

**The Myth of the Rogue Employee  
(Conversations with Boards and C-Suites)**



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**THE ROGUE EMPLOYEE PRESS RELEASE\***

*"We regret that the actions of a single rogue employee, Mr. BadGuy, were contrary to the values of this company.*

*Our longestablished principles of integrity, honesty, truth, transparency, sustainability, ethical leadership and [fill in the blank] have been offended by the scandalous acts of Mr. BadGuy.*

*We condemn the actions of Mr. BadGuy.*

*Mr. BadGuy has left the building."*



**\* Brought to you by the PR Wizards of Smart**

## ACTUAL CREDIT SUISSE STATEMENT ON “ROGUE” BANKERS

*"We deeply regret that - despite the industry-leading compliance measures we have put in place - before 2009, some Credit Suisse private bankers appear to have violated U.S. law. The evidence showed that some Swiss-based private bankers went to great lengths to disguise their bad conduct from Credit Suisse executive management."*

- Prepared remarks by CEO Brady Dougan delivered to a U.S. Senate subcommittee, February 26, 2014



## Why do we need to change the conversation at the Board + C-Suite level?

- The “go to” defense of the Rogue Employee may be a favorite of PR firms, but it is usually false.
- Allows Boards & C-Suites to avoid the tough questions and breeds a sense of false security.
- Regulators and the public don’t take kindly to misdirected blame.
- **Better:** Candid conversations starting with the Board on the “myth” of the Rogue Employee and what is really required of management (ethical leadership).
- **Better:** C-Suite and Management understand their responsibilities and are incentivized to “own” culture & compliance, rather than blame it on the “rogue.”

## 1. Definition of a “Rogue Employee”

The rogue employee commits a bad act that is

- (i) contrary to a credible “culture of integrity”
- (ii) despite a wellimplemented compliance and ethics program, and
- (iii) there was nothing the company could have reasonably done to stop or detect the act.



## Rotten Apple or Rotten Barrel?

- Behaviour = intersection of personality and situation
  - ◆ Focus on the situation
  - ◆ Focus on self-interest
- Rotten Apples or a Rotting Barrel?  
(Susan Silbey, Massachusetts Institute of Technology)
- The (Honest) Truth About Dishonesty (Dan Ariely)



## 2. Ripped from the Headlines

### How the story unfolds

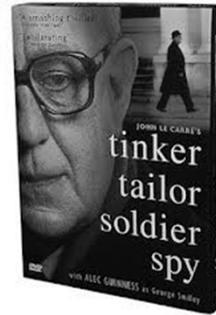
- ✓ Bad thing happens
- ✓ Blame Rogue Employee
- ✓ Someone Investigates
  - ✓ Uh-Oh ...
- ✓ Rethink that Rogue Employee thing



## CREDIT SUISSE “SPY NOVEL” TAX EVASION

- ✓ 22,000 Accounts of private banking clients avoided \$12Bn in US taxes
- ✓ Special offices at Zurich airport near ski slopes
- ✓ VIP elevator operated by remote control
- ✓ No bank statements or paper trail
- ✓ Bankers acted as personal ATM's
- ✓ Bad news for Credit Suisse:  
Swiss banker arrested at Reagan National  
=> Guilty Plea

*“You know what we expect of you  
– don't get caught”*



## WHAT THE EMPLOYEES HAD TO SAY:

*“Swiss bankers say tax evasion 'a business model' ”*

**Banking group hits out at Credit Suisse chief executive after he tells US that alleged tax schemes were due to a few dishonest employees**

**-- Daily Telegraph, February 28, 2014**





## NEWS CORPORATION -- PHONE-HACKING AT THE NEWS OF THE WORLD

- ❖ 2005 NoW publishes scoop on member of the royal family
- ❖ 2006-7 NoW's "royal" editor and a private investigator arrested for phone-hacking and pled guilty
  - ✓ Court heard that the pair accessed voice messages from celebrities, an MP, and professional football reps
  - ✓ The PI was paid £117,000, including £12,000 cash
- ❖ 2007-2009 News International sticks to "rogue" reporter defense
- ❖ 2009-11 News of the World dealing with more than 20 civil claims for breaches of privacy that cover period after "rogue" reporter was jailed.
- ❖ 2011 Rival paper reveals NoW hacked phone of missing girl



10 July 2011



### Inside the Siemens Bribery Scandal

How international prosecutors dug up suspicious payments

Dec 28, 2007 8:40 AM CST



### The Domino Effect

How the bribery scandal at Siemens evolved

**Spring 2003:** Liechtenstein bank LGT spots unusual transactions tied to Prodromos Mavridis, a Siemens executive in Greece, and Reinhard Sielaczek, a Siemens executive in Germany.

