In breast implants scandal, where was Dow Corning’s concern for women?

By Andrew W. Singer

In the annals of business ethics, the fall from grace of Dow Corning Corporation was particularly precipitous. Here was one of America’s 100 most profitable industrial companies. Its high-level Business Conduct Committee, which dated back to the 1970s, was considered an industry model: It conducted annually some 25 face-to-face audits worldwide with employee groups. More than ninety percent of Dow Corning employees considered the company “highly ethical,” according to a 1988 company survey, an exceptionally high rating.

That was all before the silicone breast implants scandal.

Even though the health hazards associated with the silicone implants came to light gradually, over years, the defining moment for John E. Swanson was a June 1991 story in Business Week magazine (dated June 10, 1991). This was the first article that alleged that Dow Corning concealed documents about the product’s safety. “It was the first time the company’s ethics were questioned in a public way. To me, it was a shock,” recalls Swanson, then manager of internal communications and the sole permanent member of the company’s Business Conduct Committee. After 26 years with the company, “I thought I knew where all the skeletons were.”

The article alleged that silicone breast implants could deteriorate and leak, wreaking havoc upon a woman’s immune system. The company had long maintained that the implants it manufactured through Dow Corning Wright, its subsidiary company, would last a woman’s lifetime. At the time of the article, approximately 1.5 million to 2 million women had had silicone breast implants. It was the third largest form of cosmetic surgery after nose and liposuction operations. Nevertheless, Business Week charged that the industry had known for a decade of animal studies that linked implants to cancer and other illnesses.

On June 4, 1991, Swanson sent to the company’s corporate Comptroller, who was chairman of the Business Conduct Committee, a note via electronic mail about the Business
‘The ethics process worked while the company had no problems. But when the company’s feet were put to the fire, the process failed.’

Week article, which he said clearly raises ethical issues and “casts a cloud over the company” that was hurting its “hard-earned reputation” as an organization committed to integrity. Swanson said that “it was time to re-examine our position.”

He reasoned that if there is a growing body of anecdotal evidence of health problems (even in the absence of the usual animal studies, epidemiological studies, etc.), should a responsible manufacturer stay in the market? Could it really countenance continuing to supply 130,000 women a year with implants? It wasn’t as if the business was making the company much money, after all. The implant business accounted for less than 1 percent of the Midland, Michigan-based company’s sales.

Swanson discussed the case for suspending sale and manufacture with the company’s Business Conduct Committee, which in addition to Swanson and the Comptroller, included Dow Corning’s Director of Sales and Marketing and its Vice President and General Manager of the company’s largest industrial business, among others. (The Committee did not include the three or four top decision makers in the company. Nonetheless, Swanson says the committee had influence within the company. “It had easy access to the CEO and to anyone in the company. It was a well-regarded committee of senior managers.”)

A decision to keep manufacturing

The issue came to a head at a Corporate Board of Directors meeting on June 10, 1991. Prior to that meeting, Swanson spoke with the executive who had been assigned responsibility in the implant controversy. Swanson suggested a tactic to pre-empt discussion: A fictional press release for use at the meeting. It read in part:

“Dow Corning Wright will suspend the manufacture and sale of breast implants until research on certain biosafety issues has been concluded. Since entering the market in 1963, Dow Corning has continuously studied the health and safety effects of these devices . . . and believes them to be safe. But it also recognizes that questions about the safety of silicone implants exist. We are placing a high priority on finding scientifically sound answers to these questions.”

The board met. The breast implant controversy was discussed. Unfortunately, the board decided to stay in the business, recalls Swanson.

Why did it not react? The company had become “ hypersensitive about its legal position,” suggests Swanson. The company had paid $1.5 million in punitive damages in a major 1984 lawsuit in which a federal district judge had found the company’s implants inherently defective. The judge had noted that the company’s own studies “cast considerable doubt on the safety of the product,” the results of which were not disclosed to patients. The judge called the company’s actions “highly reprehensible.”

Following the Business Week article and the board meeting, the company apparently believed that to suspend production would be to admit the product was dangerous and would invite further legal action.

A damaged reputation

This was an “interesting perspective,” comments Swanson. When the company has one to two million women with silicone breast implants and has lost a lawsuit on the issue of fraud and the concealment of information, one might
think that would “serve as a wake-up call.” Perhaps the company should simply have said, “To hell with the legal defense” and looked first at the health of its women users.

The result of Dow Corning’s decision not to suspend manufacture was to exacerbate a situation that eventually was to result in approximately 12,000 lawsuits by early 1994 and a proposed $4.25 billion global settlement. (The mass settlement included other silicone implant manufacturers as well as suppliers and doctors.)

The company’s reputation suffered grievously. By March 1992, the common view of the company in the public mind was that its devices were not safe, that it had covered up evidence about their safety, that it was insensitive, and that its actions amounted to a 30-year medical experiment on women who were uninformed as to the risks.

The company’s CEO was demoted as a result of the affair. In March 1992, the company commenced getting out of the silicone breast implant business. Dow Chemical Chairman Frank Popoff (Dow Corning is a joint venture between Dow Chemical Co. and Corning, Inc.) declared in April 1992 that CEO Lawrence Reed was “not emotionally equipped” to deal with the crisis. Dow Corning lost more than $287 million in 1993.

How could it happen?

How could a well-regarded company reach such a pass? There were several reasons, in Swanson’s view. He speaks of an “insulated organizational syndrome.” The company had only two shareholders, after all, Dow Chemical and Corning, Inc., and as a result it had operated independent of the scrutiny to which most large public companies are subject. There was an “attitude of invincibility” within the company. In the area of silicone technology the company was regarded as a world leader and some of its managers may have felt they could do no wrong in this area.

There was management’s inability to gauge the public’s perceptions, too. Dow Corning’s position was and is that all the scientific evidence was still not in regarding the safety of silicone breast implants. Technically, this is correct. But meanwhile the company was “losing the battle in public opinion.” It was seen as a callous corporation, indifferent to the plight of its product’s end users.

