were the management mantras of "Filthy rich by 40," and the incentive structures that produced so many millionaires so early in their lives. Goldman was also a "toes to the line" culture – finding the next big loophole to use. The culture was also, "If it's legal, then it's ethical."
5. The Goldman behaviors are a classic illustration of Carr's theories. Was it just bluffing for Goldman to not disclose its positions or was it a card up the sleeve? Not everyone knew the rules of the Wall Street game – the large investment bankers clearly did from their involvement in IPOs to auction securities to their structuring of the CDOs. However, these investments made their way to the retail level where the knowledge base was just not there. Goldman and others believed them to be sophisticated investors by definition and it was not necessary to disclose. However, that definition is now changed and more disclosure will be required because they clearly did not understand the double positions.

6. The translation of these two sentences is that the culture that existed at Goldman before will remain, with all the drive to success and that Goldman does not feel that its client base will be affected. In other words, Goldman emerges with a fine but little contrition and a plan to go forward with the status quo. The lessons learned do not seem to be there.
7. Fabrice was using a complex form of rationalization – he believed that what he was doing improved the world because high finance allowed everyone in the U.S. to improve his or her lot in life through investments. This mantra was something that was repeated throughout the Goldman culture – Mr. Blankfein believed that he was doing God's work. This assurance allows them to continue with the gray area activities because the cause has been defined as noble.

Compare & Contrast

Senator Collins has pointed out that there was no legal fiduciary duty but she was asking whether Goldman needed to act in its clients' best interests as a matter of good business practice. As the discussion indicates, Goldman struggled with that answer and could only conclude that it was "an interesting idea." Goldman has a sort of survival-of-the-fittest mentality about the markets. However, it is not factoring in the new regulations, the changes in the market so that it can no longer occupy those legally gray areas and will be required to compete on a different basis other than loopholes. This is a good example for discussing self-interest vs. selfishness – the Ayn Rand model.

CASE 2.12 – MAKING BELIEVE WE ARE AT WORK OR BEING LOYAL: THE ALIBIS OF TECHNOLOGY

Answers and Key Discussion Items

1. This question on immorality is loaded – the European girlfriend feels that because the underlying activity is immoral then those who support that activity are accomplices. The alibi clubs cover up something we are doing that we don't want others to know about. There is a simple element of the Nash test here. If we can't disclose what we're doing, we have a problem. If you want to cover up your conduct, the clubs will work, but the bigger ethical issue is what you are doing that requires the cover-up. You may want to add a discussion of Ashley Madison here – the online dating service that matches married people who want to have affairs.
2. This is a credo moment for discussion. If you knew you could make a great deal of money with a business like this, would you have a business such as this?

There is money to be made here. This case is an introduction to their introspection for drawing their lines – the lines they would never cross to be successful or to make money. The decision models that help are the newspaper test and the "how would you feel if you were on the other side" test. And, there are also the systemic effects of a society that supports infidelity.

Compare & Contrast

The European girlfriend is a moral absolutist who believes that it is wrong to lie and also believes that cell phones should not be used to facilitate unfaithfulness. She sees the alibi system as a support group for infidelity. Be sure to ask the students how they would feel if these services were used by someone they trusted and how they would feel (part of the decision analysis models they have studied). Many students argue for privacy but would themselves be outraged by a loved one cheating on them and that others would be complicit in that activity. Credo moment: I would never sell a product that was used for deception of others. I would never sell a product that would be used for misleading others.

CASE 2.13 – MAKE-BELIEVE REALITY TV: STORAGE WARS AND RECONSTRUCTED HOME SALES

Legal Issues

From the time of TV quiz shows in the 1950s (See Robert Redford's film "Quiz Show" for background), the problem of seemingly real TV shows not really being real has haunted us. The FCC can take action against networks and producers who deceive the public about the content of TV shows that are touted as real-time or reality.

We want to believe that it is all real; if it is not, then we are disappointed.

Answers and Key Discussion Items

1. There is a common thread in all of the actions taken – the viewing public is deceived about the timing, the facts, or the actual outcome of a situation that they are led to believe is occurring as is, in real time. In some situations, the deception is greater because of the staging quality – such as using actors instead of the real buyers. In the case of storage wars, the deception relates to the underlying theme of the program which is that there is valuable stuff in storage lockers, when, in reality, there may not be and "stuff" is just planted there.
2. There are indeed viewers who are watching to see the homes. However, the question is the responsibility of those showing the home – they have created a premise, which is not truthful, about the drama behind the show. Perhaps, a new show theme with just looky-loos – allow people to view homes and then vote on which one they would buy.
3. The issue in the Amish show is really not different – the set-up is not correct because they have already left the farm long before the show documenting them leaving the farm appears. They have already bought the house before the film crews show up to film them looking. The bottom line in all of the shows is that what is being shown as reality TV is not reality, but is a creation.

