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Reducing the Likelihood of Corporate Misbehavior

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In the current crisis of confidence in corporate behavior, HR executives and in-house counsel are increasingly asked to advise business leaders on how best to define, monitor and respond to unethical behavior in their organizations. The law by itself, however, has limited ability to influence human behavior. This is no truer than at the present time when well-publicized corporate misbehavior has been responded to by hurried efforts to define and impose new legal and regulatory remedies. While public opinion polls and skeptical financial markets point to a broad loss of confidence in corporate conduct, the front page 'perp-walks' of a handful of the most egregious malefactors has done little to restore that confidence. In response to this loss of trust, which is so central to a well-functioning economic system, there is growing interest in the pragmatics and practices of ethically run organizations. There is a recognition that the law must work in concert with other disciplines when it comes to serious efforts to promote ethical behavior within organizations.

Leaders in Congress, the business community, and regulatory agencies have rushed to press with proposals, policies and legislation intended to placate the public's concern about corporate thievery. The legislation would impose harsher penalties on corporate officers who are tried and convicted of various crimes. CEOs are now required to literally sign off on their quarterly financial statements. There are efforts underway to help ensure that, in the future, Boards of Directors are more independent of management. A new accounting oversight board is being created by the SEC (though that is already shrouded in controversy). Unfortunately, while all these efforts have some relevance in potentially curbing corporate misbehavior, they do little to directly address the underlying business cultures, leadership dilemmas and organizational irregularities that have allowed the behavior we've seen to emerge and flourish in the first place.

Apologists for corporate wrongdoers have suggested that they were only playing by the rules defined by competitive financial markets and capitalist ideology. Furthermore, they contend that individual business leaders can hardly be blamed for the fact that they and their companies were caught in the backwash of a bursting stock market bubble and a slowing global economy. While they are minimizing personal culpability for self-serving reasons, it is equally true that illicit behavior could only have thrived within a broader organizational environment that provided insufficient barriers to corruption and self-dealing. Even in the most spectacular cases, those individuals who took illegal advantage of their corporate roles to enrich themselves at the expense of their shareholders and employees were not operating in a social or moral vacuum. They were operating in organizational environments that were deeply flawed. At a more everyday level, many corporate employees engage in practices that, while not as flagrant as those in the news, equally suggest corporate structures and culture that are doing a poor job of promoting ethical conduct.

The Enron debacle is so significant not just because of the sheer scale of its duplicity and subsequent bankruptcy. It is also because Enron had become a widely admired corporate icon of New Economy competitive behavior. Its ways of conducting business, and the values it promulgated were seen as exemplars of what leading-edge companies should be doing to achieve business growth and shareholder value. The very messy public scandals of Enron, WorldCom and others, with their extreme examples of private greed and deception, have caused us to question our assumptions about what values and practices should underlie successful 21st century businesses. When considering the cause of such events, there is a tendency to point to a weakness of character in the relative few responsible for leading the enterprise. In fact, Tom McCormick, Director of Global Ethics at Dow Chemical, has pointed out that it is very difficult to cite character defect as the primary cause of such behavior. More than anything else, today's fast changing corporations get into trouble from a lack of consistent maintenance of the structures and leadership necessary to run an ethical organization. In such circumstances, people who are otherwise of relatively sound character, can fall into behavior that is questionable and dangerous to the reputation of the organization.

How can you advise the senior team about ensuring that it is creating and sustaining an ethical organization? You can suggest a holistic strategy that addresses the key drivers of organizational conduct. Given what we know about the drivers of behavior, there are a number of steps that companies can take to instill and maintain a culture that upholds ethical, honest behavior and reduces the risk that actual illegality may become an issue:

- **Leadership**
  The behavior of leaders has an enormous influence on the culture of an organization. Leaders at every level have to not only verbally promote an ethical business environment, but also relentlessly 'walk the talk'. Nothing is more destructive to organizational behavior than leaders who do not themselves consistently model the espoused values. Leaders have a responsibility for making sure that ethical behavior is a continuing part of the company's agenda right alongside business performance. If it has not done so recently, the senior team should revisit corporate values and reassess how the commitment to ethical practices is promoted within the company.

  With the accelerated rate of change in the marketplace and the world, business leaders are the touchstone that employees seek when they are unsure about how to react in a new situation. In this era of increasingly rapid change and turnover within corporations, leaders have become even more important sources of guidance and stability.

- **Taking the organization's pulse**
  It can be very useful to survey the organization to test to what extent ethical conduct is actually perceived as expected and rewarded within the company. Leaders are often surprised to learn that employees have a very different impression of what is valued within the company than what its leaders intend. Surveys also provide a useful baseline for testing the progress of later change efforts.

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- **Management behavior**
  Day-to-day management practices have a great deal to do with the organizational climate and the kind of behavior that is viewed by employees as acceptable. While senior leaders are above everyday operational realities, pressures to make numbers at all costs or internal competition may drive mid-level managers to potentially encourage marginally or not-so-marginally unethical behavior. Managers, as much as senior leaders, have to model high integrity in their own behavior and in the expectations of their employees. Furthermore, approaches to performance management, HR policies and procedures, and resource allocation decisions send messages about appropriate conduct.

- **Testing for unintended consequences**
  From stock options to forced ranking protocols, there are reward systems that unintentionally can become drivers of corporate corruption. Companies are well served to closely examine their business processes to see if they may be inadvertently motivating employees to conduct themselves in a less than completely honest, ethical manner. Processes that unwittingly focus on only the ends and not the means can encourage a lack of regard for proper conduct. It is unrealistic to expect employees to act on a set of stated corporate values when business processes do not fully support those values.

- **Relations with external constituencies (customers, suppliers, vendors, etc.)**
  Even when companies are relatively scrupulous about their own internal conduct, it is important that they ensure that 'outsiders' are treated the same way. In some companies characterized by a strong, internally focused culture, there can be a subtle 'us-and-them' psychology which tolerates behavior towards those outside the corporation that would not be tolerated inside. The modern reality of ubiquitous competition in every business segment and market can also encourage a sense within an organization of being embattled together and that business victory at any costs to others is okay.

It is certainly true that few organizations or executives actually encourage unethical behavior. However, in an increasingly complex business environment, companies have to be vigilant about the unintended consequences of their cultures, policies and processes. Taken together, there are many shapers of corporate behavior that ultimately enable or disable ethical business conduct. While there are numerous social and economic factors that reside outside of the control of individual companies, there is much that individual companies can do to help ensure that they are contributing to an ethical business environment that is worthy of a renewed public trust. Though there may be considerable effort involved, the markets may ultimately reward companies that are very public and persistent about their ethical business practices. A concerted effort to redefine and practice ethical business conduct on a company-by-company basis can do more to help restore faith in our business systems and markets than can a handful of new laws and regulations.