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Corporate Ethical Training: An Answer to White-Collar Crimes

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Cover Page Footnote

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Corporate Ethical Training an Answer to White-Collar Crimes

Abstract

The modern business corporation is a culturally significant component of American Society. It is facing a cultural invasion of the highest order. The categorical imperative, an unconditional principle that rational individuals must follow despite natural desires or inclinations to do otherwise, is today being called into question. This is most likely the result of grounding moral values upon information that is transient and unstable rather than upon established data. The social contract, which governs the formation and maintenance of individual morals, is a requirement in organizations that demands collective agency – employees acting together to set forth moral rules of behavior and eschew pernicious leanings and tendencies. From that perspective, ethical training becomes a key leveraging point in the disconnect between cultural expectations and individual behaviors in corporate America.

Introduction

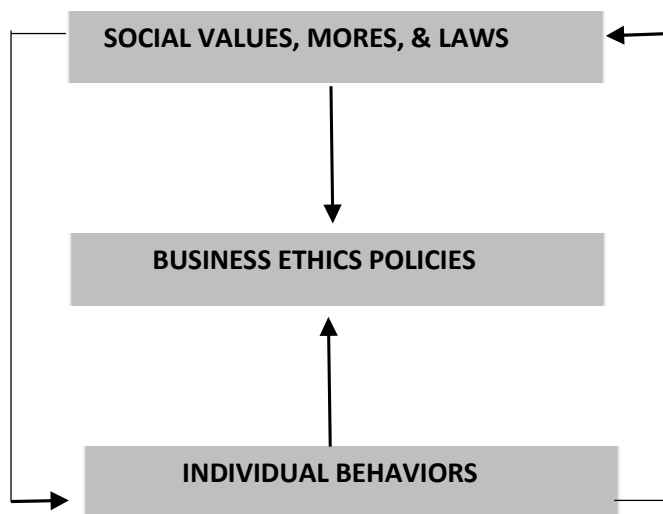
Ethics is a choice as to how we behave. White-collar crime is a product of those choices. White-collar crime is not new; it is culturally invasive, representing a major threat to organizational integrity. One of the earliest cases of white-collar crime dates back to 15th century England. It concerned an act of embezzlement committed by an agent entrusted to transport wool, who had attempted to keep a portion for personal use without authorization (McGarth, 2008). Since then, the 21st century has witnessed a dramatic increase in fiduciary breaches and unethical behavior. For example, in fiscal year 2020, the U.S. Securities and Exchange Commission (SEC) “brought a diverse mix of enforcement actions. These actions addressed a broad range of significant issues such as accounting violations, foreign bribery, market manipulation, insider trading, and broker-dealer misconduct. Through these actions, the SEC obtained judgments and orders totaling over \$4.5 billion for the Commission” (SEC, 2020). Why does such deleterious conduct continue to occur and how can it be resolved? Is it because of our need to be the best versus being the best that we can be? This need to be the best often leads to compromising or outright violating ethical norms. The desire to be the best is selfish and lacks compassion. It is generally a result of the failure to internalize a world beyond one’s sole consideration of self. This presents us with the research question: can a formal corporate ethical training program be designed that will reduce white-collar crime? The training should be based on a modified definition of the firm’s objectives by focusing on “the

process of making ethical choices (doing the right thing) to achieve wealth maximization.” Ostensibly, the foundation of the training program must be rooted in ethical philosophy and scientific evidence.

Philosophical History Informs Today’s Struggle with Ethics

Much of philosophy addresses individual beliefs about what is good, right, and true. In many cases, these beliefs are settled in terms of broader societal mores. Kant (1724–1804) argued that the supreme principle of morality is a standard of rationality, the *categorical imperative*, which he characterized as an objective, rationally necessary and unconditional principle that individuals must always follow despite any natural desires or inclinations to the contrary. The context of his questioning is remarkably similar to the present day. Are today’s corporations better positioned, in the current environment, to tie together the societal values denoting reasoning or knowledge proceeding from theoretical deduction than when Kant so advocated? If we imagine a social ontology comprised of three levels (see *Figure 1*), the business or organization is situated between individual behavior and societal values. When a business articulates and demands certain ethical behaviors based on its translation of societal values, the resulting individual behaviors reinforce those values, accomplished in a way that makes the latent societal values stronger. This theory was first articulated by McCracken (1988) in terms of how meaning is transferred in a marketing system by advertisers and other promoters. Similarly, this latent knowledge that is acquired independently of any particular experience trickles down vis-à-vis institutional ethics policies that set individual behavioral norms. Those behaviors provide feedback and become or reinforce original societal values. Furthermore, In the *social contract*, Rousseau (1762) proposes that an individual has a responsibility to give back to the common good vis-à-vis his (or her) personal will or action. In the ethical corporation, this commitment is well understood.

