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EXAMINING ETHICAL ISSUES IN BUSINESS

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A survey of three stages in the evolution of corporate ethics programs

By Laura L Nash

The study of corporate ethics codes and programs is rather like Wordsworth's curious child who, though living inland, held a sea shell to his ear. Listening with his very soul he heard murmurings, the sound of which expressed the shell's "mysterious union with its native sea." Although the exact connection between codes and behavior cannot he established, recent studies—such as The Conference Board's 1991 Survey of Corporate Ethics Practices—provide us with a few murmurings about the ethical management of business today.

After surveying more than 200 corporate ethics programs, and studying many programs in detail, I would suggest that corporate ethics practices in the United States seem to undergo a maturing process that breaks down into three separate stages.

'Achieving high ethical competitive standards is not just about a set of rules—it's about a whole way of thinking.'

Stage One: Start-up

A trigger event—a scandal, a new CEO, a retiring founder, new legislation—initiates the creation of a new document that defines the philosophy and guiding principles of the firm. The document can be a code, credo, or corporate philosophy, but in any event it will be viewed as the chairman's document, and primarily formulated by some configuration of top officers, and then disseminated.

The document will often be printed up and distributed either to a restricted group of managers or the whole company from the chairman's office (top-down), but never to line managers to the exclusion of more senior officers. Many programs outside the defense industry (Defense Industry Initiative guidelines suggest full distribution) distribute their documents only to top officers in the first stage, and move to company-wide or even public distribution at Stage Two.

Stage One is essentially a gate-keeping activity. It puts ethics on the table of articulated concerns. It opens the way to a formalized discussion by top management of the ethical

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A trigger event—a scandal, a new CEO,a retiring founder, new legislation—initiates the creation of a new document that defines the philosophy and guiding principles of the firm.

responsibilities and principles in the organization. This process may have occurred only informally—if at all—previous to the creation of the document.

In Stage One, the driving question is: "What do we stand for?"

Stage Two: Compliance

Eventually the corporate ethics effort, if it is to be more than a meaningless piece of paper, has to face up to the inevitable question: "How are we doing?" Thus begins Stage Two, which heralds the introduction of a number of compliance mechanisms. A well-developed program would include at the minimum:

— A code of conduct worded in compliance language.

— A signing requirement.

— Formalized discussion of the contents of the document(s).

— Monitoring of performance through audits, committees of the general counsel's office, security, or an ethics officer.

— Communication of enforcement procedures, including the creation of special communication mechanisms such as hotlines or guidelines to help employees when compliance is particularly problematic.

— Training, including case examples of application.

— Revisions to the original document in response to implementation problems that have surfaced or to new social concerns and laws.

In the compliance stage, the driving question is: "What choices have we made that may or may not be violating the rules that we've agreed to uphold?"

In pursuing compliance objectives, a revision of the rules themselves may also appear necessary. Any such compliance stage, to be effective, involves a broadening of input, as the Conference Board's 1991 Survey of Corporate Ethics Practices indicated has happened in the U.S. The general counsel provides needed interpretation and clarification of the rules, and human resources helps work out the people issues, communication, training, and, where necessary, disciplinary procedures. At American Express, for example, a beefed up ethics program now includes a strong compliance focus with regular reports to the audit operations. The group, however, works closely with its human resources and general counsel offices.

Stage Three: Relevancy

Once Stage Two mechanisms are established (with or without 100 percent actual compliance), another leap is required to understand ethics as an essentially positive management asset—as opposed to a series of shalt-nots. This notion is often stated as a generalized ideal during Stage One, but it doesn't take on a meaningful reality during that document-creation period. In Stage Three, the ethics program moves toward a more pro-active diffusion of ethical sensitivity, concretely applied.

In Stage Three, the driving question is: "How does what we stand for apply to specific operating choices we have in carrying out our corporate purpose?"

The ethics program is now slanted toward understanding the concrete relevance of ethical standards to normal business decisions rather than defining and detecting wrongdoing. Shalt nots are still important, but in the relevancy

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stage, managers begin to explore ethical principles in terms of their positive application to business problems, especially newer areas of activity. Such a program invites reference and re-examination of the corporate ethics guidelines, and may spark yet another revision process.

A good example of Stage Three corporate ethics practices occurs in connection with some total quality movements. Any rigorous effort at quality improvement brings to the surface the need for honesty among employees: honest assessment of current practice, and honest feedback on plans and changes. Suddenly the company's overall ethics profile becomes highly relevant to the discussion of normal business thinking, not just wrong-doing.

Another example would be entry into a new service or product, or new geographic location, where the rules of competition are less well known. Gaining credibility and customer trust will be imperative, and again, the corporate commitment to high ethical standards will suddenly he couched in terms of having new and more immediate relevance to getting the job done in a professional and profitable way. The programmatic result may be the creation of a management seminar on ethics as part of the new job training, instigated and driven by the senior operating managers in charge of the new business, and featuring tailored cases of problem-solving for that job. Typical case problems would feature situations where ethical standards might be difficult to determine and maintain even though they ultimately make good business sense.

It should be noted that Stage Three is an outgrowth, not an abandonment, of Stages One and Two. As compliance efforts gain credibility, an integration mindset begins to emerge, and the mix of players involved in the programs changes.

These three stages, while historically incremental in most companies, should be seen as mutually reinforcing. In companies with a long history of high standards and shared values, all three may already he in place. A good corporate ethics program will continue to enrich all three areas.

An illustration: Honeywell

While not all corporate ethics programs follow these stages to the letter in totally discrete steps, many programs tend to cluster around one of the three stages, usually in the order reported here.

Honeywell, a diversified manufacturing firm, illustrates this process more fully. The company first issued a general statement of its values in 1974, which was circulated throughout the company and in some publicly available

In Stage One, the driving question is: 'What do we stand for?'

documents. Typical of Stage One, this statement represented the company's ethics commitment in general terms. In 1986, Honeywell entered the compliance stage. Training programs were initiated in order to comply with new obligations under the Defense Industry Initiative agreements. Information lines were also established at this time. These training programs were essentially reiterated company policies in more precise terms that included the intention to enforce the code. In 1988, a compliance office was created to facilitate and reinforce the process.

