



**BENTLEY**  
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W. Michael Hoffman  
Center for Business Ethics



# A Conversation with the Kallman Executive Fellows of the W. Michael Hoffman Center for Business Ethics

**Vol I:** On Identifying an Ethical Culture

**Vol II:** Barriers to an Ethical Culture

**Vol III:** Strategies for Developing an Ethical Culture

**Vol IV:** On the Responsibilities of the Ethics and Compliance Officer

October 9, 2018

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# Introduction

This is an excerpt from a conversation about ethical culture with the Kallman Executive Fellows of the W. Michael Hoffman Center for Business Ethics at Bentley University that was held on October 9, 2018.

The Hoffman Center for Business Ethics was founded in 1976, when almost no one had heard the phrase “business ethics.” When the phrase was used, it was as an oxymoron and the brunt of ridicule. Those actively working at the Center believed in the importance of their work and before long, the study of business ethics began to spread among universities and businesses across the United States and internationally. The growing acceptance of business ethics among corporations, though, did not arise spontaneously. Usually, it was in response to pressure from the federal government. An important early landmark took place in 1986 with the creation of what was called the Defense Industry

Initiative or “DII.” This initiative was launched in response to a major scandal in the defense industry. The industry was faced with a choice: They could accept stringent government oversight of their companies or they would have to commit to self-governance that adhered to clear ethical principles. They chose the latter, and to meet their commitment they appointed people who became known as “ethics officers” to ensure that the companies abided by the ethical principles to which they had committed. With time, more defense contractors joined the DII and the role of the ethics officer began spreading to companies in other sectors. A new profession of ethics and compliance emerged from this process. The Hoffman Center recognized this as an important development in the field and, in 1992, the Center served as the facilitating organization for the creation of the country’s first ethics practitioner professional association that was aptly named the “Ethics Officer Association.”



In addition, in 1992, the Center further strengthened its association with the business ethics practitioner community by launching what became the Kallman Executive Fellows program. The program now has 25 active Fellows and nine emeritus Fellows, all of whom have had distinguished careers in the field of ethics and compliance. Through the Executive Fellows program, both the Center and the Fellows benefit from the exchange of ideas in a rapidly evolving field. The Fellows represent the Center as speakers at conferences and in university classrooms. However, above all, they are trusted advisers who help ensure that our Center is actively connected to the field of business ethics as a living practice that is exerting its influence in organizations and boardrooms globally.

With the Kallman Executive Fellows program now in its 26th year, we have had ample experience to witness the value of having such an esteemed group of professionals in the ethics and compliance field. This led to the realization that the time had come for the Hoffman Center to more broadly share the wealth

of experience and wisdom of these experts by holding its first Executive Fellows Forum.

The topic of this day-long conversation is ethical organizational culture, one of the key issues in the field of business ethics. Despite so much being written on this subject over the years, the persistence of this issue in the business ethics literature testifies to the fact that it remains a relevant but often poorly understood topic, which is why it was chosen for the Forum. To make progress in understanding a tough problem, assembling some of the best minds in the field, as we have done, and listening to their views on the subject is a useful place to begin.

This monograph represents that part of the larger conversation on ethical culture that focused on the responsibility of the ethics and compliance officer in developing and sustaining the ethical culture of an organization.

**Leon Goldman, MD**  
**Chair, Kallman Executive Fellows**



# Acknowledgments



**The W. Michael Hoffman Center for Business Ethics and the Kallman Executive Fellows wish to thank our sponsors for their generous support:**

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# Participants

**Michael Hoffman**, Executive Director, W. Michael Hoffman Center for Business Ethics and Moderator of the Executive Fellows Forum.

**Dawn-Marie Driscoll**, former Vice President of Corporate Affairs and General Counsel, Filene's and Director, DWS Mutual Funds.

**Steve Harris**, Senior Vice President and Chief Ethics and Compliance Officer the Lincoln Financial Group.

**Barbara (Bobby) Kipp**, former Partner, PricewaterhouseCoopers, where she led adviser services in the Governance, Risk, and Compliance area, and former head of the Ethics and Business Conduct Office, both at Coopers and Lybrand and then at PwC.

**Tony Messina**, Business and Human Resources Consultant, Pathways and former Senior Vice President for Human Resources at Boston Biomedical, Inc.

**Joan Dubinsky**, Independent Ethics Adviser to the board of directors at the Global Fund to Fight Aids, Tuberculosis, and Malaria, and former Director of the Ethics Office at the United Nations, and former Chief Ethics Officer at the International Monetary Fund.

**Dr. Leon Goldman**, Chair of the Executive Fellows Program at the Hoffman Center for Business Ethics, former privacy officer and adviser at Kyruus Inc. and former Chief Compliance and Privacy Officer at Beth Israel Deaconess Medical Center in Boston.

**Carrie Penman**, Chief Compliance Officer and Senior Vice President for advisory services at NAVEX Global and former Director of Corporate Ethics at the Westinghouse Electric Corporation.

**Donald Stern**, Managing Director of corporate monitoring and consulting services at Affiliated Monitors Inc. and former United States Attorney for the District of Massachusetts.

**Gael O'Brien**, Leadership Coach and Consultant, and President, Strategic Opportunities Group and former Vice President, Mitsubishi Motors North America.

(FROM LEFT TO RIGHT) Michael Hoffman, Tony Messina, Joan Dubinsky, Steve Harris, Carrie Penman, Gael O'Brien, Barbara (Bobby) Kipp, Donald Stern, Dawn-Marie Driscoll, Leon Goldman.





IN MEMORIAM

*W. Michael Hoffman, PhD*

Founder, Hoffman Center for Business Ethics

FEBRUARY 23, 1943 - DECEMBER 6, 2018



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*We* are sad to report that W. Michael Hoffman did not live to see the publication of this monograph. He passed away after a brief illness on December 6, 2018.

Dr. Hoffman began working at Bentley University in 1974 as a professor and chair of the Philosophy Department. Recognizing that he was in the right place to teach future leaders about moral leadership, he introduced a course on business ethics to the curriculum. Soon afterward, in 1976, he opened at Bentley the first center dedicated to all aspects of business ethics.

Mike was a pioneer, an innovator, a philosopher, and an ethicist. He welcomed to his Center scholars and other visitors from across the country and around the world. They, in turn, helped to develop the field and spread the message of business ethics. Today, the impact of business on society is greater than ever. Although Mike is no longer here to lead the Center he founded, the field of business ethics continues to evolve quickly. We at the Hoffman Center for Business Ethics will continue to advance the Center's important work inspired by Mike's example and legacy.



# On Identifying an Ethical Culture

# A Conversation with Kallman

## Executive Fellows Vol. I

From the W. Michael Hoffman  
Center for Business Ethics

Bentley University, Waltham, MA

### Summary

#### *On Identifying an Ethical Culture*

- You cannot tell if an organization's culture is ethical simply by reading its code. You need to get into the organization at all levels to answer the question, "How are things done here?"
- Assess what the culture is and then ask, "Is it ethical?"
- A good marker of healthy organizational culture is the consistency in the ways that senior leaders and "rainmakers" are treated compared to line employees in the application of discipline for policy and values violations.
- Culture is about how people behave, how they treat each other, how well these behaviors comport with the company's values and support the notions of fairness and dignity.
- Culture and reputation are related but one should not confuse reputation with culture.
- Board involvement is important and the board does bear some responsibility for supporting and monitoring the culture.
- Measurement for measurement's sake can be deceptive and gives a false sense of security.
- It can be tricky to measure things like culture and ethics, but such measurements can be useful indicators of potential problem areas that ought to receive closer scrutiny.
- Both the board and senior leadership need to be wary of developing or imposing incentives or quotas that have the unintended consequence of putting employees in an ethical bind and creating situations that incentivize good people to do bad things.



Michael Hoffman: The topic of today's forum is ethical organizational culture. This is obviously one of the key issues in the field of business ethics. One may wonder why we chose this topic when so much has already been written on it. Our reasons are twofold. First, the persistence of the issue of ethical organizational culture testifies to the fact that it remains relevant but often poorly understood. Secondly, if you want to make progress in understanding a tough problem one would do well to assemble some of the best minds in the field and that is what we have done. We have among us today 10 highly seasoned ethics and compliance professionals from 10 different companies drawn from many different sectors of the economy brought together to apply their experience and insights to explore one problem, that of ethical culture. Before I invite our panelists to speak today, I would like to set the stage by identifying some of the fundamental points that guide our investigation. To begin, I will refrain from listing academic definitions and simply give a folk-view of business culture as the way that things really are done in a company. A corollary to this informal definition is that what keeps a corporate culture going is discerned by what is rewarded and punished. The next important point is to acknowledge that, in today's business world, talk of ethics is inextricably linked with compliance, and ethics and compliance are intrinsically interdependent.

Nevertheless, from the champions of ethics and culture, I frequently hear the refrain "culture trumps compliance every time." While the importance of culture is undeniable, this saying might be misunderstood as implying that culture and compliance are somehow exclusive of each

other. They are not; to have a strong corporate culture both compliance and ethics are needed together.

However, despite the seemingly complementary nature of ethics and compliance in today's business world, compliance tends to bask in the limelight and ethics languishes in the shadow. One way to get a sense of how businesses prioritize compliance over ethics is to follow the money. While the corporate world tends to allocate the lion's share of personnel and financial resources to support the compliance function, ethics is often neglected or ignored.

This is a formula for trouble because without ethics nothing will go right. Why? Because a clever and unethical employee can always find some way to circumvent the law without technically breaking it. Left to its own devices a culture of compliance will seek to avoid breaking the rules while, by contrast, a culture of ethics will operate according to the spirit of appropriate corporate values.

Ethics cannot be as conveniently captured in a set of laws rules and policies. This insight was surely what led the United States Sentencing Commission in 2004 to amend for the first time the 1991 Federal Sentencing Guidelines for Organizations (F.S.G.O.) and stipulated that corporate executives and directors must take an active role in creating company cultures that are both compliant with the law and encourage ethical behavior among the employees.

An interesting side note is that this was the first time in its history that the FSGO mention the word "ethics" in relation to the Guidelines, and it made it clear that ethics and compliance are not the same things.



*Dawn-Marie Driscoll says that ethical culture is more a matter of deeds than words.*

It is also an important fact that this amendment is what has driven corporations to focus on ethical culture for the past decade or more.

I think Lou Gerstner, the former chairman and CEO of IBM, got it right when he said, “I came to see in my time at IBM that culture isn’t just one aspect of the game. It is the game.”

There will be some key questions guiding the forum today. And given this, you can see why I am so happy to bring together this group of experts with such broad experience and deep roots in the field to answer, to make clearer some of these questions. To them I would like to begin by asking two fundamental questions:

1. How do you identify an ethical corporate culture?
2. How can a company develop an ethical corporate culture?

### ***On Identifying an Ethical Culture:***

Dawn-Marie Driscoll: Let me start by saying that you do not identify the ethical culture by looking at a company’s values. What do you think about these as examples of corporate values: communication, respect, integrity, and excellence? We all think they sound good, and we all know that they were Enron’s. Enron was touted as a great company and in 18 months the stock price went from about 90 dollars to a dollar. Their values were just four words that meant nothing in terms of how they behaved. So, my start on the discussion of this question would be, “Don’t look at the words.”

Leon Goldman: Are you saying that to decide if there is an ethical culture, we can begin by looking for consistency between behaviors within the organization and the values that the organization espouses? This is my question: Do you assume organizations

are ethical and then look for the markers and the consistency between behaviors and values statements?

Joan Dubinsky: I start somewhere earlier than that question. In dealing with any organization, I ask what the internal sense of the culture is. I don't use the word ethical because many places are so focused on the tangible action of running the entity that they don't stop and ask Mike's question of "How do we get things done here?" The question I often ask is, "What's it like to work here?" And if I start at that broader level, Leon, I start hearing both the absence of something and the presence of something. So in trying to answer the detection question of can we find an ethical culture, can we get our arms around it, can we understand it, I start at an earlier point in the conversation and wait to see what I hear. It's almost like being an anthropologist. You must wait a while until you understand the group that you are working with.

Leon Goldman: Let me try to rephrase and see if I heard you right and if you would agree with this construct. We're not really looking for an ethical culture we're looking at a culture and asking the question "Is it ethical?"

Joan Dubinsky: Yes, and to add to that I listen for phrases that describe an aspect of the kind of behavior we think is important to promote in an organization where both values and compliance are cherished; I might hear things like "speak-up culture," "no-tolerance culture," "prevent-corruption culture." However, there is also the challenge of how do I distinguish habit from culture?

Donald Stern: Just to add a layer of complexity, it's hard enough to identify the culture. There is not just

one culture per company; there are different cultures at different levels of the company. You're going to get a different response if you talk to the board, the CEO, C-suite management, middle management, to people on the front lines. There are different issues depending on whether you're in the U.S. or other countries. At least in my experience, the middle-level managers and the people on the front line will have a totally different perspective as to the rewards, incentives, and punishments and the like at their level as compared to what happens at the senior level. To pick up on Joan's point, it isn't as if you go in and take a snapshot on day one and figure out what that culture is. You have to dig deeply into that company at all levels, in all branch offices, and in all countries, to figure out what that culture is. It's a complicated art.

Dawn-Marie Driscoll: Not only levels but departments. Because when you were talking, I was thinking that this might be easier in small organizations, but let's take the most recent classic example, Wells Fargo. You have some people of Wells Fargo, I'm sure, who thought they have a great culture and great ethics and values. Yet you have retail sales whose compensation motivators were horrific.

Bobby Kipp: I agree with what everyone has said. You embed yourself in them over time, see what patterns emerge, and describe what the culture is. As you do this, you might hear some things that may or may not align with the value statements; things like innovation, or we have an aggressive approach to sales, or, not to use a negative word, we have an active sales culture. You have to see how those ideas play out in the behaviors of the people in the organization because



organizations don't behave, people do. Some ways are entirely ethical and compliant or entirely unethical and noncompliant or some combination to execute on all the different areas of business. You can look at sales and ask about how they go about their competitive practices; are they this side of the line or that side of the line? You can look at how they treat their people. Yes, while you say "respect," what does the treatment actually look like over time? I think the only way to do this is bottom-up and a little bit top-down. More bottom-up and inside out as to what do the patterns of behavior look like and what people say about those patterns of behavior.

Steve Harris: I would pick up on Joan's reference to anthropology. I think an anthropologist would probably tell us that culture is the sum of the stories, experiences, and rituals shared by an organization that influences the behavior of people in that organization. So when you're looking at the question of how you begin to identify a culture, you have to recognize that first there will be many subcultures within the organization. Sometimes the culture depends on the department or the leader but you have to begin by looking at how the people in that organization tell their story. What are the stories they tell? What are the rituals that they engage in and how is performance rewarded or punished?

Gael O'Brien: Steve, I would add that an abundance of research says that we're all very overconfident about how ethical we are. This where I'd add leadership. Leaders often take for granted that an organization's culture is something that exists. They do not always appreciate their role in that culture in terms of not just leading by example but leading from a perspective

of the kind of environment, the kind of energy that they believe is possible. We have all these advertising slogans that sound really good. I was seeing them as I was driving in this morning on trucks and was thinking about how the spirit of the company does not always reflect how organizations present themselves externally; that creates a dynamic that's not great.

Leon Goldman: We talk about culture in terms of looking inside the organization, at how the culture affects their behavior and how their behavior reflects the culture. But, do we also not need to look at the outside and how customers, clients, or other outside community stakeholders perceive the consistency between the corporation's stated values and what they perceive to be the actual behavior? Isn't that part of the culture?

Steve Harris: I think that it is but I think we also have to be careful as ethics and compliance professionals to be sure we recognize the distinction between character and integrity on the one hand and reputation on the other; there's a great quote from Abraham Lincoln, "Character is like a tree and reputation is its shadow. The shadow is what we think it is and the tree is the real thing." So, understanding perception by customers and investors and the marketplace is important but that, too, is not necessarily a true reflection of what's going on, what the culture of the organization is.

Carrie Penman: Picking up on Gael's point about leadership, I wanted to add that employees are always watching what's happening in the organization. What they're watching is what happens to those top performers who violate the rules. And we all know that what is rewarded gets the most attention. They're watching the leadership and

trying to determine what will provide rewards for them. They're waiting to see if the company will make the hard decisions regarding how are top performers who violate the rules treated. That is a huge indicator for defining an ethical culture.

Bobby Kipp: And, Carrie, when you look at that, do you typically see a disconnect between how they feel rank-and-file employees will be dealt with and how senior leaders are dealt with?

Carrie Penman: Very often. In fact, in a lot of the research that I've done over the last number of years in talking to employees in focus groups we often ask the question; "What happens to these top performers? Are they promoted, tolerated, coached, promoted, or fired?" and I've been in focus groups in organizations where 75 to 100 percent of employees respond promoted or tolerated. And other organizations

where you have a much healthier response. However, I think that's really where the rubber hits the road when they see whether or not people are dealt with consistently and fairly.

Bobby Kipp: That's a real kernel that we ought to latch on to for this piece. Is the treatment of bad actors appropriately consistent between senior-level people and non-senior level people?

Donald Stern: Well I would say it's not just how bad actors are treated, but also how good actors are treated.

Leon Goldman: I would add that not only does it need to be consistent across all levels of the organization, it also has to be consistent with the stated values of the organization. So if they're all consistent across the organization, you start to promote or at least help nurture an ethical culture.

Joan Dubinsky: One of the challenges that I know I have confronted in the

*What happens to top performers who break the rules? Carrie Penman argues that how they are treated is a good indicator of whether the firm has a healthy respect for ethics.*



work that I do is getting beyond the easy rejection that perception matters, “Oh that’s just somebody’s perception those focus groups.” So it’s very easy to dismiss how much perception is one of the core drivers of behavior. It’s much more difficult to measure culture or reputation writ broad but I think that I can measure what I would call the secondary and tertiary impacts of that, and this is where perception drives behavior. It’s one of the things that one of our fellows Craig Dreilinger often talks about which is the degree to which how we perceive each other, or perceive a culture, or perceive a group or part of a group, drives how we behave.

Bobby Kipp: Joan, give me an example of that.

Joan Dubinsky: I hear that the secretary spoke up about safety and got a call from the CEO, and that goes into the company newspaper or goes beyond the water cooler. The person who hears this now perceives it’s important and safe to speak up. They perceive that they have autonomy and efficacy by taking an action even if I jump multiple hierarchical levels so I’ll take the risk. All of those things have to be in place before you’re going to say, “Mr. So-and-So, please, that’s against our rules.” If I perceive that being aggressive in meeting sales targets is rewarded because everyone around me on my team brags about their bonuses at the end of the quarter then that is how I will behave. However, if no one’s talking about having a 35-day month, you just have a 30-day month, and you can’t keep your books open, then my perception is I had better do something to get my numbers up but at least not change the calendar.

Leon Goldman: What I’m hearing, as you talk, is the cycle of behavior and

perception. The behavior within the organization leads to a perception and that leads to a new behavior. I’m reminded of organizations where there was a big push to have people talk up about near misses and possible errors that didn’t quite happen, so they could be fixed. That lasted about as long as it took the first person who actually did speak up and found themselves being berated. Then the perception was really clear, “Yeah, well, they said that, but that’s not what I’m going to do.”

The challenge for senior leadership that would like to make the culture ethical is how to identify the source of negative perceptions or behaviors and how to make sure the negative behaviors are corrected or eliminated so you enhance the behaviors you’d like to see.

### ***Role of the Board:***

Carrie Penman: I am going to add one observation and that is that in all the years of doing this work I’ve always approached it from the standpoint that 99.9 percent of the employees come to work every day wanting to do the right thing. They want to work in an environment where they’re respected and treated with decency. What are the cultural factors that cause good people to make bad decisions in organizations? We’ve talked about Enron. We’ve talked about Wells Fargo. We’ve talked about many of these high-profile cases where I’m sure there are very many people in all those organizations that did not want to be associated with that kind of a reputation. One of the things we haven’t yet talked about in this discussion is the role of the board of directors in impacting the culture of the organization. When I train boards of directors, I tell them that if they want to have an impact on the



organization's culture, they must start with a review of the financial plan. If they are setting financial targets that are unachievable, then those good people who want to do the right thing are in the bind of needing to either break the rules or miss a target. That's really where it starts. The leaders don't recognize that they are putting people in a situation where they have to make a very difficult choice. That's how they set the tone and set the culture for the organization.

