At McDonnell Douglas: ethics “refresher” training for 65,000

By Andrew W. Singer

The nation’s defense manufacturers compete fiercely for government contracts, but when it comes to ethics and compliance programs, cooperation is more often the norm.

Ethics “tools” are often shared among contractors through the Defense Industry Initiative’s (DII) Best Practices Forums, an association of the nation’s largest defense contractors. “Whatever we can gain from other companies we try to incorporate,” notes John Strickland, Corporate Ombudsman, Ethics and Compliance Officer, of McDonnell Douglas Corporation (MDC).

Consider MDC’s own ethics and compliance programs and their antecedents.
— It has introduced a “Responsible Executive” program to ensure “effective compliance programs” in accordance with the federal Organizational Sentencing Guidelines. This program was pioneered by Sundstrand Corporation.
— It uses an ethics board game in its training programs, Gray Matters, that was developed by Martin Marietta Corporation.
— It employs computer-based, interactive training modules that were developed by GE Aerospace (now part of Martin Marietta).
— It also utilizes in its employee training a Northrop Corporation video, “When things Go Wrong,” about the debarring of a defense manufacturing unit.

In the last year or two, St. Louis-based McDonnell Douglas has introduced a few wrinkles of its own, as well.
— MDC now requires each of its 65,000 employees to take an annual ethics “refresher” training course.
— “Ethics” will soon be a requirement in an MDC-financed baccalaureate program. About 1,000 full-time MDC employees are working toward their baccalaureate degrees in association with Webster University.

The single most important factor in an effective ethics program? ‘Communications — far and away, and above anything else.’

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‘We have the mechanisms, the structures, that any large company has to have. But having them doesn’t mean that you’ll skate through life with no violations.’

A cooperative spirit

The Responsible Executive program is a good example of the cooperative spirit that now prevails among the largest defense contractors in the ethics and compliance areas. It was originally developed by Sundstrand, and MDC became aware of it through the DII Best Practices Forums. Sundstrand allowed MDC to copy its entire program, notes Strickland.

Spurred on by the 1991 federal Organizational Sentencing Guidelines, which put a premium on “effective” compliance programs, the Responsible Executive program is a recognition that “no one person can keep abreast of all pieces of law.”

For the purposes of the program, MDC breaks the law down into 14 pieces: antitrust law, employment law, environmental law, contract law, tax law, etc. Each area has one or more “responsible” executives to ensure that any possible violations will be detected and that an effective compliance program is in place in their area. (The Sentencing Guidelines require companies to assign high-level personnel to oversee compliance with standards if they expect to be eligible for mitigating credits.)

The number of “responsible executives” in any one area varies. MDC has several in contract law, for instance, but only one in tax law. Executives’ responsibilities are either corporate-wide or at the business unit level. They are generally line executives who have other duties as well.

While the program focuses primarily on pro-active measures, it also looks closely at disciplinary systems. The Guidelines, Strickland notes, have required the company to focus more on disciplinary matters than was the case before.

Ethics ‘refresher’ courses

As noted, MDC has developed some innovations of its own. Annual ethics “refresher” training courses for the entire employee population is one program that puts the company on the leading edge in this area.

The first year’s “refresher” courses will be built around MDC’s revised “High Road” ethics manual. Strickland figures that the refresher courses will take one or two hours. It should require that long for an instructor or manager to go through the manual.

The company deliberately wasn’t specific as to how long or in-depth it expects the “refresher” course to be, however. They didn’t announce that they would be one hour or three hours, say. This is in recognition of the fact that McDonnell Douglas Corporation has many businesses. Some are commercial. Some are defense-related. Some are union. Some are non-union. “So we need flexibility.”

If one business unit slips into legal hot water, it may want to concentrate on one particular issue. A unit with a good record, on the other hand, may not have any major “issues” and may simply want to highlight matters that have received attention in the news lately—like harassment or workplace violence. The policy “lets local management address their needs,” says Strickland.

Isn’t it expensive, though, to put 65,000 employees through refresher courses of this sort? “Yes, there are always questions of costs,” acknowledges Strickland. That was one reason they sent ethics packages to the homes of
In 1993 MDC had about 5,600 ‘contacts’: through the hotline, visits to ombudsmen, letters to the ombuds office, etc. They comprised about 7.5 percent of the corporate workforce.

8,000 managers recently, soliciting their comments about the revised “High Road” ethics manual. “We felt they could do it more effectively in the quiet of their homes. If they had to do it on company time, it would be quite expensive.”

Ethics required for baccalaureate degrees

As noted, McDonnell Douglas has an arrangement with Webster University, a local institution, that permits MDC employees to take three-credit-hour college-level courses toward their baccalaureate degrees. MDC reimburses the employees for the cost of the courses. One thousand employees are now pursuing baccalaureate degrees while working full time for the company.

For the last four or five semesters an ethics “elective” course has been offered on company premises. Strickland says that attendance was good, initially. But then the word got out that the ethics course wasn’t exactly basket weaving. “It was a challenging course.”

Strickland should know: He took the course himself. “There was lots of outside reading. There was a take-home final that I spent twelve hours on. Word got out that it was not your typical elective.” Recently, “We have not had the enrollment that we would have liked.”

But that isn’t how things are going to be left. An ethics course will be required for those graduating from the baccalaureate program after June 30, 1996. Although this course may not necessarily be taught on site, equivalent ethics courses will be offered in colleges in the area.

Four broad areas

In his capacity as the company’s chief ethics officer, Strickland focuses on four major areas: 1) Organization 2) Communications 3) Education and Training, and 4) Administration, Enforcement, and Auditing.

The first area encompasses several high-level committees. The Corporate Responsibility Committee, comprised of outside members of the corporate board of directors, monitors and supplies suggestions about MDC’s ethics programs. It also oversees corporate environmental, health and safety issues.

The Business Practices Committee—which includes the corporation’s chief financial officer (CFO), general counsel, senior quality officer, and chief compliance officer (Strickland)—oversees self-governance activities, including reporting mechanisms like hotlines. It reviews all problems that arise in the ethics and compliance area and monitors any disciplinary actions taken as a result.