There was a lack of crisis-management leadership too. If one criterion for selection of a new CEO back in 1984 had been how well the chief executive understood the company’s various constituencies, including its ultimate customers and government regulators, then Lawrence Reed probably would not have made the final cut, in Swanson’s view. “Reed was inexperienced” in many of these stakeholder matters, including crisis management.

Where was the Business Conduct Committee?

Still, for so-called business ethics practitioners, a further question has to be: What happened to Dow Corning’s vaunted Business Conduct Committee? Could it not influence the outcome in a case that clearly had ethical implications? And if not, does that not call into question the efficacy of not only this committee but of business conduct committees in general? Are such committees, in fact, nothing more than fig leaves on the secular corporate body?

“In a very broad sense, if you have a wonderful process, and good communications, and also have few major problems, then the program will look very good, and that was the case for a long time,” says Swanson.

For a company with sales in the $2 billion range, Dow Corning had a relatively small employee base: less than 9,000 employees. This enabled the company to “put together a business ethics program that had the potential of touching all the company’s people in the world at some time.”

Swanson estimates that from the 1970s, Dow Corning conducted some 500 ethics audits with employee groups, half in locations outside the U.S. and as far afield as Europe and South America. It was a “great way to educate employees” in business conduct issues. Many sessions were conducted by senior officers. Swanson conducted hundreds himself.

His final judgment is harsh, however: “I’d categorize the process as good time ethics.” When it came to the real test, Dow Corning failed.

A failure of leadership

“What Dow Corning needed was a leader with a sixth sense that told him: ‘This company has values that insist that we stand up for the women who have used our products.’” Until they knew for sure the health repercussions, they should have taken the devices off the market.

Moreover, if the company had stood up and admitted its mistakes and said, “We have to make them right,” it is...
Swanson’s view that “the media would have lacked the incentive to keep digging unrelentingly into the company’s past.” The company’s stonewalling in the affair only encouraged further media scrutiny.

“The finest and most elaborate ethics programs are no more effective than the company’s leadership permits them to be.”

Nor does Swanson think that the company only needed to do something in the early 1990s when the controversy reached public light. Dow Corning could have “stepped up” to the issue decades earlier when it was known that women who were users of the product weren’t getting all the information needed to make informed judgments. Why did the company think that it was sufficient to provide information only to the plastic surgeons who inserted the devices? What assurance did the company have that women were getting information from the plastic surgeons?

Employee surveys
That the whole affair took a toll on employee morale is not surprising. As mentioned, the company conducted an employee survey in 1988 before the breast implant controversy arose that found that over 90 percent of its domestic employees considered Dow Corning a “highly ethical company.” In 1992, while the controversy was in full swing, the company did another survey. Not surprisingly, its ethics rating dropped. It did not drop precipitously, however. Seventy-seven percent of employees still said Dow Corning was a “highly ethical company.” This seems noteworthy. Many companies that have avoided major scandals would probably be pleased if as many as 50 percent of employees viewed them as “highly ethical.”

The fact that many employees stood by the company might serve as some consolation in the whole tale. “Over a period of time, from 1976 on, pride in ethical conduct was very important to the company,” recalls Swanson. Dow Corning is fortunate to have an employee base “that has hung in with them through all the bad publicity.” Evidence introduced in implant trials and many of Dow Corning’s long-suppressed safety studies when released had “not put the company in a good light.” The fact that employees remained “amazingly loyal” might be attributed in part to the attention paid to business ethics through the years. That, at least, is one way of salvaging something of value.

A new CEO
Keith R. McKennon was brought in from Dow Chemical Company to take over running the company after Reed was demoted in 1992. He was probably the “best guy” for the task, in Swanson’s view. A veteran of Dow’s Chemical’s Agent Orange controversy, McKennon was skilled in dealing with the media. The company’s new “theme” became its concern for women with implants. McKennon gave more than 100 interviews in his first month on the job, including an hour on the Larry King show.

“He became visible and displayed more sensitivity.”
McKennon announced a $10 million research program to find answers to some of the health and scientific questions that had been raised in the affair. McKennon admitted that Dow Corning had made errors, the first time the company had publicly confessed to this.

In early 1993, Swanson spoke with McKennon’s successor, Richard Hazleton, about the Business Conduct Committee. “What we arrived at was a new process for changing the role of the Business Conduct Committee from a leadership body to a facilitating role.” They discussed ways to integrate the committee’s former responsibilities into those of Dow Corning’s line management.

The Business Conduct Committee now represents all geographic areas, not just the U.S., as was the case earlier. The new structures should move the process toward a “day to day activity rather than an event-linked” process.

Not ‘inherently bad’
Swanson insists that the company did and does have an ethical culture. “It is not an inherently bad company with evil intentions.” On the contrary, Dow Corning has “good people,” and if one looks at its 50-year history, “it is a very good one, with only one black mark.” During that 40 to 50 year period, however, the company operated in an unusual environment, shielded by its two shareholders and led by managers who were chemists or chemical engineers and weren’t called upon to concern themselves with crisis management. According to Swanson they were a “bright group of linear problem solvers,” highly analytic managers whose biggest challenge was traditionally deciding which of the company’s promising technologies to commercialize.

Continued on page 11
“I saw it unravel. I saw how an organization wasn’t reacting to the bigger issues,” recalls Barbara Pope, who until 1992 was Assistant Secretary of the Navy. As a manager for 18 years, she looks at the U.S. Navy’s sexual harassment problems from a manager’s point of view. Today she heads the Pope Group, a firm based in Bethesda, Maryland, that consults with public and non-public organizations on management problems, with a particular focus on diversity and sexual harassment issues.