**Late 2004:** LGT files money-laundering report to Liechtenstein authorities. Liechtenstein freezes €7.6 million in funds tied to Siemens executives; alerts authorities in Switzerland and Germany, as well as Siemens.

**December 2005:** Germany's Dresdner Bank sends Siemens a money-laundering report detailing suspicious transactions involving Mr. Mavridis.

**Nov. 15, 2006:** More than 200 German police raid Siemens's offices across Germany and arrest several current and former employees.

**Fall 2007:** German court fines Siemens €201 million for bribes paid earlier this decade; Siemens says it has now flagged €1.3 billion in suspicious transactions globally.

**Dec. 17, 2007:** Siemens says that Michael Christoforakos, the long-time chief executive of the Greek unit, has left the company.




Siemens's Greek headquarters in Athens

## “At Siemens, Bribery Was Just a Line Item”

New York Times headline

- ❖ December 2006 Siemens CEO, Klaus Kleinfeld and Chairman Heinrich von Pierer say that Siemens probably fell victim to a "sophisticated" criminal plan by rogue employees in the telecommunications division – even though police had searched company offices and the homes of employees in at least 30 locations.
- ❖ Ultimately investigated in more than 20 countries in business divisions including telecommunications, energy and medical devices.
- ❖ “Today’s filings make clear that for much of its operations across the globe, bribery was nothing less than standard operating procedure for Siemens.”... “This pattern of bribery by Siemens was unprecedented in scale and geographic reach. The corruption involved more than \$1.4 billion in bribes to government officials in Asia, Africa, Europe, the Middle East and the Americas.” DoJ press release December 15, 2008

## Some other “Rogue Employee” scandals

- ✓ Barings
- ✓ Barclay’s
- ✓ UBS
- ✓ Societe Generale
- ✓ GlaxoSmithKline
- ✓ HP
- ✓ JP Morgan Chase
- ✓ Wal-Mart
  
- ✓ The US IRS



### “Kerviel: prison confirmée nouveau procès en vue”

lanouvellerepublique.fr

- « La Cour de cassation a confirmé mercredi la condamnation de Jérôme Kerviel à cinq ans de prison, dont trois ferme, mais, coup de théâtre, a annulé les dommages et intérêts record de 4,9 milliards d'euros, renvoyant ceux-ci à un nouveau procès. »
- **"The [highest] Court confirmed on Wednesday the sentencing of Jerome Kerviel to five years in prison, to serve a minimum of three, but dropped a bombshell, cancelling record damages of €4.9 billion, returning the case for a new trial. "**
- « Plus de six ans après les faits, Jérôme Kerviel, accusé par la Société générale de lui avoir fait perdre près de 5 milliards d'euros en 2008, continue à clamer son innocence et à reprocher à son ancien employeur d'avoir menti sur ses propres responsabilités dans l'affaire. »
- **"More than six years after the fact, Jerome Kerviel, accused by Societe Generale of having lost nearly 5 billion euros in 2008, continues to proclaim his innocence and to blame his former employer of lying about its own responsibilities in the matter. "**

### 3. Changing the Conversation (Board Education)

- Board needs to know
  - Why Rogue Employee is mostly a myth and easy out
  - Significance of culture and control environment
  - Cost of investigating misconduct is HUGE e.g. Walmart



### 3. Changing the Conversation (Actions)

- What Board should do
  - Actively oversee culture, including culture assessments
  - Become knowledgeable about compliance program
  - Look for warning signs
  - Challenge management when problems occur, don't just accept "rogue"
- What Management should do
  - Own compliance and culture
  - Drive the right behaviour through incentives and actions



### What tone is management really setting?



Is debate welcome and encouraged?



What are staff really being incentivized to do?



#### 4. Walk is harder than talk

CODE OF CONDUCT  
 TRAINING  
 ENGAGEMENT  
 POSTERS, WEBSITE,  
 CEO MEMOS  
 "THE RIGHT THING  
 TO DO"

INVESTIGATIONS  
 DISCIPLINARY ACTION  
 INCENTIVES  
 HOTLINE, MONITORING  
 & REPORTING  
 INTEGRATION

**"THE TALK"**  
 (talk is weak)

**"THE WALK"**  
 (actions speak)

**Leadership making the tough calls is where  
 the rubber meets the road!**

#### What managers can do to make a difference

- Be the model in business decisions
- Be the model in compliance program
- Tie ethical leadership into compensation and promotions
- Ensure top leaders have ethical leadership training
- Punish bad acts consistently
- Ask your senior managers to set specific c&e goals and report on progress
- Start meetings with an "integrity/values moment"
- Ensure the compliance officer and team have "clout", including direct reporting to the board
- Commission a third-party c&e review by a qualified expert

*Joe Murphy, What CEOs Can Do to  
 Make a Difference, Ethikos*

### **Rather than look for Rogue Employee after the fact, look for warning signs of culture deficit**

- Authoritative, dictatorial management style
- Communications only about financial goals and performance
- High staff turnover
- Complaints about bullying or poor management
- Clues in exit interviews
- Sense of entitlement, evidenced by abuse of expense policies or false reporting
- Inconsistent or unduly lenient discipline
- Employee surveys regarding trust in their managers, management leading by example, and do you feel comfortable raising concerns
- What behaviour really gets rewarded?