The Ethics Council, a third committee, which Strickland heads, is comprised of the chairpersons of the company’s six ethics committees. This council provides Strickland with further guidance in ethics matters. MDC has ethics committees in all its main business units: Aerospace East, Aerospace West, Douglas Aircraft, MDC’s helicopter manufacturing facility, its C-17 program, and its Florida manufacturing facility.

The ‘High Road’

In the communications area, McDonnell Douglas recently revised its ethics manual, which previously had consisted of three booklets. Total page length was reduced from 91 pages to 39 pages. The “High Road” manual now contains the company’s Code of Ethics and its Standards of Conduct. It includes 73 “what if” situations, usually presented in a sentence or two. These set forth the company’s expectations—“something for everybody, from the nuclear scientist to the janitor pushing a mop.” The section devoted to reporting information, for instance, offers five “what if” scenarios. The answer, in each case, begins with: “The High Road is . . . . ”

MDC has 20 ombudspersons corporate-wide. Twelve work full-time, eight are part-time. They are stationed at 14 different facilities and each is viewed as a neutral third party to whom employees can address any concern. Posters are placed around the company with the phone numbers of the local ombudsman, the corporate ombudsman, and even that of the Department of Defense’s hotline. Employees can contact the local or corporate ombudsman. Strickland says that he fields calls from all over the country.

The company conducts periodic surveys of its business units. As an adjunct to these surveys it asks questions pertaining to ethics, such as “How effective is ethics training?”

Ethics articles are published regularly in corporate periodicals. Each unit has its magazine, newspaper or newsletter. Douglas Aircraft even has its own ethics newsletter.

Education and training, the third key area, encompasses
both basic introductory training and job-specific training. Hiring a former government official, for instance, is a complex process, notes Strickland, one that is subject to many regulations. A contracts administrator, to take another example, requires much job-specific training. He or she must know about provisions of the Truth in Negotiations Act, among other things.

The company has invested resources in computer-based training, which Strickland believes is the “wave of the future.” In years ahead, employees will have access from their desktop computers to hundreds of training courses. If they have an hour of time free because a meeting has been canceled, they might use that time to meet one of the training requirements that their boss has given them.

MDC and other DII signatories have gone to some lengths to “genericize” GE Aerospace’s interactive computer-based training modules, which the Pennsylvania-based company made available to other DII signatories. (For more on the modules, see *ethikos*, November 1992.) The computer-based modules were laced with GE acronyms that couldn’t be readily understood by other companies’ employees. A consortium that included MDC, the Boeing Company, as well as defense units of ITT and IBM was formed to convert the GE Aerospace computer courses into something more generic. Eight courses have now been “genericized,” Strickland reports.

**Enforcement and reporting**

The fourth major area under Strickland’s purview is enforcement and reporting. MDC is audited every year by Ernst and Young, the accounting firm, to determine if its programs are consistent with the standards of the Defense Industry Initiative. They must answer 20 key questions about their ethics and compliance programs. MDC also conducts internal audits—of programs like its Responsible Executive program.

Strickland reports regularly to the Corporate Responsibility Committee, and also makes monthly reports to the chairman of the corporation. Quarterly discipline reports are also compiled.

Strickland keeps extensive records, including demographic data about hotline contacts (which service units they are from, for instance, or the gender of callers), the types of issues raised, and any trends that may have emerged. If and when negative trends materialize, the appropriate managers are informed.

Strickland’s office also looks closely at disciplinary records. If there has been an increase in substance-abuse cases, for instance, the office may suggest to managers that they act more aggressively in promoting drug-abuse prevention programs.

Other matters like sexual harassment and safety violations are also scrutinized “to make sure we’re alert to what’s happening in the workplace. Our workplace is like a cross-section of humanity. It behooves us to take steps when we see a negative trend.”

Strickland also meets with the Executive Council, composed of MDC’s top nine officers—usually on a quarterly basis, but at least twice a year.

**Hotline trends**

What trends have been apparent in recent hotline contacts? “We’re beginning to see a positive trend in the number of concerns raised by females. It’s starting to diminish as a percentage of the overall caseload,” says Strickland. “We’d like to see it equal the percentage of females in the overall work force.”

Like other large companies, MDC gets its share of sexual harassment complaints, but that isn’t the primary thrust of female grievances, according to Strickland. Complaints about “opportunities for advancement are more typical. The aerospace industry has been a pretty macho world” traditionally. But now Strickland believes they are approaching a more level playing field regarding the sexes and notes that “many women are doing superbly in fields like engineering.”

In 1993, MDC’s ethics office had about 5,600 contacts. These included hotline calls, visits to ombudsmen, letters written to ombudsmen, etc. Is Strickland satisfied with that number, which comprised about 7.5 percent of the corporate workforce?

Companies structure their hotlines differently, he answers. Some companies only advertise for reports of waste, fraud, and abuse. Others, like MDC, welcome broader queries, such as questions about promotions.

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Honeywell, Cargill, Cray et. al. combine to benchmark ethics performance

The federal Organizational Sentencing Guidelines, which took effect in November 1991, put a premium on developing effective compliance programs to detect criminal wrongdoing. Among other effects, the guidelines have spurred the formation of business roundtable groups designed to determine just what are “effective” internal programs.

One such group is the Minnesota Association for Applied Corporate Ethics, formed in fall 1993 and based in St. Paul, Minnesota. Among the association’s seventeen members are some of the largest businesses in the state, including Honeywell, Cargill, Cray Research, Ceridian, Jostens, and Ecolab.

Under the Guidelines, companies that have effective ethics and compliance programs can save themselves millions of dollars if and when they are convicted of corporate crimes. “It brings things down to earth, in a dollars and cents way,” notes Andrew R. Apel, the association’s Executive Director.

At the roundtables, all matters are discussed in total confidence. “Only companies that have, or are developing, internal programs are eligible,” says Apel. That means no consultants or lawyers. He believes this helps to foster candor.