These days perhaps the two most unwelcome words in the United States Navy are sexual harassment. The service and its top brass have been pummeled and vilified for their part (or non-part) in the infamous Tailhook Association convention in 1991. At that time, it may be remembered, female Navy officers were groped and assaulted by their fellow officers in the halls of a Las Vegas hotel.

By all accounts, Tailhook represented a gross breakdown of leadership. A Navy judge later accused the service’s chief Admiral, Frank B. Kelso 2nd, of having witnessed the misconduct—and doing nothing. The affair “represented a failure of leadership on the Navy’s part,” acknowledged no less a personage than U.S. Secretary of Defense William Perry.

They did nothing

In the case of Tailhook, if the First Admiral had done something—anything—when Lt. Paula Coughlin came forward “Tailhook never would have happened,” asserts Pope in a recent interview. When an individual comes forward with a complaint of this sort—Coughlin was one of 15 women assaulted by Navy aviators at the convention hotel—at a minimum the manager should make an effort at empathy, of understanding. And the manager should try to collect the facts, i.e., what exactly did happen. “They did neither. No one in leadership was appalled.”

Pope spoke with Coughlin, the main “whistleblower” in the Tailhook affair, after the incident. Coughlin made it clear that “she didn’t want the [Navy] aviators fired.” What she really wanted was some acknowledgment that a wrong had been committed: That fellow officers whom she knew—whom she worked with every day—had assaulted her in the hall of the hotel. And that was not right. “But nothing happened.” The Navy leadership, in effect, stonewalled. (The Navy judge later charged, among other things, that Admiral Kelso had manipulated a subsequent investigation into the affair to shield himself from blame.)

The same standard for everyone

“You have to have strong leadership, leadership that walks the talk. There has to be the same standard for everyone, top performers, low performers, senior people, junior people,” says Pope. Only then is there a possibility of generating trust in the organization.
In the everyday work environment, nothing quite so dramatic as the Tailhook affair is likely to confront senior managers. But harassment is an everyday threat. A CEO should talk to managers, making it understood that harassing type of behavior will not be tolerated, especially from managers. If a manager is making off-color jokes, the CEO might say, “Joe, I know you don’t mean this to be threatening, but some in the organization might take it that way.” The CEO need not blow away the offending manager. It’s important, after all, says Pope, “to give people the benefit of the doubt.”

Senior managers should be sensitive to such things as jokes and language. Pope offers this rule of thumb: “If you can’t say it in front of your spouse or your children, don’t say it.” A top manager has to resolve: “I’m not going to tell these kind of [lewd] jokes or let others tell them.”

Pope recounts an instance when an executive displayed just this sort of sensitivity. A senior manager at a large organization had had a conversation with one of his managers, a woman. He told an off-color joke. The woman assumed that he didn’t mean anything by it. But the next day the senior manager called her anyway and apologized: “Listen, I realize I shouldn’t have put it that way.”

Recalls Pope: “That was important to her,” i.e., that he should take the time to say, ‘I didn’t mean to tell that joke.’

**Be careful with ‘zero tolerance’**

Many organizations today are declaring “zero tolerance” where sexual harassment is concerned. But this has its own risks. One is that the offending conduct may simply be driven underground. This is likely to happen if “zero tolerance” is not accompanied by education.

Pope relates the story of a senior manager who had been “hitting on” the women in the organization for some years, but no one in senior management knew this. Many people lower down in the organization were aware of it, however. Because they weren’t particularly interested in seeing this manager fired, or getting personally involved in what they assumed would be a complex legal process, they said nothing. They assumed it was an either/or situation.

Education in procedures would have taught them that “zero tolerance” could mean that the senior manager would first receive a warning about his offensive conduct.

“When the case exploded, the CEO was appalled. He was frustrated that it had gone on for years. He realized that zero tolerance wasn’t enough without education. The people involved didn’t want the man fired. They just wanted to get on with their jobs,” recalls Pope.

**A bottom-line issue**

If an organization is going to maintain a work environment free of sexual harassment, several key elements are critical. “Sexual harassment has got to be seen as a bottom-line issue, one that affects productivity, morale, turnover.” If it is affecting the workforce, it will ultimately affect the final work product. Sexual harassment should be viewed as an issue that goes beyond merely avoiding liability.

A survey of large Fortune 500 companies several years back, Pope recalls, found that the average cost to companies with 23,000 or more employees as a result of sexual harassment was $6.7 million per year. This included the cost of turnover, productivity losses, and low morale, which admittedly are difficult things to quantify.

Second, there has to be a clear policy. A “hostile environment” is now illegal under law. A company must make it clear that it is committed to a workplace free of such sexual hostility.

“The focus has to be on prevention.” One has to have education from the senior levels down through the organization. “Zero tolerance” has to be part of the environment. This really has to do with the “basics of human dignity.”

Observes Pope: “If sexual harassment is going on, you probably have race discrimination going on.”

Enforcement must be consistent, too. “The informal system is as important as the formal system.” It builds trust. “People don’t come forward because they don’t trust the organization.”

**Gray areas**

There are bound to be gray areas when dealing with sexual harassment. When a so-called incident occurs, one has to ask: What is the motivation behind the behavior. “Is it affection and affiliation? Or is it power and control?” If it’s the first, “and the person says, ‘No, I don’t appreciate it,’ then the person stops.” If the motivation, on the other hand, is power, then the behavior usually does not end.

Lewd or crude jokes are not sexual harassment in themselves. But they are often seen as inappropriate in the workplace, and if they go on for a long time they can develop
into sexual harassment. “It’s smart to be cautious about it. It may be contributing to an environment where other people may say it [sexual harassment] is okay.” If someone says “it’s distracting me from my work,” then that can be sexual harassment.”

If a person asks a co-worker for a date, and the other person says no, and the first person walks away, that’s okay. But what if the man asks a second or a third time? Much will depend on the “recipient’s” response. If she says, “‘No, I can’t, I’m washing my hair tonight,’ that doesn’t make it clear that the advances are unwanted.”