Dawn-Marie Driscoll: That's very difficult for a board, and I am sure Donald sees this a lot. As a director of mutual funds, I not only see the difficulty as a board member but I also see it from the companies that are in our mutual funds. There is more emphasis in trying to assess companies through an ESG (Environmental, Social, and Governance, ed.) lens and the "G" is sometimes very hard to assess. On these boards, you sometimes have sophisticated and well-meaning people but they fly in for a board meeting once a quarter; they have their day and a half and they get their presentations from management. Maybe if there were an ethics and compliance officer who reports to the board, they have 45 minutes. But knowing all the details is difficult. Let's take Wells Fargo. What did that board know about the motivation [engendered through] the compensation system that was driving employees to create unauthorized customer bank accounts, and when did they know it? How would they even know to ask those questions? What do you think, Don, you see this?

Donald Stern: I have a somewhat unusual perspective in that I spent many years as a lawyer representing boards, companies, and executives, usually when they were in trouble.

Now, I sit on two corporate boards — one public and one private. I have a newfound respect for the challenge to board members to really peer into the organization. While you might have phone calls between board meetings, you usually get a high-level view through in-person meetings four or five times a year at which you get presentations from management. I will say though, in part because of the public pressure and governmental pressure, that board members treat their job more seriously than they used to. They no longer just show up and collect the compensation they're getting. They're asking those questions, trying to get insight into what's happening. I'm chair of the compensation committee of a company, and we ask what the compensation system is for our salespeople? How is the performance plan being put together? Are ethics and compliance specifically in the compliance plan such that it's a metric against which their bonuses are judged? It's hard, but I think boards are trying to take it more seriously.

Gael O'Brien: I think there is another dimension in addition to the financial. In the case of Wells Fargo, and others, when the independent board did an investigation of what went wrong and why, they found something that I'm quite sure they had to have known all along. The CEO did not like to be given bad news, and that the CEO was very clear about how he viewed things. I think that there's no way that the board members of Tesla don't know what the personality of Elon Musk is. So, too, did the board members of Uber know about the personality of their CEO? So I think we have another dimension to board accountability. They are key personalities who are human beings, who may get into

trouble, and need help and support. Board members need to pay attention to the psyche and the personal values of the leaders they have chosen — how the leader is executing company values as well as personal values. There are far too many examples of where that has not happened.

Dawn-Marie Driscoll: But isn't that the key question? Is the value of an Uber, or a Tesla, or anything, its stated values that they have in their ethics code or is it the multi-billion-dollar value of the entity? And to Carrie's point, how do you treat the good performers? If you're a board member, do you toss out a charismatic founder who built up this multi-billion-dollar organization because you have questions about his personality?

Gael O'Brien: No, but you drive home to that person, in a mentoring, or whatever, kind of way, that this is what we stand for as a company and you're not behaving at this time in a way consistent with those values. How can we support you in getting back to your own personal strengths? I'm arguing for just dealing with this as a human being in whom they have an investment. The care and feeding of leaders emotionally, psychologically, and every other way is important when people start to get too full of themselves or too caught up in stuff that's not going well in their lives.

Leon Goldman: But do board members see themselves as responsible for that? If not, how do you get to the point where it's the standard for boards? Do boards now need to be psychiatrists?

Gael O'Brien: No, but they do need to see warning signs and address them or require a CEO to get coaching or [they seek] help to monitor how that CEO is doing.

Leon Goldman: I understand they need to see the warning signs, but how do the board members educate themselves about the warning signs?

Dawn-Marie Driscoll: Let me give you a harder example because I think it's clear that the number one responsibility of a board is choosing the CEO.

Carrie Penman: And evaluating.

Leon Goldman: I'd like to get to that question: Is the number one responsibility of the board the choosing of the CEO, or is the number one responsibility the running of the company ethically?

Bobby Kipp: I think it's the CEO.

Dawn-Marie Driscoll: I do too.

Joan Dubinsky: I think it's a triumvirate. I think there are three questions, Leon:

- a) Is this an ethical place? Which goes to pride, reputation, caring, core values.
- b) Did we pick the right person to be our leader? And that goes to Bobby's idea. It's not just when you selected them but, as Gael was saying, along the course of their tenure, and,
- c) As Dawn-Marie was saying, what are the numbers — how did you get to this budget, how did you get these projections?

Dawn-Marie Driscoll: Because the ultimate responsibility of a public company board is to the shareholders. That's the conflict, right?

Leon Goldman: But if your primary responsibility is to the shareholders and your primary responsibility as a company is to be successful, seen well, and ultimately, do well, I would think it has to be an ethical company. That gets to your point that to make it an



*Donald Stern says that many board members are taking their jobs more seriously than they used to, in response to governmental and social pressure. They are looking deeper into the workings of firms and asking harder questions.*

ethical company, who did you choose to run it and are they still consistently behaving in a way that they're going to make the company ethical?

Dawn-Marie Driscoll: Well, Leon, you are exactly right because as you have more and more investors looking at companies through an ESG lens, that is exactly what they are saying, which is, "Is this company sustainable?" That means they need a good culture and a good CEO.

Bobby Kipp: And good financial results. I wouldn't agree with the notion that a company that is focused on its profitability, cash flow, and share value is inherently unethical. I don't know if that's what people were suggesting. But, I think doing business in an ethical and appropriate way should result in financial success.

Leon Goldman: But, I don't think financial results should be paramount. I always come back to Johnson and

Johnson's Credo, in which the last paragraph of five paragraphs is that if we do all of the above, we will make a fair profit and support our company. And I think, for me at least, that an ethical company is one that doesn't put profit as the primary thing. Yes, it has to be profitable; nobody survives if you don't profit. I mean you can be charitable for about a month and a half ...

Gael O'Brien: I think that's what Larry Fink of Blackrock is saying; you need to have a social purpose. You need to understand your impact on the community, you need to have your strategy and have the board tied into all of that. You need to be looking at the impact of the technological changes that are going to be happening on your employees, which is a new dimension but an important one to articulate. So you're right, the world is broadening. When I interviewed Paul O'Neill, the former head of Alcoa about

10 years ago, he talked about money as a consequence, not a driver. He has a wonderful quote that gets to the point of culture. He said, "If you are CEO, why wouldn't you begin immediately with a vision for the organization and the people in it? Why wouldn't your vision be about creating a wonderful fulfilling organization that is not about money? Money is a consequence, not an object." He led Alcoa's turnaround to tremendous profit. That's really where I hope leaders are going.

Steve Harris: I think the challenge for both leaders and boards is to find balance; it's how you look at risk generally, right? If you're only looking at risk through the lens of financial performance, you're going to have some of the problems that we've talked about. But, the challenge for boards and senior leaders is to look at not only the financial risk but also the operational risk, reputational risk, and all of the other things that can impact the overall performance including the share price of the organization. While it can be difficult for board members to understand all of the cultural drivers happening within the organization, the good news is that they don't have to do it themselves. In most, at least, publicly traded companies, the chief ethics and compliance officer is going to meet with them, not only with management present but also in executive session, from time to time. If they don't, they should. And that's the opportunity for someone on the inside to educate the board about what is the culture of the place, how the leaders behave, how they deal with reward and recognition, and all of the various issues we've been talking about. If they don't know what to ask, we can help them. You can come in and say, "Here are the 10 questions you ought to be asking me."

Dawn-Marie Driscoll: You can say to the board members, "You're probably wondering..."

Steve Harris: Yeah. There's no question that since Wells Fargo, the expectation for board members to be engaged in governance and to understand those drivers of culture has grown tremendously.

### ***Measuring:***

Donald Stern: So, Steve, when the board, your board, asks that question of you, are there objective measures, benchmarks, that you come back with? There's the subjective notion which is you've gotten to know the culture. But the board is probably saying give us some objective measures. What are the things that we can ask about month-to-month, year-to-year that might tell us whether we're ethical?

Steve Harris: So the question of measurement is a very tricky one. There are certain things that are relatively easy to measure and other things for which, in my experience, you have to rely on information that is more anecdotal.

For example, we were talking earlier about the question of when senior people engage in misconduct. Do we deal with it the way we would with a lower-level employee, do they suffer the same consequences? Do we enforce the policy, the law, or the rules against them the way we would against anybody else?

Other areas that relate to how employees perceive the organization and how they behave you can measure at a more macro level. For example, if part of your program is to engage in communications and awareness, there are all kinds of metrics you can provide about not only how



many people are reading the stuff that you put out or how many people complete the training, but also metrics that help you understand whether or not it's more than just a check the box exercise, whether it's actually influencing behavior.

One of the things we do after training, for example, is a post-training quiz where we ask not only whether the quiz is easy to navigate and if anything was learned, but we also ask how likely is it that you are going to change the way you do your job because you went through the training. Is there anything that you identified that you would do differently as a way of helping to mitigate risk? Those things can be measured and those are the kinds of things that I will periodically take up to the board to help them understand how we're influencing culture and how we think we're doing in mitigating risk.

Dawn-Marie Driscoll: I've sometimes found that it's very persuasive to bring stories to the board. The board may sit there and think, "We're all wonderful." Then you bring them a story about what happened to one of their competitors or somebody in the industry who appeared in a story in *The Wall Street Journal*, and it not only says what happened, but it has a sidebar listing all of the directors' names. The least desirable thing for any director is to be criticized in public. You explain to them, the best you can, what happened and then you explain that's why we have this program here and why you should be asking these five questions.

Steve Harris: The best scenario would be that you don't even have to bring it to them; you go in and they say that they read about what happened to your competitor and ask how or why we are different.

Joan Dubinsky: I'd like to pick up on the measurement question some more. I have to make the caveat that this is one of my pet peeves so please push back as I'm on a platform here. Willingness to report, the number of whistleblower calls and trends among whistleblowers are interesting but they are not necessary and they are not the entirety of the metrics you need to be looking at. As a profession, I think, we do ourselves a big disservice if we link willingness to report as a marker of a great culture or an ethical culture, and I'd like never to fall into the trap because it's easy to measure. The number of calls and number of individuals who sit through a training or complete online training are easy to measure but I don't think they're particularly useful metrics; when we overemphasize them, we're promoting a culture of fear. You're going to report me so I'm going to get there first and report you. So, finding other measurements, even though they're harder to gather or less numerically precise, is a challenge that faces us; I don't think we've solved it. But, I don't want us to fall into this trap of "it's easy, therefore, it's the right thing to measure."

Steve Harris: I completely agree. It's hard to gain any meaningful insight as to what the number of calls into a hotline really means. For me, though, what I am thinking about is this: Are we doing what we ought to be doing to promote a "speak-up culture?" One metric that I have used is a question on our employee engagement survey that says, "How confident are you that you can speak up and raise a concern without fear of retaliation?" We broke it down, as someone earlier made the point, into the different perceptions at different levels of the organization. What we saw was

that at the most senior levels of the organization they all had 100 percent confidence that they could speak up without retaliation. But there was, not surprisingly, a big dip as you got down to lower areas, and we could see through that data not only to where the breaking point was and at what level, but we also see in what businesses did it fare better or worse. That kind of data I think is worth reporting to the board because it gives you a better picture of what the culture of the organization is. As an ethics and compliance leader, it also gives you a road map as to where you need to focus your training and awareness activities to improve that piece of the culture.

Carrie Penman: I would like to add an opposing view particularly around reporting. So we all have our pet peeves and I feel very strongly that there is much we can learn from how, when, and why employees report and to whom they report and what the data are telling us. As you all know, I've spent about 25 years really studying this. I started studying this at Westinghouse and we had some very interesting findings. When you have such a large organization, you're able to look at data across a global organization including small remote locations that were acquisitions where we left local management in place. We could compare those units with units close to the mother ship. Just the numbers of reports in aggregate doesn't tell anybody anything, but looking at who's calling, where they're coming from, who's not calling, and what locations are you not hearing from are important. For example, we found that when we started to spike the noise level in HR reports that there was something else going on and that was an indicator of culture. It was a management-style indicator.

What we would do is set the audit for the next year based on where we were starting to get the noise level spiking out of our norms for that particular location; we always found something else going on at that location. So, yes, you're right, just counting the numbers is not the be-all and end-all, but it's certainly an indicator of what's going on.

Joan Dubinsky: It goes back to what we were saying at the very beginning of this session. How do we detect culture in its multiple spots, in its multiple data points? What's interesting, Carrie, is that 25 years ago there was sufficient trust within Westinghouse to collaborate behind the curtain on what the data means rather than siloing data ownership, which is what I've seen in many other organizations.

Carrie Penman: Great point there.

Joan Dubinsky: We were all at that meeting once where someone, I don't remember who, presented data over a span of about 10 years of reports to a hotline and mapped that data to things that were happening in that institution or in the greater world, which gave context to the hotline data at each moment of time. I have no idea how you get to that level of data sharing. My experience has been that in several organizations the siloing of information is extreme; you cannot get the broader view by collaborating because each silo is so protective of their data.

Leon Goldman: We live and work in systems. Getting people to talk among themselves within a large organization is challenging. Nothing happens in a vacuum although we measure in vacuums, we make departments in vacuums; we, as humans, need to be organized into discrete pieces where we can get control of the world. But,

the world is going on in a very chaotic fashion. We are the ones who impose the silo. At some point, we must look at the unintended consequence of the silo, namely the loss information. As a result, sometimes when making policy plans we don't look at or see the unintended consequences of what seems like a great plan because we do not look beyond our silo. We need to look beyond and have the thought game of what does it look like if it goes wrong. When we do this, we may uncover things. Here's how we're going to design it and then when you follow it through the system you see a problem and say wait a minute, so what do we do to guard against that?

Joan Dubinsky: Sure. Let me try to give you an example if I can, and it's from the "Me Too" movement. In the last 12 months, an international organization decided it was time to review its sexual harassment policies. We are very concerned that people have a right to speak up. The organization wanted to be certain that they have been fair before making a decision. So, they focus on due process and the protocol of the organization; what they are proposing is that while reports of misconduct may be anonymous, those about sexual harassment are not because they don't want someone to be accused without having the right and the opportunity to hear from and confront the person who is accusing them of inappropriate behavior. That, at first glance, appears to be supporting and promoting fair play, due process, respect for individuals, and not taking precipitous action. But the unintended consequence is that it will absolutely drive down the number of individuals who will speak up. It will drive them underground because as we've heard so many focus groups, "the reason I report is not to get somebody in

trouble, I just want someone to fix it."

Dawn-Marie Driscoll: I have had that happen in my experience when a woman would come in and say I want to tell you this, but I don't want anyone to know that I complained and I don't want anything to happen to the person. My answer back was always that no one will ever know you complained, but what you don't know is whether you are the first person or you are the 10th. And so if you hear that something has happened to this person you complained about, do not think it was necessarily your reporting that did it.

Joan Dubinsky: Which is a fabulous way of calming someone down to hear information or obtain information that may be very critical.

Dawn-Marie Driscoll: Because we're talking about measurements and how to discern culture, I want to ask you about the subject of emails. In all the government investigations and settlements, there are excerpts from emails. You find highly paid financial masters of the universe putting all kinds of incriminating language in emails to each other. How do you get your arms around that and can it be used to assess the culture?

Leon Goldman: In a study in the 1970s looking at how patients interact with computers versus their physicians in the setting of taking a health history, they found that patients told the computer more than they told their doctor. For whatever reason, if you put someone in front of a computer screen, they think it's an entirely private and personal experience and will do things and say things on it that they would never do in a public setting. This shows part of the challenge about which we haven't spoken, namely the realities of human behavior. We are human and



*According to Joan Dubinsky, companies need to think carefully about whether employee complaints can be anonymous. If anonymity cannot be promised, then employees may not report wrongdoing.*

we are fallible; we misjudge our ethics and we see our world in a way that makes us look best to ourselves. Even when those around us see that what we are doing is not good or right. That's part of the argument for transparency; we really can't judge ourselves because of our internal bias. Despite how much you justify a behavior to yourself, you really stop and rethink when your trusted friend comes and says to you, "No, you really shouldn't do that."

**Bobby Kipp:** So to Dawn-Marie's question, does anybody today apply artificial intelligence or do data analytics on the structured data of the entire email stream? Do you tell your employee base? What does that do? Or, what do you plan to do in the future? Do you see it going in the future because certainly where I work there wasn't that unless there was a reason?

**Donald Stern:** Absolutely. I think companies look at emails and look

at keywords and I know many pharmaceutical companies will do audits of their salespeople and look at some emails. That might point to other things. I mean it may turn out that the Midwestern region is a problem. It may not be across the board but they're looking for pointers and saying let's do a deeper dive and look at emails.

**Bobby Kipp:** But my question is, should this be done more broadly and do we have unintended consequences when we do it?

**Leon Goldman:** If I understood your question correctly, you're asking how you prevent problems because if you have a system that doesn't look at your emails regularly to uncover problems and you find them after the fact, then it's a little late because now it's out there and you can't take it back.

So it's more about trying to help educate people. I know that when we used to do our privacy education we



would point out to them where errors had happened. We would show how things that became public knowledge through the foolish use of emails and the mistaken belief they were private. I would also advise people that if they were angry and wanted to vent in an email, they should put it in a draft, come back in ten days and delete it, but don't send it.

Dawn-Marie Driscoll: Well it's not only preventing bad emails, but it's can you use the content of emails to ascertain the culture of an organization?

Joan Dubinsky: That's the question and I've not heard of any organization that has the capacity or the AI knowledge to start screening billions of bits of data. Certainly, none of the organizations with which I've worked has had either the capacity or resources to do that.

Make it an easy example: We're a group of consultants and we've been hired by an organization to look at a top-down

and side-to-side review of harassment, sexual exploitation, sexual violence, and abuse of power because the organization wants to prevent it now before there is a problem. And this is a mid-sized organization of 10,000 people. If we could look back for 10 years of all email, we might find flirtatious behavior, abusive behavior, innocent behavior and a lot of ambiguous conversation that just doesn't make a whole lot of sense to us.

"Hey, are you free for lunch tomorrow?" could mean all kinds of things. Would we have the capacity to do this and understand what was happening? Would the organization put the funds into it to do that? I just don't know.

Leon Goldman: I don't know whether or not a company that size could afford it. I think there is a fair amount of literature growing in the Applied Psychology area. I vaguely remember one study where they tried to identify

*Should firms monitor their employees' emails for signs of unethical activity? Can they? Steve Harris considers what this might entail.*



suicidal behavior based on twitter exchanges. So the science is beginning. What I don't have any idea of is what it would cost a company and how you would get it done. They could probably partner with a university's IT department or psychology department and begin to think about what a map would look like to do that.

**Steve Harris:** I think most organizations have to take a risk-based approach to this issue. Organizations through their IT departments can monitor if people are going to inappropriate websites, whether certain inappropriate words are being used in email and flag those, to see whether Social Security numbers or other personally identifiable information is being sent in the emails that are about to leave the network. The harder thing and where you really have to take a risk-based approach because of the capacity issue that Joan was mentioning is how do you monitor email or other technology for other more general kinds of cultural indicators. What search terms do you use that would signal that you have a Wells Fargo problem, that people are engaging in inappropriate sales practices and abusing the compensation scheme? If you were to look at every email that talks about commissions, that creates a serious capacity problem. So, unless, to your point Dawn-Marie, you have a reason to believe that you have a problem in a particular area where it makes sense to devote the human resources that it's going to require, you're not going to do it. I think that most organizations have not been able to figure out yet how to engage in that kind search as a routine annual review to differentiate between what's an indication of a culture problem and what's appropriate communication. I have not yet seen an artificial intelligence

solution that can simply get to the root of those kinds of problems without a ton of false positives.