The association wrestles with such questions as whether companies should have ethics and compliance “hotlines”—or handle reports of wrongdoing in the more traditional way, passing them up through the management hierarchy.

Assistant AG: Better have a hotline

Apel isn’t above seeking some prosecutorial opinion on the subject. He says he was recently told by Andrew Luger, the Assistant U.S. Attorney General, based in Minneapolis, that “if you don’t have a hotline, you don’t have an effective program, in a legal sense.”

The Assistant Attorney General also suggested, Apel recounts, that companies should employ an outside firm if they want to conduct an effective investigation of wrongdoing. If the company conducts an investigation internally, it tends to “be so politically charged” that the results may be skewed. Companies that are dealing with scandal often will hire an outside law firm to conduct investigations, even though many still investigate internally. Kidder, Peabody & Company, for example, which is now wrestling with charges of illegal trading at its bond desk, hired Gary Lynch, a former chief of the SEC’s enforcement division and a partner in the law firm of Davis Polk & Wardwell, to conduct its internal investigation. Other firms, such as Pinkerton Security and Investigation Services—see ethikos, March 1994—also conduct investigations.

That does not mean that association members still aren’t hesitant when it comes to hotlines. “They can create image problems,” notes Apel. Hotlines may be viewed within companies as little more than 1-800-SNITCH lines. Thus, his members are “struggling with questions as to how to implement a hotline without it being viewed as a negative develop-
ment.”

Several member companies did recently install hotlines and reported favorable results, notes Apel. These hotlines were positioned more like “advice lines,” though, i.e., “if you have questions, give us a call.” Presumably, questions about more serious matters, like waste, fraud, and abuse, could also be addressed in this way.

**Industry practice**

Roundtable groups in general often meet to discuss “industry practice” in the compliance area. As reported (see *ethikos*, November 1993), a telecommunications industry roundtable was formed in response “to a premise in the guidelines that a failure to meet industry practice will work against you.” Roundtable discussions were seen as an effective means for determining just what “industry practice” is.

“That may *not* be an appropriate way to look at things,” says Apel. “So much occurs in business that is the same, across industry lines.” If a company mishandles its pension funds, for instance, that misconduct will probably be viewed no differently by prosecutors if it occurs at a defense contractor or inside a telephone company.

In the ethics and compliance area, in Apel’s view, “it is more appropriate how a program stands up against other companies.”

The size of the organization may be more relevant than the industry to which the company belongs. Allegations of wrongdoing, he notes, are often handled differently in a “small shop” than in organizations with thousands of employees.

**Networking**

Networking is another key function of the Minnesota association. The network runs through Apel. A member calls, looking for information about a specific question, and Apel will direct the caller to his or her counterpart in another company.

He conducts a member survey each month by telephone. The results are incorporated in a monthly newsletter. One recent question: What programs does the company use to detect fraud and deceit? Another: How does the company ensure that it isn’t giving discretionary authority to those with a propensity to engage in illegal activities? (The Sentencing Guidelines obviously have an influence in topic selection.)

Regarding the latter—ensuring that you aren’t hiring people with criminal backgrounds—“It starts with the hiring process,” explains Apel. Law enforcement agencies won’t provide much help here. One can ask other companies for references, of course, but many firms simply don’t release information about alleged misconduct anymore, fearing lawsuits. Information is available through services like Equifax, although it is expensive, notes Apel.

Membership in the Minnesota association costs $375 a year. Most of those who attend association meetings are members of their companies’ legal staffs, but representatives from audit and human resources departments also attend. (Minnesota companies tend not to have ethics officers per se, notes Apel.)

**Canvassing 200 companies**

With degrees in law and philosophy, Apel was determined to put his education to some practical use when he approached St. Catherine College, a local institution. His notion was to “incorporate business ethics in organizations in a meaningful way,” and his model, to some extent, was the Ethics Officers Association, a national association run by Bentley College (Waltham, MA). Apel also spoke with Honeywell, a major local corporation, which was also supportive of his idea.

He then canvassed the 200 largest companies in Minnesota. Would they have any interest in such an association? What would they hope to get out it?

Benchmarking, networking, and developing practical ethical standards were the main concerns of most corporations that expressed an interest. Thirty-eight companies that were devising or managing internal compliance programs agreed to attend the first meeting.

That meeting took place on October 28, 1993 at St. Catherine College. It included an address by Honeywell Vice President Edward Ayers, who discussed the practical value of internal programs. Apel reported on the results of his survey of local companies; he also presented preliminary data from the U.S. Sentencing Commission, based on the first 26 sentences rendered under the Guidelines. He cautioned that it was still too early to make any meaningful generalizations. The exercise, however, was a demonstra-
Skadden, Arps shows clients how to prevent sexual harassment: Push the correct button on the computer

Don, a supervisor, is considering both Mary and Joe for a promotion. Both are equally qualified. Don explains the situation to Mary: “Mary, I know you’re hoping for this promotion, and I think you’d do a wonderful job. But it requires a lot of ‘one-on-one’ time with me, if you know what I mean.”

Mary glances away from Don, crestfallen. Don continues: “The job is yours IF you are willing to... cooperate. Let’s have a drink later and discuss it!”

Now... at the bottom of computer screen where this scenario is unfolding, a question is posed: “What do you think? Could this be sexual harassment.”

A user, sitting at his office personal computer, presses the “yes” button. “Right,” responds the program. “Don has made Mary’s acceptance or rejection of his proposition the basis of an employment decision that affects her. You’ll learn more about this later.”

The scenario is from a new legal compliance computer-based training program for employees called “Preventing Sexual Harassment in the Workplace.” It was developed by Skadden, Arps, Slate, Meagher & Flom, the New York law firm. It is intended “to assist clients in meeting their obligation to advise employees about their rights and duties regarding sexual harassment in the workplace,” according to the firm.

The program, which took about a year and a half to develop, was rolled out in early June 1994.