Figure 1



Grant McCracken Adoption (1988)
The Movement of Meaning and Ethics in a Society

Ethical training, given this context, becomes a mechanism to operationalize a social ontological system that goes beyond a mere articulation of normative values. Today, as in the

1960s and 1970s, traditional values are being questioned. Today, moral reasoning and values clarification are more important than ever (Kirschenbaum, 1992). As our society becomes more diverse, multicultural, and pluralistic, a major question arises as to whose values are the “right” values. In this, the third decade of the 21st century, the concern for values and morality is as prevalent as it was in the 1960s. With the advent of social media and the massive injection of misinformation, what is true, right, or good is no longer simply a question of espousing and enforcing a norm. An underlying “me” or “mine” asserts a right to prosper by any means. Despite societal norms, cognitive schemas allow the perpetrators of crimes like embezzlement or insider trading to frame their acts as “a small thing,” or “brilliant.” An understanding of today’s social schemas is relevant in addressing differing social values. To this end, this paper serves to highlight several major corporate scandals and attempts to understand the mindset of those who propagated the underlying crimes.

White-Collar Crimes

Reportedly coined in 1939, the term “white-collar crime” is now synonymous with the full range of frauds committed by business and government professionals (FBI, 2020). These crimes include acts of deceit, concealment, and violation of trust. They are not dependent on the use of threats or violence. They are motivated by the desire to obtain or avoid losing money, property, or services and to secure personal and/or business advantage. Often these acts are political or business scandals of financial misdeeds committed by trusted executives of corporations or governments which, in many instances, illustrate the failure of “Leadership at the Top.” Those misdeeds involve complex methods of gross financial mismanagement at several levels of the organization. They unequivocally constitute fraud, waste, and abuse and are usually the catalyst for investigations launched by government oversight agencies such as the Securities and Exchange Commission (SEC) and the Department of Justice (DOJ).

The Fraud Section of the Department of Justice plays a unique and essential role in the fight against sophisticated economic crimes in America. Examples of the historical problem are set forth in *Appendix 1*, while the following case synopses (augmented by others in *Appendix 2*) represent instances of recent criminal activities involving the DOJ’s investigation of white-collar crime.

1. In September of 2019, one South Florida health care facility owner was sentenced to 20 years in prison for its role in the largest health care fraud scheme ever charged by the DOJ. The case involved a decades’ long scheme of kickbacks and money laundering in connection with fraudulent claims presented to Medicare and Medicaid for services deemed medically unnecessary. Since its inception in March of 2007, this anti-fraud division has led the Medicare Fraud Strike Force, which is part of a joint initiative between the DOJ and Health and Human Services (HHS) to focus their efforts to prevent and deter fraud and enforce current anti-fraud laws throughout the U.S. Before this particular investigation, the Strike Force, which maintains 15 teams operating in 24 districts, had already charged nearly 4,000 defendants who had collectively billed the *Medicare* program for more than \$14 billion (DOJ, 2020).
2. On January 31, 2020, *Airbus SE* (“Airbus” or “the Company”), a global provider of civilian and military aircraft based in France, agreed to pay combined penalties of more than \$3.9 billion to resolve foreign bribery charges with authorities in the United

States, France, and the United Kingdom arising out of the Company's scheme to use third-party business partners to bribe government officials, as well as non-governmental airline executives, around the world and to resolve the Company's violation of the *Arms Export Control Act* (AECA) and its implementing regulations, the *International Traffic in Arms Regulations* (ITAR), in the United States. This settlement is currently the largest global foreign bribery resolution to date (DOJ, 2020).