**Carrie Penman:** I'd like to go back to the comment that Joan made about there being so many silos within organizations and a lack of willingness to share data across the various groups whether it be HR, legal, compliance, audit, or security. There are whole hosts of functional groups within the organization that are in possession of data. I think back to the question of what the board can do, what can leadership do to improve the sharing of the data? They have to say, all right guys the silos are done. We have to start talking across the functions. You're not here because you run HR, you're here to support our organization; you're not here because you're in the legal department or the compliance department. We are a leadership team that is responsible for the entire organization. I'm seeing this, but don't know if it's a one-off or is a trend going on in organizations. Going back to culture, we need to ask what is the culture that put those barriers up in the first place. That's the first thing hopefully we can fix from a culture point of view because having these silos is certainly not helping any organizations. So, back to your question Dawn-Marie on what can the board do, I think that's one area where the board can assert itself and insist that the various functional groups play nice and fair.

**Michael Hoffman:** Thank you. Let's bring this first session to a close.



# Barriers to an Ethical Culture

# A Conversation with Kallman

## Executive Fellows Vol. II

From the W. Michael Hoffman  
Center for Business Ethics

Bentley University, Waltham, MA

### Summary

#### ***Barriers to an Ethical Culture***

- Cultural blindness: Not being aware of or acknowledging the inconsistencies in the attitudes toward the violations of organizational values and rules of senior and/or powerful organizational members. Examples of the kinds of justifications used to explained away such behavior are as follows:
  - “I’m entitled to special consideration because I am a senior leader.”
  - “What they did (or I did) is no big deal.” (Minimization of the event.)
  - “They bring in so much money, we can’t risk their leaving.”
  - “They are too important to the success of the organization.”
- The “undiscussable topic”: negative and/or destructive behaviors of leaders and others that no one wants to talk about.
- The board does not understand its role in sustaining and fostering an ethical culture.
- A lack of board education.
- The board does not want to “rock the boat.”
- The board does not know what questions to ask.



## **Cultural Blindness:**

Michael Hoffman: I'd like to talk about the barriers to an ethical culture. What are some of the things that prevent a corporation from either recognizing or developing an ethical culture? I think about an experience I had that highlighted for me was the notion of what I would call ethical blindness or cultural blindness. However, let me turn it over to you.

Dawn-Marie Driscoll: I remember that you and I used to talk about this on panels. Let me toss out one: "NBD" — no big deal. Let me give you an anecdote. Three employees are sent to a conference; let's say in Las Vegas. On the first day, one of the employees comes in, sits down next to the coworker, and says, "Take notes for me. I'm not going to stay. I'm going out to Las Vegas." The employee was sitting there thinking, well that's not fair, but it's no big deal, "NBD." One barrier is the view at all levels that these violations, in the scheme of things, are no big deal.

Bobby Kipp: How about a little example. You set a meeting for a certain time. You show up on time or a little bit early because that's the polite thing to do and the senior person shows up late or not at all. To me, in a very simple way, that is breaking a promise you made to me; your message is that my time wasn't worth anything. It's the little things like that that collectively people might not label as unethical, but if they build the image of a place where we never start meetings on time then over time no one respects anyone's time.

Leon Goldman: That is part of this larger issue I keep going back to regarding cognitive dissonance. We have inside ourselves what we think is right. We as humans can't deal

with the disjunction between our view of how things should be and how they are. So while I may be really ripped that this person skipped the conference to enjoy themselves, I solve my discomfort by saying that it's no big deal and I bury my discomfort. I think you see this repeatedly as one of the ways not only individuals get in trouble but organizations too. We use the word "rationalize" to explain it. However, for me, the concept of rationalizing has a connotation of my consciously making it up. When you read the cognitive dissonance literature, people truly believe in the world they construct to allay their discomfort. It's real to them. Some of the studies with college students have documented how the students changed, in their minds, the documented history from days before so that it would comport with what the students wanted and needed to be comfortable that day. They could not be convinced they had changed the history; how they viewed events was real to them, despite the evidence to the contrary. Therefore, I think that makes for a larger problem. We see it as "no big deal" and the behavior becomes acceptable, and that erodes the stated values of the organization and corrupts its culture. We accept and live with it. The challenge lies in figuring out how to address the normal human reaction to lessen disquietude by making what isn't acceptable, acceptable.

Dawn-Marie Driscoll: And in the eyes of the employee, none of it rises to a level of ethical misbehavior that would prompt a call to the hotline.

Donald Stern: If you drill down though, it can be a big deal. In your example, Dawn-Marie, the company is charging it as a business expense. There is a deduction on the income tax so they pay less income tax



*Michael Hoffman leads the group's discussion of the question, "What are the barriers to creating an ethical culture in an organization?"*

because he claimed that he had been at a business conference in Las Vegas when, in fact, he's out playing golf or gambling. Viewed in that light, it is a big deal. It's a false entry on their books. The problem is that individual employees may have no concept that this is a big deal and an ethical violation. Getting the individual employee even to appreciate the larger context is a challenge.

Gael O'Brien: I remember having a conversation with a CEO who was continuing to fly first class despite the new policy that there would be no more first-class travel due to pending budget cuts. The CEO believed, however, that he should still go first class, as he was the CEO. He didn't see the disconnect between his behavior and the organizational policies and values. He didn't see the disconnect caused by his maintaining a perk and asking everyone else to sacrifice. Employees saw the disconnect clearly.

I think it's a very difficult experience for some leaders to understand and embrace the incredible impact of everything they do and how employees read into their actions or inaction what the company really stands for.

Joan Dubinsky: We've talked about the "say-do" gap and the failure of some leaders to recognize that they are always observed. I want to talk about what I believe is one of the barriers to ethical culture, the character, the Aristotelian character, of the CEO. I'll give you two examples, one with a name and one without a name.

The one without a name is the CEO of a midsize nonprofit government contractor. The CEO is known to have temper tantrums, but the employees refused to talk about it. Only after I had been working with them for several months did one or two employees take me aside and say, "You know that's just the way he is." So there's

something much deeper there, that this is the undiscussable topic.

The second is Dominique Strauss-Kahn, a world-renowned leader and now very much a tarnished human being who at one point was in line to be the next prime minister or president of France. He had severe problems with interpersonal behavior. We called it the “zipper problem” and we would talk about the “zipper problem” quite openly. When I talked to him as his ethics officer after the first episode of inappropriate behavior, it was the first time the board had to deal with inappropriate behavior. The board reprimanded him, and he made a public apology with his then-wife and held press conferences. They went through owning up to his inappropriate behavior. However, after that, female employees still came to me and said we’re still not comfortable being in the room alone with him. So I had a conversation with him and it took all of about three minutes to which he said, “All of those women are wrong and you don’t understand, I’m French.” He could not or would not see it as an issue. I recognize that those barriers are very high, but such character issues can be enormous barriers to an ethical culture.

Dawn-Marie Driscoll: Mike and I used to call that the Elephant in the Room. Everyone knows something about the toxic CEO but no one’s willing to talk about it.

Donald Stern: Another barrier that occurs to me, “it’s not my job.” I think it’s the siloed nature, particularly, but not exclusively, in a larger corporation; it happens in government, too. It may be a big deal, and you may see it as a big deal, but it’s not your job. And that’s something that is a problem; it’s not my job, it’s their job.

Dawn-Marie Driscoll: Particularly if you combine it with the elephant in the room because a) it’s not my job and b) everyone else knows about it, too. Therefore, let someone else do it.

Bobby Kipp: And c) there’s the power differential that presents fear and risk.

Tony Messina: I think resistance can also be with the board of directors. There are public companies where there are no term limits for the board of directors. These folks have stayed forever and a day. Now, why am I concerned? I think, over the years, groupthink mentality starts to permeate and they don’t even see it or know it. The employees do see it; they thought that good companies had some kind of program where board members changed to get new blood, to get new ideas, to get new whatever. So that’s one piece that I think hurts the culture and to which the leaders are often blind. Another issue that is an annoyance for me is that most public companies that have stock options for employees have a time limit of when the stock option will expire. In most companies, it’s 10 years. After 10 years, they’re gone. For the board of directors, however, there is often no time limit on the stock options. Leadership either doesn’t see it as a problem or doesn’t care. However, employees see that and say, “Oh it’s an ‘us/them’ kind of culture and I’m not on the right side of the fence.” My point is that the board of directors can have a tremendous effect on the culture even if they only come in once a quarter or whatever their schedule is.

Leon Goldman: In a broader sense, this lack of insight into what employees may see as a lack of fairness can anger employees and they may retaliate because they perceive the institution is being unfair to them and

all they're asking for is fairness. The CEO in some ways says, "I'm entitled to this because that's fairness to me because I'm 'important'." Often it comes down to people not seeing the impact of their behavior and how it is perceived by others. They don't have the empathy to put themselves in the shoes of the people with whom they're dealing or they may have chosen not to for whatever reason.

Tony Messina: Or, Leon, they don't care. They just plain don't care.

Dawn-Marie Driscoll: I think Tony's on to something and I don't know how to describe this barrier. I think public company boards might be more responsible than in a nonprofit. Does everyone remember the old United Way of America scandal? Or, let's consider a university. I've sat on a number of nonprofit boards over the years — everything from a college to a trade association — and board members are volunteers and often contributors. They are either passionate about the mission or it's good for their career, and they come in for the quarterly board meetings. The worst thing in the world for one of those board members is that they have a change of leadership at the top while they are a director because then it becomes very time-consuming. So if you have somebody like the lauded CEO of United Way of America and you come in for the quarterly board meeting, you just keep your fingers crossed there's no change in leadership. You surely don't want to force one because the next thing you know, you're on the search committee and it becomes like your full-time job. I mean do we call it apathy, do we say it's not my job? I don't know.

Leon Goldman: It's self-protective behavior. We're human; we tend to protect ourselves and do things in our

best interest. That's understandable and it's also why you see compliance officers who just smile and accept what's going on because they don't want to look for a job or want to pick their family up and move them. I'm not sure there's a specific answer to it other than trying to raise the issue to the board, or raise it to management so that they have heard it and are aware of it. Some may not care. Others may say, "I need to think about that." Sometimes that's all you can do, just raise awareness since we're not in control. The board may be saying, "I don't want to deal with it," but raising awareness and talking about behavior and leadership may make someone on the board think, "Hmm, there's a point there."

Gael O'Brien: Aren't we talking about what the board needs to see as its role? We've talked about the fiduciary, that's standard. However, there's an evolving need that board members must address. Many of us think the separation of the CEO and chairman is important. We've seen several scandals and problems when the two are tied together and that makes it difficult for the rest of the board to get good information. I'm wondering how conscious members are of understanding the culture, of really getting the kind of feedback that they need and what kinds of mechanisms there need to be in that kind of setting. How can we suggest ways in which board members can know more about the culture? How can we address the shortfall of good intentions? Presumably, if you've recruited the best people, they have people skills as well. If they don't, maybe you shouldn't be recruiting them as board members. As you pointed out, Leon, all senior management needs to have such skills. It is a people business



no matter what your product is.

Dawn-Marie Driscoll: Don't forget that the toxic chief financial officer will be on his best behavior at the board meetings.

Bobby Kipp: So I have a question for people in the room that are certainly more active than I am on for-profit boards. Are any of you aware of a conversation collectively with the board that acknowledges the board's responsibility to help build an ethical culture and having them understand what the organization's culture is? Are any of you aware of conversations at the board where the board has given management not only permission but also the remit to help the board look for and perform their role as monitoring oversight? If we don't start with [the idea that], yes we as board members are responsible, in part, for the culture of this organization and for the performance of the organizations

and that performance is dependent on the culture being certain things... So I'm just curious about for-profit boards.

Donald Stern: My short answer is "Yes," but it depends on a crisis. Typically, it doesn't happen organically. I've seen it as a practicing lawyer and then as someone on a for-profit board after a company went through a crisis, fired its CEO, and went under investigations from the Department of Justice, SEC, and FDA. Usually, it's only after a crisis and the stock price goes down that board members have no alternative but to accept responsibility. By the way, members of boards are being held more accountable by activist shareholders.

Bobby Kipp: Just to be clear, Donald, in those situations in your experience, they have no choice but to take responsibility, finish the sentence, for what? For the misconduct?

Donald Stern: A little bit of both. For having blinders on and not seeing some

*Bobby Kipp pushes the discussants to consider the role of boards at for-profit companies in fostering ethical cultures. It begins with a conversation.*



of the misconduct and accepting going forward that they as board members, both individually and collectively, have a responsibility to get a compliance officer who knows what they are doing.

Dawn-Marie Driscoll: You're talking about oversight.

Donald Stern: Well, oversight and some sense of responsibility to break through the presentations to the board and getting to know some of the people below. Now is that still playing? Who knows? You know you are probably not going to go out on to the factory floor and be chummy with the foreman. However, at the very least, you can get to know some of the people below and maybe pick up the culture there. Are people afraid? Does the CEO get nervous when you're talking to the head of sales? It's tough. I know, based on experience, that it's tough to break through as a board member.

Dawn-Marie Driscoll: They feed you what they want to feed you.

Leon Goldman: It's highly unlikely there's going to be a scenario, and correct me if I'm wrong, where that kind of education can occur to the board. My question is, is there any venue or organization where board members can meet and get educated as board members about board duties independent of their companies?

Dawn-Marie Driscoll: Sure. Twenty years ago, I helped to start an organization called the Independent Directors Council, which was for directors of mutual funds. There were conferences about ethical culture. Now whether they spend enough time on that I don't know. I would answer from my own experience that I don't think many board members feel it's their responsibility to set the ethical culture. I think they hire the CEO. I

think they provide the resources.

Bobby Kipp: I agree with you, that one of the most important functions of the board is to hire, fire, and evaluate the senior executives. By doing that and then following up with them, board members demonstrate some knowledge and responsibility for ethical culture.

Michael Hoffman: Dawn-Marie and I have argued about this. I tend to agree with Leon that boards should be responsible more than perhaps they are for the ethical culture of the organization. The discussion about mutual funds is very apropos because if I understand correctly, with mutual funds, the ethics and compliance officer reports directly to the board. It seems to me that that reporting relationship...

Dawn-Marie Driscoll: ...but also works for the company, day-to-day reporting responsibilities.

Michael Hoffman: I understand that too. In many companies, I am not sure that the ethics and compliance officer reports in a particularly constructive way to the board. They may give the board some information about how many calls came in on the helpline, if they faced a particular issue, and they may have only 15 minutes to do that. My argument is to have ethics and compliance officers be agents of the board or directly responsible to the board. I don't understand how else the board gets knowledge about the ethical culture of the company. Now, I know this is controversial, and we've argued about it. How else will the board know if the board only has access to what the culture is like through somebody who is not necessarily on the board? We've improved because we now have, in most companies, independent board committees. I'm not sure that it used

to be true. So these independent board committees, even though they may have been selected by the CEO and feel obliged to the CEO to a certain extent, are supposed to exercise objectivity and independence. However, if they don't have an avenue whereby people are telling them issues related to culture, how does the board know what the culture is like? Do they go down into the organization and actually ask questions themselves? I doubt it. But if they don't have, shall I call it, "an agency," who says, "Here's what I'm finding out, which I think should be of some concern to you." How, then, does the board really know that? Are they supposed to know through the CEO because we've hired a good CEO and therefore that means we're going to get the knowledge we should be getting?

Tony Messina: You nailed it for me, Michael. In terms of my experience, I went through four CEOs in my tenure with this company and there were some extremes. To your point, while I reported to the CEO, I only got airtime with the board in terms of ethics through the compensation committee. One CEO had a horrible relationship with the board and as a result, they didn't exchange very much in terms of culture; for some reason, the two were just at odds. Another CEO that came in was so open and transparent that the same board members, because, as I said earlier they never change, felt they were really in the know; this guy had his ears to the pulse and knew all the stories and all the little things that were going on and could report very accurately. So I've seen two sides of it in working operations — one not so good and one better.

Dawn-Marie Driscoll: Did you have executive sessions with the board?

Tony Messina: Did I personally? Only

through the compensation committee, and they used that vehicle, as Michael said, to know data like the number of hotline calls. It was cursory. They didn't dig down deep. Once a year there was a cocktail hour where all the employees would go to the cafeteria. There they could have a bite to eat and have the opportunity to meet with seven or eight board members who stopped by to say hello. Some of the employees, not just senior management people, to their credit, would say, "Since you're asking I'll tell you exactly." Some were not inhibited and I gave them a lot of credit. Sometimes, senior managers were more inhibited than the employees were. There was that tool if you want to call it that, which was available.

Donald Stern: It's not an either/or. Companies accept that they must have third-party independent financial audits of the books. That's just the way it is whether it's a public company for the benefit of shareholders or governmental entities. We don't necessarily think of the same thing when it comes to ethics and culture. So it's not to take away the responsibility from the board, but it is another way for the board to get insight. Companies should consider having an independent outside entity do, from time to time, an assessment of the ethics and culture that should go directly to the board.

Bobby Kipp: As I listen to this conversation, I do think it is the board's responsibility, but not only the board's responsibility. I would argue that first it's the management's responsibility because they run the company day-to-day. The board needs tools and needs to clearly signal to the people that they are in the positions to gather and provide objective information that will help it with its responsibility to

understand the entire culture and how it may need to change. The board needs to be active in making clear what it needs, while at the same time it may need help learning how to do this.

Steve Harris: I agree with you Bobby that culture is a function of both management and governance. The province of the board revolves around how the board understands their culture and how they learn about the culture. One way to do this is through the reports from the chief ethics and compliance officer in executive sessions where management isn't present.

One thing we haven't talked about yet is training. I think that we have an obligation to train, under the federal sentencing guidelines, everyone in the organization including the governing authority, the board. You want to be tailoring that training to the board's governing function. Carrie and I worked on this at one of my companies. There are opportunities that you should be taking periodically to train the board on what are the evolving expectations concerning the board's governance role over the organization including its culture and what are the indicia of the culture.

Carrie Penman: I would add as well that they were very enlightened and appreciative of it because it empowered them to ask, even in that room, questions that they may not have asked previously.

Joan Dubinsky: I wanted to talk about where Mike and Dawn-Marie are in terms of board engagement. There is a model I want to present to you for which there may be a universe of only one — and that's the Global Fund to fight HIV, Tuberculosis, and Malaria. I am their independent ethics adviser,

so I am the independent ethics person to the board. It is in some ways a parliamentary board. There are 40 board seats and board meetings are attended by around 250 to 300 people so it is a very different structure than you're used to. An ethics officer reports 50 percent to the ethics committee and 50 percent to the CEO. So for things like culture, this is a board that is not only conversant with staff culture that comes up through the program committee or the human resources people but also is very aware of the ethical issues that show up in the one-to-one conversations with the ethics officer without the management present. The board is now embarking on a board organizational culture assessment, which is now falling to me because no one else will pick it up. This is a board, insofar as it can act like a board in parliament, which is quite aware of what's happening. However, there are still some of the barriers, the silo barriers. Organizational culture writ large is owned by human resources and finance. Ethical issues are owned by a committee, an adviser, and the ethics officer. When it comes to culture, the board is vaguely aware of what it's like to be a staff member but doesn't appreciate that its own culture also has an impact on how it operates to support how it governs. While some of these same barriers still exist, there is this model that is very much evolving. It's a hybrid. How many other boards would want to have an independent ethics adviser to the board that is not a board member? I don't know. It's just another way of thinking about some of these issues structurally.

Dawn-Marie Driscoll: We're required to do a board self-assessment once a year and we have opportunities to comment. We get at our board culture with many questions and



then we discuss it in an executive session. All the results are merged and nobody knows who wrote what until someone says they wrote a particular comment, and let me tell you why.

Tony Messina: Dawn-Marie, when you did the board assessment, was it effective? Was it really something that got to the bottom of the issues that the board was trying to resolve within its board confines?

Dawn-Marie Driscoll: I think it was effective for two reasons. One, our board at present resulted from the merger of four other boards over the U.S. and each one came with its own culture. The assessment helped us to surface different cultural issues and getting us all to one culture. I don't think we have any big issues to resolve. We are a very candid, close-knit group in which one of the good cultural dynamics is that nobody hesitates to raise something. When we go through this process every year, I am not only reading the six pages of questions, suggesting new questions, scoring them, and writing comments, but also getting the amalgamated results. We discuss the results in an executive session and zero in on the points where there is disagreement and about which there is something to talk about.