For another look at a 'Stage Three' ethics program, see the Northrop Corporation story on page 4.

While compliance has remained a strong focus of the program, which now extends even to company suppliers, in 1989 the program began a transition to Stage Three; it expanded the domain of the ethics office to include the company's commercial business for the first time (up until this date only government-related businesses were included). Traditional compliance topics (gifts and gratuities, contracting procedures) continued to be discussed, but other functional dilemmas were added, such as marketing practices, information gathering, and the use of consultants. Relevancy seems to be the operating assumption behind this change. i.e., how to make the ethical commitments relevant to all aspects of the business. In 1990, an ethics poll was integrated into the company's annual employee poll. The Honeywell values statement was also updated at this time, introducing and revising the number of competitive guidelines, and bringing the relevancy stage back to the first steps of the process.

Where are we now?

Where do corporations stand now? There is good evidence from the Conference Board's 1991 survey that Stage Two is well underway in large U.S. corporations. The recent addition of newer topics to codes where the law is relatively ambiguous (competitive and proprietary information, environmental responsibility, employee privacy) could indicate the first tentative steps in moving into Stage

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Northrop seeks to leave moral clouds behind with a values-driven ethics program

By Tim Mazur

One should not judge the quality of an ethics program by the number of allegations of misconduct that do or do not make the *Wall Street Journal*. But it's another matter when one company is consistently counted among the worst offenders.

Northrop Corporation is a big company (37,200 employees, sales of $5.7 billion in 1991) that has suffered some large-scale problems in the realm of corporate ethics. In 1990, the company pleaded guilty to falsifying test results on a nuclear missile weapons program. A South Korean court recently charged the company with making illegal payments to influence that country's purchase of Northrop's F-20 jet fighters. Other irregularities involving the manufacture of MX missile parts are under investigation now. Most of the allegations that continue to plague the company date back to the Reagan Administration, from the heyday of defense spending.

More recently, however, Northrop has embarked on a broad-based program to root out corruption and to fashion a new ethics strategy—one that motivates values-driven behavior. It appears to have initiated the organizational systems necessary to curtail the type of impropriety that has dogged the contractor for years.

'For too long our people have been extremely frustrated by the negative history that is constantly dredged up.'

A vice president for ethics

As a signatory company of the Defense Industry Initiative (DII), Northrop has had a presumably acceptable compliance program for years. One too many avowals of illegality, however, finally moved the company's board of directors to demand changes. The most critical step was the hiring of a new chairman, CEO and president, Kent Kresa, about three years ago.

On assuming the helm, Kresa initiated a list of actions designed to earn back the respect that was compromised over the previous 20 years. One was the appointment of a Vice President for Ethics and Business Conduct, Shirley Peterson. Peterson's job description was unusually simple: determine what needed to be done to improve Northrop's conduct and attitude toward ethics—and then do it.

She chose to put the problem to Northrop's people, assembling numerous broad-based focus groups composed of employees from all divisions and grade levels. The cumulative message that surfaced from these sessions can be captured in a word: confusion. Employees were confused by the seemingly endless negative reports that emerged about the company, and similarly confounded as to what Northrop really expected from them when they faced an ethically challenging situation. As each of the sessions drew to a close, a common, unsolicited question raised by many was: What are the values of the company'?

A values-driven program

To answer that question Peterson and her team spent an entire year planning, coordinating, and developing a comprehensive values-driven program. The program is built on a set of six newly defined Northrop Values. Executives and senior managers, with

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comments from focus groups in hand, met with an outside consultant and drafted the statements. They were:

- — We work to deliver customer satisfaction.
- — We value Northrop people.
- — We regard our suppliers as essential team members.
- — We take responsibility for the quality of our work.
- — We demonstrate integrity in all we do.
- — We provide leadership as a company and as individuals.

The Values were intentionally defined as goals rather than perceptions of Northrop as it was. To work toward realizing the goals, the management team "breathed life into the statements" by translating the Values into elements of a Leadership Inventory.

The leadership inventory

The inventory extrapolates 80 "behaviors" from the Values that define what actions are necessary to achieve Northrop's goals. Under the Value "Integrity," for example, the inventory lists, among other behaviors: "Avoids playing favorites," "Encourages individuals to surface concerns quickly and honestly (doesn't shoot the messenger)," and "Stands up for what she/he believes in (even under pressure)."

Behaviors are intended to be more than mere words. More than 4,000 managers have completed training to learn how to use the Leadership Inventory to measure their actions, and the actions of others, against the Values. Measurements are performed and used in two ways: One involves a set of anonymous ratings from a manager's peers and subordinates; the other represents a new element of Northrop's performance appraisal process.

David Beard, ethics program director for Northrop's B-2 division, describes the anonymous process as follows: A manager, let's call him John, receives 12 to 20 evaluation booklets listing the Leadership Inventory's 80 behaviors followed by five "bubbles" ranging from "highly satisfied" to "highly dissatisfied." (Beyond the bubbles, the booklet also includes room for writing comments.) John distributes the booklets to his subordinates and peers with whom he works regularly, and also evaluates himself. Each individual anonymously rates John against each behavior and sends the completed booklet in a pre-addressed envelope to an outside vendor for scoring.

John later attends a Leadership Conference where he and other managers study the 80 behaviors as opportunities for improvement. At some point during the conference, each participant meets individually with a member of a consulting team to discuss the results of his or her evaluation. The report provides specific information for each of the 80 questions, the dozen or more anonymous ratings, John's average score, a cumulative Northrop average, and John's percentile ranking among the pool of those who have already been evaluated.

Programs based on compliance training and rule books often suffocate the positive aspects of corporate ethics.

Some tough feedback

The report ends with a summary of John's ten or 15 greatest strengths and his ten lowest-ranked behaviors. The consultant works with John for 30 to 45 minutes to help him plan what to do in response to his perceived weaknesses. After John drafts a personal action plan, he leaves with his report, which was never seen by anyone other than himself and the consultant.