3. In September, 2020, the DOJ charged 345 people – including doctors, nurses, and other medical professionals – involved in fraudulent billings across 51 federal districts. The charges were in connection to cases representing approximately \$6 billion in losses, including more than \$4.5 billion connected to *telehealth claims*. According to court documents, 86 defendant telehealth executives allegedly paid doctors and nurse practitioners to order unnecessary durable medical equipment, genetic, and other diagnostic testing, and pain medications, either without any patient interaction or with only a brief phone conversation with patients they had never met or seen (DOJ, 2020).
4. On October 22, 2020, the *Goldman Sachs Group Inc.* (“Goldman Sachs” or “the Company”), a global financial institution headquartered in New York, New York, and Goldman Sachs (Malaysia) Sdn. Bhd. (GS Malaysia), its Malaysian subsidiary, admitted to conspiring to violate the U.S. Foreign Corrupt Practices Act (FCPA) in connection with a scheme to pay over \$1 billion in bribes to Malaysian and Abu Dhabi officials to obtain lucrative business for Goldman Sachs, including its role in underwriting approximately \$6.5 billion in three bond deals for 1Malaysia Development Bhd. (1MDB), for which the bank earned hundreds of millions in fees. Goldman Sachs agreed to pay more than \$2.9 billion as part of a coordinated resolution with criminal and civil authorities in the U.S., the United Kingdom, Singapore, and elsewhere (DOJ, 2020).

Behavioral Ethical Training Based on Philosophy and Science

The fundamental basis for the development of an efficient and effective training program requires some basic understanding as to why white-collar criminals behave the way they do. Harvard business professor Eugene Soltes, in a year's long quest to discover why topflight executives become white-collar criminals, interviewed close to fifty convicted defendants (Carozza, 2017). He says, “he realized that they failed to see the personal and professional consequences of their choices because they never deeply felt that their decisions were harmful to themselves or others.”

This paper proposes a cultural change through education. A cultural environment focused on changing leadership's thinking from motive to motive and results, such that the breaches listed above are minimized. This can be done through an applied ethics training program based on philosophy and science. Prior to attempting to develop such a program, it is necessary to answer a dominant question: **Can We Teach Ethics?** According to the research, the answer is emphatically, yes. Science provides the first proof. The science of neuroplasticity is the brain's ability to change over time, with education. According to Pascale (2008), for a long time it was believed that as we aged, the connections in the brain became fixed and then simply faded. However, research has shown that, in fact, the brain never stops changing with continual educational stimulation.

Brain plasticity, also known as neuroplasticity, refers to the brain's ability to change and adapt as a result of experience. It is the ability of neural networks in the brain to change through growth and reorganization. Recent capability to visually “see” into the brain, allowed by functional magnetic resonance imaging (fMRI) science, has conclusively confirmed the ability to change brain processing (Hampton, 2016). The concept of a changing brain has replaced the formerly-held belief that the adult brain was pretty much a physiologically static organ or hard-wired after critical developmental periods in childhood. The studies conclude that while the brain is much more plastic during the early years with its capacity declining with age, plasticity happens throughout life (Hampton, 2019).

William T. O'Connor, foundation professor of physiology at the University of Limerick Graduate Entry Medical School and author of the blog “Inside the Brain,” thinks neuroscience has a particularly useful role in advancing ethics. O'Connor believes that: “The responsible application of neuroscience should be represented in the teaching and learning of ethics in the classroom” (Humphreys, 2015). The study of perception, learning, memory, and recall are converging into what is known as Neuroethics which focuses on ethical issues raised by a continually improved understanding of the brain, and by consequent improvements in the ability to monitor and influence brain functions to unite ethical and social thought with neuroscience (Roskies, 2021).

The second level of support is philosophy which is based on Lawrence Kohlberg’s theory of moral development. According to Kohlberg, the process occurs in three stages (Sanders, 2006):

1. ***Pre-conventional (childhood) stage:*** defines right and wrong in terms of what authority figures say is right or wrong or in terms of what results in rewards and punishment;
2. ***Conventional (adolescent) stage:*** the individual internalizes the norms of the groups among whom he or she lives; right and wrong are based on group loyalties; and
3. ***Post-conventional level (adult) stage:*** moral principles are defined, right and wrong determined from a universal point of view. The moral principles of the post-conventional person are principles that would appeal to any reasonable person because they take everyone's interest into account.

Many factors can stimulate a person’s growth through the three levels of moral development. One of the most crucial factors, Kohlberg found, is **education**. Kohlberg discovered that when his subjects took courses in ethics and these courses challenged them to examine issues from a universal point of view, they tended to move upward through the levels.

Lawrence Kohlberg was a developmental theorist of the mid-twentieth century who is best known for his specific and detailed theory of children’s moral development. His work continues to be influential and is supported by recognized scholars (including Colby, et al., 1983; Rest, 1986; Walker, 1989, and Walker & Taylor, 1991b). Kohlberg’s stages of moral development constitute an adaptation of a psychological theory originally conceived by the Swiss psychologist Jean Piaget. Piaget placed great importance on the education of children. Piaget created the International Center for Genetic Epistemology in Geneva while on the faculty of the University of Geneva. The number of collaborations that its founding made possible, and their impact, ultimately led to the Center being referred to in the scholarly literature as “Piaget’s factory” (Burman, 2012).