Tony Messina: My experience — and maybe it's just the makeup of the individuals that I was used to — is that not much came out that needed attention or more discussion. They sort of loved each other and I think they went through it as an exercise because they want to make sure that shareholders weren't going to attack them at the shareholder meeting,

Dawn-Marie Driscoll: Did they change the questions every year? That's one of the tricks, too.

Tony Messina: No, they weren't that sophisticated. One tool that I've seen used is a cultural survey by a third-party firm that is very sophisticated with a lot of science and metrics behind it. You get back all the charts and graphs and all the connects and disconnects; it was very helpful in zeroing in on and articulating to what we needed to pay attention. I'm not an advocate of homegrown questionnaires, even with bright people on the staff. Rather, bringing in people who are experts in this field allows you to hone in on certain things and highlight what employees are thinking and where the disconnects are.

Gael O'Brien: We've talked about many barriers. We know that purpose is important. At a board meeting where so much needs to be digested and discussed instead of just siloing committee functions and board reports, discussion is needed around the idea of the purpose of the board and the purpose of the organization. Such questions about the organization would be very different from the risk questions that are normally asked and might stimulate the kind of curiosity and inquiry that we want board members to have about the organization. This could also inspire the CEO to be particularly mindful of the kinds of things that he or she is doing within the organization related to the organization's purpose. Calling that out could create an energy that I think can be very productive.

Michael Hoffman: I remember when Laura, another executive fellow, was asked, "What would be the first thing you do if you were starting your own company?" She said, "I would want to know what its purpose was." From the notion of purpose, all sorts of other things grow.



*Boards need to assess their own performance periodically. Tony Messina argues that boards need expert help to ask themselves the right questions.*

### ***Retaliation and Nothing will be done:***

Carrie Penman: Before I go into another barrier, I would like to comment on surveys. I think one needs to be very careful about them, particularly when managers and executives are incentivized based on the results of the survey. It's amazing the kind of pressure that can be put on employees about the results. The thing about surveys is to make sure that you're comfortable that you really are getting feedback about what's happening in the organization and not what management would like everyone to think is happening.

Now to shift gears, we know that one of two primary reasons why employees don't raise issues is the belief that nothing will be done because of the issue they raise and fear of retaliation. I've been thinking a lot lately about the fact that fear of retaliation has

not changed in the 25 years that I've been working in this field. Also, there is often so little transparency when it comes to informing employees about what actions we took in response to a violation. [Consequently,] employees believed that nothing was done. I know there are many reasons for this, both due to concerns over privacy and protection of personal information. However, I wonder if it's time to be a little less fearful about the legal ramifications of explaining to employees [what happens] when we take an action, rather than state our standard answer of 25 years, which is, "Thank you for raising your issue. We've reviewed the matter and have taken appropriate action."

Dawn-Marie Driscoll: But how do you do that? In my experience, many dismissals involve settlement agreements in which there is a confidentiality clause.

Carrie Penman: I think it's an opportunity. I don't have all the answers but it's the challenge to find ways. Maybe it's to have a conversation with the individual. I'm not talking about public announcements, although we're seeing more of those. Having a manager or supervisor sit down with the individual who raised the concern and talk to them about what happened is important. They could just say, I can't tell you everything but let me tell you that we found truth in what you reported and we've taken some actions even though you may see that this person is still sitting here. When a person leaves an organization, you know something has happened. However, actions such as canceling someone's bonus or given someone two weeks off, [to which they respond by] telling everybody they're on vacation, are not viable [as it] makes it appear as if nothing was done. We continue to face this issue where employees don't trust that we're taking appropriate action because they cannot see it. So I would love to have a discussion with this esteemed group about what we can do to reduce that barrier of the belief that nothing can be done.

Bobby Kipp: I have an example that might surprise people. It's the use of the term zero tolerance. Apropos of what you can and cannot say, we had a situation, probably more than one, where we had a bad actor, a senior person that was a repeated bully. Got a warning, got another warning, happened to be a rainmaker, got another warning, we can't get rid of him, we got a partnership, etc. Actually, the person who was the victim of this behavior was another partner who came to us. Zero tolerance means that he should no longer be here. Well, I can assure you that certain actions were taken, etc.

So we embarked on a little experiment and we walked the halls of our office and we went up to random people and we said, "Hey, Steve, when you read these words, this behavior is zero tolerance, what does it mean?" We got many different responses. Many people said what that means to me is that if somebody does that, they're gone from the organization. Other people said, "Well, it means that the behavior should stop," and other people said, "Well the behavior should stop and they should be disciplined." So we changed the language and embarked on a little campaign on what zero tolerance means because for us it didn't mean that a person automatically is fired. Yet, you don't know what the perceptions are of your employees. To Carrie's point, you have however many thousands of employees and they're walking around thinking, "Ha! You said 'zero tolerance,' but Steve is still here." You can start by establishing greater definition and communication in the abstract around what that means in your organization.

Dawn-Marie Driscoll: So what did you do?

Bobby Kipp: We actually took out the language "zero-tolerance." In each of these conversations, we explained what we meant. We tried over time to do the things Carrie talked about, which was broadly communicating that these kinds of behaviors have occurred at these levels and these are the kinds of things that happen to these people. There's no magic pill, but a whole bunch of little things.

Carrie Penman: Right, employees lose trust in the organization, whether it's zero tolerance, which is an excellent example, or anything else when they do not know what is happening or what the actual rules of the road

are. Also, understanding how people define your terminology is critical.

Steve Harris: I've undergone a complete transformation over the course of my professional career on this issue of transparency. For the first part of my career, for 25 years I was a management-side employment lawyer, which meant that when people engage in this conduct it was my job to make them go away and disappear. It was all about not being transparent and not talking for fear that you would be exposing the company to defamation claims or what have you. Now that I am an ethics and compliance officer, I look at it from a completely different perspective. I think that transparency on those issues is incredibly powerful, not just at the macro level in terms of what you can broadcast to the whole organization, but also particularly most powerful with the individuals who initially reported it. To address your point about the fear and the belief that nothing will happen, we are, as part of our communications strategy, producing a feature called, "What Would You Do?" In these scenarios, we feature real, recent examples of employee misconduct to illustrate to the employee population that people do sometimes make bad decisions and do engage in behaviors that they shouldn't. The segment illustrates that when they do, the organization does something about it. Each one ends with the problem and question of what would you do. It's a call to action for people to comment on the event and it's the most read and most commented-on feature. People are forced to think about what they would do if confronted with the situation. What action would they take, what decision would they make, and how would they behave differently from the person in the situation? Of course, we

don't give names; it's all very general. However, the impact is especially strong for the people who report the misconduct and see that something happened, it happened quickly, and people are talking about it. Maybe no one is naming names, but people are talking about it and telling the whole organization this happened. That's incredibly powerful in terms of giving people confidence that they can report something and know that something will happen. That serves to enhance the speak-up culture.

Donald Stern: Great example, Steven. There is a tension between wanting to keep [these experiences] private — we take care of our dirty laundry and we don't advertise it — versus, what Carrie is talking about, which is using these experiences as a teaching moment so people understand. One practice I've seen, which I thought was interesting and got people thinking about ethical issues on a personal level, was managers starting meetings by asking whether anyone had an example of some issue that they had to face since the last meeting, which was troubling to them. Usually, somebody would volunteer a story and the manager would use that as an opportunity to talk about the challenges it presented and how it wasn't black and white and clear-cut. There are many gray areas and the manager would get people talking about them in a collaborative way. I found it very powerful. I saw this in India, which is not a place where people usually report anything because they fear for their job. People would say, "Well, of course, I wouldn't say anything. He's my best friend." These meetings got people to understand that they own these ethical dilemmas and they weren't going to be punished if they voiced their opinions.



Carrie Penman: Gael mentioned earlier Paul O'Neill at Alcoa. He is also very well known for establishing a strong safety culture. I want to go back to this discussion about transparency. Your story reminded me that organizations that have a strong safety culture are also likely to have a strong ethical culture because they're focused on caring about people and on respect. You think about how organizations handle safety issues and how evolved the safety culture has become. They have tailboard meetings every day where before you start a job, you discuss what can go wrong, where can we have a problem? Or, you might be doing the root-cause analysis of an accident or a near-miss so that you are talking about it on a regular basis. Yet, we're not having these same kinds of conversations about near misses on ethical issues and near misses on potential problems in the organization. That's why I keep coming back to the

progress we've made in terms of safety. There is a lot that organizations can learn from the safety culture and the transparency around it because, to your point about teachable moments and to Steve's comment about storytelling, when people can talk, you're going to solve the problem.

Joan Dubinsky: How do we address that fact that both fear and futility seem to be ever-present in organizations; they are a valid part of any third-party independent culture assessment. I'm always picking on fear and futility. So it's possible that one of the antidotes to the fear and futility is not how we monitor or how we encourage speaking. It could be a redefinition of what we mean by zero risk and zero tolerance. Zero tolerance is not zero risk, which goes back to Leon's idea that we are all flawed as human beings. So it's not that you're going to completely reduce the risk of improper behavior through whatever you're

*Employees don't speak up because they worry that it won't do any good, and they will be retaliated against. Leon Goldman suggests that companies can address these issues through greater transparency.*



doing. If you only focus on that, you'll drive it underground. But you could also modify what we mean by zero tolerance and I think that goes to the question of what do you do with your top performers? Carrie, I'm not sure that the visibility of individual reports has a lot of impact. It may be for the victims, the witnesses, or the reporters of a certain matter. But, [we need to know] how to resist the good lawyering [practices] that say buy it out or make it quiet. We've inherited that now in the #MeToo movement.

Carrie Penman: Social media has changed everything. Even if we don't start talking about it in some way, it's happening. I think that we have opportunities. I agree with you; I don't have all the answers. I do think it's important for individuals to believe that if they come to us and say that there's a problem and we're able to demonstrate in some way, shape, or form that we've done something about it.

Joan Dubinsky: And when that happens though what I've experienced is the complainant saying, "I want the report, I want the evidence, I want the data, and I want the interview documents." So trying to figure out how to balance...

Carrie Penman: They can get it in a lawsuit, right? I just think it's about building trust. It's also about setting expectations in the beginning. Here are the things that we can tell you. However, we also have confidentiality when we are doing an interview and investigation. There's an expectation that if I give you feedback, you are going to protect some of that confidentiality, right? It's a two-way street that we have not gotten through during the 25 years that we've been doing this. We haven't been able to break through those

two reasons why employees will not raise issues. I'm just trying to explore these because they are the things that hold back our culture.

Bobby Kipp: It's the same with #MeToo.

Leon Goldman: I hear what you're saying about fear and futility. Personally, I believe that at least some public acknowledgment is one of the ways to fight fear and futility. If I know that it's really happening, maybe I won't be so fearful and it won't feel so futile. At the same time that's not an event, that's a journey for an organization. In the beginning, part of the "I want this report and that report" is because they don't trust the organization. As the events keep happening, the culture arrives at a point that says, "Well I don't need them because this has happened before and they actually do take action." The sticking point is that first episode. That when somebody has to make the decision that the organization will share, what it will share, and what it won't. Then it has to be consistent in doing that at each step along the way. The ethics and compliance officer can help the organization make those decisions.

Joan Dubinsky: Is part of this because part of their response is displaced? You have an impact on fear and futility by working somewhere else in the system. How do your organizations explain why you have a reporting line, a whistle-blowing line, a hotline, or a helpline? What are the reasons we tell people why we do this?

Bobby Kipp: Because it's complicated out there and you're going to face things that are difficult to deal with by yourself.

Joan Dubinsky: So one of them is you're not alone.

Gael O'Brien: There is a tool already in place that we're not sufficiently utilizing: performance reviews. What we did with Mitsubishi Motors in changing the culture was to include the company values in the performance review. Many companies do that. Whether or not something happens depends on whether or not the behavior matters to the organization as reflected in the performance review. If the employee thinks they're a great performer but when they show up for their performance review their bonus is affected by the examples of when they were rude, brash, abrasive or bullying then the importance of the value of respect to the organization is clear. Knowing that the company takes living by its values seriously and knowing that it stands by what it says about trust and transparency because those values go into the review may change that person's behavior. I think we're not doing enough with that. Companies have enormous leverage to support their culture by using that tool.

Bobby Kipp: Right now one barrier that hasn't been talked about is a single word: rainmakers.

Dawn-Marie Driscoll: Do you think that the companies really want the rainmakers, high performers, to leave?

Gael O'Brien: It isn't just the rainmakers. It's the overall sense of do you want a culture where communication means something? Do you want credibility? That's one of the ways of getting credibility, and obviously, if they care about the high performers and they're finding problem issues, they need to get that person help.

Tony Messina: No company is perfect. I would readily admit we have a way to go with performance reviews. What I would add in discussing the challenges

we have been talking about, is that you have to maintain the dignity of the bully while admonishing them because not everybody is fired for every violation that we come across. When I sat down with someone, I'd say, "If that happens to you again in any form or shape or manner you have to trust that I have taken action. I may not be able to divulge everything you'd like to hear but in fact, I feel confident that this problem is squared away. If I'm wrong and naive about that and it happens again, will you instantly come and see me?" That usually made it, though not all the time, a positive event.

Leon Goldman: To pick up on Gael's point, my experience with doing evaluations is that nobody trains the people on how to do the evaluation. So you have many things that occur and become mechanical. When I was teaching, I evaluated students all year long and nobody ever taught me how. I was told what the values were and to make sure the students comport with them. That did not help me.

To your point also about dignity, and that's Donna Hicks' point, it wasn't until I took a course on public speaking that I learned how to evaluate and criticize while maintaining the person's dignity. Everyone one of us in the class had to go give a presentation and the entire class had to critique it. Before the critique started, the instructor laid down the rules for doing the critique: One, you will tell them something good that happened. Second, whatever was bad will not be bad. You will phrase it as "You did this and this well and your presentation would be better if you did this." Then you finish with a positive thing. It was intriguing to watch the people accept the message when they heard it phrased as "and you could be better if you..." They didn't turn off. If



*Gael O'Brien argues that performance reviews can be a tool to increase ethical behavior. Employees should be evaluated and rewarded on whether they treat their colleagues and others with respect.*

you said you did a terrible job with this and this, everybody would shut off. One of the things corporations could do is to spend some time training reviewers on how to do the evaluation and how to give effective feedback. Train on what it looks like when somebody lives by our values and on how to tell them when they're not doing it.

Gael O'Brien: That's the sandwich method that Toastmasters use. Most corporations have a Toastmasters club and it's a very effective way of understanding how to give constructive criticism that is supportively phrased.

Bobby Kipp: But that's a little different. On the evaluation point, one of the challenges that we have faced in the profession for many years is that it's easier to recognize ethical behavior in its absence and deal with it in a punitive way than to define what our values look like in practice. I know companies do try to define what their values look like

in practice. At least, I know what we did. At each level of the organization, we defined what ethical behavior looks like positively. At the lowest levels, it was very simple — it consisted of what appeared in one's ethics training. With increasing seniority, the responsibilities associated with what is meant by ethical behavior changed. Whether 100 percent of people just checked those boxes as they thought through the evaluations or not, I'm sure many did, but I think in some parts of our workforce what it generated was people stopping and pausing and saying, you know Gael, I thought about this and what I've seen with you is this behavior. A discussion started that would maybe change a person's behavior. Did it affect their evaluation that year? Maybe not? Did it change their behavior in the future? I hope so. It's tricky.

Michael Hoffman: This ends the discussion of barriers to an ethical culture.





# Strategies for Developing an Ethical Culture

# A Conversation with Kallman

## Executive Fellows Vol. III

From the W. Michael Hoffman  
Center for Business Ethics

Bentley University, Waltham, MA

### Summary

#### *Strategies for Developing an Ethical Culture*

- Do not be ethically mute; talk about the importance of ethics in the business and talk about examples of ethical behavior and how they contribute to success.
- Make ethics a conscious part of the “everyday” and not a unique special occasion.
- Financial and other incentives must be aligned with the ethical goals of the company.
- Line managers and lower-level managers need to model behavior; employees relate more to their local manager than to others in the organization.
- Organizations must invest in training new managers, especially when they are promoted from within; they need to be given the skill set to model and evaluate the ethical behavior the organization expects.
- Ethics needs to be folded into employee surveys, not a separate survey; it needs to be integrated into the life of the organization.
- Ethics needs to be part of all employee evaluations and leadership needs to model how this is done.
- People learn from experiences and our stories. Storytelling is a powerful strategy to develop and maintain an ethical culture.
- Organizations should articulate overarching values and principles that may play out differently in varied organizational subcultures but are fundamentally inviolable.

## ***Strategies for Developing an Ethical Culture:***

Michael Hoffman: Let's talk a little bit about the strategies for developing an ethical culture. One strategy would be to make sure that people talk about ethics. Like we talk about ethical blindness as a barrier, so, too, is ethical muteness, that is the leadership of the company doesn't talk about ethics. Then to reverse that would be to talk about fair use and ethics. Even talking about it outside the company, making sure that stakeholders and the public know their commitment to a company promotes an ethical culture.

Dawn-Marie Driscoll: Years ago you used to tell the story of the CEO of Bath Iron Works. If I remember correctly, the CEO made a bad decision that nearly got Bath Iron Works barred from Navy contracts. Their CEO went around and told that story about himself showing how he made the wrong decision in the space of a few seconds.

Michael Hoffman: Well the CEO was forced to resign and Bud Fitzgerald, who was the COO, took over as either acting CEO or fulltime CEO. I remember working with him on this whole issue. Harry Britt, an emeritus executive fellow of ours, was intimately involved. The CEO was given business-sensitive documents right before he took off to give a talk. He told his two vice presidents that brought the documents to him to have them copied and they would look at them when he got back. In the meantime, Bud Fitzgerald heard about this and stopped everything saying that this would absolutely be grounds for disbarment. When the CEO came back, Bud stopped him and told him that he had to notify the Navy that they had the documents and had copied them. The CEO then said, "What was I thinking? Of course, we have

to do that." He wasn't an unethical person; he just wasn't thinking. He said that he made a 15-second mistake. He wasn't thinking about what was the ethically right thing to do. He flew to Washington, DC to talk to the Defense Department (DOD) and to give them the original and the copies. The DOD essentially said that they appreciated that he flew down, but that wasn't good enough. They insisted that the CEO fire the two vice presidents who saw the documents and the CEO would have to resign or the DOD would debar his company.

Dawn Marie-Driscoll: Clearly, he went around and told that story over and over again.

Michael Hoffman: Oh yeah, it has become a legend. They wanted not only the company to know what they had done and what should never happen again. However, they also wanted the outside world to know about it. So it became a case and we published it in a book. This is what I'm talking about in terms of talking about ethics. I remember back in the late '70s, early '80s, when I first started out in this field that you talk to CEO's and ask to talk about ethics or ethical culture with them and the CEO's would say to me, "Of course we have an ethical culture; we hire good people." I would ask then, "Why don't you talk more about it, the importance of it?" Their response quite often, if not the majority of the time, was that they don't want to brag about themselves. We don't want to seem like we are "holier than thou" and it's just something that's private. We don't talk about how ethical we are or talk to our employees about it because we know our employees are ethical. I have reflected on this over time and now believe that talking about it is one of the strategies for



*Developing an ethical culture begins with talking about ethics. Mike Hoffman stresses this point while Dawn-Marie Driscoll looks on.*

developing an ethical culture. I don't think it's the only one. I just wanted to start the conversation. Also, this connects with leadership, Gael. Part of developing leadership is to make sure that the CEO and other leaders of the organization talk about ethics, building it into their lectures. Talking to their officers about ethics being something that needs to be talked about. That's one strategy that ought to be followed, not the only one, but one.

Joan Dubinsky: I want to give you a postscript to the Bath Iron Works story and it's a very positive one. Some point after General Dynamics purchased Bath Iron Works along with other companies, I was working at one of those other companies that General Dynamics had purchased. The CEO's habit of talking about personal experiences had gone from Bath to the other now subordinate companies. For example, one CEO brought gift bags that he had recently

received and talked about what they do with things like that. He had his own example, his own ways of talking about it, and was very comfortable leading that conversation about ethics.