On the other hand, if the woman says, “I’m flattered, but I don’t date people in the workplace,” then a clear message has been passed along. If the man still persists, then you have a problem.

A confused workplace

There is much confusion in the workforce today, Pope acknowledges. In some cases “supervisors don’t want to give negative feedback because they’re afraid of a bogus harassment charge.” They fear that their organizations are so paranoid about sexual harassment that they will overreact. “Those are valid concerns.”

What advice does she have for that anxious supervisor? “Write a memo to the file. Say, ‘This is what we discussed’ so you have a paper record.” The supervisor might also have someone else sit in on the session, as a witness. But it is still important to build a case file so it can be said that the supervisor gave this person feedback, i.e., “You’re not qualified, and I’ve been telling you for six months.”

When it comes to sexual harassment, Pope doesn’t like the term “victim.” She prefers “recipient” instead. The word “victim” assumes that an individual is powerless, which often isn’t the case. In fact, Pope advocates a tactic developed by Mary Rowe at the Massachusetts Institute of Technology of “writing out” in the form of a letter how the “recipient” felt when so and so made advances or engaged in lewd conduct. Such a letter should describe the behavior, summarize how the recipient “felt,” and finally ask the person to stop. “Please stop asking me out.”

Often this is the first time that the offending person has seen things put in this form and the behavior will often stop. “And if not, you have a record,” notes Pope.

What to do

When a complaint has been made, the first thing to do is to collect the facts. A woman might put it in writing, perhaps with the help of a designated third party, such as an ombudsperson. The point of the letter: “I want the behavior to stop.”

If that doesn’t work, one can go to the harasser’s boss. If the action has happened before, then the organization has a serious problem. “If it is a repeat offender, a top performer, for example, and the organization does nothing, then no one will trust the system.”

The ideal outcome, of course, is to keep the top performer, put an end to the offending behavior, and engender satisfaction in the minds of employees who know the system works. That isn’t possible in all situations, of course, but it is probably possible in more instances than is commonly assumed.

There are cultural differences that should be taken into account when dealing with sexual harassment. In some cultures, for instance, “touching” is more common than in other societies. If one is from a Mediterranean background, as Pope is, it may be more natural to talk with one’s hands, or to touch another person in the course of social intercourse. “I have found in the workplace that I can’t do that,” says Pope, who in 18 years of management has had numerous male subordinates. Where it might be normal behavior for her to put her hand on another person’s hand to get that person’s attention, she can’t do that in the workplace. “I’ve got to be very careful.”

Time to move on

Pope, a political appointee, left government service in 1992 with the change of Administrations. Even though she was asked by the Clinton Administration to stay on for several months as Acting Secretary of the Navy, she recognized that “it was time to go.” (Her departure had nothing to do with Tailhook.)

The Navy has since stepped back and looked not just at sexual harassment but at its whole tradition. “To their credit they’ve looked at this as a leadership issue,” says Pope.
An in-house or outside hotline operator: pros and cons

When establishing an ethics hotline, should a company manage the process in-house or contract it to an outside firm?

One disadvantage of hiring an outside firm like Pinkerton’s Alert Services (see *Ethikos*, March/April 1994) or a law firm to run the hotline is that the corporation loses some control, notes Steven F. Molo, a partner in the law firm of Winston & Strawn.

An in-house hotline operator in a large organization, trained by the company’s ethics officer, may be able to direct calls to the proper source better than an outside operator. The in-house operator might have a better idea, too, when a particular issue should be taken more or less seriously.

An in-house operation can create “a positive image within the company,” because employees know that someone in their company is manning the hotline, suggests Molo.

“If it’s in-house, you want to train people properly to deal with the types of calls that will come in. Many will be human resources calls rather than actual reports of criminal misconduct,” notes Molo, who has advised corporations setting up hotlines.

Operators should be trained to direct issues to the right department, to gather the appropriate information, and to counsel callers properly. They should be taught to involve corporate counsel if reports have legal implications so attorney/client privilege can be invoked. A case where the caller claims to have some evidence of an employee taking kickbacks from a vendor, for instance, would often be reported to the general counsel’s office.

An outside firm may bring credibility

Why do some corporations go with outside firms, then? In a word, credibility. In some companies there is a perception that an outside firm is better equipped to maintain employee anonymity. This is something that may or may not be the case, in Molo’s view, but there is no question that employees at some companies still believe that hotlines are not on the up and up. Some insist that the company’s security department is monitoring calls, for instance. If a company has a credibility problem of this sort, then an outside firm may be the way to go.

On the other hand, notes Molo, who works out of Winston & Strawn’s Chicago office, time is often the great healer (or destroyer) where credibility is concerned. When employees use a hotline—and learn that it really is anonymous—that experience is communicated throughout the organization and hotline credibility grows.

An outside hotline firm has another potential advantage: Because the operator
often is doing similar work for other companies, he or she
becomes experienced in these matters. This operator may be
on the “cutting edge” of hotline issues, as it were.

If an organization does go with an outside hotline, it
should conduct careful interviews with the firm to make sure
that it, the client, has some control over reports and the way
issues are to be referred back to the company, says Molo.

The inside/outside question often comes down to whether
an organization has the resources for an in-house hotline,
suggests Molo. Can it afford to pay someone full time? If
not, it may have no choice but to go the outside route.

**Snitch lines?**

Ethics and compliance hotlines received some negative
press recently in the form of an Op Ed article in the *Wall
Street Journal* (March 14, 1994) which suggested that
hotlines in some cases were little more than “snitch” lines.
“It’s the Big Brother thing,” said an unidentified employee
of International Paper, which implemented a Compliance
Line last summer. “You’re encouraged to report on your
neighbors and friends.”

“They create an environment of mistrust,” commented
Barbara Ley Toffler, a principal at Resources for Responsible
Management (Boston), in the article.

