How to Reduce Rationalization Risk
In the Fraud Triangle through Effective Ethical Decision Making Training

Fermeen Fazal
Vice President, Chief Counsel, and Director of Ethics and Compliance
Fermeen.Fazal@hii-uni.com
713-354-6326

Why do we care about Ethics?
--The Fraud Triangle

Managing risk of misconduct

Rationalization
The ability of an employee to intellectually justify an intentional act of business misconduct

Opportunity
The ease with which an employee can commit misconduct

Pressure
The motive or incentive for employees to commit misconduct

Leadership

An effective Compliance program, combined with strong Leadership and sound Ethics work together to reduce risk of compliance failure
How do you teach ethics?

• Ethics programs focus on three main learning approaches:
  – Modeling the behavior we expect others to follow, or sharing hypotheticals and scenarios on how to act ("Walk the walk, not just talk the talk")
  – Focusing senior leaders develop an ethical culture by including them in your messaging ("Tone at the Top")
  – Reminding employees of what the company stands for—ie, this is who we are, and how to act when faced with an ethical choice ("Integrity is Core Value").

• These approaches are summed up at my company with a tag line: "We do the right thing, even when no one is looking"

• It’s a great message, but when we ask an employee to act ethically, or do the right thing, what does that mean?

• In my ethics training, I start with the very basic fundamentals.

What is Ethics?

• Answers are usually some form of “my inner moral compass.”

• My answer is that ethics refers to standards of behavior that tell us how human beings ought to act in various situations.

• But what those standards are, and what they are based on, can vary.
What Are Ethical Standards Based Upon?

• Where do you get an Inner Moral Compass, and can it be trained?

• Where does a “sense of ethics” come from? And how do you have it be uniform given that in a diverse workforce, employees come from a variety of backgrounds and value systems?

• My thesis:
  – Four places you cannot use as the sole source of ethics are feelings, religion, law, and societal norms
  – Ethics can be found by probing the issue and asking philosophical questions about the proposed action.

Ethics is Not Feelings

• Feelings can be a guide if you have a pin prick of conscience, but not everyone was raised with an inner voice or the same value system.

• Human nature kicks in for self preservation and helps justify bad acts

• Examples
  o “Stealing is wrong…” but what about the homeless mother stealing milk for her newborn?
  o The Dinner, by Hermann Koch
Ethics is Not Religion

• Religion is usually a good ethical road map; faith tries to answer questions about right and wrong and certainly guides many of us down a moral path.

• But not all employees share the same religion.

• Even if they did, religious convictions can also be used to justify “bad” acts:
  o War, like the Crusades, or Jihad
  o What if faith prohibits something that’s legal like abortion?
  o What if faith allows what our Western society judges as “barbaric” practices like female genital mutilation?
  o What if faith prohibits something on the cusp of becoming legal, like gay marriage?

Ethics is not Law

• The law incorporates ethical standards as it seeks to right wrongs and protect the weak
  o A lawsuit is an attempt to make the plaintiff whole
  o Antitrust laws and insider trading prohibitions are designed to keep a level playing field

• But laws can be ethically corrupt
  o Slavery and Separate But Equal were laws in the USA
  o In South Africa, where there was apartheid, the law was designed to protect a narrow group
Ethics is Not Societal Norms

• Some culturally accepted norms are good.
  o Murder is wrong
  o Rape is bad

• But all cultures aren’t the same so “When in Rome, do as the Romans do” doesn’t always mean your actions are ethical
  o Plural Marriage in some cultures
  o Nazi Germany
  o Taliban

So now what?

• If Ethics does not come from feelings, religion, law or societal norms, then where do we look?

• My goal is to offer UPI employees a tool kit they can use when they are standing in the gray, faced with an ethical dilemma, and aren’t sure what choice to make.

• If we don’t teach them this skill, how will they decide?
Five Sources of Ethical Standards—

1. Utilitarian Approach

- **Utilitarian Approach**—
  – John Stuart Mills (1806-1873)

- “End justifies the means”

- **Seeks Good Consequences, Minimizes Harm**
  - But acknowledges that there may be some harm
  - Classic military justification for collateral damage—you need to take the strategic hill, but some soldiers will die
  - Grapes example for diabetic

2. The Rights Approach

- **Rights Approach** – Immanuel Kant (1724-1804)

- Ask: “Does the action respect the moral rights of everyone?”
  - Actions are wrong to the extent that they violate the rights of individuals; the more serious the violation, the more wrongful the action. Focus on the collective act.