What is to stop an employee or peer from attempting to butter up the manager being evaluated? Northrop asked itself that question before the program began. "For too long our people have been extremely frustrated by the negative history that is constantly dredged up," says David Beard. They're learning that the success of this process will directly contribute toward Northrop's long-term viability and, in combination with the unusually strong commitment from Mr. Kresa and the general managers, that has been enough to earn their buy-in so far."

"Some very high people have received tough feedback," adds Shirley Peterson. One team of executives, members of the Corporate Policy Council, chose to demonstrate their support of the process early on by publishing their strengths and weaknesses. Some of the areas in which the executives were found lacking:

- — Not providing effective orientation to people in new assignments.
- — Not working to improve others performance from acceptable to excellent.
- — Not asking people what they need to do their jobs better.
- — Not dealing effectively with performance problems.
- — Playing favorites.
- — Not working to see the value of other opinions (even

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Influencing J. Irwin Miller: Socrates, Saarinen, Stradivari

By Andrew Singer

As a student at Yale he studied the classics. As chief executive officer of the Cummins Engine Company, he helped bring some of the world's most renowned architects to Columbus, Indiana—population 30,000—to design the town's municipal buildings and schools. He was the first lay president of the National Council of Churches. But J. Irwin Millers most enduring legacy, arguably, is the notion of the socially responsible business corporation. He is the philosopher as businessman.

J. Irwin Miller's most enduring legacy, arguably, is the notion of the socially responsible business corporation. He is the philosopher as businessman.

Miller retired from Cummins Engine in 1977, after 43 years as its chief executive. During that time the company grew from a small, unprofitable company with 60 workers to a $1.2 billion (sales) concern that employed 22,100 people. It had become the largest independent diesel engine manufacturer in the world.

Recently, Miller was honored with the lifetime achievement award from the Business Enterprise Trust, a non-profit organization that honors integrity and social vision in business. The Trust's board members include the Washington Post's Katherine Graham, Berkshire Hathaway's Warren Buffett, former Johnson & Johnson CEO James Burke, and former U.S. Ambassador Sol Linowitz, among others. At its second annual awards ceremony in New York. the Trust honored Miller for "expanding our ideals of a successful and humane business enterprise."

Taking a long-term perspective

It has long been Miller's view that a business can only prosper if it takes a long-term perspective and acts responsibly toward all its stakeholders employees, shareholders, customers, and local communities. In a recent interview in New York, he observes that "responsible business behavior is basically the best kind of long-range planning. You have to do many things in this world that don't pay out tomorrow. But it may he the key to your survival ten or twenty years from now."

At 82 years of age, Miller's notions about business, politics and life are as uncompromising today as they have ever been, since he is at odds with an age that celebrates success at any cost, whether it be the politician who declares, "I will do whatever it takes to get re-elected" or the businessperson who justifies questionable business practices with: "We have to do these things because everyone else does it."

'What do you do?'

This is no impossible idealist, however. His morality is of the here and now. Miller recognizes that there are many ethical "gray areas" out there to which attention must be paid. This was obvious in the way he handled the issue of facilitating payments when he was running Cummins Engine.

The company, founded by Clessie L. Cummins, the chauffeur of Miller's great uncle, Will G. Irwin, today sells its diesel engines and generators all over the world. Some time ago, Miller recounts, one of its engines broke down in a Far Eastern country. The company

had to fly in a spare part. When the replacement piece arrived at the Asian port, however, it was made clear to the Cummins representative on the scene that the part would never reach its destination unless he paid the customs officer $50.

"What do you do?" asks Miller,

"We went to the government and explained the situation. The government official answered: 'You pay the $50.'" The official went on to explain that customs officers in that part of the world were simply not paid a living wage. They were expected to supplement their income with facilitating payments—the sort demanded on the docks.

"But $500," the government official continued, "that's a bribe."

Such distinctions may appear arbitrary. But the key thing, according to Miller, is that "we encouraged our guys to get it out in the open. Not to keep it secret. Talk to the government. 'What role do you expect us to play?'

"There is a gray world out there. We tell our representatives: If you're in doubt, don't do it."

Hiring black managers

Miller was active in the civil rights struggle in the 1960s. He personally helped desegregate his hometown of Columbus. Between 1965 and 1973, he recruited approximately 100 black managers and trainees for Cummins Engine. As the first lay president of the National Council of Churches, Miller was instrumental in pushing that organization to support the civil rights movement. At the time, Martin Luther King, Jr. called Miller "the most progressive businessman in America."

He has always been concerned with the larger picture. In the 1970s, Cummins Engine broke ranks with many of its industrial competitors and supported the Clean Air Act. The new air emissions standards that were established transformed Cummins' business into a high technology enterprise—that required extensive investment in new equipment and processes.

Cummins' architectural program—which brought architects like Eero Saarinen, I.M. Pei, and Robert Venturi to Columbus—has received much attention over the years. But the program began accidentally, according to Miller.

After World War II, the community had to build a number of schools as a result of its growing population. Initially the town bought some prefabricated buildings. "It was obvious to us that this was no way to educate children."

So Miller and company made a proposition to the school board: "We'll give you a panel of young architects. The panel won't be selected by us. You pick one of them, and we'll pay the fee."

> *'You cannot exist or operate without a community that is stable, that has a reasonable crime rate, adequate schools.'*

An architectural Mecca

The first building went up. It was deemed a success. When it came time to build the second, the community came to Cummins: Will you do it again? Other school buildings followed, and later even churches and the town prison. It has made Columbus an architectural Mecca on the Midwestern plains.

Is there a connection between architecture and morality? "First we shape our buildings, then they shape us," answers Miller quoting Winston Churchill. Yes, buildings affect those individuals who work within, and even those without, who simply pass by each day. Miller recalls the dingy public school he attended as a youth, how depressing it was to return to that building after the summer break.

But is a program such as this transferable? Can other corporations—those based in urban centers, say, and not small Indiana towns—make a comparable mark on their communities? "If you engage in a practice like this, you better not anticipate immediate results. It's an act of faith." At some point, one has to believe that individuals will he touched.

Looking at the realities

Does Miller believe that an ethical company will be a more profitable concern in the long run?