In a letter written in response to the *Wall Street Journal*
article, and again in an interview with *ethikos*, Molo ob-
served that under the 1991 federal organizational sentencing
guidelines many large corporations feel that they have no
choice but to go the hotline route.

Companies must have “effective” compliance programs
to be eligible for mitigating credits under the sentencing
guidelines, runs this argument. (These credits can save
 corporations millions of dollars in penalties if they are
convicted of corporate crimes.)

To be deemed “effective” a compliance program must,
among other things, provide employees a means of reporting
criminal conduct by others without fear of retribution. The
government doesn’t say that this means the company must
have an ethics or compliance hotline. But a hotline has been
the preferred choice of many large corporations trying to
meet this requirement.

One common criterion of effectiveness, notes Molo, is:
Does a program meet industry standards? If a company
doesn’t have a hotline, it may be found not to have kept up
with industry standards. Its program may thus be deemed
“ineffective” and ineligible for the mitigating credits.

There are other alternatives to hotlines, such as report-
ing wrongdoing directly to one’s superior or writing out a

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**‘I don’t think any company would take precipitous action based solely on a hotline report.’**

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report in the form of an anonymous letter, Molo notes. “In
theory, that could be enough. But I think the guidelines
anticipate more.”

**Can be a ‘positive’ part of culture**

Big Brother fears associated with hotlines aren’t en-
tirely unfounded. “Some companies find that it seems ‘anti’
their culture,” notes Molo. “But if they are implemented in
the right way, they can be a positive part of any company’s
culture.”

Hotlines should be set up “in conjunction with other
methods of reporting,” such as direct reports to supervisors
or an ombudsman, or a written letter. And a company should
“make those other methods known.”

When rolling out the hotline, an organization should
also explain that this is something intended to foster a law-
abiding ethic and is not just a company snitch line. “Tell
them: We do want you to use it for positive reasons.” It
doesn’t hurt to make it known, either, that deliberate misuse
of the hotline will be grounds for discipline.

What about so-called grudge calls? The hotline opera-
tor has to obtain as much information as possible in order to
screen such calls, suggests Molo. He or she can never know
for sure if a call is frivolous. There will always be some calls
of this nature. “But companies will often find that fewer
crank calls are reported than might have been originally
thought” before the hotline was implemented.

Barbara Toffler told *ethikos* that one fundamental
problem with hotlines is that they are based on anonymous
accusations “which deny people what the legal system
allows them: The ability to stand face-to-face with their
accusers.”

What about that criticism? “I don’t think any company
would take precipitous action based solely on a hotline
report,” answers Molo. The organization will seek further
information to see if there is any substance to the report. And
if the report can not be verified, no action will be taken.

But, say critics, during the investigation a cloud hangs...
Legal but not ethical. That is the verdict of a U.S. Congressman upon learning that Philip Morris Companies had suppressed a 1983 research study that demonstrated the addictive effect of nicotine on rats. This was five years before the U.S. Surgeon General declared that nicotine was an addictive substance.

Philip Morris, which manufactures Marlboro cigarettes, forced the author of the study, a researcher who worked for the company, to withdraw an article based on his findings after it had been accepted for publication in the journal Psychopharmacology. “Experts on nicotine and addiction said the paper would have been the first and best of its kind at the time, an important addition to research on the addictive properties of nicotine,” reported the New York Times.

Congressman Henry Waxman (D-CA) told the Times that there was probably no legal requirement that the company publish the study but that there was a strong moral imperative to do so.

Whistleblowers continue to reap enormous monetary rewards under the controversial False Claims Act. At the end of March, the former chief financial officer of United Technologies Corporation (UTC) was awarded $22.5 million for his part in exposing fraudulent billing practices at UTC in connection with a U.S. Defense contract in the 1980s.

The former CFO, Douglas D. Keeth, had participated in an internal investigation into alleged overbilling of the government in UTC’s Sikorsky helicopter division. Keeth later charged that company officials attempted to cover up the extent of the overbilling.

While denying that it had covered up, UTC nonetheless agreed to pay the government $150 million because of accounting irregularities. Under the amended False Claims Act, whistleblowers who initiate lawsuits that lead to the recovery of money by the government are entitled to a share of any recovery. In this case, Keeth will realize 15 percent.

John Phillips, a lawyer involved in many False Claims Act suits, told the New York Times (April 1, 1994) that Keeth was the highest ranking corporate official to reveal wrongdoing to the government in connection with the whistleblowing law. The government has recovered $738 million since the False Claims Act was amended in 1986, said Phillips, and “the recoveries this year will probably be near $500 million.”

Fraudulent trading by its leading government bond trader apparently caused brokerage firm of Kidder Peabody to overstate its profits by an astonishing $350 million in 1993.

The scheme, wrought by a 36-year old managing director who apparently was trying to inflate his bonus, involved stripped government bonds in which the rights to the interest payments are sold separately from the rights to the principal. The case highlights the limitations of corporate compliance programs, in the view of some observers. “How Kidder Peabody could be bilked like this is shocking,” Harvey Goldschmid, a professor at Columbia University’s law school told the Wall Street Journal (April 19, 1994). “Missing $350 million of false gain may indicate that internal and external auditing procedures aren’t keeping up with the complexity of what’s going on.”

“It’s clearly a black eye for G.E.,” a Salomon Brothers analyst told the New York Times, referring to the brokerage firm’s parent, General Electric Company. “It’s frankly surprising that a company like G.E. would allow something of this magnitude to happen.”

General Electric CEO John Welch Jr. countered that there were limits to the effectiveness of any control system, telling the Times, “When we have 220,000 employees, you can’t legislate morality. Obviously we made a mistake in hiring and obviously the controls were not good enough to stop the clever scheme this fellow put together.”

Corporate compliance programs and ethics programs are often spoken of interchangeably. But there is a world of difference between the two, according to an article in the March/April issue of the Harvard Business Review.