Dana H. Freyer, a partner with Skadden, Arps, observes that there has been more demand for sexual harassment training programs in recent years. Sexual harassment prevention training is mandatory for larger companies in some states now. The computer-based program “would certainly help to meet those requirements.”

The program

The training course runs about an hour. In the company’s 10-minute demonstration program, a user was first asked to tap in his name in order to personalize the program. A letter from the company followed, explaining that sexual harassment is a growing concern in the workplace, and that the company has developed a program “to acquaint you with our policy and the law.”

A screen follows with the program outline:
— Why You Should Care About Sexual Harassment in the Workplace
— Testing Your Current Knowledge About Sexual Harassment
— Legal Definitions and Guidelines
— Scenario Examples of Sexual Harassment
— Your Company’s Policy Against Sexual Harassment
— Quiz

Sexual harassment ‘causes morale and productivity to suffer,’ ‘it is unethical,’ and ‘it is illegal,’ under Title VII of the Civil Rights Act of 1964.
Such programs are effective in companies in which employees are scattered over a wide geographic area. It obviates the need to travel to a centralized training center.

Subsequent screens illustrate each section. In Why You Should Care About Sexual Harassment, for example, the program offers three reasons: “It causes morale and productivity to suffer,” “it is unethical,” and “it is illegal,” a violation of Title VII of the Civil Rights Act of 1964.

Untoward consequences of sexual harassment are not only legal, the program reminds the user. “Facing your family may be the most difficult aspect of all. Think how you would feel if your spouse or children, parents or friends picked up the paper and read a headline about you? DON’T TAKE A CHANCE!”

In the second section, “Testing Your Current Knowledge,” the above scenario is offered. Other examples of sexual harassment offered on the demonstration program include the posting of a Playboy-type calendar in the office, and a man who persists in making unwelcome advances to a woman—even after she indicates that she is not interested. The program offers ideas in “How to Respond;” it suggests, among other things, telling the harasser “in plain, direct language” to desist and, if necessary, notifying management.

The program ends with a quiz. The software automatically tallies the user’s score and directs the employee to retake the course if necessary. “This design is intended to permit training employees individually at flexible times while enabling the company to track results that may help to fulfill its training obligation and demonstrate its commitment to legal compliance,” notes the firm.

Too obvious?

The scenarios in the 10-minute demonstration program seemed somewhat obvious. It wasn’t difficult to figure out that sexual harassment was taking place. Freyer was asked about this seeming lack of subtlety.

“In the actual program, the scenarios are not as obvious. The basic purpose is to make it clear what is prohibited and what is permitted.”

One of the questions that the firm asked itself as it test-marketed the program to the general workforce was what level of subtlety should be incorporated. What they settled on “was neither insulting nor so obvious. In trying to reach a range of the workforce, it can be used across the board comfortably. We felt it would most serve our purpose if it was not too subtle,” says Freyer.

Technologically, too, the program strives for a common denominator. It is designed to be used in a variety of computer environments. The program can run on a 286 personal computer, for instance, somewhat antiquated equipment by today’s standards. The firm deliberately designed its program so that companies would not have to use relatively advanced technologies like CD-ROM or sound boards. “Most clients don’t have advanced technology.” It is arguably less passive—and more active—not to include all the technological bells and whistles, suggests Freyer.

Which sorts of companies would be interested in such a program? “Almost every conceivable sort of company,” answers Freyer, because sexual harassment can arise in almost any employment situation. Such a program might be particularly effective, though, in large industrial companies where employees are scattered over a wide geographic area. It can be useful for training employees in remote locations because it obviates the need to travel to a centralized training center.

A program for antitrust issues

What prompted the firm to develop the program? Skadden Arps, an international law firm with more than 1,000 attorneys in 21 offices worldwide, regularly generates compliance programs for corporate clients. Several years ago a client company asked the firm to develop an interactive, computer-based training program that could be used in the antitrust area.

“When a number of us saw it, we thought that in light of the training requirements of the [federal Organizational] Sentencing Guidelines, it could be useful in compliance training,” recalls Freyer.

The first application that came to mind was for sexual harassment prevention. “That was one area where you can develop a generic product. It doesn’t vary much company by company.” This is not the case in other areas, like environmental compliance, where companies with different waste streams based in diverse states often face significantly different requirements. The idea was that this training could be conducted by clients in-house, by themselves.

The story boards and scripts were drafted by two Skadden, Arps labor lawyers. The firm retained a software developer to put the script on computer disk. A committee
of Labor and Employment lawyers, as well as Freyer and C. Benjamin Crisman, the partner who authored the firm’s antitrust computer-training program, reviewed the text, script, and the various scenarios.

One of the major advantages of such a program is that it offers automatic record-keeping. It easily tracks employees who have taken the course.

**How much does it cost?**

How much will such a program cost a corporation? It depends on the number of employees to be trained. The price begins at $7,500 for companies with less than 1,000 employees, notes Freyer. The maximum charge for the largest corporations is $50,000.

As companies enhance their computer capabilities, such training modules are a way for them not only to know that employees are trained, but also to demonstrate the course content to regulators and to suggest that they did everything they could to see that employees were informed.

Recent court decisions have suggested that if a company has a well-publicized training procedure to prevent sexual harassment, the company itself may be shielded from liability.

Although it is not being used by any clients presently, companies are expected to begin ordering the program shortly, says Freyer. The firm has also had inquiries from non-clients. They will consider those requests on a case-by-case basis. Primarily, though, the program is viewed by the law firm as an additional service to its current clients.

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**‘There was a take-home final that I spent twelve hours on. Word got out that it was not your typical elective.’**

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“With a program like ours, if you’re getting 5 to 7 percent of the population, that’s adequate. Seven to 8 percent is on the good side.”

As for MDC’s own 7.5 percent rate, “we think that’s good.” In some cases employees may have only contacted the ombudsman because they may have wanted to apply for a job opening—in which case “the ombudsman is just a traffic cop,” directing the caller to the right office.

Those more serious cases, where the caller actually has an ethical dilemma, are more unusual. They account for only about 8 percent of all contacts, estimates Strickland.