In two studies, Cheryl L. Carmichael et al. demonstrate an engaging classroom activity that facilitates student learning about Kohlberg's theory of moral development by using digital resources to foster active, experiential learning. In addition to hearing a standard lecture about moral development, students watched a video of a morally provocative incident, then worked in small groups to classify user comments posted in response to the video according to Kohlberg's six stages. Students in both studies found the activity enjoyable and useful. Moreover, students' scores on a moral development quiz improved after completing the activity (Study 1), and students who completed the activity in addition to receiving a lecture performed better on the quiz than students who received the lecture alone (Study 2) (Carmichael, et al., 2018).

Kohlberg's work is further validated by the results of a 20-year longitudinal study of moral judgement development. The study was an effort to document the basic assumptions of Kohlberg's cognitive-developmental theory of moral judgment. Moral judgment was found to be positively correlated with age, socio-economic status, IQ, and education. The results of this study were interpreted as being consistent with a cognitive-developmental stage model. Subjects seemed to use a coherent structural orientation in thinking about a variety of moral dilemmas. Their thinking developed in a regular sequence of stages, neither skipping a stage nor reverting to use of a prior stage. The Standard Issue Scoring System used in the study was found to be reliable, and it was concluded that it provides a valid measure of Kohlberg's moral judgment stages (Colby, et al., 1983).

Behavioral Ethical Training: An Applied Approach

The training proposed integrates several approaches that attempt to change individual and corporate behavior by reprogramming tacit understanding and behavioral outcomes. It is designed to take place in an organizational setting, which can elucidate concepts and relationships. The training clarifies what is expected of employees, how the organization will deliver those expectations, and feedback about performance. The training is accomplished through four modules.

Module I: Philosophies and Beliefs of Good, Right, and True

Social Ontology

This unit is focused on the impact of social interaction on ethical behavior. It is a process of analyzing the various entities in the world that emanate from social interaction. In this module, special emphasis is placed on similarities and differences of employees, specifically in the design of the rules of the workplace. Additionally, this section examines ethics and societal norms and traditions including ethnicity, nationality, gender, and wealth as well as their impact on organizational values.

Emotional Intelligence

Emotional intelligence training focuses on one's consciousness of the impact of their behavior on others within the organization. This module focuses on managing emotions of self and others. Special emphasis is placed on the role of "Leadership at the Top" and its ability to manage this process. Leadership needs a unique perspective of the natural instinctive state of mind that results from employees' circumstances and relationships with their co-workers.

Conscious and Sub-Conscious Mind Awareness

This unit is focused on logic and reasoning and how the mind controls intentional actions, as well as how involuntary actions are controlled. Training will create knowledge of how the conscious and sub-conscious mind impact organizational behavior.

Shared Agency

This component focuses on what makes us better when we act together. Earlier in this paper, Eugene Soltes was quoted as saying that those who commit white-collar crimes “failed to see the personal and professional consequences of their choices because they never deeply felt the impact of their decisions on others.” *Figure 2* gives a visual of the depth and breadth of societal interconnections. The visualization of the various groups in society clearly illustrates how deeply interconnected we are.

Figure 2: Shared Agency Personified



Reconfigured by Richard Pitre (2021).
The above figure is an example of our shared humanity.