CASE 2.14 – TRAVEL EXPENSES: A CHANCE FOR EXTRA INCOME

Answers and Key Discussion Items

1. The phrases the employees use when confronted with excessive and unauthorized travel expenses are the classic rationalizations for taking things that don't belong to you. The travel expenses that are not actually travel are a form of stealing.
2. Employees risk claiming extra expenses with the hope of making a little extra money, because they feel they won't be caught, and they feel entitled to it when raises have not been forthcoming.
3. Employees who are honest are harmed in that they are not trusted; the company is harmed in that it has additional expenses and investors and customers are affected by those higher costs and possibly declining sales. The extra expenses also create lower taxes based upon fraudulent expenditures. Up and down the chain with respect to the company, there are many affected when travel claims are inflated and created.

NOTE: Bring out the similarities between this case and the more complex Goldman case – when we engage in false impressions or offering misleading information there are always those down the chain – at the retail level – who are affected by our conduct and decisions. At Goldman investors who were not all that sophisticated, but relied on the trustworthiness of the investment banks and the markets were affected. Here, companies rely on honesty of employees, but if it is not there they pay in the

form of higher expenses, which translates into higher product prices, which affects those at the retail level. The idea is to help students understand that no ethical breach is ever isolated in effects or consequences and the classic, "It doesn't hurt anyone" rationalization can be debunked through either the complex Goldman case or this simple case of travel expense reimbursement.

4. The rationalization is "For all I do around here...." Employee X feels that others are compensated more than he is and that extra travel expenses are a means for him to get what's coming to him. Employee X has also done it for so long, beginning with little things, that he does not even acknowledge that the conduct is taking something that does not belong to him. He has justified it for so long that the amounts keep growing and he is comfortable both because of the rationalizations and also because he can no longer see the bright line of "This is mine," and "This is my employer's."

CASE 2.15 – DO CHEATERS PROSPER?

Answers and Key Discussion Items

1. No, the suggestions involve many ethical breaches from taking things that don't belong to you, to saying things you know are not true, to taking unfair advantage.
2. The publication of a book with methods for cheating demonstrates enormous "chutzpah." That the author did so under an anonymous name is indicative of the embarrassment the author would feel if these tips and suggestions were attributed to him. Also, he might not be able to rent a car again!
3. The suggestions cost the businesses involved money, but there is also a trickle-down effect in that those costs must be absorbed somewhere. Perhaps employees are not given a raise, perhaps insurance rates run higher for the fake claims, or perhaps product costs increase. There are always "retail-level" impacts when individuals cheat businesses.

CASE 2.16 – THE HOME REPAIR CONTRACTOR TEMPTED BY CUSTOMERS AND CONTRACTS

Legal Issues

It is fraud to submit false claims to an insurance company?

There are always those who will want you to do something with which you are not comfortable. Craig has a very clear credo – he will not cross that line into false representations in order to win business. He has made the determination upfront so that he does not succumb to pressure if such an opportunity presents itself. Craig lost the work on that house, but he avoids the issues that would come with an insurance investigation and the resulting blackballing of him as a contractor for home repairs.

Answers and Key Discussion Items

1. The homeowner is submitting false information to his or her insurance company. The goal is to get something paid for that is not something that is covered by the terms of the insurance contract. If the homeowner owned the insurance company, he or she would see the situation differently because the homeowner is not honoring the terms of the contract.
2. Craig is simply following the law – it is fraud to submit a claim to an insurance company that is false. Craig could lose his license – there are implications that are long term that he is considering that others are not – they see short-term reimbursement and he sees the long-term effects on his business. For example, insurers could refuse to deal with him or caution customers against using him as a contractor.

CASE 2.17 – PENN STATE: FRAMING ETHICAL ISSUES

Legal Issues

Penn State has already settled a number of cases related to the conduct of the former assistant coach. There are other claims that will go to trial or be settled because there is liability for injury that results from the failure to fulfill your duties.

Use **PowerPoint Slide 91** to keep the identity of so many people involved in the situation clear.

Organizations that experience ethical lapses that bring them front-page/Huffington Post headlines have common practices and issues. Penn State is now grappling with the departures of its president, athletic director, longstanding head football coach, Joe Paterno, and a vice president following criminal charges of child sexual abuse against a former assistant football coach. Penn State lost so many leaders because two of them face criminal charges related to their alleged failure to take action to stop the child sexual abuse, some of which may have occurred on the campus.

MF Global's bankruptcy trustee is hard at work trying to find \$1.2 billion in missing client funds. MF Global collapsed after the firm's former chairman, Jon Corzine, bet wrong on Greek government debt. Oddly, Mr. Corzine bet the funds would increase in value. Mr. Corzine has resigned, and it would be easier to list the federal agencies not investigating MF Global as opposed to listing those that are. From the SEC to the FBI to Congress, MF Global is under the microscope.