He answers with a question: "What are the actual facts in running a business? First, you have to be sure that the shareholders are fairly rewarded. They are the owners of the business; they don't have to pay in the capital."

Conversely, "You cannot exist or operate without the employees; they don't have to work for you," Miller wrote in *Organizational Dynamics* in 1975. "You cannot exist or operate without a community that is stable, that has a reasonable crime rate, adequate schools, and so on; the citizens don't have to welcome you to it.

"You cannot exist without customers; they don't have to buy from you. Even suppliers don't have to sell to you if you don't give them a decent mark-up and otherwise treat

'Responsible business behavior is basically the best kind of long-range planning. You have to do many things in this world that don't pay out tomorrow.'

them fairly. You have to operate in a fair and balanced way, such that all of these people will want to give you their services, their funds, or their business. You have to treat them equally because they are all equally essential. Otherwise, you don't have a business for very long. In other words, corporate responsibility is not a matter of what you ought to do but really is a matter of looking at the total realities and total requirements of a given situation."

Investing for the long-term

Cummins Engine, by consensus, one of the most socially responsible companies in America, has nevertheless seen its profits and share price plummet in recent years. The company has been under heavy assault from Japanese and domestic competitors. Does this undermine the claim that by doing good one also does well?

The company has invested heavily in new technology, Miller replies, which is necessary for the firm's long-term survival. It takes between seven to ten years to bring out a new diesel engine—to perfect it and get it into commercial production. That process is even more complex today, with emissions abatement requirements, fuel efficiency standards, and so on.

"Our expenditures for research are very high." The company has its eye fixed on the year 2000 and beyond, anticipating what will he required in Europe, Asia, and North America. "We feel we have to spend the money now to be competitive in the year 2000. That doesn't please some analysts."

While securities analysts may verbally approve of what the company is doing, they often add: "We're not going to buy the stock until you've turned the corner." Analysts and their primary customers, institutional investors, notes Miller, are often judged on their short-term—often quarterly—investment performance. The result: "They're too short-term focused."

Lincoln and Socrates

As one who has inspired scores of others, in industry and without, Miller was asked about his own moral heroes. Abraham Lincoln is one. Lincoln "almost alone saved the nation in the Civil War because he had a vision of what the nation could be." He was willing to fight his own cabinet on behalf of that vision, even to risk losing an election. "I was very moved in my readings of American History by this heroic and tragic figure.

"I had the same feeling in reading the shorter dialogs of Plato"—the Crito, for instance, where Socrates, condemned to death for "impiety," explains why has to stay and drink the fatal hemlock, instead of fleeing abroad, as some of his followers urged, and continue to teach there. Socrates possessed a vision that transcended immediate exigencies, indeed, even survival.

The reason Miller remembers the Crito so well, he hastens to add, is that "an outstanding teacher helped me to discover it." In fact, "The teachers that I remember most vividly always had a high ethical content in their teaching." Indeed, it may be difficult to motivate others without some "ethical content," a problem evident in the schools today where teaching ethics has largely vanished.

Morality, too, is part of artistic achievement. "I have a strong feeling that great artists always have a strong ethical content to their work." Haydn's "Creation" shows how "mankind messed up the environment." Thucydides, in his histories, reproached Athens for enjoying democracy at home, but not extending it to its colonies. Livy assailed the Romans for being in love with death, collectively and individually. Michelangelo, Goya, Hogarth, and Bosch all had a strong moral content in their works.

'You learn from your mistakes'

During a press conference following the Business Enterprise Trust awards ceremony in New York, Miller was asked to assess American business today. "Overall, American business performance is as good or better than it's ever been," he answered. Ethically? Again, as good as ever. But, he added, in this highly competitive world that may not be good enough. We must do better.

His advice to other executives? "You learn from your mistakes. You don't learn from your successes." It's important not to offer alibis when one makes mistakes. "The problem with success is that you stop thinking."

At the end of the breakfast this remarkably civilized man, who plays a Stradivarius, reads the New Testament in the original Greek, and for years gave away 30 percent of his income to charitable causes, received a standing ovation. Later he met a reporter in the hallway.

"Now," he said, "we go back to the real world." ❑

The case of the whistle-blowing general counsel

It is one of the classic questions of applied ethics. Should one expect individuals to act ethically simply because it is 'the right thing to do'? Or is it necessary also to provide incentives to ensure right action?

This was an issue placed before the Illinois Supreme Court recently—a case in which a company was prepared to foist flawed medical equipment upon the public until its in-house attorney blew the whistle.

Deadly dialyzers?

Roger J. Balla was general counsel for Gambro, Inc., an Illinois-based distributor of kidney dialysis equipment. He was also the firm's director of administration and manager of regulatory affairs.

In July 1985, Balla learned that Gambro's German affiliate, Gambro Germany, was about to ship to the U.S. dialyzers that were not up to FDA standards, equipment that could possibly cause serious bodily harm to patients, or even death. As the German affiliate explained:

> "For acute patients the risk is that the acute uremic situation will not be improved in spite of the treatment, giving continuous high levels of potassium, phosphate and urea/creatine. The chronic patient may note the effect as a slow progression of the uremic situation and depending on the interval between medical check-ups, the medical risk may not be overlooked."

Warning: Reject the shipment

Balla told his firm's president to reject the shipment: the dialyzers did not comply with FDA regulations. The president did as Balla recommended.

But one week later the president reversed himself. He told the German affiliate he would accept the dialyzers and "sell [them] to a unit that is not currently our customer but who buys only on price."

When Balla learned of this, he told the president that he would do whatever was necessary to prevent the sale of the dialyzers.

Within a month, the president fired Balla. The following day the counsel reported the shipment of dialyzers to the FDA, which seized the shipment and determined the product to be "adulterated within the meaning of section 501(h) of the [FederalAct]."

Balla sued Gambro for wrongful discharge. He lost his case at the circuit court level, but won on appeal. In December 1991, the Illinois Supreme Court reversed the appellate court's decision.

In-house attorneys may not sue

In its opinion, upon which the above events are based, the Court said in effect that Balla could not sue his former employer under the tort of retaliatory discharge because he had been its in-house counsel.