Leon Goldman: I think this is all within the context of the discussion we had before about transparency and the various ways to talk about ethics. The CEO and others talked about the fact that they are ethical, not in a bragging way. The example that Donald gave of a manager who starts a meeting with the discussion asking about a tough decision and then having everyone talk about it. Or, a manager who when talking about a policy decision talks about how that policy lines up with company values, how do these values play into our decision about the policy, and how do these play into our not choosing to do something. Not necessarily announcing, "I'm going to talk about ethics," but more saying, "This is our life." It's bringing people



to the place where it's the ethics of the everyday. Every decision we make has an ethical dimension and there are times when we need to bring that forward in a conscious way.

Steve Harris: I think to make it every day, to your point Leon, I've spent a lot of time today talking about boards and CEOs and other C-suite executives without diminishing the importance of that tone from the top. It comes from creating a culture. To extend again the culture is to share stories and rituals. It's those front line managers, the team leaders, whose employees are interacting with others every day. They are the ones who are telling the story; they're the ones who are modeling decision making and other behaviors. We were talking earlier about the 'not my job' barrier. One of the ways you build culture is to start focusing on the middle and getting those frontline managers to understand this special and unique role in building a culture and giving them the tools to accomplish that role.

Gael O'Brien: One of the ways to reinforce what you're saying, Steve, is that the top tier of management needs to be reminding people that ethics is part of the business strategy. Because we see ourselves as ethical, we take ethics for granted, and that can lead to problems. We don't conceive of ourselves as ever doing anything unethical. We feel we don't have to talk about it. However, intentionally raising questions in meetings at every level about how a decision aligns with what the company says it stands for is very powerful. While some may believe that what is ethically correct is obvious, we would likely not have these ethical problems if those conversations took place.

Donald Stern: Yes, talking about it is

critical, but making sure the financial incentives within the company are aligned with the ethical goals of the company is also important. You could talk the talk but, frankly, almost everyone in the company is paying attention to following the money and the financial incentives. Therefore, whether the issue is performance reviews or stock options or CEO compensation, you name it, they all have to be aligned with the ethical goals of the company. If not, the financial incentives will overtake everything else.

Dawn-Marie Driscoll: And are you seeing that for companies that end up being monitored? Isn't that one of the issues?

Donald Stern: Yeah, for example, in pharma companies where there is off-label marketing, you'll often see that the incentives for the salespeople are out of whack. Wells Fargo is a great example of "What were they thinking?" You could open an account and then close it three weeks later and you get a benefit from that? What were the engineers of VW thinking? I've always tried to imagine what the meeting was like when the engineers at VW got around a table like this and said, "I got an idea, let's change the software on emissions control and we'll fool all the government regulators." I mean, did somebody actually say that? They must've. You've got to think that the reason for that could be found somewhere in the incentives; I don't know exactly what they were, but maybe they were preventing government oversight, or whatever, but they were not aligned with the ethical behavior of the company. I don't think the board knew anything about that. I can't imagine the board blessed the change in the software...

Gael O'Brien: This is the danger when companies have silo cultures.

Donald Stern: But someone at the higher levels — not necessarily the board — did know. What are the compensation mechanisms? How are people being rewarded?

Carrie Penman: As we are talking about talking, we should remember that in today's organization there's a whole lot less talking happening as everyone is on IM. When you have remote employees and very little interaction with managers, we as a profession need to adjust to how our organizations function now; we need to recognize that somebody may not even have met their manager in person. So what we need to do is to find a different way to communicate because we're not talking face-to-face now. I think about my kids, you know, they're on IM. They're not talking; they won't use the phone. Meetings are on whatever the latest software is. Meetings are happening virtually and that is our challenge. Our fallback was always the manager, to your point Steve, the first-line manager who was the same person who would be talking around the table about safety or talking about how to address this problem or that problem. I wonder now if there is a table.

Dawn-Marie Driscoll: That's very true, people work from home. Look at what's happening in commercial real estate. Many companies are reducing space. Nobody has an office anymore; they have a laptop.

Leon Goldman: That gets back to barriers and one of the barriers is the loss of face-to-face time and the loss of all the non-verbal communication we do with each other. Reducing the world to 280 characters in the context of a cold and lifeless text. There probably

is a lot there that hasn't been studied about it. That is part of the issue since we all know stories where people have misinterpreted a text or they've written something that was a problem. So there all these things that...

Donald Stern: Spell correct [apps that] change the message entirely.

Leon Goldman: And you don't notice it.

Gael O'Brien: So that raises a wonderful question about how you create belonging and a sense of connection in a gig economy. Even in a non-gig economy, you may not know who your manager is. You may not have met your manager yet. He or she could be in a very different part of the country. So it gets back to how the culture really communicates — writing, of course, talking, of course, but then there are so many subtleties that we don't often think about. How do you really show that it matters that someone is part of your team? How do you reinforce to new people what it is that makes us who we are and what their part in [the organization] is going to be? How do you create the sense that the culture is what we're proud of because that's how we demonstrate, collectively, our meaning as a company as well as human beings? That is a level of thinking that many leaders often believe they do not have time for. In a disruptive world, it matters that leaders find many ways to relate personally. Wells Fargo after their crisis had many town meetings with thousands of people listening. Time will tell how effective that was. Kip Tindall, CEO of the Container Store has done a good job, as have other CEOs, in his internal blog connecting to people with stories and messages that are authentic, personal, and inspiring and not just public relations tools. We need to think about ways in which we can

encourage leaders to think about how they create belonging and connection in whatever way they can. For some it's going to be writing, for others, it's going to be something else. If we lose that from them then the managers underneath the various layers don't have examples of ownership.

Tony Messina: To your comment from two minutes ago, Gael, about, how do we show that it matters? I like that terminology because I'm listening to this and I'm trying to recollect what I did well or not so well in my environment or what I was a part of in one form or another. One of the most profound ways of displaying what our culture was what we did when a business problem like a layoff happened. I worked for a CEO that had a hare-brained idea that the board did not want to do them at all. Some companies do layoffs by not warning employees and just tell them to pack up the next day and go because the

company leaders are worried about sabotage. Maybe, you give two weeks' or a month's notice. My CEO said that we're going to give them six months' notice and the board thought he was nuts. Well, he won that day and it was so profound in the minds of the employees that stayed as well as the ones that had to go and had six months to look for another job and keep their career intact. So communicating is important, but do we walk the talk? When all is said and done, they watch us. You know we said that all morning in one form or another, they watch us just like hawks and they assess whether we're the real deal or just plain big hypocrites. I think about the tough business problems that cross our desk and what we do to maintain the dignity of everybody coming or going in the company.

Gael O'Brien: Dignity is the big word.

Michael Hoffman: What are some of

*Talking about ethics is a good first step. But it is not enough, Tony Messina says. Businesses have to "walk the walk," including at the highest levels of the organization.*



the strategies for middle management? I mean it's been shown in studies that most employees who feel that they have witnessed an ethical indiscretion report it to their supervisor, not necessarily to the ethics office. What are strategies that can be employed to push that ethical culture building down into middle management?

Carrie Penman: I think the strategy is training. I think about back to my Westinghouse days and we would take our best engineers and make them managers and assumed that they would have people skills and could respond to an issue. A big challenge for first- and second-line managers is that they used to be one of the team members, now they're managing the team members and have to discipline their friends. The organization is obliged to train new managers on how to be a good manager. That needs to include how to handle an issue brought to you. We don't expect you to have all the answers but we do expect you to get to the right person who will help you address the problem. It's not necessarily intuitive for somebody who was a subject matter expert in one area to know how to handle these situations when they are promoted to their first job managing people. Many organizations have new supervisor training. Hopefully, there's a component of that discussion that helps them understand that if you ignore somebody who's raised an issue to you it's not going to go away. It's going to get worse and so here are the resources that are available to support you if somebody comes to you with that issue. Here is how to recognize how your reaction can be construed as retaliation if somebody has raised an issue to you. I think we owe our new managers and supervisors the opportunity to help

them be successful in their new role.

Joan Dubinsky: I'd add two things. First, supervisory and managerial training is skills-based and very simple. We don't want you to be the investigator, but we do want you to listen a certain way. We want you to respond within these parameters and we want you to pass the matter over. I see the problem and know how to respond; I have a couple of different avenues. Second, organizations that are still managing to have team meetings, even virtual team meetings, give the managers some materials that they can be successful with a couple of times a year. The materials don't have to be terribly complex, but this is where scripting helps. Here's a case study. Here's a policy. Here's a conversation. Here's a challenge question.

Bobby Kipp: In addition to all of that, we were talking this morning about surveys, and I have a strong view that you shouldn't do ethics surveys. I know not everyone agrees. In my view, it's "I just got the survey and I know how I'm supposed to answer." Are you really going to get an honest response? A better way is to include it in another survey such as an employee experience survey, part of which has some questions that get at aspects of culture. In the toolkit for new managers and supervisors has to be the information about their subset of the organization and how it performed as it relates to all of the aspects of employee engagement or employee experience; they need some context in which to interpret it. They find out how their unit scored, how they scored compared to last year, or how these things scored compared to other similar business units in the organization. Then they need access to the people that can help them address what the survey tells them.



It should be part of their toolbox.

Leon Goldman: This gets to the whole issue of silos. HR may do its survey and they say ethics and compliance are not part of us [i.e., not part of HR's responsibilities.]. We are one company and our employees have limited time and don't want to answer ten surveys. So let's pick questions and give a single survey that serves all these functions. It can be a challenge convincing people this the best way to go.

Bobby Kipp: You have to ask for 20 questions and be happy with five.

Donald Stern: One practical thing is that this is not one size fits all. We all know that each company is different so one practical thing I've seen work to expand the wingspan of the ethics adviser or compliance person is to designate deputies within different business units. There are pluses and minuses to that because it may result in more silo-ing. However, you elevate the status of that person, you bring them in for training; they're made to feel important. You give them important but limited training so that they know that they don't replace the ethics adviser or compliance person but they're an expansion of that role. They feel some ownership. We talked earlier about overtly talking about ethics and with this they will feel some ownership. It's like when your organization is collecting for the United Way. They name an agent for each part of the office and employees feel more connected to that person; it's the same concept.

Dawn-Marie Driscoll: Do any of you put ethical issues in the performance appraisals of middle managers?

Donald Stern: I think it should be for everyone.

Bobby Kipp: Wait, wait, what do you mean, Dawn-Marie, "Do you put ethical issues in..."

Dawn-Marie Driscoll: Well I'm thinking of what the qualities would be. If you have somebody in middle management, you say to them, "These are the five things on which you will be reviewed next year." Do you model ethical behavior? Do you train your troops?

Bobby Kipp: Do you evaluate them on their ethical performance?

Dawn-Marie Driscoll: Yes, so they know going in when they are promoted to middle management that this is now part of their own evaluation.

Gael O'Brien: One of the things that can be done is to have the C-suite members do management by walking or wandering around. I am impressed by leaders who have lunch in company cafeterias, who are accessible. One of the things that makes it hard to trust and makes it hard to know that you belong is when you never have any contact with leaders. Companies have offices, plants, and businesses all over the world. However, if the philosophy in each company, starting from the top, is that wherever we're located, the senior-level team will be visible and available. Then middle-level managers pick the practice up and they're much more likely to be connected. Our best selves show up more readily when we are reinforced and encouraged by the people who are evaluating us and working with us. I think that it is so obvious that it is not often part of the toolkit.

Michael Hoffman: Often you hear that you don't build ethics into a performance evaluation because you can't measure it. You know what I mean; there is no way to determine

whether this manager has been ethical and so forth. I think that's the wrong approach. I think there are strategies to have ethics as part of the performance evaluation. Maybe you'll agree with this and maybe not, but a manager or a supervisor could say to his direct reports as part of an existing periodic meeting, "One of the things we're going to do in our meetings is to have someone present an ethical case. This is so we can talk about ethics. It could be a case that you faced or it could be a case that you are concerned could come up. We'll have a calendar as to who goes at the next meeting." What that does, I believe, is to get the direct reports talking about ethics, thinking about ethics. Then when the performance appraisal comes up for that supervisor or that manager, that's one thing they could put down in their performance appraisal. Here's the strategy that I have used to get my people to think and talk about ethics. It is much more measurable than just saying, "Oh yeah I was a good person" or "I believe in the values." I think there are probably other strategies that could be employed to get more conversation and commitment about ethics into the direct reports of those supervisors. That's just one that I thought of but I'm sure there are others.

Bobby Kipp: Mike, many years ago, when we started, on this journey of how to get ethics to be a part of the regular employee-assessment process, all we could negotiate with HR the first year was to put a single question in every single employee and partner's evaluation that said, "Does this person demonstrate commitment to ethical conduct?" or something like that. It was a yes/no question. Everyone went, "Well this is a stupid question, who's going to answer no?" We were all prepared to follow up

on anybody that said "no," which didn't happen. However, what we did hear, anecdotally, were the stories of people saying, "You know, Leon, we are sitting down to talk about your evaluations and this question here, I really thought about this, and I thought about the time when xyz..." It sparked a conversation in which the person said, "I thought about checking the box no." It put you on notice. We could not measure whether that had a long-term impact, but it was a starting place and we heard some good stories around it.

Carrie Penman: You know it's been interesting all day and it started with Steve, we keep coming back to our stories. People learn from experiences not from...

Bobby Kipp: ...online training courses.

Carrie Penman: ...or 20 pages of policies. They learn by example. So, are we telling the stories of when we walked away from business, or when we fired a client? In addition to, "Here's the conversation we're having at this level," one can give permission by demonstrating [these ideas] at all levels, such as, "This is when we shut down the line," "This is when people were empowered to do the right thing," "This is where we stood for our values." Going back to Gael's comments about values, when you start demonstrating how you're living the values, it starts to have a positive effect.

Leon Goldman: We always talk about the need to demonstrate our values and the next thing we talk about is we fired somebody, we punished someone, or we didn't sign a contract. We also need to talk about the times when we did something because it was good, it was positive, and this was something we did with this company because they, too, are an



*Donald Stern puzzles over the disappearing boundary between work life and home life. The ethics and compliance officer's efforts may be geared toward making people not just more ethical workers, but more ethical people.*

ethical company. We merged with them and here are the reasons we thought they were worthwhile. We don't do it as often as we should.

**Carrie Penman:** That raises the controversial discussion in terms of a strategy. What about organizations that give awards, such as an ethical conduct award? What are the thoughts around the table about the pros and cons of that?

**Joan Dubinsky:** I'm stuck on the disconnected workforce that's text messaging, that's IM'ing, that's doing a virtual meeting, and I wonder whether any reward system matters in that work environment. The techniques that we're talking about are the things that were popular in US businesses in the '50s through the '80s, maybe the early '90s. It's what my parents would have experienced, what I would have experienced. We're bringing those things that we know. We're bringing

them forward. But I've never had to have a hot desk in a hotel. I've never had just a laptop that's my home office. I've worked with teams around the globe and they come and go. They reform and then you go back to your home group. So my own personal experience of the work environment is so different it makes me question whether any of the techniques that we're talking about apply.

**Carrie Penman:** They still want the stories, they still want to be treated with respect, and they still want to be recognized.

**Leon Goldman:** It takes a different format. If someone's texting with you, you don't respond to "reply all," you respond to the person. It can be as simple as, "Thank you very much. When you said 'xyz,' you may not have meant it, but I felt you thought less of me." Training people to do that is very difficult. Alternatively,

you do “reply all,” “Thank you very much; you made me feel good when you said I did a good job; I appreciate your praise and I appreciate your caring about me.” Those kinds of texts going back and forth can establish a new culture. They do train. When somebody starts responding that way, that starts training the other person and starts training the group about how you might respond in a very sterile environment.

Donald Stern: Joan to your point and Gael’s, the discussion of this gig-economy concept makes me think that the dividing line between professional life and personal life, a notion we all grew up with, has all but disappeared. It occurs to me as we’re sitting here, the goal of the ethics or compliance function is to be looking less and less at only ethics within a business environment and more towards getting people to think about ethics and integrity as part of their life; to become part of what they do. Maybe all the examples and all the talking are not just about the business. Carrie’s mention of the safety culture reminded me that I had a similar experience when I was working with a company that had a very strong safety culture. I was talking to a woman, a middle manager, who told me that she knew the safety culture was really working when she went home one weekend and her husband got up on a ladder. The light bulb went off and she said to him, “Do you think you should be going up on the ladder at your age; is that something you really want to do?” and it was at that point that she realized that the safety business had truly become a part of her life. I don’t know what the equivalent is, Leon, for the way we live our own lives, but I think more and more of that should be our goal.

Leon Goldman: I think getting back to the whole discussion of silos, why good people do bad things is because sometimes they silo their business life from their lives at home. “I wouldn’t do this at home but business is business and I just feel I have to do it, or can do it, or whatever.” In how many trainings have you told people that if you think of doing something that you wouldn’t tell your mother about, you probably shouldn’t do it? Well, that’s probably how they think about things at home too. If I won’t tell my wife or kids....

Dawn-Marie Driscoll: Are you now seeing everywhere that companies hire people based on their entire character, or would fire somebody for something they did outside the company? I’m asking this because early in my experience I got an anonymous letter. It was a newspaper clipping about one of our employees in another state who’d been arrested over the weekend. I happened to mention it to our chairman, which I later realized was a mistake, because he immediately said, “Well, fire him!” I got into an argument with him that went on for several weeks. I said, “You can’t fire him. It’s not job-related. It has nothing to do with his experience here and I can guarantee you I can pull out his personnel file and the reviews will all be glowing.” So, he said, “Well you tell me what happens to his criminal case.” Every week I had to check in with the chairman and he would say, “What’s happened to that employee? Have we fired him yet?” I would say, “No.” His case was continued without a finding. I said to the chairman, “You can’t fire him. He didn’t get a guilty verdict and that’s all we’re discussing.” Now, years later, I think I was probably 100 percent wrong because I can see that the pendulum has shifted; we know employees



don't check their character at the door when they walk in. They are the whole person. However, how far can companies take it today? I don't know.

Leon Goldman: Didn't we just undergo a national discussion about how much of your outside life comes into a decision about your employment? And isn't the country divided on this?

Michael Hoffman: We talked about earlier a bit about the punishment of employees when they do something inappropriate. We haven't ferreted out the notion of rewarding employees who've done something over and beyond what might be called the ethical norm. The federal sentencing guidelines, I think it's in the amended version, talks about corporations having both punishments and rewards for employees for their ethical conduct. What do all of you think about that? I've heard people say that you shouldn't reward people for being ethical. I've heard other people say that if you want to send a message that ethics is important to the company then you not only discipline employees but you also reward them. I'm not talking about a reward for being a good boy or girl in the last year. I'm talking about something they've done that's extraordinary, such as when they reported wrongdoing that was risky, perhaps it was their boss, or perhaps it was somebody higher up. There may be other examples. What do you all think about rewards as a strategy for strengthening the ethical culture?

Bobby Kipp: First, I just want to make a comment on the sentencing guidelines because I confirmed this with people who were involved in the Sentencing Commission and some other attorneys. The intent was not just to say that we're going to give incentives and rewards for ethical conduct, whatever

that is but was also to ensure that your incentive systems do not intentionally or unintentionally recognize or reward behaviors that you would otherwise consider unethical. That's an important job for an ethics and compliance officer in collaboration with human resources and others. One problem with ethical rewards or awards is there's a little bit of the feeling that they are hokey and artificial; does that really accomplish what we want...

Carrie Penman: ... and then somebody comes out of the woodwork and as soon as you name somebody saying, "This is what they did wrong."

Bobby Kipp: It's my view that an award is just one of the tools in the toolbox, but don't go checking it off the box and say, "We're X company, big retailer and every year we do our Ethical Courage Award and it's global and therefore we met that sort of expectation of the sentencing guidelines."

Well, OK, but have you built ethics into your performance evaluation and your reward and recognition system? Have you looked at your compensation systems to make sure there are not negative incentives in it? If you haven't taken those steps then your system is incomplete; the award is only one piece of it.