Asked if there were a percentage of the employee population above which he would not want to go in terms of ombuds contacts (e.g., 10 percent), Strickland answers, “No. We are broadly advertising the hotline as a helpline.”

**More successful than others?**

Given its size, McDonnell Douglas has performed relatively well in terms of limiting serious contracting violations. As the *New York Times* noted in a July 18, 1994 article on General Electric Company, another major defense contractor:

Earlier this year, a study by the Project on Government Oversight, a Washington watchdog group, found that General Electric had been involved in more instances of Pentagon fraud since 1990 than any other military contractor. Although it was the fifth-leading military contractor during the period, General Electric had 16 criminal convictions and civil judgments, compared with four for McDonnell Douglas, the nation’s largest contractor.

Asked whether this could be taken as some indication that its programs were effective, or even superior to others, Strickland demurred. “I believe that we have the mechanisms, the structures, that any large company has to have as a prerequisite. But having them doesn’t mean that you’ll skate through life with no violations.

“An organization needs to have programs, but any organization can have a maverick employee and as a result of that employee get in big trouble.

“The fact that some companies have had some high-profile problems doesn’t mean the companies don’t have some high-quality programs. Many of GE’s programs are just superb, and they’ve been generous in sharing them with the industry.”

Asked what in his judgment is the single most important factor in having an effective ethics program, Strickland answers: “Communications—far and away, and above anything else. You may have a problem that is reported on the front page of the local newspaper, and you may look hypocritical talking about ethics, but you must keep preaching the gospel.” And if a company does, he adds, “Employees will respond.”

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When wrongdoing occurs at a securities firm, who ultimately is responsible? Senior managers. That increasingly is the view of the government, at any rate.

"More often than not, the regulators aim at the higher-ups who knew or should have known—as well as the firms themselves," notes the New York Times in an August 8, 1994 article. "The idea, SEC officials have said on several occasions, is to give firms compelling incentives to watch their money makers like hawks and to take swift action when something does go awry.

"They have expressly said, "You can’t insulate yourself with layers of management,"" said Ira Lee Sorkin, a partner at Squadron, Ellenoff, Plesent, Sheinfeld & Sorkin.

And, increasingly, the only way to avoid devastating penalties has been readily to admit responsibility at the top, to show that the firm’s way of doing business is being overhauled, and to take lots of bitter medicine, long before the regulators insist.”

Is business ethics really just an American preoccupation? At this point, it largely is an American issue, according to Edward C. Ayers, Jr., Vice President, Corporate Contracts Manager, Honeywell, Inc.

"There is a gap between American thinking and that of the rest of the world, but the gap is rapidly closing,” said Ayers. Speaking at The Conference Board’s Sixth Annual Business Ethics Conference, held May 4 and 5 in New York City.

"Five years ago, I would have told you that Brazil was the most corrupt country in the world. . . but people liked it that way. That is changing,” says Ayers. Not long ago Brazil dumped its president because of corruption.

Still, there’s no getting around that fact that “Europeans think our interest in business ethics is faddish.” European laws are historically lenient in comparison with those in the U.S. Insider trading was legal in most of Europe until the early 1980s, for instance. (It only became illegal in Germany several months ago.) France just recently passed a law that addresses sexual harassment in the workplace. Sexual harassment has been a federal violation here since the Civil Rights Act of 1964.

Honeywell, a Minnesota-based company that generates 35 percent of its business outside of the U.S. and is involved in many joint ventures with foreign companies, has sought to promote its ethics standards beyond the U.S. It isn’t always easy given the cultural differences that exist. Ayers cites a few examples:

— “It’s unthinkable for a Japanese to be a whistle-blower. It runs counter to consensus thinking.”

— “Germans are more hierarchical. The boss is on the top floor, in a corner office. German’s don’t go above the boss’ head.”

— “Favoritism to family is not considered a conflict of interest in much of the world.”

How does one deal with ethics in such an environment? Honeywell tries to link its rules to values. In the case of gifts, for instance, it doesn’t establish specific limits. “But a gift has to be reasonable.” Employees are asked to gauge the effect of the gift. They are also asked to consider its visibility. “And there can be no quid pro quo.”

Ayers speaks of a “journey toward developing an ethics environment in our company.” And despite cultural challenges, he is optimistic. “I believe that American business standards will eventually become global standards.”

Thomas Furtado, Corporate Ombudsman at United Technologies Corporation (UTC), echoed Ayers sentiments about the difficulties of transplanting domestic ethics programs in Europe and elsewhere. Europeans don’t particularly like corporate staffers coming in and creating programs, “but ethics is one area where one needs a uniform approach,” said Furtado at the conference. UTC has one ethics code that it uses in all its units around the world.

Why a universal code? "U.S. law doesn’t stop at the U.S. borders," notes Furtado. American companies can be prosecuted for bribing foreign officials in the Middle East. The company feels it needs a baseline for all employees.

There are differences between domestic and overseas businesses, of course. European managers are more “authoritarian” than U.S. managers. A “skip-jump” conference, in which an employee speaks with his boss’s boss, would be more difficult to sell in Europe, he concedes.

UTC’s ethics program, which assumed its present structure in 1986—and includes an extensive network of ombudspersons—was rolled out to South America in 1987, and Europe and the Far East in 1989.

“What we have learned in the last seven years is you don’t do it with smoke and mirrors. You do it with a lot of hard work.” Employees must be told: “It’s not just what we want you to do. It’s what we won’t tolerate.” ■
BENCHMARKING . . . Continued from page 6

ation of the “hands on” approach the association would take regarding ethics and compliance programs.

Since that time, Apel has secured more data from the Sentencing Commission. In 101 cases, “we now see some trends emerge” (see box below).

Seventeen companies joined the association. Meetings are held quarterly, although they may soon move to a bimonthly format. The Sentencing Guidelines, he concedes, have been a big “driver” in the development of ethics programs. The association has had two meetings in addition to the initial meeting. Apel hopes to have 38 members in the association within the next twelve months.