"[T]here is no public policy more important or more fundamental than the one favoring the effective protection of the lives and property of citizens," wrote Justice William C. Clark. However, in this case, the appellee was not just an employee of Gambro, but also general counsel for Gambro. Balla "was required under the Rules of Professional Conduct to report Gambro's intention to sell 'misbranded and/or adulterated' dialyzers."

Are corporate attorneys a 'different animal' from lawyers in private practice?

Explains Arthur Steinberg, a partner in Pedersen & Houpt, the Chicago law firm that represented Gambro:

"The rules that apply to employees generally are different from those that apply to employed attorneys." In-house lawyers, says Steinberg, "already have an absolute requirement to whistle blow," under their code of professional ethics. There is also the critical matter of preserving the attorney/client relationship.

In his dissent from the majority opinion, Illinois Justice Charles Freeman found "this reasoning fatally flawed." It expects too much of lawyers and ultimately harms the public.

"I would like to believe, as my colleagues conclude, that

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Chronikos

Which U.S. business schools have the top business ethics programs? According to a recent U.S. News & World Report *survey of deans and directors of MBA programs (March 23, 1992), Harvard Business School is first, followed, in order, by Stanford University, University of Virginia (Darden), University of Pennsylvania (Wharton), and Georgetown University.*

"We cannot afford management styles that suppress and intimidate," wrote General Electric's John F. Welch, Jr. in the company's recent annual report. Emphasizing the need for trust and respect among workers and managers, the GE chairman proclaimed a "set of values we believe we will need to take this company forward, rapidly, through the 1990s and beyond."

The report received wide attention insofar as it appeared to herald an awakening on the part of an executive who earlier in his career received the nickname Neutron Jack—as one who purportedly eliminated people while leaving buildings standing. But now Welch, according to the *New York Times*, "has gone through a conversion and is now preaching corporate pacifism."

In the annual report, Welch describes four types of leaders, the last of whom is "the most difficult for many of us to deal with. That leader delivers on commitments, makes all the numbers, but doesn't share the values we must have. This is the individual who typically forces performance out of people rather than inspires it: the autocrat, the big shot, the tyrant. Too often, all of us have looked the other way—tolerated these 'Type 4' managers because—they always deliver—at least in the short term.

"And perhaps this type was more acceptable in easier times, but in an environment where we must have every good idea from every man and woman in the organization. we cannot afford management styles that suppress and intimidate. Whether we can convince and help these managers to change—recognizing how difficult that can be—or part company with them if they cannot, will be the ultimate test of our commitment to the transformation of this company and will determine the future of the mutual trust and respect we are building. In 1991 we continued to improve our personnel management to achieve much better balance between values and 'numbers.' That balance will change further in 1992 and beyond, because we know that without leaders who 'walk the talk,' all our plans, promises and dreams for the future are just that—talk."

Employers are less loyal to employees than they were five years ago. So say 69 percent of executives surveyed by Communications Briefings*, a management/communication newsletter.*

Only 16 percent of the 536 professionals surveyed said that companies were "more loyal" to their employees. Fourteen percent said companies were "as loyal."

When asked, "What is the main reason you believe employers lose the loyalty of their employees," 38 percent answered poor communication, 22 percent said "employers take employees for granted," 13 percent cited "broken promises by employers," and 7 percent said "inadequate bonuses, raises, promotions."

The survey consisted of 536 responses to 5,000 questionnaires mailed to the newsletter's subscribers, who include business, communication, human resource, training, and management professionals.

For some years business ethics professionals have been watching Harvard Business School, wondering how it would spend the $20 million gift bestowed by former SEC Commissioner John Shad to advance the cause of ethics. At last they have some answers.

The school has recruited a core of four ethics teachers, initiated extra courses, and is supporting additional research in the area, reports *Business Week*. New students now take a nine-session, nongraded "module" called Decision Making and Ethical Values. Another 150 students are enrolled in an elective course called Moral Dilemmas in Management, compared with 50 two years ago.

But some onlookers aren't impressed. "They haven't done anything new or innovative," Barbara Ley Toffler, a business ethics consultant told *Business Week*. "What they are offering is a politically correct, cram-down program," added Arizona State professor Mark Pastin.

The rocky road toward a market economy in Russia is pitted by potholes of bribery and corruption.

"Once a way of greasing the wheels of a gruesome bureaucracy, bribery has now become part of the cost of doing business and, more than ever before, part of everyday life," reports the *New York Times*, in a March 14, 1992

article.

"You can't get anything without bribes," said one store director, who anonymously called a bribery hotline set up by a local newspaper. "I get a delivery of cigarettes—10 percent goes to the supplier, to the distributor. Looking for space for your store? That's 10 grand on top."

For Westerners doing business in Moscow, "the cost of corruption is often hidden in the fee paid to middlemen or brokers, Business executives say there are two ways to tell if a bribe has changed hands: if the fee is particularly large, and if the permits are approved relatively quickly.

"One Western company involved in a real estate deal was recently asked for a seven-figure fee, in dollars not rubles, according to a Westerner familiar with the case."

A chief executive sometimes has to cut himself off from loyal subordinates in order to preserve the integrity of the organization.

On April 15, 1973, the Watergate scandal was n full swing. Henry Petersen, who headed the criminal division of the Justice Department, met with President Richard Nixon. He told the president that his two top aides, H.R. Haldeman and John Ehrlichman, should resign.

"He admitted that the evidence against them was not conclusive," writes Stephen Ambrose, in his recent book, Nixon: Ruin and Recovery 1973-1990, but "what you have to realize is that these two men have not served you well. They already have, and in the future will, cause you embarrassment, and embarrassment to the presidency.

"I can't fire men simply because of the appearance of guilt," Nixon responded. "I have to have proof of their guilt."

"What you have just said, Mr. President," Petersen replied, "speaks very well of you as a man. It does not speak well of you as a President."

As the Ambrose book makes clear, Nixon's failure to cut himself off from the Republican operatives who broke into Democratic National Headquarters in the Watergate complex, and those aides who abetted the deed, proved his political undoing. ❏

Three stages of ethics programs . . . *from page 3*

Three discussions of dilemma and relevancy.