Tony Messina: I think it's how it's phrased. It's like zero tolerance. I have a hard time saying, "You're the ethics citizen of the month." This may not be the right word. I think a monthly corporate citizen award (but not "ethics" or "zero tolerance"), would be a better approach. I can think of a real example of going above and beyond. There was a shipper receiver at Genzyme a number of years ago. They received a call from a hospital outside of Boston that wanted the

shipper to expedite the shipment of tissue that they needed because a patient's life depended on its arrival by the morning. They wanted him to get to Logan Airport and get it out. Despite not having the authority to make the decision to ship, that shipper-receiver got that tissue to Logan Airport. He took a big risk and might have thought he would lose his job by doing it, but did what was best for this unknown patient. This is an example that I think fits the mold you're talking about, Michael. If I can just slip in one other quick thing, as you want strategies for how to do this, I thought of another one and I think it's way before performance reviews. I think it's when you interview people. I think you begin to set the culture in the interviewing by asking, "So tell me, in your background, in your great experience and education that you bring here today, what your most difficult challenging ethical dilemma has been thus far?" You send a deep message then and throughout the whole company.

Bobby Kipp: PwC has been doing that for the past 20 years.

Leon Goldman: I agree with doing it in the interview, and I agree with having it suffused through the evaluation where people know that if I don't behave well, at the minimum, they are not even going to see their cost of living raise. The problem I have with the ethical "star" is what the boundary is. I agree that often it does start to look hokey. The story you tell of the Genzyme employee is uncommon. That's worthy of a commendation irrespective of a program to reward ethical behavior. The police officer puts their life at risk in an unusual situation gets a reward, and they should, but, to say we're going to have rewards for good ethical behavior leads

sometimes, I believe, to an employee base that says, "Well I didn't get the reward but I'm an ethical person, so to hell with the whole thing!"

Michael Hoffman: We do give companies awards. Like the American Business Ethics Award. How is that different, I think it probably is different, but how is it different from giving an individual an ethics award within your organization?

Joan Dubinsky: I've always been deeply suspicious of most ethical companies.

Bobby Kipp, Carrie Penman: Uh-huh, yes.

Joan Dubinsky: It communicates to me, rightfully or wrongfully, it's a pay to play.

Bobby Kipp: Yes!

Joan Dubinsky: It just doesn't do much for me. Will it influence people, will a consumer say, "I'm going to buy a car from that company"? I don't know. All of these rewards are a mixed bag. Whether it's individual, corporate, or team-based, they have short shelf lives. The value might be six, eight, nine weeks of excitement, enthusiasm, and a positive benefit to morale. However, then we forget that an award happened and it goes back to business as usual. In addition, when we do this, audiences get jaded quickly. This year it's a commendation from the CEO, and, maybe, that lasts for two years. Then I have to plan for the third year and some other format for that award or process because I've lost my audience and they won't tolerate it for the third year in a row. Therefore, if you start it, you have to think about it as a very long-term award process.

Leon Goldman: It gets back to our earlier discussion about how do you show every employee that you

appreciate who they are, that you appreciate their contribution to the organization, which is always unique, and you appreciate their attempts to do the right thing? That's a larger issue and I think it becomes too diluted when you give the specific award because everybody else says "Well...."

Steve Harris: I think that's why when it comes to recognition maybe it's better to focus on small stuff. The big above-and-beyond examples, like the one you gave, Tony, are few and far between. Even when they happen, you oftentimes have an individual who doesn't want to be recognized for what they did. So you have that challenge as well. I'm coming to believe that maybe there is more value in recognizing people in small ways for the little behaviors that collectively influence the culture positively. For regular employees maybe it's you get a digital badge for the fact you completed your training on time or, that you shared with friends on the company internet some ethics content that you published. For a manager maybe, they will get a badge because once a quarter they sit down and deliver one of these ethical dilemma toolkits at their team meeting. Those things can be done more regularly, they are things that you can measure, they are behaviors you're trying to drive in order to influence the culture. In the ideal case, you could even turn it into a competition where it takes on a life of its own. There is a gamification aspect where people are competing for who has how many digital badges. I wonder in the grand scheme of things if that's more valuable than the big gesture.

Bobby Kipp: How about Ritz-Carlton? Ritz-Carlton is known for creating a culture where line employees are not only allowed but also expected and

empowered to do what's right by their customers and they do it. I don't know if they get recognition but that's how they operate. If you've ever been to a Ritz-Carlton it's almost universally a wonderful experience and the people that are there, regardless of whether they are emptying trashcans or at the front desk, will go out of their way to make your experience wonderful.

Gael O'Brien: They do get recognition. What they do becomes part of the organizational stories. I was going to build off Joan's point. The day of CEOs writing notes to employees to thank them for various things is not exactly current. The idea that at every level of the company, C-suite leaders are making it clear that people matter is crucial. The personal messages and stories of people who stepped up and stood out inspire us. Sharing a collective sense of who we are through stories is something that organizations can do on every level. To your point, Mike, about middle managers, they may have less pressure on them than do CEOs and senior management, and so may be able to embody the engagement and recognition; they hear the stories sooner and have the ability to tell in larger meetings the stories of the exciting things that have happened. I would hope, they also have two seconds to send it a quick email, "Heard what you did. Wow, that's great; that's who we are!"

Leon Goldman: I think it's one of the things companies could do, but it's work and takes effort. Every time a client or customer says something along the lines of "I have positive feedback about Gael O'Brien," that should get to Gael O'Brien's manager. The manager should then either write or call Gael and say, "I want to thank you. Mr. So-and-So was very appreciative of what

you did for him, and we appreciate that you have been so kind.” That’s not a big deal. It’s not an award, but it says we care about you and we care that you performed that way.

Gael O’Brien: And that’s how you build loyalty. Do you remember when the CEO of Market Basket was in danger of losing his job in a family power struggle? Employees walked off the job in protest. They fought for him because he was connected to them personally. No matter how we get involved with our driverless cars and artificial intelligence, nothing is going to replace being seen, heard, and felt. If we forget that, then companies become like Enron.

Tony Messina: You’re right. I’ve been a strong proponent of it over the years, what you just demonstrated was “I care about you.” If I don’t believe that you care about me, everything else doesn’t matter.

Gael O’Brien: Yes, you don’t have my loyalty.

Tony Messina: “Right, then trust [first] and everything follows. However, first, it’s as a human being you care about me, and then I’ll give you anything you want. Just ask.

Leon Goldman: But, again, it has to be demonstrated that you care about me and not what I can do for you.

Tony Messina: You’re right, as a human being I said, Leon. I’m with you. But, fundamentally a lot of our leaders leave that at the door and don’t understand the basic principle of “I really care about you,” not just as an employee and what you knock out the door in terms of results, but at the level of “What’s going on in your life?” or “Are you OK?”

Donald Stern: There is a tension here because I’m not sure all employees want to see a manager who cares about what’s happening to their kids. This is

*Gael O’Brien impresses on the Fellows the importance of recognition. It matters what gets talked about, and who gets recognized.*





a sort of privacy, millennium issue. I'm not sure all employees want a touchy-feely relationship with their manager. I don't know what the answer is.

Leon Goldman: What constitutes caring about me differs from me, to you, and to others. I believe people want to know that if somebody wrote a good word about me, the company noticed it and that my manager at least said on behalf of the company thank you for your behavior. I know about Ritz-Carlton, I remember being in one 25 years ago and walking down the hall looking lost and trying to find my room. There's a guy putting up wallpaper and he looked at me and said, "Can I help you?" I said "Well I want this room." He said, "Come with me" and he walked with me to the right room.

Dawn-Marie Driscoll: Getting back to the Ritz-Carlton, it's so obvious that we all know what that culture is; it permeates all the way down. However, don't you think it starts with training?

Gael O'Brien: Sure, it's all about training

Dawn-Marie Driscoll: So I go back to what we're trying to inculcate in culture. Somehow, Ritz-Carlton does a great job in training.

Bobby Kipp: Yes, but I'm sure they're also trained on what the boundaries are, what they're allowed to do. "Oh you like that bathrobe; sure here take five of them home." I mean, obviously, they have boundaries.

Leon Goldman: It's matching the training to the actual behavior. Reinforcing it with the stories about how what you're hearing in training works or doesn't work.

Dawn-Marie Driscoll: And then acknowledging good behavior.

Leon Goldman: Yes, it's an entire

system. It's a journey. You'll train. People do things and screw up; they'll be corrected and come back in training. Hopefully, fewer people will screw up. Then we're getting better and it comes around and around.

Bobby Kipp: Does anyone know if the employee retention rate at Ritz-Carlton is notably different from other high-end hotels?

Leon Goldman: I don't know about the hotels but I know Costco's retention rate is very high.

Michael Hoffman: There are studies that show that one of the major reasons why employees stay at a company or are loyal to that company is because of their perception of the ethical commitment in that company. That's some evidence. What we're doing now is talking about strategies for developing an ethical culture and we've talked about a good deal. But I don't want to leave any stone unturned, so to speak. Over the next few minutes, we are going to wind up this discussion on developing an ethical culture and strategies for doing so.

Carrie Penman: So we danced around this little bit earlier today. How from a strategy perspective do we deal with the current political environment affecting our organizational culture? You know we hear stories about arguments about the current political climate coming nearly to fistcuffs in organizations. It doesn't seem to be letting up anytime soon. We are seeing behaviors outside our organization that we don't want to have inside of our organization. However, they may be coming in. Should we spend a couple of minutes talking about the disconnect between what's happening in the environment outside our workplace and how to

cope with that inside the workplace?

Dawn-Marie Driscoll: Let me ask, is it more difficult for employers because they're having such a hard time finding workers under very low unemployment?

Leon Goldman: While they're having trouble finding workers, the other side that we don't acknowledge is that many of these people, for one reason or another, are extremely demoralized outside and they bring that depression, anxiety, and frustration to work and sometimes it finds its way into the workplace in ways that are unhealthy.

Joan Dubinsky: So I'll go ahead and start. The phenomenon that I think we are seeing in the U.S. is known around the globe in many other countries and for decades before this. The challenge of politics finding its way into the workplace is not new. It's new for the U.S. in terms of the polarization. What do I see around the globe? As professionals, as managers, as leaders, as supervisors you find a time when you make it OK for political talk. I've started business meetings with "Who's seen something in the press this past week that's got an ethical issue?" Then I'll bring in something from around the globe, whatever it is. You make part of the conversation OK within a boundary. What I have no experience with is when political affiliation leads to fisticuffs or shouting matches. I haven't seen politicization or party affiliation enter into hiring decisions. I'm sure it does, I just haven't seen it or had to address it. The ugly news is that it's new for this country but it's not new for most of the rest of the world. In many parts of the globe you already know someone's political affiliation from their last name, their religion, where they live, the schools they went to and so you do

a fair amount of self-censoring. We don't have that sensitivity here yet.

Bobby Kipp: Given your experience how do you see it going if somebody said, "I think the way Brett Cavanaugh handled his interview was totally out of line, inexcusable, and demonstrates he's unfit to be Supreme Court justice." How do you handle that in the workplace?

Joan Dubinsky: I can tell you what I would do but I don't know that other managers would do. I'd say step back from the Cavanaugh nomination, confirmation, and now swearing-in process. What are the ethical questions that this raises for all of us? Then I have a blackboard or a piece of paper that says, who are the victims? How do we show compassion to victims? What does it mean to be a victim? Is there a moratorium on the dumb stuff I did in high school? How do the media today make that either better or worse? And so, the group tells you what those issues are. In doing this, I am not saying this is a good or bad example, but I am acknowledging that it is what we are already thinking about and saying it's legitimate to think about. You then step back and say, "Is there anything here we can apply to what we're doing today to make sure that the books are accurate or that we close the books at a certain time?"

Leon Goldman: But, to Carrie's point, we need to be training all managers about how to do that. Again, because it's not been part of what has happened in the U.S. Nobody is really trained.

Joan Dubinsky: Exactly.

Leon Goldman: People will need to learn to start meetings with "Here are the ground rules: We don't yell at each other, and everybody gets to speak." That would change many things and might allow conversations.

Joan Dubinsky: And in many parts of the globe, those groups have done that. They have those norms in place.

Michael Hoffman: We brought this up a little earlier but I don't know that we completed our thinking on it and that is the subcultures within a culture. How do you have a unified ethical culture when you have a variety of different subcultures? Is there an issue with having those subcultures?

Dawn-Marie Driscoll: Let me give you an example of one that came up when I was doing some training a few years ago. There was a major gated community developer. I was working with the CEO who said, "Well you know we don't need a lot of training or words, we're an ethical company." He said, "We hire ethical people and I think we're all set." I was looking for an example to give him and I said, "Well one of the reasons why it might be helpful is because even if you say what you think the expectations are, people with different cultural backgrounds may receive that differently." I said, "For example, you have a Hispanic worker working on your landscape. You also hired his cousin. There's a family connection. He's out one day working and sees his cousin sleeping under a tree. What is the higher value to him? Is he going to know that the company would like him to report his cousin to his cousin's supervisor? He's taking money from the company because he's not working. Or, is his loyalty to his family member going to be higher and he's going to ignore the event and say, 'Not my job?' Unless you do some training around company values, how does that employee know how the company wants to handle such events? They will know because you've said in your material that if you know something

and don't report it, you are as guilty as the person who does it?" I said, "Let's then suppose somebody else notices the cousin and reports him. Are you going to fire not only the cousin but the person who should have reported it?" This gets complicated because people bring different expectations, values, and understandings to the workplace; that's just one example.

Bobby Kipp: The cousin thing is easy. Just go wake up your cousin and tell him to get back to work. I think it is possible to define the attributes of the overall organizational culture that are non-negotiable and common to everybody. What those look like in the different subcultures may be different. For example, what integrity looks like in the research organization versus in the manufacturing versus clinical versus sales might be different and the subcultural aspects of sensitivity are going to be different because the jobs are different. The culture in sales has to be very much focused on how you get new business and things like that. Whereas research culture has to all be on how do we solve these problems?

Tony Messina: Overall, the values are still there for all. I'm interested, Michael, when you asked the question, did you mean subcultures in that way or the way Dawn-Marie meant it?

Michael Hoffman: I think there can be different subcultures within the company. I think Bobby is correct that you can have overriding principles that apply to whatever culture you're in. Sales are no different from other cultures within the company in terms of following these ethical principles. However, these cultures, I think, can diverge.

Dawn-Marie Driscoll: Or an operation in Texas versus New Hampshire.



*When trying to create an ethical organizational culture, firms need to navigate differences among various organizational subcultures. Michael Hoffman highlights this point and suggests a way of addressing it.*

**Michael Hoffman:** Yes. For example, in a sales culture, your livelihood is dependent upon making sales, whereas another culture in the company may not have that pressure and may hold [to different] rules. 20 or 30 years ago, when the Foreign Corrupt Practices Act was enacted, many corporations felt, “Well we can’t compete because Germany’s even giving tax breaks for bribes.” Turns out, we could compete. The company has to make it clear that these are inviolable values and principles no matter what culture you’re in. If you don’t think you can operate in that culture then maybe this isn’t the organization for you.

**Leon Goldman:** Your point was very good. There is an organizational culture, then there are subcultures within the organization, and then there are outside ethnic and social cultures that each employee brings to the organization. The challenge in maintaining the organization’s

culture is to be able to identify those differences and figure out how to blend them. How do you deal if you have an organizational culture about integrity and then you have sales and other subcultures, but you also have a Muslim, Sikh, and an Orthodox Jew working in your company? Somehow you have to figure out how that’s all going to come together and be able to show them how their personal or ethnic or religious cultures fit within the larger culture of the organization.

**Michael Hoffman:** Thank you. Let’s bring this session to a close.





# On the Responsibilities of the Ethics and Compliance Officer

# A Conversation with Kallman

## Executive Fellows Vol. IV

From the W. Michael Hoffman Center for Business Ethics  
Bentley University, Waltham, MA

### Summary

#### ***Responsibilities of the Ethics and Compliance Officer in Maintaining and Sustaining the Culture***

- While the primary job of the ECO is maintaining and sustaining an ethical culture, the responsibility for the culture lies with the board, c-suite executives, senior management, and all the employees of the organization.
- Without consistent adherence to the organization's values across the organization's hierarchy and structure by its leadership team, the ECO role cannot sustain or maintain an ethical culture; it can only perform rote compliance functions.
- The role of the ECO is as a "consultant" to the others noted above; to guide them, point out dangers, and work with them to achieve organizational goals ethically and in a manner consistent with the organization's values.
- This is best accomplished when the ECO is an integral part of strategic planning.
- The ECO must understand all the parts of the organization, develop their trust, and make it clear that the ECO is a valuable and needed partner to their success.
- At the same time, the ECO must maintain a level of independence from management and find a balance so they can bring the necessary objectivity to their work.
- The ECO must also develop the trust and respect of the board and make themselves a valuable source of information and guidance to the board.
- The ECO needs to balance the obligations associated with their compliance role without being overwhelmed by those demands and neglecting the ethics challenges within the organization.
- The ECO must be prepared to speak truth to power and to exit the organization when it is clear to them that leadership is not prepared to make hard decisions and take difficult actions.

## ***Responsibilities of the Ethics and Compliance Officer in Sustaining and Maintaining the Culture:***

Michael Hoffman: I would like to focus, though not necessarily exclusively, on the role of the Ethics and Compliance Office in sustaining an ethical culture. I'm going to ask a question to which I will get an almost unanimous answer. Is it the primary responsibility of the ECO to maintain or sustain the ethical culture?

Dawn-Marie Driscoll: And the answer is no.

Bobby Kipp: When you say, is it the primary responsibility, do you mean is that the person or persons that are primarily responsible for it or is that their primary job? I am trying to understand your use of the word primary...

Gael O'Brien: Good distinction.

Michael Hoffman: Well, let me put it differently. In maintaining or sustaining an ethical culture, is it the sole responsibility of the ethics officer to do so?

Everyone: No

Michael Hoffman: Why not? Whose responsibility is it to sustain an ethical culture?

Dawn-Marie Driscoll: CEO.

Bobby Kipp: Were you asleep this morning, Mike, when we were talking about the CEO and the board and everything?

Michael Hoffman: Is it just the CEO and the board?

Bobby Kipp: It's everybody.

Leon Goldman: Everybody at different levels has different responsibilities and contributes in different ways to

maintaining the culture. I have heard it said that an ethical culture is like a garden. One has to tend it every day and while the primary responsibility for tending may be the ethics officer's, it's also [the responsibility of] the CEO, managers, the board, and the line person. Part of the challenge and responsibility of the compliance officer is helping everybody else in the organization understand their role in maintaining the organization's culture.

Carrie Penman: I know where your question's coming from, Mike. I had an experience fairly early in my career, where I was introduced by either the president or the CEO of Westinghouse as, "Carrie, who is responsible for ethics at Westinghouse." I looked at him trying to decide whether I was really going to challenge that particular comment.

Dawn-Marie Driscoll: Did you?

Carrie Penman: I did some kind of a weak finesse, but it's a great point. If we find ourselves being the only ones accountable then it's not going to work.

Michael Hoffman: I know Pat Gnazzo has always driven it into us that the ethics officer's role is not to maintain the ethics of the company. It is management's job to do that, and perhaps also the board. What then is the role of the ethics officer in helping to maintain the ethical culture? Many of you have served as ethics officers so I'm expecting...

Leon Goldman: The ethics officer is the consultant to the company about ethics; while the ethics of the company is the responsibility of management and the other employees; they might not know what exactly they need to do, or what it means, or how things are being seen on the outside, or even the inside. So the ethics officer



*Carrie Penman observes that the job of maintaining an ethical culture doesn't fall to the ethics and compliance officer alone. It is the job of everyone in the company.*

is there to help provide guidance, to help support people in their efforts, to encourage them, to reward them, to make sure that HR disciplinary systems are being used consistently, to work with HR to make sure that the disciplinary policies are consistently enforced. The major part of the role is helping parts of the company do what they need to do to maintain the ethical culture. (Turning to Carrie) Your story reminds me of my story. Thankfully, this happened to me happened after MEO<sup>1</sup> or I might not have known how to respond. I was stopped by a board member who said, "How's your ethics program going?" I had been doing it for about three weeks. I looked at him and said, "It's not my ethics program, it's yours. I'm here to help you."