Module II: Ethical Values

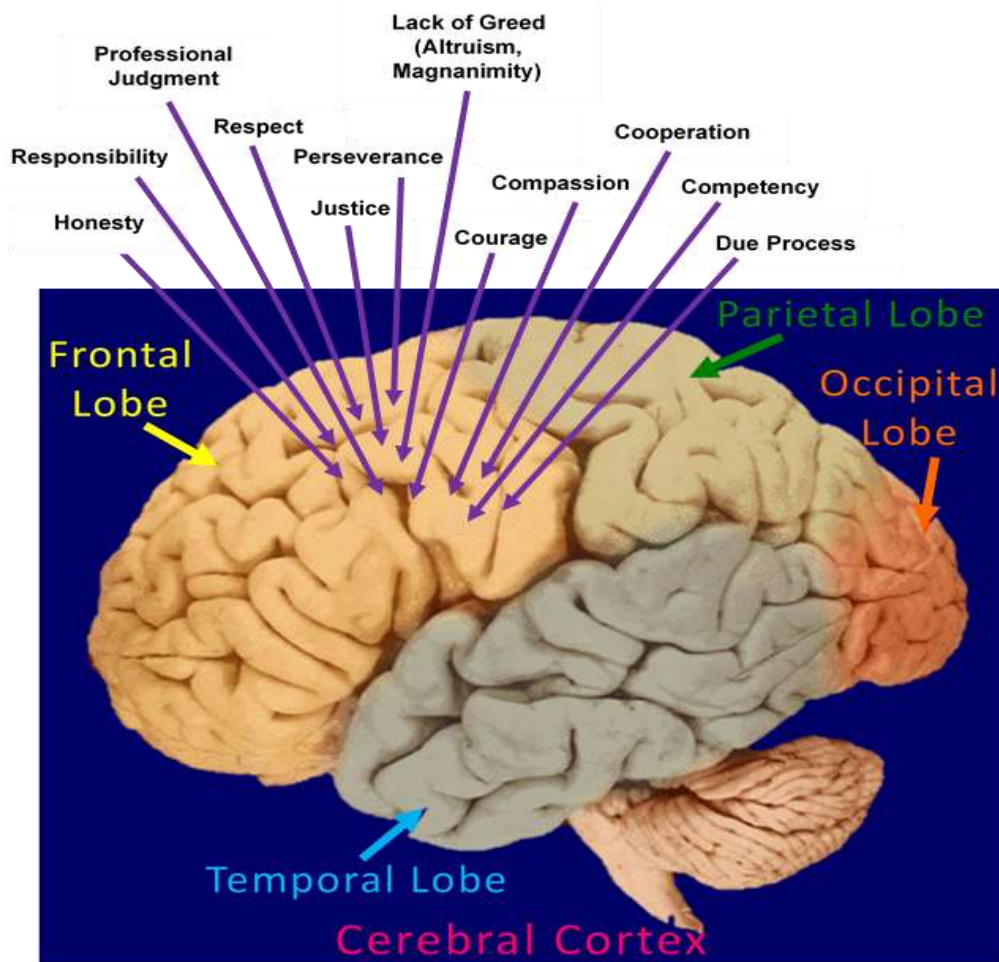
One needs to know one’s unique perspective from which one chooses. This can be accomplished by knowing one’s values. The training here will focus on the impact of a value system as a deterrent to wrongdoing. It is difficult to embrace these values and be unethical.

Training Values

- | | |
|-------------------|--------------------------|
| a) Honesty | g) Competence |
| b) Responsibility | h) Professional Judgment |
| c) Respect | i) Greed (lack of) |
| d) Cooperation | j) Perseverance |
| e) Due Process | k) Courage |
| f) Justice | l) Compassion |

The ethical values presented here reside in the frontal lobe of the cerebral cortex (see *Figure 3*). Sensitivity to these values is the foundation of an ethical way of life. Leaders are often consumed with the maximization of shareholder wealth exclusive of the ethical consequences. *Figure 3* is an illustration of the relationship between the values and the brain as supported by the concept of neuroplasticity.

Figure 3



**Kinser, Patricia Anne. *Brain Structures and their Functions*
(Insertion of ethical values are of the author)**

This connection is part of the default action stimulated by the brain. This default process has its genesis of ethical brain stimulation long before one becomes a leader. Your thinking, controlled by your brain, ultimately impacts how you lead, and the benefits of ethical training are a great reinforcement of brain thoughts and behavior. Effective ethical training is achieved through the actual application or use of ethical ideas, beliefs, and realistic expectations as opposed to theories and philosophical discussions lacking in sincerity and practical content. Ultimately, choices have consequences and proper training enhances the positive and minimizes the negative. It is very difficult to adhere to these values and be unethical.

The phenomenon of plasticity is of significance to this research because it is widely accepted that it provides the underlying processes for learning and memory. “The Brain,” with David Eagleman, which aired on Public Broadcasting Service (PBS.org) on March 2021, explored the foundational principles of the phenomenon of neuroplasticity. The major focus was on how the brain can change throughout an individual’s lifespan. With the latest scientific research and illuminating stories about neuroplasticity, “The Brain Revolution” shows how the brain works. Of significance to this research is *structural* plasticity: the brain’s ability to actually change its physical structure as a result of learning (Ethical Training). The frontal lobe in conjunction with the other lobes of the brain plays a vital role in controlling inhibitions (Lieff, 2014). The frontal lobe is important for voluntary movement, expressive language, and managing higher level executive functions. Executive functions refer to a collection of cognitive skills including the capacity to plan, organize, initiate, self-monitor, and control one’s responses in order to achieve a goal (Brain Map Frontal Lobes, 2021).