There is a danger that the recent introduction of stiffer criminal laws in the U.S. may undercut the development of a third stage in U.S. corporate ethics practices. Legal compliance objectives may now dominate the focus of these programs to the exclusion of more ambiguous topics and questions that would further the integrating effort. If a manager is worried about demonstrating compliance on contracting—and that person's chief ethical dilemma in the past year has been layoffs—it is very tempting to stick to monitoring and enforcement questions in the corporate ethics program and forget about more uncertain issues such as use of competitive information, how hard you "sell" a customer a discretionary product, what service claims you make now that your workforce has been cut back, how far you go on environmental and safety programs, or how deeply you research product safety results. All of these questions require information, debate, and questioning.

Another leap is required to understand ethics as an essentially positive management asset—as opposed to a series of shalt-nots.

In suggesting that corporate ethics practices should engage in all three stages, I am reminded of a remark by Philip Caldwell, former chairman of Ford Motor Company, and currently senior managing director at Lehman Brothers. In recalling his push for quality improvements at Ford, and how improving the honesty of communication in the company became a central part of the changes that led to the Taurus design, Caldwell expressed some reservation about formal ethics codes and programs—not because he feared that they went too far—hut rather because they might not have the capacity to go far enough. Caldwell put it this way:

> Achieving high ethical competitive standards is not just about a set of rules—it's about a whole way of thinking.

That is the challenge that corporate ethics programs

This article is an edited excerpt from a paper delivered by Dr. Nash at the fourth annual conference of the European Business Ethics Network in London, England, that will he published in "Business Ethics in a New Europe," edited by J. Mahoney and E. Vallance, Kluwer, Netherlands 1992. ❏

Nurturing: How Branch Electric transforms its truckers and warehouse men into managers

A question for the 21st century: In an increasingly competitive global environment, how does the U.S. keep high-wage assembly-line type jobs from fleeing to developing countries, like Mexico?

The answer is training, says Foster C. Smith, senior vice president of the National Alliance of Business, based in Washington, D.C. Skills must be upgraded "so the work is worth $15 or $16 an hour."

Smith, co-author of the book *Rebuilding America's Workforce*, has warned of "serious trouble ahead unless the business community, with the help of government, builds a system to nurture and train the vast majority of young Americans who go into the workplace without college degrees so they can get better jobs with better pay."

He points to large companies that have taken the training message to heart, including Xerox, Kodak, and above alt Motorola, which "ten years ago realized that in order to survive, it had to enter into worker upgrading." Motorola even created its own "university" to improve the basic skills of its workers.

Little higher education

But not only large corporations are taking the plunge. One smaller firm that engages in continuous training is Branch Electric Supply Co., a wholesale and retail distributor of electrical supplies based in Upper Marlboro, Maryland. The company has about 325 employees and $110 million in annual sales.

Few of Branch Electric's managers have college degrees; most began in unskilled positions at the company. Eighty percent of the firm's store managers, for example, began as truck drivers or warehouse workers, according to Susan Levering, the company's director of human resources. Almost all of them are the product of the company's in-house training programs.

Ninety percent of these programs are taught by Branch Electric's own people, which helps keep down costs. If the company wants to teach a class on transformers, they ask: Who are our best-educated people in this area? Those in-house experts then work with Levering and staff so *they* can teach the classes. Many workers attend the classes at 5 p.m. on their own time, after a regular work day that begins at 6 a.m. These are people employed in the company's warehouse, counter sales, or clerical support staff.

Workers receive credits for taking the courses. When they get 40 credits, they earn a $500 education bonus. This usually takes between one and a half and two years.

Money is not the real motivation for those involved in the volunteer program, says Levering, who holds a PhD. in education. Most participate so they can gain a larger picture of the company. A woman who works in accounts receivable wants to know what the parts numbers on the invoices that she handles every day mean. In-house telephone salespeople want to know more about the products that they are selling. "What is a connector? What does it do?" Overall, about 50 percent of the firm's employees participate in the program, says Levering.

'No choice

Why did the company enter into such a program? "We had no choice," answers Charles Steiner, the company's chairman. The fact is that the nation's schools—elementary, middle, high school—"are doing a lousy job" preparing people for the work world, he says.

"It started with a sense of loyalty to the employees who are loyal to the company," explains Levering. The idea was to "develop people so they could continue to grow as the company grew." The firm expects to double in size in the next five to ten years. "The only way to do that is to prepare the workforce for that kind of growth."

Thus, the 27-year old manager who runs the company's central distribution center began working at the company while still in high school, on a work study program. He went to work at Branch Electric full-time after graduation, working in sales. Now he supervises 72 people.

Is such a program expensive? "It's expensive if you look at it in terms of dollars spent," answers Steiner. But he is convinced that it translates to better results at the bottom line, although he admits that the company has not done specific studies linking training with productivity. "We're concerned with morale," adds Levering.

The company realizes that if it runs a Wednesday

afternoon class for supervisors, there is going to be a store (or stores) that is one person short. But they take it as a matter of faith that the firm will have a payoff in the long run.

"When we send someone to a two- or three-day seminar, we know that money is coming back in a short time. It's not a cost, but an investment," says Levering.

Overall, the company has less than a 10 percent annual turnover rate, and most of that is in the first three months.

Is there an ethical component to all this? "On an overall scale, our goals as humans are to improve the lot of the people around us," says Chairman Steiner. "This is a program that has the effect of changing the socio-economic situation of people. People who have just finished high school now are able to send their children to college. In that sense, the program has an ethical component."

Foster Smith applauds Branch's efforts, noting that "it's more difficult to convince small businesses to dedicate the resources for this."

He emphasizes that the reality of global economics today is simply: "If you're not better educated than a South Korean, you're not going to get paid better than a South Korean." ❑

Gambro case . . . *Continued from page 9*

attorneys will always 'do the right thing' because the law says that they must," wrote Freeman. "However, my knowledge of human nature, which is not much greater than the average layman's…is more than sufficient to dispel such a belief.