What do a hedge fund and a university have in common? Well, both are facing the clean-up from accusations that destroy reputations and, in MF Global's case, the ability to move forward. However, both may well be in their pickles because of decisions made as their ethical collapse lurched forward. One clear common factor and a certain precursor to headline ethical issues is the termination of dissenters. Silence those who raise issues within your organization and, well, you end dissent. Organizations with monolithic views are organizations that are vulnerable to ethical lapses.

Mr. Corzine fired his chief risk officer because, well, that chief risk officer had the temerity to disagree with Mr. Corzine on the Greek bet. Penn State's standards and conduct officer clashed repeatedly with Coach Paterno over the level of discipline that was appropriate for student-athletes who violated the university's code of conduct (and worse). At one point, Dr. Vicky Triponey wrote to the now-departed university president about her concerns following assaults by football players on other students, "I would respectfully ask that you do something to stop this atrocious behavior before this team and an entire generation of Penn State students leave here believing that this is appropriate and acceptable behavior within a civil university community." Dr. Triponey would then resign, citing "philosophical differences."

The resignation or termination of dissenters, of course, ends dissent from the departed ones. However, their departure also puts a big damper on remaining employees' willingness to raise concerns. In short, get rid of those who disagree and disagreement ends. When disagreement ends, perspective departs. And when perspective departs, well, you find yourself betting on a failing Greece and failing to report conduct that makes us shudder.

Don't drive out the dissenters – let 'em speak, early and often.

Answers and Key Discussion Items

1. The blog quote is not unusual. The comment to the blog has expressed what I hear from many employees who find themselves coping with their organizations' ethical and/or legal lapses that make their way to the front page of the newspaper or become the first story on The Huffington Post. Quite simply, these employees are saying, "Hey, I didn't do it!" "We're not all like them!" and "Other than this, we are an honorable [company][hospital][university]. . .!"

The employees are quite correct. Fully 99.94% of the folks who work at Penn State were nowhere near the showers, the athletic department, or the non-profit the assistant coach founded that allegedly became his source for these young boys. Penn State employees who did nothing wrong are painted with the same broad brush. They simply did not have and could not have access to people and information that would have allowed them to realize the awful things that were going on at an organization they valued as they toiled under leaders they respected. Stop! No more!

Therein lies the problem. The hard truth is that you can never know everything that any one of tens or hundreds of thousands of employees is doing. Look at the difficulty pharmaceutical firms have in reining in sales forces. Read the newspaper on any given day and you will find another company admitting to FCPA violations because of bribery by employees that somehow got away from them. As this goes to press, a former senator, governor, and head of Goldman Sachs is trying to explain how \$1.2 billion in customer funds invested at MF Global has gone missing. That missing part is where we need to channel innocent employees' frustration.

My response to employees who are outraged about very public missteps by isolated employees and defensive about their organizations' reputation is simple, "I could talk myself blue defending you and nothing would take. The way to prove that this was indeed an isolated incident, thereby re-earning that reputation is to try a little soul-searching, "How did this happen?" "What did we miss?" If we fail to explore this question, "Could this have been prevented?", we continue to chase the tiger by the tail, chalking up the incident to a black-swan type of event that no one could have prevented. We are usually wrong when we try to depict ethical and legal missteps as black-swan events that no one saw coming.

Another hard truth is that we can always learn by finding missteps and then proceed to fix the processes and procedures. What is traveling as a wave across the nation's colleges and universities is this question, "Do we have a Penn State problem?" Colleges and universities are sending around e-mails to all hands advising, "If you see something, speak up." Oh, and, "Here's the person to whom you speak up!" Colleges and universities are raising money to help child sexual abuse victims. Such an approach is far too narrowly focused. The end result of these efforts will be higher reporting of sexual abuse crimes and activities. There is nothing wrong with addressing child sexual abuse, and emphasize the obligation to report such abuse. However, if we are to escape the next great scandal, we are already behind if we are looking for child sexual abuse. Another hard truth is that you never know what the next ethical or legal issue will be. What we need are the systemic fixes that can catch any sort of misstep.