Manufacturing companies are more likely to join the association than others. They probably have more exposure under the Guidelines than other companies, Apel notes, with the exception of financial services firms, which are heavily regulated.

Most association participants are large, publicly held companies, with 1,600 to 2,000 employees, or larger. “Annual revenues are not a good indicator” of likely interest in such an association. A software manufacturer could have millions of dollars of revenues, but only five employees, notes Apel. Companies with multiple facilities, on the other hand, including firms with overseas plants, carry a large burden in terms of the control environment, he observes, and finding “more creative ways to control and keep tabs on what’s going on” is a higher priority with such companies.

The First 101 Cases

Although it is still early to generalize about sentences handed down in federal courts since the implementation of the federal Organizational Sentencing Guidelines in November 1991, there have been a few surprises, according to Andrew Apel, Executive Director of the Minnesota Association for Applied Corporate Ethics. This analysis, conducted by Apel, is based on raw data supplied by the U.S. Sentencing Commission and includes 101 cases, which Apel concedes is a small sample, even though it is based on two years’ experience in the area. “Eventually, there will be approximately 400 sentences per year rendered under the Federal Sentencing Guidelines,” he writes in the association’s newsletter where this data was first published.

The sentences by violation so far:

<table>
<thead>
<tr>
<th>Violation</th>
<th>Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bid-rigging, etc.</td>
<td>55</td>
</tr>
<tr>
<td>Fraud</td>
<td>18</td>
</tr>
<tr>
<td>Customs violations</td>
<td>5</td>
</tr>
<tr>
<td>Money laundering</td>
<td>4</td>
</tr>
<tr>
<td>Hazardous/toxic substances</td>
<td>3</td>
</tr>
<tr>
<td>Mishandling pollutants</td>
<td>2</td>
</tr>
<tr>
<td>Drug paraphernalia</td>
<td>2</td>
</tr>
<tr>
<td>Pharmaceuticals</td>
<td>2</td>
</tr>
<tr>
<td>Arms exports/imports</td>
<td>1</td>
</tr>
<tr>
<td>Possession, illegal chemicals</td>
<td>1</td>
</tr>
<tr>
<td>Smuggling plants/wildlife</td>
<td>1</td>
</tr>
<tr>
<td>Copyright infringement</td>
<td>1</td>
</tr>
<tr>
<td>Eavesdropping devices</td>
<td>1</td>
</tr>
<tr>
<td>Obscene materials</td>
<td>1</td>
</tr>
<tr>
<td>Transactions, unlawful property</td>
<td>1</td>
</tr>
<tr>
<td>Failure to pay/file tax</td>
<td>1</td>
</tr>
<tr>
<td><strong>Total:</strong></td>
<td><strong>99</strong></td>
</tr>
</tbody>
</table>

“The surprise in this table is the number of offenses for bid-rigging,” notes Apel. “The U.S. Sentencing Commission compiles data on all organizational offenses, regardless of whether or not the sentences are rendered pursuant to the guidelines. Bid-rigging is not subject to the guidelines.”

Ninety-two of the offenders were closely held companies. Four were wholly owned subsidiaries and only three were publicly traded companies. “The U.S. Sentencing Commission estimated in its 1991 report that 83 percent of the sentences rendered under the guidelines would be against closely held businesses. Though this data set is small, their earlier estimate seems to have been somewhat conservative. Its estimate that most sentences would involve organizations with no prior history is on target.”

In an interview, Apel said he was surprised at the number of customs violations, since historically customs violations “were never anywhere. It seems the Sentencing Guidelines have made it more attractive to prosecute these as criminal violations.” In the past these were more likely to be handled as civil matters, he notes.
Instituting ‘ethical discernment’ at Holy Cross Health System

The ethical challenges facing the health care industry are daunting: the removal or non-employment of high-technology procedures like respirators “that won’t be therapeutic” in certain instances is but one example, notes John A. Gallagher, Director, Corporate Ethics, Holy Cross Health System Corp., South Bend, Indiana.

Complicating the issue is the fact that many health care “providers” are being squeezed economically.

The Holy Cross Health System Corp., formed in 1979, with nine subsidiary corporations from Maryland to California, has traditionally managed hospitals under the auspices of the Sisters of the Holy Cross. But now the organization is moving toward “integrated delivery systems.” That is, in addition to hospitals they will run outpatient surgery centers and provide long-term health care, as well as other services.

Amid these changes, it is crucial, in Gallagher’s view, that the system utilize something called “ethical discernment.” That is, as major changes are initiated—moving an acute-care hospital, say—ethical issues are considered along with economic issues.

One would not want to approve a business plan without some sort of financial review, he explains; so too one should not approve a business plan without some sort of ethical review.

Attending Board meetings

To this end, about two years ago Gallagher began to sit in on the organization’s annual Board of Trustees meetings where the CEOs of its nine major subsidiaries present their business plans for the following year.

Presumably, the hospitals have already dealt with any key ethical questions. If not, questions are raised at the board meeting.

What sorts of issues might be taken up? Business plans must be consistent with the Holy Cross system’s mission—which is to produce quality health care but also to serve the needs of the poor.

Thus, if a subsidiary is proposing to acquire a physician’s practice, say: Has “everything involved with care of the poor been considered in the practice?” Will the physicians be sensitive to the needs of the poor? Is their practice based in areas to which the poor can travel easily? Are the physicians committed to the organization’s mission goals?

Other questions that might be raised: Is the hospital proposing a multiplication of services in a community where many services already exist? Are they proposing that physicians be supervised by other physicians—or by a business manager. (The latter might be queried.)
An oversight role

Such questions must be asked in a regular and orderly way. It’s not desirable to have an ethics officer dealing solely with problems on an ad hoc basis, says Gallagher.

He sees his role here as one of oversight. “I think it’s important that the ethicist be able to sit with people making decisions.” If not, ethics becomes too peripheral.

Gallagher has a Ph.D. in theological ethics from the University of Chicago. He taught at Mercy College in Detroit. He assumed his present position in 1991.