Carrie Penman: We keep coming

back to definitions. How many of us are ethics officers and how many are compliance officers? Is that changing the way we do our jobs?

Dawn Marie Driscoll: How would you describe the difference between the two?

Carrie Penman: We've all had the debate for many years about whether ethics is part of compliance or is compliance part of ethics. I'm a believer that compliance is part of ethics; if you don't have ethics, you're not going to have compliance. I worry that with too much focus on compliance we're doing too much box-checking, and we're not thinking about the real motivators of behavior when we're just trying to make sure that everybody is aware of the regulations. I get it. Bobby

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<sup>1</sup>Managing Ethics in Organizations, a program organized by the Hoffman Center for Business Ethics at Bentley University and the Ethics & Compliance Initiative, which has been designed to prepare participants to enter the ethics and compliance profession.



said earlier, this environment is very complex, and just to stay up to date on the kinds of compliance requirements that our employees need to know about is a huge challenge. We've watched the pendulum swing over the years from more ethics-focused, to behavior-focused, to culture-focused, to compliance-focused. I think that right now we're sort of in a place where we are a little bit too compliance-focused.

Leon Goldman: I've talked about this silo mentality before. The separation is heightened in healthcare because healthcare organizations have always had ethics committees, and they have ethicists who have never viewed business conduct or the CEO's behavior as their purview. When they created compliance programs, they were created as separate from the ethics programs. Except for a few health systems in the country, there has not been any communication between the two. So they've heightened that silo separation.

Tony Messina: Without getting pedantic and worrying about whether it's ethics or compliance for just a moment I think it's everything that Leon said a moment ago and the following, I think the ethics officer's role has to take on a "where are we going" view, almost a SWOT analysis; "Where are we going and why aren't we getting there?" They must be upfront to help the organization understand what they should be doing, short term and long term, in a strategic way. They're not just maintaining the ethics; they're way ahead of it. I don't think you maintain anything. You either go backwards or you go forwards. The ethics officer must lead that charge with their creativity because no one else is going to do it for the organization. I don't think anybody else

is going to lose any sleep over it. That's why I put the "and" to what Leon said.

Donald Stern: I think Tony makes a very good point — losing sleep. If I were CEO, I would want someone to lose sleep over this, and the CEO has so many things on his or her plate: shareholder-concern, investor-concern, Wall Street, profitability, etc. I want the chief ethics and compliance person to be focused like a laser on how we not just maintain it but to look forward to the next challenge. We are always fighting the last war. What's the next war that we have to be fighting? Social media might be the next war. The chief ethics person must be obsessed with making the culture better.

Gael O'Brien: To help that happen, the ethics officer needs to be able to connect themselves to the purpose of the company. Purpose inspires. That's what rallies everyone together. It is paramount that the ethics officer can look at the purpose of the company and see how that purpose is served and advanced through the work of the ethics office and others. The Mayo Clinic did a video about purpose in the organization. One of the people interviewed said, "I help save lives." He was the janitor, but he was able to own what he did and how it played into the highest purpose of the organization. That is the challenge and the gift of ethics in organizations. Collaboration, communication, and intention.

Steve Harris: I think about it much the same way. You use the words "integrate" and "collaboration" in the remarks you just gave. Those are the two keys, integration and collaboration or partnership. It's not up to the chief ethics and compliance officers alone, you must, of necessity, partner with all of these other stakeholders across the organizations who also are

accountable in some way for shaping the culture of the organization.

For example, when I arrived at Lincoln, one of the opportunities I saw was to redesign the code of conduct. My first step was to invite representatives from human resources, communications, marketing, and media relations, as well as, legal, compliance, and business to talk about what the code ought to be. We wound up, as a theme for the code, picking up on the communication strategy that the company was already using, called “Be Lincoln.” We decided to build the code around that same communications mantra and use the code to show “what that means through the lens of ethics and compliance,” while staying consistent with the overall message that employees were already getting from other parts of the organization. We believed it was important to show alignment. Partnership, integration, and alignment were key. I had the head of HR and marketing saying, “Wow, this is the first time anyone ever asked us for our opinion about the code of conduct.” By taking those steps to build partnerships with those stakeholders, I am now able to go to them. They will listen when I say that I want to have a conversation about building ethics and compliance components into our leadership development programs, or I want to discuss building some ethics and compliance culture questions into the employee engagement survey. You have to be working together to understand and agree that you’re all aiming toward the same thing: working together to achieve it because no individual leader can do it on his or her own.

Leon Goldman: I think Pat Gnazzo used to say during the MEO that one of the roles of the chief ethics and

compliance officer is to go around to every other part of the organization and say, “What can I do to make you successful and accomplish your goals ethically?” In each place, the ethics officer’s role is to be the assistant to make the other person successful.

Bobby Kipp: I think all of the things that everyone has said are the responsibilities of the ethics and compliance officer that relate to culture. We talked about the notion of being a player who periodically helps assess the state of the culture, who makes independent observations, and who helps plan for written course corrections. But I also want to add being a conduit to and a supporter of the board, which is something we also talked about earlier.

Dawn Marie Driscoll: Donald hinted at this. Does anybody see the role of the ethics officer being either the CEO’s or the company’s insurance policy? What I would hope is that while everybody, including the board and CEO, are so focused on the purpose of the organization, that the ethics and compliance officer would also be the one who would bring warning signals into the organization. Let them know what’s going on in the rest in the world, what’s going on in our industry, how other boards have gotten in trouble. The ethics officer should tell them, here’s what I’m worried about, we don’t have a problem yet, but maybe we ought to lay the infrastructure for making sure that we don’t.

Donald Stern: It’s a great question. What I’ve seen is that the government, the Department of Justice and other regulators, are looking for a much more risk-based approach. It’s not one size fits all. They’ve seen it already. They’ve gone through 15 years post-sentencing guidelines. Every major company has a

code of conduct. They all have training. But, they also see repeat offenders — big companies that should know better even though they've got thousands of people who are compliance people, and money laundering software and all that stuff. However, they're still seeing problems. They look at the compliance officer not as the sole arbiter of this, but as a key actor. They now ask, "What's the risk analysis that you're doing?" While you are in 50 different countries, one of those countries may be very high risk. You have many different activities, but what are the ones that are really creating problems for you? What are the metrics you are using and how did you arrive at them? So, you may have picked India and China, but why? What have you done? You may be looking at money wire transfers, and I am sure, Steve, you focus on such concerns. Why are you focusing on wire transfers to and from London? What's that all about? The

accountability has to be somewhere and to some extent, it will be centered on the chief compliance officer.

Dawn Marie Driscoll: I agree with that. I think it's hard for a company.

Steve Harris: I take exception to the analogy of an insurance policy because as someone who works in the insurance industry, the insurance policy is the thing that pays in the event of...

Dawn-Marie Driscoll: How about an early-warning system?

Michael Hoffman: I'm so glad you mentioned the word partnership because it seems to me that the ethics and compliance officer has many functions. One of the main functions would be to build partnerships with the other functionaries in the company. Going back to what I think Leon said, one way to develop those partnerships is to show where there is

*According to Leon Goldman, the ethics and compliance officer needs to form partnerships with others in the organization, and ask what they need to make sure that they do their jobs ethically.*



value for them in such a partnership; that way you can get buy-in from those other units. Just one other comment that relates to what Gael was saying, I totally agree with the notion that the ethics officer needs to continue to take the company back to “What is our purpose?” I would add one thing to it, and that is, the purpose of a corporation, in my opinion, needs to be related to helping people. In other words, “Are the services I’m providing or the products I’m making truly needed by society or are they helping people in a better way than if we didn’t have them?”

Dawn-Marie Driscoll: How do you do that with a widget company?

Michael Hoffman: Well, if they’re making widgets, these are widgets that would be for some useful purpose. If it’s some kind of nail or some kind of...

Dawn-Marie Driscoll: OK let me change it. How about luxury handbags? A luxury handbag company?

Michael Hoffman: Yeah, I’ll have a harder time with that. (Everyone laughs)

Gael O’Brien: That still works in the sense that you’re talking about quality, about people not being disappointed or taken advantage of. You’re talking about being proud of what you do.

Dawn-Marie Driscoll: OK, you convinced me.

Leon Goldman: But to your question, let’s take the issue of Facebook. At what point should their compliance officer have been the one who said, “Our purpose is to do good to help people join together and that’s wonderful and then somewhere along the way that good purpose turned to harm?” Where does the ethics and compliance officer fit in raising an alarm, or once it’s been

raised by the outside, coming back to the company and saying that this is an issue we cannot ignore. I don’t know the answer. The purpose may start out to help society, but things can change as the world changes. The coal industry was wonderful for society during the Industrial Revolution. I think it has an issue today.

Michael Hoffman: Or the manufacturer of glue which was used down in Honduras or other places. Then young people started sniffing the glue and getting high, and suddenly the company stopped making the glue; that was a good ethical story. They realized that the product they were making, which was going to help people, was beginning to hurt people.

Tony Messina: So, Leon, let’s go back to your Facebook example. A moment ago, you said that you were not sure whose job it was to make the harm known. Well, if the compliance officer, ethics officer, isn’t willing to be a whistleblower, how can he or she lead the group of employees within the company and tell them that they have the right to be a whistleblower? For me, I wouldn’t have been saying this 20 years ago. However, now, that’s an easy question because, in my naïve way of looking at the world, every ethics and compliance officer needs to be willing to quit their job on the spot when and if they realize that they are running up against a no-win situation that is absolutely critical to the organization. Now, they have to be independently wealthy to do this. I think every ethics and compliance officer needs to be independently wealthy.

Joan Dubinsky: Or marry a wealthy person.

Tony Messina: To be serious, I do believe, that to be effective they have



to be willing to put their job on the line.

Leon Goldman: I agree with you, but then I come back to the reality that we're also human beings, and there is a point at which we will explain away why we haven't done what others think we should have done. I don't think it's clear cut. It's not so much "blow the whistle," as what then was their responsibility once it was apparent that harm was happening. Joan, that gets to your discussion early this morning when we were talking about safeguards. What are these boundaries; what are the boundaries of the government obligations versus those of the corporation? Where does the ethics and compliance officer fit into all of this?

Joan Dubinsky: If we burden the ethics and compliance officer role too heavily with being the champion, the promulgator, or the sustainer of the corporate culture without the parallel resources, the clout, and the CEO and senior team who says, "That's what we want you to do," we're setting up a lot of people for rank failure because we can't live up to the expectations. You can't take that burden on your shoulders as an ethics person especially as in many organizations it's a one- or two-person shop. The ethics officer who says, "What can I do to help you succeed inside the company?" "How can I help you get to your goals ethically," builds relationships, but also starts to cross the line of independence. In the process, they are enabling that sales culture but then no longer have the ability to say, "It's gone too far." The third issue, for which I don't have any insight other than to say that I could see this one coming, is that corporations now in many parts of the globe are taking over for failing nations or failed states. The only thing that's

working in some countries or some parts of countries is a corporation. We are seeing, especially in developing countries, a growing expectation that the successful entity in that nation, the corporation, protects the most vulnerable. If the government can't, why isn't the company, the nonprofit, the church, the aid association, or a UN entity, protecting vulnerable populations from violence, sexual exploitation, abuse, abuse of power, harassment, corruption, etc.? And so more and more of the trouble that we see in the world is falling on the shoulders of fewer able and willing entities. That's enormously tough to balance. I can see it and I can despair for it, but any entity has to be able to say, "We can help improve the society in which we're operating to some extent, but we can't do everything."

Gael O'Brien: Based on your experience and based on what I have seen with sustainability officers and ethics officers, how does an ethics officer ensure that he or she has built the kind of pathway to the CEO? There needs to be clarity on the CEO's part that this person is there to support and help the company, has earned and can sustain enough trust that when this person disagrees with the CEO they are heard?

Joan Dubinsky: Individual personal characteristics of the ethics and compliance officer or the sustainability officer and the individual characteristics and temperament of the CEO.

Gael O'Brien: So what two things would an ethics officer need to do that would allow the CEO to begin to trust them and not dismiss them when they say, "This isn't going to work for us?"

Joan Dubinsky: It depends on the two individuals entirely. It's an

idiosyncratic solution. From my perspective, it's speaking the language of the listener (or organization) and not being seen as the outsider.

Gael O'Brien: That's exactly what I have heard.

Joan Dubinsky: The problem is that, to get maximum independence, many organizations only want the outsider and then that person can never speak the language, can never be one of "us." You're going to struggle to be successful.

Michael Hoffman: Let me ask a question, and while I think I know the answer I really would like to hear your response. It's a story about an ethics officer who came to me 25 years ago, to ask my advice on a situation he was facing. He had heard complaints from employees about an officer of the company who, according to the complaints, was sexually harassing women. This ethics officer reviewed the exit interviews and realized that every woman that had exited the officer's office or who was near this person had quit. They had quit because they felt they were harassed by this person who not only sexually harassed them but also stalked them. Now this person being accused was a rainmaker. The ethics officer felt that something had to be done. He went to the general counsel and told him the situation, and the general counsel said, "Don't take it any further than this because it's a career-ending move."

The rainmaker had been hired by the CEO and was a very close personal friend of the CEO. When the ethics officer tried further to get to see the CEO and tell him about this predicament, he couldn't get an audience; the CEO wouldn't see him. He began to get very nervous,

not only because of this issue but because of certain kinds of attitudes within the company. This was a major company. He said he began to fear for his own life. So, given what I've just described as a story of an ethics officer, who faced this dilemma, what would you do in that situation?

Steve Harris & Dawn-Marie Driscoll: Did he report to the CEO?

Michael Hoffman: I think he reported to the general counsel.

Dawn-Marie Driscoll: And he told the general counsel that he couldn't get in? He told the general counsel about this rainmaker.

Michael Hoffman: And the general counsel said, "Don't take it any further than this. You don't want to pursue that trail."

Dawn-Marie Driscoll: Did he ever make presentations to the board?

Michael Hoffman: He did call a board member because I asked him that. He thought it was a board member he could confide in but never got a call back.

Dawn-Marie Driscoll: That doesn't surprise me.

Michael Hoffman: I know. It's depressing.

Steve Harris: I was going to say, the first thing I would do is pick up the phone. If I were getting direction, in a hypothetical from the general counsel not to pursue something, where I felt we had not only an ethical but also a legal obligation to investigate, then I would pick up the phone and call the chair of the audit committee. If you're not getting a response from the chair of the audit committee, then that tells you that there's a story.



*The ethics and compliance officer needs to be heard by senior leaders in the organization. If he or she cannot get those senior leaders on the phone, there is a problem with the organization, according to Steve Harris.*

Dawn-Marie Driscoll: Well let me throw out another scenario. The chair of the audit committee would definitely — tell me if you think I’m wrong — take a call from the CFO. I would say he had another strategy, which is if he’s blocked by the general counsel he could have gone to the CFO. He has a legal obligation to pursue this. This can cause great financial harm to the company. I think he can go to the CFO, and say, “I’m having trouble with my boss over here who can’t get me to the president/chairman. But, how about this, you and I go to the chairman.” Try that first or, barring that, you go to the head of the audit committee and say, “You and I have an issue.”

Donald Stern: Could you go to the outside accounting firm? If they went to PwC, what would the outside accounting firm do?

Dawn-Marie Driscoll: Well, first they’ll probably ask if you

have gone to the CFO?

Bobby Kipp: PwC would first ask if it had been raised internally with management. They would probably consider a joint call. I think you’d always go to the CFO with our relationship as the auditor, and then, together go to the audit committee, if that’s appropriate, but if the CFO then... You can play out door number 1, door number 2. If the CFO had the same reactions as the general counsel...

Steve Harris: You’ve already had to go five steps too far. If you, as the chief ethics and compliance officer, don’t have the kind of relationship with the head of the audit committee that, presumably, you’re reporting to, where they won’t even return your phone call...

Dawn-Marie Driscoll: What I suspect is that this ethics and compliance officer is reporting to the general counsel and the head of the audit

committee may not even know who he is. Maybe, the ethics officer goes before the board once a year sitting next to the general counsel and makes a presentation for 10 minutes.

**Bobby Kipp:** Steve I agree with you, you should be able to go there. At the same time, you're also going "My career is on the line here. What can I do that is politically helpful to me or less harmful to me that still achieves the objective that this needs to be dealt with right away with senior leadership?" So if you work through the channel, then you still can end up in the exact same place, but protecting yourself by having certain members of leadership on your side.

**Steve Harris:** I'm not saying you shouldn't go down those steps. I'm saying that that would be so indicative of a dysfunctional organization and a dysfunctional relationship that I'd be questioning should I be continuing to work at this place long before I got to that point. If you have gotten to the point where the chair of the board committee to whom I extensively report won't return my phone calls, doesn't know who I am, and you need to worry about whose phone call they do accept, that's horrible.

**Dawn-Marie Driscoll:** But from a board member's standpoint, I think board members are very careful about process. Let's assume they don't know the compliance officer, or they don't see him. If they take a phone call from them, are they going to take a phone call from the vice president of building and construction? Are you going to take a phone call from anybody? You expect to take a phone call from the CFO.

**Bobby Kipp:** If, as a board member, you get the call from the ethics and compliance officer whether

or not you know them, you would go right to the CFO because that's where your relationship is.

**Dawn-Marie Driscoll:** Of course, that's what I would do. I'd go to the CFO and say, "Hey, I just got this message from the ethics and compliance officer, what's up?" Let me tell you if the CFO doesn't know, then I think that's a big missed step by the ethics and compliance officer.

**Michael Hoffman:** My impression was that the CEO certainly knew that this was happening, but he just didn't feel he could lose this rainmaker. The conclusion of the story is that the ethics officer resigned. He didn't see any other place to go, plus the fact, he was beginning to get very paranoid about stirring up trouble.

**Dawn-Marie Driscoll:** Well I'm sorry to hear that he resigned before he tried the CFO route.

**Michael Hoffman:** And I don't know whether or not he did.

**Dawn-Marie Driscoll:** Maybe today he would call the company's outside law firm.

**Donald Stern:** It is hard to imagine that this would happen in the current environment. You have the CFO, outside auditors, outside counsel, regulators, the media, and social media. It is just hard to imagine that this would happen today. This was 20 years ago, right?

**Michael Hoffman:** At least.

**Donald Stern:** And so the world looked a little bit different on issues like this for many people.

**Dawn-Marie Driscoll:** I agree with you.

**Donald Stern:** Forget about rainmaking, consider the reputational harm to this

company.... Was it a public company?

Michael Hoffman: Yes.

Donald Stern: You can't even comprehend the loss in stock value overnight if this became known without them doing anything. Becoming known includes the fact that the CEO sat on it and didn't do anything. It's enormous.

Gael O'Brien: I think that the ethics officer might have another approach. You start by quantifying what the cost of public relations and legal fees are in a lawsuit and adding the dimension of where we are today. I wouldn't quit. I would think that the most effective thing for someone to do in that position is to quantify all this information with the outside counsel, and take it directly to the president's office and figure out how it can be given without a confrontation. That personal private letter documenting what the liabilities are for the CEO and the company. This is where the ethics officer establishes why it's so important to have him or her and why it's so important that they be listened to.

Bobby Kipp: And maybe the CEO ends up firing general counsel for not understanding all this, right?

Gael O'Brien: Or maybe, they all get fired, but the point is the ethics officer leaves with, hopefully, the outside law firm saying, "This is a heck of a person, you want to keep this person."

Michael Hoffman: Let me ask one final question.

Bobby Kipp: Wait, we need to know what happened after that. I know he quit, but did the guy drop a dime or did he find out afterward whether they ever learned about [what happened]?

Michael Hoffman: This is exactly where

I was headed, Bobby. The ethics and compliance officer has a responsibility if he or she sees something unethical happening. A responsibility to try to prevent it, to try to stop it. So would you think that the next step should be blowing the whistle?

Dawn-Marie Driscoll: To whom?

Michael Hoffman: Well, it could be to the DOJ. It could be to the SEC.

Bobby Kipp: It could be the press.

Michael Hoffman: Could be the press. In other words, to try to stop this from continuing.

Dawn-Marie Driscoll: I would say not if he ever wanted a job as an ethics and compliance officer again.