Penn State's experience provides a classic case study in answering, "What Did We Miss?" A cursory view of the Penn State case finds the following:

- The former general counsel for Penn State University served as the attorney for The Second Mile, the charity the former assistant coach founded and with which the young alleged victims were associated. He was general counsel for both Penn State and the charity when he reviewed the Penn State police report in 1998 on the assistant coach's behavior with these young boys.
- A janitor witnessed the alleged sexual contact of the former assistant coach with a young boy in the campus athletic department showers and was visibly shaken by what he had seen, but there was no follow-up on his concerns.
- Other staff members who witnessed behaviors by the assistant coach explained that fear of termination prevented them from reporting the incident further.
- The young graduate assistant who told Mr. Paterno that he saw "severe sexual acts" between the young boy and the assistant football coach explained that he could use certain terms in talking with the coach and that he only reported it to Mr. Paterno despite being disturbed that the assistant coach was still on the campus.
- Students at Penn State rioted following the announcement of Mr. Paterno's termination.
- Penn State's former standards and conduct officer clashed repeatedly with Mr. Paterno over the level of discipline that was appropriate for student-athletes who violated the university's code of

conduct (and worse). Vicky Triponey wrote in an e-mail that Mr. Paterno had, "no interest, (or business) holding our football players accountable to our community standards. The Coach is insistent he knows best how to discipline his players...and their status as a student when they commit violations of our standards should NOT be our concern...and I think he was saying we should treat football players different from other students in this regard." Dr. Triponey resigned in 2007, citing "philosophical differences." The investigation resulted in the release of e-mails, one of which Dr. Triponey wrote to the former Penn State president expressing her concern about the culture, "I would respectfully ask that you do something to stop this atrocious behavior before this team and an entire generation of Penn State students leave here believing that this is appropriate and acceptable behavior within a civil university community." She was addressing the conduct of six football players in beating other students in their apartment. Mr. Paterno's lawyer responded by indicating there was context for these issues and that the coach had produced many successful student-athletes.

There it is again – that rationalization! "Why let one thing outweigh so much good? So there were a few beatings. Look at the good Coach Paterno has done." To offer this type of a response is to sentence ourselves to future missteps.

As we glance down this list, the systemic issues are obvious. At the top of the organization there was a tin ear when it comes to conflicts. The general counsel for a foundation founded by the suspect in a university police report should not be reviewing that report.

There was a lack of follow-up on employee concerns that were reported. There was a culture of fear and silence that left frontline employees (those who are most likely to have the information we need to stop and/or correct behaviors) unwilling to disclose even the most deviant behaviors. The university official responsible for the enforcement of standards expressed frustration and concerns over at least a two-year period and resigned in the midst of a controversial case citing "philosophical differences."

Perhaps the riots following Mr. Paterno's termination provide the greatest systemic insight. Information had surfaced that alleged horrific acts against children had occurred on the Penn State campus and that, despite knowledge, no meaningful action was taken to stop abuse that would continue elsewhere. The riots should have been about the harm to the victims. Instead the riots were over the loss of a football coach. Here was a culture that was overpowered by the star power of Mr. Paterno as well as the lure of the pedestal and funds that a successful college football team brings to a university. A university community, at best, turned a blind eye to conduct that made those who allegedly witnessed it physically sick. And, at worst, this university and a few of its employees may have enabled such conduct. Indeed, the conduct was allowed to continue for years following the university's inaction.

"Yes, but we are a good organization with a great reputation," goes the outrage from employees who were not directly involved. One final hard truth is that no organization is perfect. Those organizations that avoid top-fold, front page scandals are those that respond when a janitor raises a concern, when a graduate student reports graphically on the conduct of an assistant coach, when the general counsel has dual roles in a matter under review, or when the chief compliance officer resigns. Saying, "But we didn't do it!" will not prevent the next misstep. The key is for good employees to backtrack with a singular focus, "What did we miss that resulted in this scandal?"

There is always a path. There were always precursors. There is always work to do in making sure that employees are comfortable raising issues and that someone addresses those issues. Cultures are tricky things; they can get away from us and when we lose them, as Penn State did, we open the door for that one employee to hurl us onto the front page. You cannot know what every employee is doing every minute, but you can have the systems and culture in place to allow that information to get to where it needs to be addressed and, hopefully, stopped.

2. The cultural issues in the case are fascinating – Why was a report not filed when the first incident came to the attention of the administrators? Why were they so "humane" with Sandusky? Why didn't

the local people, the social worker and others, take action? Why wasn't the board informed? Why did administrators frame the issue in terms of protecting Penn State instead of protecting the young boys? The culture was protection of the players and the football program, regardless of harms to others and signals sent through inaction. Other issues, such as those raised by Dr. Vicky Triponey, were warnings about the ethical priorities on the campus and its culture – that should have been a sign of things to come.

3. Giving or allowing false impressions, saying things that you know are not true, interpersonal abuse, organizational abuse, conflicts of interest, failure to balance ethical dilemmas by considering the impact on all involved, personal decadence, failure to speak up when you see an ethical issue – this case has virtually all the categories of ethical dilemmas.
4. The stakeholders are the boys, their families, members of the community, businesses in the community, students, current players, prospective players, the NCAA, taxpayers who support state-funded universities, law enforcement agencies, elected officials.
5. The case teaches us that we not only have an obligation to speak up – that we need to keep speaking up until a problem is resolved. The damage that was done after several incidents might not have occurred had those involved raised the issue and continued to raise it until it was resolved.