Module III: *Modern Technology*

Modern technology has revolutionized the way the world operates, especially in the ethics space. It is a powerful tool that supports the dynamics of modern business operations. However, it is not without unethical consequences. The focus in this module is on the ethical implications of constantly emerging technology and the consequences of knowledge insufficiency in this area. Employees need technological agility (Fogarty, 2001) – the ability to adapt to and integrate current technologies quickly and smoothly with newer, different, disruptive, expansive, or convergent technologies. This module involves data analytics as accountants analyze raw data in order to guide decision-making.

Module IV: *Ethical Leadership*

The success of any ethics training program starts with the Board of Directors or the otherwise highest level of organizational leadership. This level, “Leadership at the Top,” must embrace ethics training by committing to be the first to engage directly in the training themselves. Leadership defines the culture of the organization. It is essential that leadership is cognizant of the impact of culture on the integration of values as it impacts operations. Leadership is the filter that is essential to an effective and efficient environment conducive for success.

In a speech titled *Why Does Fraud Occur and What Can Deter or Prevent it?*, Lori Richards of the SEC stated:

“For us as regulators, our three-fold efforts should be seen as a common attack on fraud.

1. We seek to **educate** investors to protect themselves against fraud;
2. We conduct regulatory examinations to ensure that firms have robust compliance systems to prevent and detect fraud and other violations; and
3. We aggressively prosecute securities fraud, collaborating with criminal prosecutors.”

The training program proposed by this research has the potential to be transformative, assuming active involvement of “Leadership at the Top.”

Summary and Conclusion

We study ethics because we are constantly striving for perfection. This requires an earnest attempt to alter the mental obsession with absolute perfection; being the absolute best versus being the best that one can be. Altering the need for absolute perfection will redirect

leadership thinking from motive to motive and results. This will give the organization the ability to deal with the challenges and issues encountered in leading the modern corporation. Based on the findings related to the science of neuroplasticity and Kohlberg's theory of education, it can be concluded that ethical training is an effective means of contributing to the reduction of white-collar crimes. The concept of neuroplasticity, the brain's ability to reorganize itself throughout life by forming new neural connections, reinforces the importance of training. Training promotes development of an ethical awareness that the organizational focus should be on creating a culture that is based on being the best that one can be instead of being "the absolute best." The need to be the absolute best is a threat to an ethical culture and a significant contributor to white-collar crimes.

Ethical training can help to remove ambiguity and clarify what is acceptable based on organizational culture. The values presented in this research help individuals to know wisdom and heed instruction, perceive the words of justice, judgment, and equity, and give prudence to the simple. They allow the young to gain knowledge and learn discernment and the wise to increase learning and understanding. Ethical training reinforces the need for "Leadership at the Top" to be the linchpin that solves the disconnect between collective cultural expectations and individual behaviors in the organization. Ethics is a choice as to how we behave. Choices have consequences and our thinking, controlled by our brain, ultimately impacts those choices. Efficient and effective ethical training creates an environment of leaders who are visionaries and live the values, managers who operationalize the vision, and employees who are productive. When these three are so coordinated, the organization is capable of realizing the objective of the firm, that is, "the process of making ethical choices (doing the right thing) to achieve wealth maximization." This is how we become "The Best We Can Be."

Appendix 1

Infamous Accounting Scandals

Waste Management

In 2002, Waste Management was found to have been involved in the largest financial statement restatement in history. The company had admitted that its profits had been overstated by \$1.7 billion (\$1,700,000,000). This defendant's scheme was simple: it improperly eliminated or deferred current period expenses in order to inflate earnings. For example, it avoided depreciation expenses by extending the estimated useful lives of the company's garbage trucks while simultaneously making unsupported increases to the trucks' salvage values. In other words, the more the trucks were used and the older they became, the more the defendants said they were worth. Defendant also:

- made other unsupported changes in depreciation estimates;
- failed to record expenses for decreases in the value of landfills as they were filled with waste;
- failed to record expenses necessary to write off the costs of impaired and abandoned landfill development projects;

- established inflated environmental reserves (liabilities) in connection with acquisitions so that the excess reserves could be used to avoid recording unrelated environmental and other expenses;
- improperly capitalized a variety of expenses and failed to establish sufficient reserves (liabilities) to pay for income taxes and other expenses (*Complaint: SEC v. Dean L. Buntrock, Phillip B. Rooney, James E. Koenig, Thomas C. Hau, Herbert A. Getz, and Bruce D. Tobecksen*, retrieved from https://www.sec.gov/litigation/complaints/compl_r17435.htm).