“To foster a climate that encourages exemplary behavior, corporations need a comprehensive approach that goes beyond the often punitive legal compliance stance,” writes Lynn Sharp Paine.

“Even in the best cases, legal compliance is unlikely to unleash much moral imagination or commitment. The law does not generally seek to inspire human excellence or distinction. It is no guide for exemplary behavior—or even good practice,” observes Paine, an associate professor at the Harvard Business School.
By contrast, “a strategy based on integrity holds organizations to a more robust standard. While compliance is rooted in avoiding legal sanctions, organizational integrity is based on the concept of self-governance in accordance with a set of guiding principles.”

While a compliance strategy is “lawyer driven,” an integrity standard is “management driven” with the aid of lawyers, human resource managers, and others. Whereas the methods used in a compliance strategy are education, reduced discretion, auditing and controls, and penalties, those used in an integrity strategy also include leadership, accountability, and organizational systems. The overall behavioral assumption of a compliance system is that autonomous beings are guided by material self interest, notes Paine. The behavioral assumptions of an integrity system are that “social beings [are] guided by material self-interest, values, ideals, peers.”

In 1993 Dow Corning finally changed its patient implant book to say that it had no definitive data on the life expectancy of the implants.

Dow Corning . . . Continued from page four

When the crisis surfaced, Dow Corning was “shocked and didn’t know how to handle it.”

Out of the loop

The controversy resulted in Swanson’s leaving the company. In September 1991, “I approached top management. I told them that I had an ethical conflict of interest with the company’s breast implant position.” He also related that at some time after leaving the company he wanted to do further work in business ethics and “could not espouse the Dow Corning role” in this affair.

After making this decision, “I thought there was a reasonable chance that the company might try to move me out, but they didn’t do that. So I removed myself from communications activities relating to implants and concentrated more on business conduct activities.”

He let his staff know his views. They were not to give him any information on breast implants. Essentially he took himself out of the loop where breast implants were concerned and remained so for the next two years. He remained on the Business Conduct Committee.

Swanson recognized that taking issue with the company on such a major matter was obviously “not a career builder.” He left the company in August 1993 after things had become increasingly uncomfortable. “It became clear to me that the company was committed to one position and I believed in a very different one.”

He moved from Michigan to Indiana where he now conducts his own consulting business, Applied Business Ethics. He may eventually write a book on the breast implant controversy.

Did he feel personally betrayed? After all, Swanson spent 26 years of his life with the company, significant parts of it spent traveling to places like Brazil to propound the business ethics theme. Arguably, all that work was overshadowed by the breast implant controversy.

“If it had happened in a major part of the business, I would have been very demoralized by the failure.” But it is one of the ironies of the affair that it occurred in the smallest of Dow Corning’s businesses, the health care area, a business that accounted for a minor percentage of the company’s sales.

“I can see how the business conduct process missed it.” Breast implants simply didn’t receive the management attention that other parts of the business—industrial sealants, say—received.

But that does not change the fact that it wasn’t until 1993 that Dow Corning finally changed its patient implant book to say that it had “no definitive data on the life expectancy of the implants,” and that they may not last beyond 10 years. Until that time the company had insisted that the implants would last a woman’s lifetime.

Asks Swanson: How many women would have elected to have silicone breast implants if they had known that they might have to have a major operation to replace them every seven to ten years?

“The ethics process worked while the company had no problems,” says Swanson. “But when the company’s feet were put to the fire, the process failed.”
A new general counsel fortifies PaineWebber’s compliance efforts

By Priscilla Lundin

“Thank you, PaineWebber.” Down the road, more clients of this top-ten securities firm may be saying that, as a result of bold compliance initiatives launched by Ted Levine, who took over as General Counsel to the PaineWebber Group, Inc., in May 1993.

The problem was that too many of the brokerage house’s customers hadn’t been saying “thank you” lately. Instead, they had been suing the firm—for big numbers—and winning. According to a Wall Street Journal article (January 14, 1994), PaineWebber had to pay out almost $16.4 million for four arbitration awards in fiscal 1993, more than any comparable securities firm paid in total awards for the same period. The Journal also reported that PaineWebber lost 61 percent of customer dispute arbitrations in the first half of 1992, the most of any top-ten firm.

Some of this customer dissatisfaction may have trickled down to PaineWebber’s own brokers, based on a December 1993 “report card” by the Registered Representative, a trade publication. A telephone poll of 450 brokers at nine securities firms designed to gauge what brokers think about their firms found that PaineWebber brokers rated their company the lowest overall among the nine firms. The survey looked at such things as sales assistance, training, sales quota, research data, etc. (The silver lining: The brokers gave the firm an “A” on its overall ethics.)

Structural changes

Ted Levine came to PaineWebber from Wilmer, Cutler and Pickering, in Washington, D.C., where he was a partner for nine years. Before that he spent 15 years with the Securities and Exchange Commission (SEC) and served as the agency’s Associate Director in the Division of Enforcement.

Some of the compliance-related changes Levine has made so far are structural. The employee group that handles customer complaints now reports directly to the legal department, for example, a move that Levine says has been favorably received. “The proof is that our business people now come to us with problems,” he says. With some two million customers served by almost 5,400 brokers, the matters handled by the customer complaint unit range from a customer not getting a dividend check to serious charges involving sales practices, such as a broker’s misrepresentation of a product to an investor.

Levine has also reorganized the counsels to the firm’s four different divisions (retail sales, institutional sales, investment banking and asset management), making sure that each division has a lawyer responsible for trouble-shooting problems on a day-to-day basis.

The firm’s regulatory group, dealing with SEC and state securities law, has been beefed up, and Levine has brought in at high levels, staff with significant SEC and state securities experience. Also strengthened is the firm’s internal review group, which conducts fact-

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finding and makes recommendations when problems arise. In addition, an in-house, early dispute resolution group involving customer complaints, says Levine, “is now more focused so it can act on a more timely basis.”