Leon Goldman: But to Don's point, this was 20 years ago. It's hard for me to believe that in this day and age the CEO doesn't know who their chief compliance officer is. Nor that the head of the audit committee doesn't know the chief ethics and compliance officer. If that's the situation, there's something radically wrong with the organization.

Steve Harris: I have in the last year and a half moved to another company, and as I was evaluating the opportunity, one of the things I was very focused on, was trying to understand whether my values or risk tolerances were aligned with some of the most senior executives.

Dawn-Marie Driscoll: To whom do you report?

Steve Harris: I report to the audit committee, though administratively I report to the general counsel. In the course of meeting with the general counsel, the head of HR, the CFO, and the CEO, I was proactively asking them questions, such as, "Have you



ever had situations where senior leaders engaged in misconduct? How do you deal with those?"

Asking them questions about incentives so I could understand how they think about those issues. That tells you a lot. You can find out pretty quickly whether you are aligned or not on those things or the degree to which you're not. I know many people won't have the luxury, but you have to think long and hard about even taking a role where they're not willing to answer those questions or the answers are troubling to you because you know you will find yourself in a situation similar to the one you raised, Michael. You're always going to find yourself in conflict with the leaders with whom you need to be effectively partnering. If your ideas about risk and your risk tolerance levels are not aligned, at least partially, that becomes a huge barrier to having an effective partnership.

Dawn-Marie Driscoll: Don, you must clean up a lot of sinners. You must've seen reporting lines that didn't work.

Donald Stern: Usually if you push hard enough, you will find somebody who's going to do something about it. It's just difficult. Steve will probably agree with me, the chief compliance officer in the hypothetical has some exposure, legal exposure if they sit on this doing nothing. Maybe they can get out of it by quitting right away, but to sit on it and to continue working there and doing nothing can be a problem. If I were their personal lawyer, I'd say, "No way, you can't do this. You've got legal jeopardy yourself."

Dawn-Marie Driscoll: You'll leave a paper trail on your way out.

Donald Stern: It's hard to imagine a public company turning that much of a blind eye.

Dawn-Marie Driscoll: How about a private company or a huge organization like a university?

Donald Stern: Is this just hypothetically? Yeah, private companies are a little bit different particularly when they're run by the founders. That is the founder's syndrome. Universities? Well, we've seen it with Penn State and other places. You like to think that the world has changed, but every time you pick up the newspaper there is another thing happening that shows that it hasn't.

Leon Goldman: Do universities have ethics programs?

Michael Hoffman: They do.

Leon Goldman: Some do, or do all of them have ethics programs?

Michael Hoffman: Well...

Donald Stern: You reminded me of a point I wanted to make earlier. I can't remember with whom I was talking about this earlier, maybe it was Joan. Universities and nonprofits have a blind spot themselves, which is different. There's something that's refreshing about the profit motive for companies, which is they are there to make money. We know what their goal is, at least in part. They may have other goals, but at the very least, it's not to go out of business because they lose money. Universities and nonprofits think they're doing God's work and they have a little bit of a blind spot in terms of recognizing and being aggressive about misbehavior in their ranks.

Leon Goldman: They don't call it profit, and therefore, they don't have a problem with profit. They still need a margin. They still need to take in more money than they spend, and it's the corrupting influence of large

amounts of money lying around...

Donald Stern: But don't you think, Leon, that in your experience is a little bit of... "Well, we're not doing it for bad reasons."

Leon Goldman: Yes, we're doing God's work; we're all wonderful people; we only hire ethical people, how can there be an ethical problem? That blind spot is a real challenge.

Carrie Penman: Moreover, think about how those two types of organizations build a board. In nonprofits, board members are contributors and fundraisers.

Michael Hoffman: Alumni.

Carrie Penman: Alumni, and so they don't have the same kind of experience.

Dawn-Marie Driscoll: But the reverse is also true, in many cases, somebody takes a seat on one of those boards for prestige reasons; they don't want the liability. How would you like to be a board member at Michigan State University or Penn State when that all went down? Everybody is now taking your deposition and deciding what to do about the president.

Carrie Penman: People don't realize when they're taking on that responsibility what they're getting themselves into. They're not taking it upon themselves to understand what the true role of the board of directors really is.

Tony Messina: Can I ask one question that relates to this? On a few occasions, we spoke about "rainmakers." I guess, we've all experienced rainmakers in our companies or former companies. Has it been your experience that the CEOs of these companies are held hostage by the rainmaker, so anything goes? Do they get a free pass? Or, has

it been the Jack Welch model, where I'm not going to be held hostage, and if he or she warrants being fired, they're gone, I don't care how good they are?

Dawn-Marie Driscoll: I wouldn't call it, "held hostage." I would say that CEOs don't want bad news about the rainmakers.

Carrie Penman: I was fortunate in my experiences. We made the tough calls. One piece of advice that I've often given to new ethics and compliance officers is you take this job very carefully. To Steve's point, if you're not aligned with the organization's values and priorities to begin with, then you've set yourself up to be in conflict. Maybe this is my Pollyanna moment, but I was very fortunate, at Westinghouse. We made some tough calls. I had to go to the CEO about what we called the chairman's "fair-haired boy." The chairman had brought him in from an outside hotshot consulting firm and he was ripping us off on his expense reports. He was gone.

Michael Hoffman: OK, in light of this discussion of ethics and compliance officers' responsibilities, how do we direct that back to sustaining an ethical culture within a company? We know that the E&C officer has some responsibility, and we've debated how far that goes, and what kind of responsibilities they have. How else should a company sustain an ethical culture?

Leon Goldman: We've talked about it. The board needs to hold the CEO and senior management's feet to the fire. Senior management and the CEO have to be committed to the project and make it visible. It's at multiple levels if they're committed to having and sustaining an ethical culture. Each layer of the organization is going to

have a responsibility. The ethics officer is the one, though, that has to make sure each person is pulling his or her weight. They are the ones to tell people when they're not, and repeatedly help the process to move forward. Not every officer is going to be able to do that and not every organization will be willing to listen. I don't think there's a magic answer. It's an enormous amount of work. You can spend a lot of time slogging and not move very far. Then you have to just smile, come back the next day, and say, "Here we go again."

Gael O'Brien: Engaging people is so critical to the ethics officer's function. They need to create the kinds of relationships that allow them to get early warnings and be seen as a resource or consultant. The job is enormous. I attended BSR's conference last September and sat in on a session with sustainability officers who talked about their lack of access to the CEO. They talked about their small staff. They seemed to echo ethics officers' earlier concerns about the importance of breaking in and being seen. Sustainability is a new field and they are doing amazing things. Yet they're talking a language that's different from the culture. You don't sustain something unless you create, through communication a sense of "we." It's a relationship job and it's an information and relevance job. It's important to find people in the organization who can be a sponsor. You don't sustain something unless you create through communication a sense of a "we." When that's missing, you are isolated.

Michael Hoffman: As an expert on leadership and strategy, how does leadership play a role in this whole notion of sustaining an ethical culture?

Gael O'Brien: Leaders need to have people, like ethics officers, who are

forthcoming and give them the kind of support and information about what they need when they may not have had the practice or experience in that area before. CEOs need to make clear the importance of ethics to the success of the organization. In those cases where they haven't, they open the organization up to problems. I don't think they do it out of ignorance or lack of interest — they may be overwhelmed with other things. That's where I come back to how others in the organization need to make it easier for the leader to understand what they're doing and not doing. The ethics officer can be the strongest help to the CEO in educating and articulating the organization's purpose — "what we stand for" — and how ethical behavior supports the business strategy.

Leon Goldman: Correct me if I'm wrong, but do the majority of companies have these programs because the governments said they had to have them? There is enormous pain for the organization if they don't and something goes wrong. It's a challenge for the ethics officer to convince the CEO that they are needed above and beyond fulfilling a simple regulatory requirement. The first challenge for the ethics officer becomes how do you make yourself indispensable.

Gael O'Brien: One of the ways you do that is to understand what's going on in the organization. You may not have any help in doing that so you get yourself invited to a variety of meetings, and you get involved as a knowledge partner. Then you start connecting the dots before the CEO can. Once you're proven that you have something to offer, they will want you at those meetings.

Steve Harris: Yes, there's a tactical component to sustaining the culture

and you're starting to pick up on it, Gael. I think integrating with the business and understanding what their strategies are, how the new technology that they're introducing, the new processes they're introducing, the new products they're introducing are essential to maintaining the culture and the vitality of the ethics program. Our ethics and compliance programs don't or shouldn't exist as a standalone thing while the organization evolves and changes around it. We have to be able to change as the organization changes. That doesn't mean we're going to change the overall values or cultural expectations, but it may mean that we have to adapt some of the specific behavioral expectations to adapt to new processes, new technology, new products. We have to show the business, or whatever the organization is, that we understand that strategy and that we're able to adapt our program in a way that gets us to the same cultural goals, but recognizes, acknowledges, and supports whatever initiatives they are trying to pursue.

Bobby Kipp: I agree with what you said, Steve. Ethics and compliance has to have the appropriate access and visibility to the development of strategies in the organization. However, that's a challenge in and of itself and we should not take having the access for granted. Furthermore, the ethics and compliance officer has to help identify the vulnerabilities and the risks in those strategies. There are ethical risks that go along with that new strategy. The ethics officer needs to help the organization understand the ethics and compliance risks before they embark on that strategy. In providing that understanding, you're more relevant to the strategy of the company and you're more relevant to senior leadership.

Michael Hoffman: Yeah, that's a good point.

Gael O'Brien: Mike, the best way I think that a leader can help sustain ethics, is for a leader to understand the critical importance of asking questions, and the critical importance of bringing in people that will help him or her understand what is actually going on. Then based on those kinds of meetings, to be able to continue to be someone asking a lot of questions. Asking questions means they're not caught up in the self-seal and blind spots that would lead you to think you are already right. Open curiosity is one of the most powerful tools a leader has to avoid being caught by surprise.

Leon Goldman: I would add the corollary that as much as they need to ask questions, they need to listen to the answers.

Gael O'Brien: Yes!

Michael Hoffman: One final question and we'll call it a day. Do you think that the ethics and compliance officer should have a seat at the important tables? If you do think that, how do they go about making it happen?

Dawn-Marie Driscoll: Here's my dream, I would like to see the "Ethics, Compliance, and Sustainability Officer," a new title, have an equal seat at the top with the CFO. I think those are the two pillars of sustainability for an organization. Then, of course, they will become an important person for the board. That would be the table I would like to see.

Michael Hoffman: Right, because better communication can happen.

Bobby Kipp: Is the general counsel part of that dream team?

Dawn-Marie Driscoll: No.

Gael O'Brien: But that also gets at the issue of role versus authority versus influence. I don't know whether we'll get to that dream of yours, which is wonderful, but I do think even without that opportunity the influence that an ethics officer can build within the organization can be extremely powerful. The types of people who will succeed in that are likely to have the ability to influence.

Dawn-Marie Driscoll: Well, you said the exact right words. It depends on the type of people. I also think it depends on the CEO. It's a combination of how receptive your organizations are and what kind of person fills the role.

Donald Stern: To some extent, it's a self-fulfilling prophecy. Some CEOs are not going to hire a strong personality in that role, someone who's going to have an equal seat at the table, because they're going to be nervous about it. The right CEO will welcome

the questioning, will welcome the person who comes in and has a strong personality. You can do some things with the org chart but if it's not the right person, it's not going to work.

Tony Messina: Mike, I don't think the person makes it happen. I think the CEO will determine whether you report to my senior management team and me.

Dawn-Marie Driscoll: But, I think the person has to have a track record of relationships and problem solving that the CEO appreciates.

Tony Messina: But, if he or she is hired from the outside, they may not have a track record within the company.

Dawn-Marie Driscoll: Not yet.

Tony Messina: When you get to hire a person like that, my experience has been the CEO knows who his senior management team is. The CEO decides whether or not the

*Ethics is bound up with strategy, Bobby Kipp argues. Ethics officers need to be intimately involved in strategy conversations so they can identify the ethical risks and vulnerabilities of those strategies.*





compliance officer is part of the senior management team along with the CFO and the general counsel.

Michael Hoffman: I think Dawn-Marie hit it on the head for me. If the ethics and compliance officer does have a seat at that table and is listening to some very strategic and important decision making, he or she can take that to the board. It would not be to say, "I think this is wrong," but to express, "I think you ought to know about this," so that they can decide whether what is going down should go down.

Carrie Penman: Can I ask Dawn-Marie and Donald one last question? As board members, do you see ethics and compliance expertise becoming a requirement to have on a board?

Dawn-Marie Driscoll: No.

Donald Stern: No. That's a great question. One size doesn't fit all. I have done many internal investigations for boards and made presentations to boards. Now I'm on two boards, and the boards tend to be CFOs, CEOs, marketing people, and medical people if it's a pharma company. There's no one, or almost no one, on the board who understands the compliance and ethics world. Even if they're lawyers, they tend to be deal lawyers and M&A lawyers and they don't really understand the compliance and ethics world. Now the OIG of HHS has a little monograph on board responsibilities for pharma companies, and they specifically say there should be compliance expertise on the board.

Tony Messina: Don, what about ethicists? Would you include ethicists, in that they shouldn't be on a board as a general rule of thumb?

Donald Stern: Are you talking about ethicists in the way Leon was talking

about? Like medical ethicists? No, they have a different perspective, which [pertains to] clinical trials and medical procedures. I'm not sure that an ethicist is really the right [function]... I am talking about somebody who knows controls but in a compliance and ethics environment .... But I don't know. Leon, what do you think?

Leon Goldman: No, but I think that's the very problem with healthcare. When they speak of ethicists, they're talking about people that know clinical trials, know patient autonomy, the right to die, or whatever, and it has nothing to do with conflicts of interest, the perverse effects of money on people's behavior. I would argue that there are different foci for ethics questions, but that the fundamental skill set actually is the same for a medical ethicist or a business ethicist. In the end, we're talking about the protection of rights, right and wrong, dignity, caring. All of that may come out in different language in different situations, but I think that's one of the challenges the profession faces.

Dawn-Marie Driscoll: Let me answer Carrie for a second. I think there's a variation depending on the board member's experience, as well as, background. You could have any number of board members who, either in their past professional life or in other board situations, including nonprofit boards, have been through bad incidents. They understand ethics and compliance, reputational risks, attention to detail, and all the rest. So I think it's less what your background is than what your life's experience is and how in-tune you are to what else is going on in the world. I'm very negative on having board members with different, specific expertise, whether it's...

Michael Hoffman: The Noah's Ark concept of the board?

Dawn-Marie Driscoll: Yes. Let's take cybersecurity because that's kind of a debate right now in corporate circles. Should you have an expert on cyber on the board? I think it dilutes oversight responsibility of everybody. It is similar to what happens when you have a board that has one minority or one woman on it. Other board members always expect that person to raise the woman's question or minority question or answer those questions. Everybody else keeps looking at that one board member for their opinion and everybody else thinks they shouldn't speak; they should be quiet; they shouldn't ask the question.

Gael O'Brien: Dawn-Marie, how does the board get the expertise if you don't have people on the board with it.

Dawn-Marie Driscoll: They have educational sessions and do deep dives.

Gael O'Brien: Relating ethics to the business at the board meetings is incredibly powerful. It would also give additional support to the ethics officer to have people on the board who can be a champion. Otherwise, it's difficult.

Dawn-Marie Driscoll: I have seen board members be so vibrant, questioning the ethics and compliance officer. You would think they would all turn to me as the ethics and compliance officer. I try to be quiet. Because they're out in the world, they understand reputational risk. They understand all the cases Don's involved with. They understand government regulation. Some of them have come from government. And it's not a shy bunch. They get it.

Gael O'Brien: In your board, but how about other boards that

have mostly finance people?

Donald Stern: Sustainability I think will also be advanced by the future career path of ethics and compliance officers. To pick a different environment as an example, it used to be that in police departments, chief of internal affairs was a dead-end job that would go nowhere, and whoever had that role had one foot into retirement. That has changed to some extent and the head of internal affairs became a necessary place to spend part of your career before you became a chief. So it may be that being a compliance officer will be seen as one of the necessary stops to getting a varied career and developing the necessary skill sets within the business environment for advancement. I'd like to see a whole bunch of people like that become CEOs.

Bobby Kipp: I was going to say that for many people this was their last job before they retired because, presumably, that would put them in a position where a) they knew the business really well, and b) they were not afraid to speak up when bad things happened. So maybe that's changed, too.

Leon Goldman: The challenge you raised, Dawn-Marie, is you have to figure out how to balance the risk created by putting specialists on the board; their presence might enhance the view that "It's not my job" for everybody else versus encouraging everybody to learn and understand the issues of an ethical culture.

Gael O'Brien: I'm not saying you have to be an ethics specialist. For example, people with a PR, marketing, legal, or accounting background can speak to the larger reputational risk. Board members need to be for more than financial responsibility. They need to



*Leon Goldman and Joan Dubinsky share a lighter moment after the day's serious and probing discussions.*

be chosen because they can connect the dots, see ethical issues, and bring in an added pair of eyes and ears.

**Steve Harris:** I suspect that a lot of board members, particularly on the audit committee, would say that while they may not have people with the specific experience of being ethics and compliance officers or have specific expertise in ethics, they do understand how to assess risk and the effectiveness of controls. Rightly or wrongly, I think that is the board's view; ethics and compliance risk is a subset of operational risk, and in many ways, it is. I believe they feel perfectly qualified to look at it through that lens and then they rely on people like the chief ethics and compliance officer or outside consultants to give them whatever additional gloss or expertise they may need on the ethics piece.

**Tony Messina:** So I have to ask this because it's fascinating to me, and I am

learning something from you — how about human resources on the board? Value, no value? Is it the same as with all these other functional areas?

**Dawn-Marie Driscoll:** Do you mean having an independent board member who comes from HR?

**Bobby Kipp:** What kind of expertise do you need on the board?

**Tony Messina:** An HR expert just like your technical people or your CFO.

**Bobby Kipp:** The only thing you're required to have on your board or committee is financial expertise.

**Donald Stern:** It's making Leon's point, which is if you are too siloed with the expertise maybe you lose the big picture that the board should have.

**Leon Goldman:** Does the board need to ask the question, will the VP of HR come and talk to us and tell us what we need to know? Is there

some regular report they should be getting, as opposed to having the HR person sitting on the board?

Bobby Kipp: No, no, he wasn't saying that. I think either could work

Tony Messina: A board member who has HR expertise — that was my question.

Bobby Kipp: It seems to me that whether it's a nonprofit, educational, or for-profit board, you need to look at the composition of your board, see the expertise that's represented on it, see the expertise that's not represented on it, and help your board be properly prepared to do their job as well as you can. That means that board members should get the kind of ethics training that some of you are doing, so that they can ask the right questions, understand the answers critically, push back and things like that. Either way could work.

Steve Harris: I think they have to ask the question, "Why are we looking for this expertise?" It's going to vary from board to board and organization to organization. I think it's a bad idea, at least in a publicly-traded company, to bring highly specialized expertise onto the board, if you're thinking that somehow that's going to enhance the management of that function. We don't want to blur the line between the board's governance function and the management function. On the other hand, to your point, Bobby, in the not-for-profit sector, where management is often thinly staffed or understaffed, you're looking for that outside expertise because you need them to help supplement and you're OK with blurring the lines between management and governance. I think you need to ask why and make sure that you're doing it for the right reasons.

Tony Messina: I couldn't agree with you more.

Michael Hoffman: Just so Dawn-Marie doesn't argue with you. I'm not suggesting that the ethics and compliance officer sit on the board. I am suggesting that there be a proper reporting communication relationship with the board. Right now, I'm not sure that the ethics and compliance field has that.

Dawn-Marie Driscoll: Does it vary by organization?

Michael Hoffman: I think it varies by organization and boards as to how much they want to rely on the ethics and compliance function. My main point is that if the ethics and compliance function is a management function, it is responsible to management and not to the board in terms of their job. In that case, I don't know whether the board will be getting the important information they should get in order to understand what's going on in the company.

Dawn-Marie Driscoll: Well it probably depends on senior management, right?

Michael Hoffman: On that thought, our time is at an end and that brings our conversation to a close. Thank you all very much.





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