Initially, Gallagher focused primarily on medical ethics, working with the hospitals’ ethics committees and participating in case reviews. If a woman wanted to go to the hospital to die, for instance—and didn’t want to be force-fed—what should the hospital do? He also assisted in the creation of ethics policies.

This continues to be an important part of his job, as it has been at many Catholic hospitals. “The presence of ethicists goes back to the late 1970s.” He continues to review the minutes of ethics committee meetings.

Nonetheless, his job has changed significantly since 1991. About 80 percent of his work now, he says, is dealing with corporate ethics issues. “It increasingly sets the context in which traditional medical ethics is seen.”

Financial considerations loom larger

Financial restraints are more of an important issue than they were in the past, says Gallagher. “Futile care” is probably the most important issue with which they are wrestling today, he says, i.e., “when the only outcome for the patient is death, but the family says they want the respirator continued,” at great cost.

The public must recognize, in Gallagher’s view, “that death can be an acceptable outcome for high-quality medical care.” Patients, with terminal diseases, can be made comfortable. They don’t need to be isolated from their families by the insertion of myriad tubes and wires.

“We’re beginning to get a better sense of what medical futility is.” Still, that growing awareness is most apparent among so-called providers, e.g., doctors. The general populace still believes in the “silver bullet upon the shelf, the magic scalpel” that will resolve all medical difficulties.

“We need to make people realistic, aware that we’re all going to die.” Every system, even the health system, has economic constraints.

How can they do that? When people are admitted to the hospital, the hospital can ask if they have a “living will.” They can be asked about “power of attorney.” “That’s educational for people,” says Gallagher, even if most are not facing life-threatening situations. “It gives people the opportunity to begin to think about it.”

The goal, explains Gallagher, should be to develop “virtuous institutions,” as the system moves toward integrated delivery systems.

He poses an interesting question: Would an organization full of saints be a virtuous organization? “I’m not so sure that it would. What’s important is not just the goodness of each person—but the goodness of the organization.”

Importance of Mission Statement

He is preoccupied with the question of “what enables an organization to be virtuous.”

An organization has to start with the mission statement, “the operating philosophy of the corporation, which acknowledges the principal constituents. That can serve as the soul of the organization.

“A great deal hinges on having a mission statement to which corporations are committed,” says Gallagher. This should lay out one’s commitment to the customer, employees, whomever.

Just as traditional business organizations talk about their stakeholders, a health organization also has its constituencies that can’t be overlooked. In the past the “payers”—insurance companies and large self-insured corporations that footed most of the health bills—were often short-changed. Their contributions were used to subsidize care for the indigent. Medical costs soared. But that is changing. Today “payers are putting pressure on providers to reduce costs.” But what implications does that have for patient care, for staff, for the community, asks Gallagher.

Commitment to the mission statement must be raised as an issue when personnel are recruited to the organization, in his view.

“Look at Johnson & Johnson. For them it [i.e., the mission statement, know as the Credo] is a creed. But it took them through some very difficult business crises,” particularly the Tylenol poisoning crisis in the early 1980s.

Companies like J&J are “aware of the type of corporations they are. They’re looking to make a profit, but they set that in a larger ethical context.”
Altruism in America: The cost has never been higher

By Loren Singer


Derek Bok conceived the idea of this book in 1988 while considering the commencement address he would deliver to that year’s graduating class at Harvard. The common theme of these ritual orations center upon the part the new graduates might play in the improvement of the society. In Bok’s view, however, the society itself was making such commitment a very difficult choice. Having graduated from the Harvard Law School in 1954, and served as its dean before becoming president of the University, he had witnessed the remarkable changes that influenced career choice at the end of the last decade.

A good rousing commencement speech might well send platoons of youthful altruists into the field to pursue estimable ends. There is, however, strong evidence, and much of it appears in this book, that contemporary salary levels can and do enlist whole armies of volunteers to less admirable but better paid jobs.

By 1988, altruism would cost a law graduate $50,000 to $60,000 in the first year of gainful employment. If that was seen as a gulf between sectors for an able graduate, in succeeding years the discrepancies became an abyss—in which much greater sums were forgone.

Bok did speak to his congregation of bloated salaries in the private sector while those in the public sector were eroding, how students were flocking in growing numbers to Wall Street rather than to schools, churches, and government agencies, and how U.S. corporate executives were earning several times more than their more successful Japanese competitors. For many, it must have been a joy to hear. Evidently it did no real damage, for the generous reunion gifts to the school did not cease. He also received “the longest, warmest ovation . . . in fifteen years of giving commencement addresses.” He believed he had struck a responsive chord, “even among those who had benefited most from rapidly rising incomes.” This response influenced him to explore the topic in more detail after he left his post at Harvard. The Cost of Talent is the end product.

What part might new graduates play in the improvement of the society? Society itself might make such commitment a very difficult choice.

Loren Singer is the author of The Parallax View and other novels. His novel, Making Good (Henry Holt & Company) was a 1993 Washington Irving Book Selection. Mr. Singer is book review editor of ethikos.
It is, however, a lengthy exercise in tautology in which many sets of statistics appear to prove the same point repetitively. These are applied to six professional pursuits: Corporate Executives, Doctors, Lawyers, University Professors, Teachers, and Federal Officials. Some of the researches quoted are interesting—even striking—as Bok attempts to measure the value of the contributions the members of these professions contribute to the health, welfare, and survival of their fellow citizens. From this melange of figures and assessments, tableaux appear that illustrate changes that have taken place, some subtle, many more irrational:

**Capitalizing on Medicare?**

In the 1920’s doctors were already charging much more than competitive rates, before technology began to make their duties more complex and demanding.

Most of the highest-paid physicians are practitioners who have managed to capitalize on imperfections in Medicare and other systems of payment.

Over 300,000 coronary bypass operations are performed each year at a fee to the surgeon ranging from $2,000 to $10,000 per procedure. This rate was set when the operation was new and very time-consuming. Now that the procedure has become more common, surgeons can perform a bypass in roughly half the time required and at less risk to the patient. Nevertheless, the fees did not fall. By the mid-1980s surgeons were able to make over $500,000 per year simply by performing three bypass operations (or twelve hours of work) each week.