**Pro-active compliance**

Levine has also created a litigation risk group of compliance people as well as lawyers whose mission it is to look at big-picture issues—like disclosure, suitability, and trading practices—and solve potential problems before they happen. “So much of the law is looking back,” observes Levine, “Given the regulatory environment that we’re operating in, we’ve got to have pro-active compliance. We want to be ahead of the curve.”

Plans for a hotline have been approved, with the only open issue being the choice of the right person to pick up the telephone. “I want someone who’s senior and sensitive to the issues,” Levine says. “He or she must also be able to handle a crisis well.”

He doesn’t want a lawyer, although to protect the company’s attorney-client privilege Levine himself will review the hotline activity on a weekly basis. It’s not that Levine thinks callers wouldn’t confide in in-house counsel.

His decision to use someone on the business side as a hotline administrator is based on an opinion of the New York State Bar Association’s Committee on Professional Ethics (Opinion No. 650) that a corporate lawyer who staffs an ethics hotline should give “Miranda”-type warnings to some callers, advising them that they may need to get their own counsel.

Levine has also ruled out a hotline handled from outside the firm. “I have a gut reaction against that,” he says. “I think you lose something.”

Levine keeps up with compliance efforts industry-wide through his participation in the Securities Industry Association (SIA), where he is a member of the Legal and Compliance Division. “It’s a great forum for the exchange of ideas and methods,” he says, noting that one of the workshops he attended at the SIA’s last annual conference involved corporate ethics issues.

Levine has also held training seminars, with more planned, for in-house lawyers and supervisors, dealing with ethical issues as well as legal and regulatory requirements. One “hypothetical” the group worked through involved conflict of interest problems that arise when an in-house counsel who is defending a broker in a claim that has gone to arbitration realizes that the broker’s interests are different from the company’s. Whom does the lawyer really represent? “It’s a give and take,” says Levine. “We try to establish a dialogue.”

What Levine brings to the party that pulls together PaineWebber’s compliance program is an intangible: His independent perspectives developed over more than two decades as a prosecutor, and on the defense side on behalf of private litigants. He has also chosen not to be on the firm’s Board of Directors or on any operating committees, although some general counsels of other brokerage houses are.

“It varies as a matter of style,” he says, “but I don’t want to confuse what role I play.”

He is also well aware that the role of inside counsel is a supporting one. “When you’re outside counsel, at the end of the day, you go home,” he observes. “To be effective when you’re inside, you have to have the support of senior management.”

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**Hotlines . . . Continued from page 9**

over the person charged. His or her supervisor presumably knows about the charges, and perhaps so do several others in the company. Damage may be done even if the person is ultimately acquitted.

“That could happen now,” replies Molo, “through an anonymous letter.” It is the type of abuse that doesn’t need a hotline to arise.

**Maturity and judgment are prerequisites**

If a company sets up its own hotline, some attention should be paid to the background of the person who actually handles the calls. The operator should be someone with
Tribulations and perhaps trial: Managing the diverse workplace

By Loren Singer

Differences That Work: Organizational Excellence through Diversity; A Harvard Business Review Book; Edited by Mary C. Gentile; Foreword by R. Roosevelt Thomas, Jr. 282 Pages; 1994.

It is disconcerting to read Mary C. Gentile’s statement in her introduction to the work she has edited that books and articles about managing diversity in the workplace abound, but that most leave readers “yearning for something more.” This collection of 13 articles reprinted from the Harvard Business Review published over the last 20 years and dealing with various aspects of the subject is also less than satisfying in content and conclusions. The concept is valid—a survey of two decades of authoritative examination of successes and failures in managing the disparate elements in the workplace. It might well be expected to be constructive and enlightening. The end sought, however, is elusive despite the well-meant efforts.

The book opens with a detailed statistical analysis of the global work-force as it will be constituted in the year 2000. This foresees massive relocations and influxes from vastly different societies that includes workers and professional practitioners on every level of achievement. It is illustrated with significant charting, and the 1991 data is sustained by the contemporary scene.

Subsequent essays are departures from objectivity; they are subjective accounts of individual experience in detailing the means and methods corporate structures have installed to manage a diversified work-force. These deal with some successes, and a number of failures—including affirmative action programs.

‘Speck of pepper in a sea of salt’

Edward W. Jones, Jr. contributed two articles. The first published in 1973 is a personal history of an able young graduate of a predominantly black college recruited as an executive trainee by one of the country’s largest corporations. He was the only black in a department of over 8000 employees: “the only speck of pepper in a sea of salt.” Executives who visited classes had to be introduced to everyone except Jones. Everyone knew him.

On stage at all times, he was considered the house expert on both the civil rights movement and also on the differences in personality between Roy Campanella and Jackie Robinson. In that antediluvian era there were common misperceptions and misjudgments both by him and his supervisors. Despite stress and tension, frustration, and appraisals of his performance that he considered either unfair or inexplicable, he survived for six years. Evidently both parties reaped some benefits from the survival contest. The company eventually sponsored Mr. Jones’ MBA from Harvard, and it still employs a higher

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percentage of blacks than any other. (The company was not identified by name.) Perhaps because of its experience with him.

Writing in 1986, now as founder of Corporate Organizational Dynamics, Inc., Mr. Jones contributed another assessment of the black experience in management. This, “based on three years of research, including hundreds of interviews of men, women, whites, blacks, and other minorities; of senior, middle, and junior managers, and of professionals in management, education, consulting, psychology, sociology, psychiatry, and medicine. They included more than 30 black executives, each earning at least $100,000, and more than 200 black managers, most MBAs.”

Mr. Jones followed up with the results of two separate surveys of 107 black MBAs. Among his findings: 84 percent of his respondents believe that their race has a negative impact on ratings, pay, assignments, recognition and promotion. Ninety-eight percent agree that subtle prejudice pervades their own companies.