"As reluctant as I am to concede it, the fact is that this court must take whatever steps it can, within the bounds of the law, to give lawyers incentive to abide by their ethical obligation, beyond the satisfaction inherent in their doing so."

'Excruciating case'

"It's an excruciating case for employed lawyers," observes Daniel Reynolds, a law professor at Northern Illinois University who has written extensively about wrongful discharge cases. "It's part of the continuing debate about lawyers who are full-time employees of corporate clients."

According to Balla's attorney, Alan A. Amos, the court said, "since he's required to do it [by his professional code], he should do it, and it's at his own risk."

Steinberg insists on the primacy of the attorney-lawyer relationship. "A fundamental right of the attorney-client relationship is the client's right to fire the attorney, whenever," he says in an interview. "Nothing should be used that might dampen that."

But Amos replies that in corporations today, there is really no separate client relationship. "These guys are really hirelings." In any event, where there is intent on the client's part to commit a crime, that's not privileged," says Amos. It has to be reported. "I have an obligation to do that, under the law and as a human being."

Steinberg concedes that "there will be cases where attorneys are unfairly discharged because they say an employer has to do X to comply with the law, but I think that just goes with the territory of being a lawyer." He adds that lawyers' salaries are relatively high, and unemployment among attorneys is low.

"Roger Balla is one of those unemployed," counters Amos, who adds that corporate attorneys "often can't go out and practice law as private practitioners when they are 50 or 55. It's not that easy in today's market to get another job." As for the high salaries, "Are you saying the retaliatory discharge statute doesn't apply if you're making more than $20,000 or $30,000 a year?"

Was the court insensitive?

In Professor Reynolds' view, the Court's decision "isn't sensitive enough, or responsive enough, to the reality of employed lawyers. It uses a standard of ethical discourse that was developed for lawyers in standard practice."

He agrees that a corporate attorney appears to be a "different animal" from lawyers in private practice. "They have only one client. It's their livelihood."

The larger issue is what courts think of the tort of retaliatory discharge, says Steinberg. "In Illinois the court was clearly sending the message that it wanted the tort of retaliatory discharge pulled back. But this will vary state by state.

"The law is still unsettled in Illinois as to how courts will treat whistleblowers." It has been Steinberg's experience, though, that contingency lawyers—the lawyers who typically take whistleblowing cases—"are now much more conservative as to the sorts of cases that they will take."

In any event, "It's not a closed issue," adds Reynolds, who notes that the Minnesota Supreme Court recently decided a similar case rather differently. ❑

'If no man will relieve him, let him die in the name of God'

By Loren Singer

Strategic Bankruptcy: How Corporations and Creditors Use Chapter XI To Their Advantage, by Kevin J. Delaney, University of California Press, 1992, 213 pages.

Hammurabi, who "established law and justice in the land" forty centuries ago, considered the plight of debtors who had suffered losses through no fault of their own. Those whose lands were inundated or afflicted by drought were granted relief from interest payments to their creditors for the year.

By the middle of the seventeenth century in England most avenues of refuge for a debtor had been cut off. What remained was prison, "where he must live on his own, or on the charity of others; and if no man will relieve him, let him die in the name of God."

Debtors and bankrupts who could not meet their obligations were regarded as a species of felon, weak, morally flawed, and condemned not only by lenders but by some theologians as well. And on through the 19th and 20th centuries, the threat or the probability of default was a popular plot device in works by Dickens, Thackeray, and Balzac, among others. Balzac compared bankruptcy to "a state of civil death."

In his book Kevin Delaney recounts the rules of engagement between debtors and creditors, advantages won and advantages lost by one group or another according to the economic, social, and even philosophical attitudes of the time,

Strategic bankruptcies are a strain on the social, economic and moral constraints that are supposed to be present in enlightened times like our own, argues the author.

Five major acts

Having provided this background, he includes a brief history of U.S. bankruptcy law. However complex the cases now dealt with in the courts, however lengthy the litigation and weighty the transcripts, the statutes themselves are few. There have been but five major acts, and several were quickly repealed. One such statute dealing with voluntary bankruptcy was introduced in 1841 to allow for the discharge of debt. Before it was repealed after one year, 32,000 applicants received some relief from their obligations of a total of 33,700 who filed. To the general body of creditors, this was obviously intolerable.

U.S. law did not include corporations until 1867, and their discharge from debt was tightly controlled by consent of creditors. In 1898 a new statute appeared and remained in force for 80 years. It was the first to involve a new concept: whether it was in the national interest to resuscitate a business and conserve property for the benefit of both creditors and debtors, "since forced sale in a time of depression constitutes loss to the nation…"

Historically, there was and is still, obviously, a correlation between the passage of such legislation and the conditions prevailing in the economy. Thus in 1938, during the New Deal's attempt to ease the effect of the Depression, the Chandler Act appeared, meant to offer a "fresh start" for business rehabilitation. There were three classifications provided: Chapter X, for reorganization and recapitalization under a court appointed trustee; Chapter

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XI, which kept management in place to make arrangements with unsecured creditors on indebtedness; and Chapter XII, for settling secured debts. Most troubled businesses preferred Chapter XI, since it left management in place, but during the 40s and 50s, the SEC often challenged such filings in order to protect "the public interest"; by the 60s and 70s that practice ended.

In 1970 Congress commissioned a Brookings Institution study of the bankruptcy process in the belief that a massive increase in declarations since World War II threatened the U.S. credit economy—at least, according to commercial creditors. Familiarly, thousands of pages of testimony were taken from all parties concerned with the problem. According to Delaney, the revamping of the bankruptcy code was born out of the mistaken belief that bankruptcy rates were rising. They were, but not business bankruptcies. Thus "the legal changes ended up causing the very problem that the new code was supposed to address." Between 1978 and 1987, business filings rose by 150 percent, with a 600 percent increase in Chapter XI declarations. An analysis suggested that 19 percent were due to the broadening of the law passed in 1978.

Under the new code, previous chapters were consolidated into the single Chapter XI, and Chapter VII was instituted for liquidation; also, most significantly, Chapter XI authorized continuing control by management, unless there "is a showing that a trustee is necessary" for preservation or loss prevention.