A study of medical malpractice revealed that half of the lawsuits leading to a monetary recovery were probably without merit.

Of settlements and damage awards actually paid, little more than half the money, if that, typically goes to the plaintiff; the remainder is eaten up by legal fees and other costs.

The trial bar earns more than $1 billion a year in automobile accident fees alone.

In recent years, major law firms have begun to accept cases on a contingency basis, something almost unheard of only a few years ago.

One hundred years ago the average professor’s salary was $1,470—twice that of a doctor and five times the average pay of a teacher.

The average faculty work load in all colleges and universities is forty-six hours per week.

Even the top professors at leading universities typically received no more than $150,000 in academic salary during 1992.

Experts on the subject have estimated that 15 to 20 percent of all professors in America are “burned out.”

**A ‘conspiracy of the least’**

What emerges unblurred (in the nation’s schools) is a “conspiracy of the least,” a tacit agreement between teachers and students to do just enough to get by.

Few elementary school teachers have even rudimentary education in science and mathematics, and many junior and senior high school teachers of science and mathematics do not meet reasonable standards of preparation.

Reports filtered down from publishing houses that classroom texts had to be “dumbed down” because they seemed too difficult for grades they had previously served satisfactorily.

The loss of interest in teaching was particularly great among minorities.

Among top students from elite liberal arts colleges, the fraction planning to become teachers dropped below 2 percent.

Where officials promised bonuses to the staff in schools where SAT scores improved, teachers went so far as to persuade their dullest students to stay at home on days when the tests were given.

In 1988, a report found that pay levels for the Senior Executive Service (of the Federal bureaucracy) had fallen as much as 65 percent below comparable jobs in private industry.

No other institution suffered the loss of pay, prestige and public confidence that the federal government endured in the 1970s and 1980s.

A majority of the public believes that 52 cents of every dollar collected for Social Security goes to administration. The true figure at the time (1987) was 1.3 cents.

If a company is performing well, the ceiling in negotiating a CEO’s compensation is virtually unlimited.

The Japanese have apparently acted on the assumption

*In 1954, ‘I could have taken a job with a Wall Street firm for $4,200 a year or joined a firm in a smaller city for two or three hundred dollars less.’*
The Japanese have apparently acted on the assumption that very high pay for top management does in fact have harmful effects on the work force.

More than 70 percent of all CEOs are hired from within and most are not many years from retirement.

A series of studies have now shown that the compensation actually paid to CEOs bears very little relation to the record of their companies. “In most publicly held companies, the compensation of executives is virtually independent of performance.”

From 1955 to 1983, the incentive plans of the 200 largest industrial companies in the U.S. had an average life span of 18 months. “Most of the changes helped to increase the rewards or made them easier to obtain.”

A statistical table (1973-1990) showing the EXTENT OF REPORTED HAPPINESS BY INCOME GROUPS indicates that 44.5 percent of those with incomes over $75,000 are Very Happy, 50.2 percent Pretty Happy, and 5.3 percent as Not Too Happy. Curiously, 55.0 percent of those earning under $10,000 reported themselves as Pretty Happy.

Hedged conclusions?

From this compilation of figures, research materials, and the Bok commentary and explication, readers will find items to satisfy any prejudice or support any belief. Pros and cons hedge almost all of the conclusions that one feels must surely be drawn. If teachers don’t teach well, there are reasons enough—large classes, little money, decayed buildings, and deprived student bodies. If some lawyers pursue accident victims right into their hospital rooms in search of claims to litigate on a contingency basis, it is because the nation can thus insure access to the courts and legal services for even the poorest. If the CEO of U.S. Surgical Corporation takes home $118 million in 1991, opinions are given that “top executives are worth every nickel they get.”

This approach to remuneration in all the sectors covered, together with the various suggestions on raising the standards and improving the efficiency and accomplishment of all of these professionals through merit pay, bonuses, incentives, are analyzed with care and consideration for the position of all parties. It is a thoroughly rational appraisal, restrained and never condemnatory. After a decade and a half of scandal and excess surfaced on all societal levels, no denunciations appear, and only the machinations associated with one merger warrant a kind of pensive reproach. This was the departure of Ross Johnson and his second in command at RJR Nabisco, pocketing respectively $53 million and $45.7 million “despite the fact that the same top executives had allowed RJR Nabisco’s assets to underperform so grossly as to make such a huge buyout possible.”

Perhaps the Bok approach is the best one. Stirring passion and emotion when trying to institute reasonable discussion of problems of this magnitude distracts, and frustrates the attempt to find solutions to the difficulties presented.

To Bok the unique U.S. is a nation beset with vexing problems, each surrounded by a thicket of conflicting interests and concerns. The situation would seem to require, if not a polemic, at least a rousing call to take concerted action, to experiment with varied approaches, to demand broad participation from a citizenry that seems to have fallen into apathy, lacking the energy, and possibly the talent to force changes. A sentence toward the end of the book indicates that Bok has come to that conclusion: “The question that remains is whether anything can be done to make things better.” The final paragraph is a mild injunction with a biblical connotation: “It behooves us to be careful about what we are worshipping, for what we are worshipping we are becoming,” and that is coupled with another admonition—that material gain may not produce happiness or pride in accomplishment.

These statements are applicable only to a very small proportion of the U.S. population, obviously. Equally obvious is the absence in the text of any assessment of the good fortune that so many Americans experienced in the last half century. It is distressing to learn of overpaid, inept executives, venal lawyers, inefficient bureaucrats, unqualified teachers, burned-out professors, and grasping doctors, but their comrades in all of these sectors have had some rare successes in a brief time span, and some of them remain in the national memory. We may also take some pride in the country’s resilience, sense of common purpose, when threat or challenge is perceived, and above and beyond this, the fact that the society remains an open one, subject to judgment and scrutiny by its citizens.