The numbers are fleshed out with anecdote from working executives that describe “frustration and pain,” stagnant careers beyond a certain level, and transfer to corporate sectors that never have led to the highest executive positions. Managing for excellence through diversity thus seems to have been an utter failure in the opinion of this group.

Requires commitment from the top

R. Roosevelt Thomas, Jr., founder and president of The American Institute for Managing Diversity, is aware of the difficulties, but believes them to be solvable, if, for example, affirmative action is replaced by an environment in which no worker is advantaged or disadvantaged according to race, sex or handicap. He reports on a group of companies—Avon, Corning, Digital, Procter and Gamble, and Xerox, that he has counseled on ways to manage diversity. The end sought may be utopian, but the means and methods are pragmatic enough. Generally, commitment by top management, consistent efforts to bring about and monitor changes in management attitudes, and diversification on every level are the bases of the Thomas approach.

Following on with the work of other essayists does raise some doubts about the capacity of both managers and workers to deal with the numbers of problems that demand their attention: sexual and verbal harassment, facilitating entry of the handicapped—including the blind and those with impaired vision—instituting and managing flexible time schedules for parents with young children, finding optimum assignments for aging workers, assuring unqualified acceptance of gays and lesbians, and very prominently in this book, the handling of AIDS cases.

The first of three segments on AIDS appeared in 1989 and details how a most unlikely corporate entity, Pacific Bell, transformed the company’s conservative attitude and image to one of “uncommon decency” when it changed the way it handled employees who had contracted the disease. This occurred over three years, between 1985 to 1988 in the wake of a landmark AIDS in the Workplace conference. This culminated in an ‘AIDS Bill of Rights’ endorsed by 30 major corporations to ensure that workers with the disease would receive “evenhanded treatment.” This mandated continuation of health benefits, the right to retain job assignments, seniority, and generally the same conditions accorded those suffering from any other life threatening disease, stigmata notwithstanding.

A collaborative effort

At PacBell this required the cooperative efforts of the medical staff, the union, human resources officers, internal communications people and most necessarily, top management; on the way to the transformation of the company’s image, there was disagreement and recalcitrance noted. There is also an implication, intentional or not, that PacBell realized that its commitment to its new liberalism would help to improve its relations with the state utilities commission and with politically powerful gay communities in Los Angeles and San Francisco.

Another article on AIDS is an account by a truly unfortunate manager who had to deal with the appearance of two successive cases—both involving individuals appointed to supervisory positions by the manager himself. There were problems, but the first case faded comparatively quietly from the workplace. His successor behaved differently. He was combative, intransigent, and quite understandably, given his situation, not at all grateful for any consideration his manager had shown. What is evident in the managerial
What is evident in one manager’s AIDS experience is that there is no good way to handle a death watch.

experience is that there is no good way to handle a death watch.

A third piece dated 1991 is a scenario written over a two-year period that is concerned with the selection of a candidate to join a successful sales team. The best qualified for the job is HIV positive. The article’s author sought the judgments and opinions of an epidemiologist, the president of Levi-Strauss International, and a third man, an executive who died of AIDS before the article was published. The first two were firmly convinced that the commitment to the candidate be made on the basis of his abilities without attempting to predict or anticipate his future. This they agreed was not only right, but a correct managerial decision. The third man, living the tribulation, experiencing the effect that it can have on character, ability, function, and personality, chose paternalism over privilege and principle. He opted for retention by the company in a less stressful assignment.

No simple solutions

Reflecting on the content of these 13 disparate commentaries on managing in a diverse workplace one becomes aware of how difficult the problems are to solve. Some are screened by the personal biases of those charged with finding solutions; some by a necessary commitment to corporate profits at the expense of principles; some by the overly rational or irrational attitudes of the managers themselves; some by the abrasiveness or intransigence of the managed; some by the weight of traditional thought patterns. In the one contribution that has a lighter tone than the rest, the influence of stereotyped thinking is demonstrated: on a rafting trip down the Rogue River, two middle-aged males and two females behaved as tradition assumed they should. The males carried the heavy burdens and managed the crises; the women made up the beds and arranged the sleeping quarters.

It seems that managing diversity in the workplace is presently a process moved by corporate instinct, occasionally by pieces of legislation followed in due course by litigation, by the efforts of pressure groups, or even by vague executive wishes to do good. Thus it is understandable that the activity is a kind of jerry-built structure set atop the corporate one—some areas are strongly supported, others are rickety and unsubstantial, depending for retention upon executive whim and ephemeral commitments. Perhaps this should be dismantled and replaced by a computer-generated program based on bytes of philosophy, ethical conduct, religious principle, economic success, and general well-being to produce a cohesive program for corporations to follow. Multiple choices will appear, no doubt, but the optimum one will be identified in large type.

Hotlines . . . Continued from page 13

“sufficient maturity and judgment to differentiate when something is serious or not serious,” says Molo. A veteran employee, near retirement, who knows the company inside and out, isn’t a bad choice to perform this task, in his view.

Should the operator be a lawyer or non-lawyer? The company may think that if it uses a lawyer, everything will be legally “privileged,” but that may not necessarily be the case, says Molo. In any event, “more commonly the hotline operator is a non-lawyer. The job does not require legal training,” although a lawyer should be available to the hotline person.

What about dealing with anonymity? “The concept of anonymity is important. That’s the whole reason for having a hotline. On the other hand, it is almost always better if the employee is willing to supply information without anonymity.” He or she has a different level of credibility, and the company can get back to that person for further information.

In sum, as Molo wrote in his letter to the Wall Street Journal: “An ethics hotline might . . . cause some employees to fear that co-workers are looking over their shoulders, ready to snitch. If implemented properly, however, it is more likely to give workers a sense that their employer plays by the rules and takes business ethics seriously.”