### **5. Chief Compliance Officer: Facilitating the Conversation on Culture & the “Rogue Employee”**

- ◆ **The conversation will not change by itself**
- ◆ **The CCO has an important role as leader of ethical culture, well beyond check-the-box compliance**
  - **Educating the Board and Senior Management**
  - **Providing tools and coaching to make it happen**



## RECAP

- Rogue Employee “excuse” is easy, and rarely true
- Boards and Management need a different conversation that focuses on culture and management responsibilities
- The CCO, as ethical culture leader, can facilitate that conversation, starting at the top



## Recommended Reading (1)

- ❖ The Rogue Employee and Dogs That Eat Homework  
(Boehme, Corporate Counsel May 2013) [bit.ly/1exn800](http://bit.ly/1exn800)
- ❖ Rotten Apples or a Rotting Barrel  
(Silbey, Massachusetts Institute of Technology)  
[web.mit.edu/anthropology/pdf/articles/silbey/silbey\\_Ethics\\_Education\\_Comments2.pdf](http://web.mit.edu/anthropology/pdf/articles/silbey/silbey_Ethics_Education_Comments2.pdf)
- ❖ The Rogue Employee Strikes Again  
(Journal of Business Compliance - April 2014)  
<http://compliancestrategists.com/csblog/2014/02/07/rogue-employee-strikes/>
- ❖ Kumbaya Compliance is Not Good Enough  
(Boehme, Compliance & Ethics Professional May/June 2013)  
[compliancestrategists.com/csblog/2013/05/30/kumbaya-compliance-good-enough/](http://compliancestrategists.com/csblog/2013/05/30/kumbaya-compliance-good-enough/)
- ❖ Tone at the Top - The Movie  
(Boehme, Compliance & Ethics Professional July/August 2012)  
[compliancestrategists.com/csblog/2012/08/01/tone-top-movie/](http://compliancestrategists.com/csblog/2012/08/01/tone-top-movie/)
- ❖ At Siemens, Bribery Was Just a Line Item  
(NYT Dec 2008)  
[nytimes.com/2008/12/21/business/worldbusiness/21siemens.html?pagewanted=all&\\_r=0](http://nytimes.com/2008/12/21/business/worldbusiness/21siemens.html?pagewanted=all&_r=0)
- ❖ Vast Mexican Bribery Scheme Hushed Up After Top Struggle - NYT Pulitzer winning article  
[nytimes.com/2012/04/22/business/at-wal-mart-in-mexico-a-bribe-inquiry-silenced.html?pagewanted=all&\\_r=0](http://nytimes.com/2012/04/22/business/at-wal-mart-in-mexico-a-bribe-inquiry-silenced.html?pagewanted=all&_r=0)

## Recommended Reading (2)

- ❖ FCPA Professor, “Wal-mart’s FCPA Expenses”  
[fcpaprofessor.com/category/wal-mart](http://fcpaprofessor.com/category/wal-mart)
- ❖ The Compliance Officer as Ethical Culture Leader  
(Boehme, Ethikos Jan 2014)
- ❖ RAND Symposium Culture, Compliance and the C-Suite  
[compliancestrategists.com/csblog/2013/05/01/culture-compliance-c-suite-executives-boards-policy-makers-can-better-safeguard-misconduct-top/](http://compliancestrategists.com/csblog/2013/05/01/culture-compliance-c-suite-executives-boards-policy-makers-can-better-safeguard-misconduct-top/)
- ❖ Perspectives of Chief Compliance and Ethics Officers on the Detection and Prevention of Corporate Misdeeds (RAND Symposium Report 2009)  
[rand.org/pubs/conf\\_proceedings/CF258.html](http://rand.org/pubs/conf_proceedings/CF258.html)
- ❖ Donna Boehme Discusses Board Engagement (video)  
[compliancestrategists.com/csblog/2013/12/14/donna-boehme-discusses-board-engagement/](http://compliancestrategists.com/csblog/2013/12/14/donna-boehme-discusses-board-engagement/)

## Comments or Questions?

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