Three 'strategic' bankruptcies

Having completed his matrix with its historical, moral, and social aspects, Mr. Delaney chooses three cases of "strategic" bankruptcy to examine in these terms. It is his belief that Johns-Manville Corporation's declaration was an avoidance of court-ordered guarantees of compensation for the victims of asbestosis, the Continental Airlines filing a means of nullifying negotiated union contracts, and Texaco's move a way to force Pennzoil Company's acceptance of negotiation and the payment of a smaller sum than awarded that company by a Texas jury after Texaco's machinations involving Getty Oil.

It is his conclusion that none of these suits served the rights and interests of all parties well. Nor did the results bring about any remarkable improvement in the U.S. economy or in the stabilization of credit markets.

Certain groups did benefit. In all cases management retained its rights, privileges and salaries, and maintained control of its company. The corollary services that management employed in the lengthy and complex process added vast expenditures. There are a number of examples. Skadden. Arps, the large New York law firm, had no lawyers working on bankruptcy in 1979; in 1987 there were 22 who "played a leading role in developing novel legal arguments." Another law firm in the Texaco case had 60 lawyers in its bankruptcy department—almost 15 percent of the attorneys in the firm. The procedure was no longer an argument over the recovery of sometimes paltry sums; it had expanded into protracted conflicts in board rooms, court-rooms and Congressional hearing rooms.

Shades of Alice in Wonderland

Even those most knowledgeable, judges, found it necessary to admit the absurdity of some of their own conclusions when defining assets, valuing them, or estimating a future "earnings stream." One remarked "I don't think that anyone can predict what is going to happen tomorrow, which makes this thing like Alice in Wonderland." Another required to value oil that had not yet been found in Canada said, "I fix the exact amount at $96,856,850, which of course is a total absurdity…but for the lawyers that want me to make that fool estimate, I have just made it."

Paradoxes abound. Manville, which had previously found itself unable to make any estimate of the costs of its settlement of class action suits on behalf of asbestosis victims, suddenly offered a figure just weeks before its filing: $2 billion, a sum just about equal to company assets.

When Continental filed, it had in cash and accounts receivable over a quarter of a billion dollars, more than enough to continue in business without protection.

The Texaco maneuver was precipitated by a remarkably disingenuous view of its attempt to spirit Getty and its resources away from Pennzoil—on the part of the jury that heard the case. The panel, convinced that when an agreement is reached and handclasps are exchanged, a contract is in existence between two parties, thought the penalty for betrayal of such a principle so awful an act that it awarded Pennzoil $10.3 billion. This brought about the largest bankruptcy in history, a record that may not long endure if the strategy retains its attractions.

After the damage award had been whittled down to $3 billion, the newly flush winner was advised to borrow against the cash to come so that the whole bundle invested at one time would not cause money market rates to be driven down causing "market tumult." For its part, Texaco had to seek a "bridge loan" in order to forward its payment.

Mr. Delaney has furnished a restrained analysis; there

The law firm Skadden, Arps had no lawyers working on bankruptcy in 1979; in 1987, there were 22.

is no doubt about his opinion that strategic bankruptcies are a strain on the social, economic and moral constraints that are supposed to be present in enlightened times like our own. His tone is more sorrowful than angry at the maneuvers he has chronicled with such care. For this is a time in which prudence, careful management, and responsible and rational dealings with all of the stakeholders in a business do not have a high priority. Increases in these cases of strategic bankruptcy thus promises to harm all of "the more vulnerable and less organized groups in our society." ❑

Northrop Corp.…*Continued from page five*

when they differ from their own).

Appraising performance

Though the personal evaluations are confidential, the Values and the Leadership Inventory serve a second purpose in the delivery of performance appraisals. Northrop's revised appraisal process requires employee's performance to he measured against seven factors, such as teamwork, interpersonal relationships, and leadership.

The first factor on the list, though, is business conduct. There employees are rated under two categories: 1) alignment with the "behaviors" and Values, and 2) compliance with business practice standards required of defense contractors.

As with standard performance evaluations, an employee's rating directly affects his or her compensation and career potential. Northrop managers are currently undergoing specially designed training in values-oriented coaching and feedback to enable them to accurately evaluate their subordinates under the two categories.

While the program may appear complicated, after the initial investment, Peterson explains, "the work has been and will be well worth it. The top managers have been excited to respond to people's requests about values—it has motivated them to find out how to do ethics better, and at each point in this unfamiliar process when we would reach a new level, the next step became obvious."

Those "next steps" reveal additional elements of Northrop's ethics effort. Beyond the Values, Leadership Conference and Leadership Inventory, coaching and feedback training, confidential evaluation mechanism, and enhanced performance appraisal process, other components of Northrop's program include:

— Mission statement
— Vice Presidents Task Force (a vital link between the corporate program and line management operations).
— Communication Plan (which illustrates a month-by-month, two-year time line of actions and events scheduled to reinforce the Values).
— Northrop Open Line (which is like a hotline).
— Standards of Business Conduct (which details compliance elements).
— Leadership Conference update (a newsletter that provides tips and reminders to those who attended the Leadership Conference).
— Values Integration Team (a group of 15 representatives from separate functional areas who brainstorm about ways to translate values into action).
— "When to Challenge, When to Support" guidelines (specific suggestions to assist decision-makers facing ethical challenges).
— Policies and Procedures Manual.
— "When Things Went Wrong" video.
— A proposed "Northrop Knowledge" game (to test employees' awareness of the Values, behaviors and compliance issues.)

An uncommon experiment

From the beginning, Peterson and her team knew that a successful program would need the help of other Northrop sectors, such as communications, auditing, and human resource development. By seeking and acquiring support from these departments ahead of time, the Ethics and Business Conduct office minimized the possibility that organizational barriers would thwart the program's goals.

Northrop's uncommon experiment in emphasizing values over legalistic rules makes it a rare exception among the more usual by-the-book ethics programs in the defense industry. As corporate ethics consultants—and many organizations—have learned through trial and error over the last 15 years, programs based solely on compliance training and rule books erroneously labeled "Codes of Ethics" often suffocate the positive aspects of corporate ethics, and sooner or later fail. ❑