Tyco

From 1996 through 2002, Tyco International Ltd. (Tyco) violated federal securities laws by overstating its reported financial results, recalibrating those reported earnings, and hiding vast amounts of senior executive compensation and a large number of related party transactions from investors. To achieve those ends, the company utilized a number of improper practices conceived, guided, or encouraged by the individuals who managed the company at that time. As a result, the company overstated its operating income by an aggregate amount of at least one billion dollars. During this period of time, Tyco acquired hundreds of companies. At least \$500 million of Tyco's inflated operating income resulted from improper accounting practices related to some of its acquisitions. In addition, apart from its acquisition activities, Tyco used a variety of reserve accounts to enhance and smooth its reported financial results and to meet earnings projections from its fiscal year ending June 30, 1997, through its fiscal quarter ending June 30, 2002.

Another area of Tyco's misconduct involved a scheme designed to overstate operating income in connection with transactions between Tyco's ADT Security Services, Inc. (ADT) subsidiary and the security alarm dealers from whom it purchased residential and commercial security alarm monitoring contracts. As a result, from its fiscal year ending September 30, 1998, through its fiscal quarter ending December 31, 2002, Tyco inflated its operating income by approximately \$567 million and inflated its cash flow from operations by approximately \$719 million (*SEC Complaint: Tyco International Ltd.*, retrieved from <https://www.sec.gov/litigation/complaints/2006/comp19657.pdf>).

Health South

HealthSouth Corporation (HRC), the nation's largest provider of outpatient surgery, diagnostic, and rehabilitative healthcare services, as well as its Chief Executive Officer and Chairman Richard M. Scrushy, systematically overstated its earnings by at least \$1.4 billion in order to meet or exceed Wall Street earnings expectations (*SEC Complaint: HealthSouth Corporation and Richard M. Scrushy: Lit. Rel. No. 18044 / March 20, 2003*, retrieved from: <https://www.sec.gov/litigation/litreleases/lr18044.htm>).

Fannie Mae and Freddie Mac

Fannie Mae and Freddie Mac entered into a Non-Prosecution Agreement with the Commission in which each company agreed to accept responsibility for its conduct and not dispute, contest, or contradict the contents of an agreed-upon Statement of Facts without admitting nor denying liability. Each also agreed to cooperate with the Commission's litigation against the former executives.

While Freddie Mac disclosed during the relevant period that the exposure of its Single Family Guarantee business to subprime loans was between \$2 billion and \$6 billion, or between 0.1 percent and 0.2 percent, of Freddie Mac's Single Family Guarantee portfolio - its exposure to subprime was materially greater. As of December 31, 2006, Freddie Mac's Single Family Guarantee business was exposed to approximately \$141 billion (or 10 percent of the portfolio) in loans the company internally referred to as "subprime," "otherwise subprime," or "subprime-like" and its exposure grew to approximately \$244 billion (or 14 percent of the portfolio) by June 30, 2008, as the company sought to win back lost market share by increasing its acquisition of such loans ("SEC Charges Former Fannie Mae and Freddie Mac Executives with Securities Fraud"; Release No. 2011-267; December 16, 2011; retrieved from <https://www.sec.gov/news/press/2011/2011-267.htm>).

Bernie Madoff (April 29, 1938 – April 14, 2021)

The SEC charged Bernie Madoff with violations of the anti-fraud provisions of the *Securities Act of 1933*, the *Securities Exchange Act of 1934*, and the *Investment Advisers Act of 1940*. He was charged committing securities fraud through a multi-billion-dollar Ponzi scheme perpetrated on advisory and brokerage customers of his firm. The size of the Madoff fraud was estimated to be \$64.8 billion. On March 12, 2009, Madoff pleaded guilty to 11 federal crimes and admitted to operating the largest private Ponzi scheme in history. On June 29, 2009, he was sentenced to 150 years in prison with restitution of \$170 billion. He died in federal prison on April 14, 2021 (retrieved from [Press Release: SEC Charges Bernard L. Madoff for Multi-Billion Dollar Ponzi Scheme; 2008-293; Dec. 11, 2008](#)).

Enron

Kenneth L. Lay, Jeffrey K. Skilling, and Richard A. Causey, all former senior executives of Enron, engaged in a multi-faceted scheme to defraud in violation of the federal securities laws. From at least 1999 through late 2001, Lay, Skilling, Causey, and others manipulated Enron's publicly reported financial results and made false and misleading public statements about Enron's financial condition and its actual performance. As an objective and result of their scheme to defraud, Lay, Skilling, Causey, and others made millions of dollars in the form of salary, bonuses, and the sale of Enron stock at prices they had inflated by fraudulent means. Skilling and Causey made at least \$103 million and \$23 million, respectively, in illicit gains (retrieved from [comp18776.pdf \(sec.gov\)](#)).

WorldCom

From as early as 1999 through the first quarter of 2002, defendant WorldCom Inc. (WorldCom) misled investors. This corporate defendant acknowledged that during this period, and as a result of undisclosed and improper accounting, it materially overstated the income it reported in its financial statements by approximately \$9 billion. In general, WorldCom manipulated its financial results in two ways. First, the company reduced its operating expenses by improperly releasing certain reserves held against operating expenses. Second, it improperly reduced its operating expenses by re-characterizing certain expenses as capital assets. Neither practice was in conformity with generally accepted accounting principles (GAAP) (*Complaint: SEC v. WorldCom, Inc.*, retrieved from <https://www.sec.gov/litigation/complaints/comp17829.htm>).

Appendix 2

The SEC Continues to Investigate

The following examples of continuing cases of white-collar crimes reinforce the need for ethics training. The SEC continues to investigate and recommend actions addressing conduct that spanned the securities markets, including conduct involving financial fraud, insider trading, offering fraud, *Foreign Corrupt Practices Act* violations, misconduct by broker-dealers, investment advisers, and more. Based on this work, the Commission brought hundreds of enforcement actions and secured meaningful remedies to protect investors and U.S. markets against wrongdoing.

A cornerstone of the SEC's enforcement program is ensuring that entities are held accountable for their misconduct.

In Fiscal Year 2020, the Commission brought actions against financial institutions, automobile and engine manufacturers, and technology, telecommunications, and pharmaceutical companies, among others. The following subset of cases is illustrative:

Wells Fargo & Co.: In a settled action, the Commission found that Wells Fargo misled investors about the success of its core business strategy at a time when it was opening unauthorized or fraudulent accounts for unknowing customers and selling unnecessary products that went unused. Wells Fargo was ordered to pay the SEC a \$500 million civil penalty as part of a combined \$3 billion settlement with the SEC and the Department of Justice.

Telegram Group Inc.: The Commission filed an emergency action and obtained a temporary restraining order against Telegram and its wholly-owned subsidiary TON Issuer Inc. for allegedly operating an unregistered offering of digital tokens called "Grams" in violation of federal securities laws. On the Commission's motion, the court issued a preliminary injunction barring the delivery of Grams and finding that the Commission had shown a substantial likelihood of proving that Telegram's sales were part of a larger scheme to unlawfully distribute the Grams to the secondary public market. Following this decision, the defendants agreed to settle the action and were ordered to return more than \$1.2 billion to investors and to pay an \$18.5 million civil penalty.

BMW AG: In a settled action, the Commission found that BMW and two of its U.S. subsidiaries disclosed inaccurate and misleading information about BMW's retail sales volume in the U.S. while raising approximately \$18 billion from investors in several corporate bond offerings. The three companies were ordered to pay a joint penalty of \$18 million.

Telefonaktiebolaget LM Ericsson: In a settled action, the Commission alleged that Ericsson engaged in a large-scale bribery scheme involving the use of sham consultants to secretly funnel money to government officials in multiple countries. In resolving this matter, Ericsson was ordered to pay more than \$1 billion to the SEC and the Department of Justice and to install an independent compliance monitor.

FinCEN files further show massive money-laundering cases, including the following: In September 2020, leaked documents provided to *BuzzFeed News*, and passed along to the International Consortium of Investigative Journalists (ICIJ), implicated major international

banks — including Deutsche Bank, JPMorgan Chase, HSBC, Standard Chartered, and Bank of New York Mellon — in the laundering of more than \$2 trillion linked to oligarchs, criminals, and terrorists from 1999 to 2017 (see Leopold, Jason (20 September 2020). Dirty money pours into the world's most powerful banks: The FinCEN files, *BuzzFeed*. Retrieved from <https://www.buzzfeednews.com/article/jasonleopold/fincen-files-financial-scandal-criminal-networks>).

For the complete SEC report, see <https://www.sec.gov/files/enforcement-annual-report-2020.pdf>.

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