- **Think about what would happen if everyone did it.**
  - Pens example
Five Sources of Ethical Standards—
3. The Fairness/Justice Approach

• **Fairness/Justice Approach – Aristotle (384-322 BC)**

• Ethical actions treat all human beings equally, or, if they are treated unequally, then it’s fair based on some reasonable standard

• **Examples**
  - The President of my company gets paid more than me, but it’s fair because his contribution is more than mine.
  - We need similar consequences for a junior worker’s theft and a senior manager’s theft for institutional justice
  - Our people need to understand the system is not rigged, even if outcomes are different (process is fair)

Five Sources of Ethical Standards—
4. The Common Good Approach

• **The Common Good Approach – Plato (423-347 BC)**

• Ethical choices are linked to the good of the community, so consider the common good when you make an ethical choice

• Our actions should show respect and compassion for the whole society, especially the vulnerable.

• **Examples:** police and fire departments, or quality public education

• At HII: free health clinics and a CEO scholarship fund for the children of employees are all based on the common good
Five Sources of Ethical Standards—
5. The Virtue Approach

• **Virtue Approach—Values**

  Ethical actions ought to be consistent with certain ideal virtues that enable us to act like the best versions of ourselves, according to the highest potential of our character.

  Example of virtues: courage, compassion, generosity, tolerance, honesty, integrity, fairness, prudence, fidelity (this is where our core values come in—and every Code of Ethics usually has them).

  Virtue ethics asks of any action, "What kind of person will I become if I do this?" Take the action that is consistent with the virtue, and do it often so it becomes a habit.

Putting the Approaches Together

• **You can use more than one framework to decide what is ethical. The key is to look at these questions a lot and get familiar with them so it’s second nature.**

  - Which option will produce the most good and do the least harm? (The Utilitarian Approach-Mills)
  - Which option best respects the rights of all who have a stake? (The Rights Approach-Kant)
  - Which option treats people equally or proportionately? (The Justice Approach-Aristotle)
  - Which option best serves the community as a whole, not just some members? (The Common Good Approach-Plato)
  - Which option leads me to act as the sort of person I want to be? (The Virtue Approach—Company values)
Testing the five questions—mix it up and keep it relevant

- When training my operations group, we talked about how engineers decide where to run a pipeline—through a town which is cheaper for the client, or a longer way through a forest, which makes the townspeople happy but may have environmental impacts, because this issue has come up in Calgary. How do you factor in stockholders as a stakeholder?

- When training HR, concerned about privacy, we discussed how Apple decided not to release the iPhone data of the San Bernadino shooters despite the FBI’s request of their help in fighting what seemed to be domestic terrorism.

- With the Senior Management Team, we’ve had reductions in force, and I talked about how the process needs to be fair.

- With HSE, we discussed the Flint, Michigan water and ethics related to the toxicity levels.

Let’s do one together

- Flooding after Hurricane Harvey. Army Corps. of Engineers must decide: do we release the water from the dams and flood the houses near by, which stayed dry during the hurricane to save the city?

- Which option will produce the most good and do the least harm? (The Utilitarian Approach-Mills) = ?

- Which option best respects the rights of all who have a stake? (The Rights Approach-Kant) = ?

- Which option treats people equally or proportionately? (The Justice Approach-Aristotle) = ?

- Which option best serves the community as a whole, not just some members? (The Common Good Approach-Plato) = ?

- Which option leads me to act as the sort of person I want to be? (The Virtue Approach—Company values) = ?
The Practical Takeaway

• When you ask all 5 questions, the other approaches can offer a new perspective on what is ethical, so use them if it helps.

• When faced with gray, go to the questions, and even if you are unsure what to do, they will guide you.

• Keep them in your wallet. The more you see them, the more they become second nature. I hand out a business card with them questions and our company values as a visual reminder

• I want to add to these questions some Eastern philosophy. Buddha and Confucious also talk about respecting all equally, and that is what I’m going to focus on this upcoming year.

  • If you like this approach, I encourage you to check out Markkula Center for Applied Ethics at Santa Clara University. They have great articles about making ethical decisions, and these approaches come form their materials available here: https://www.scu.edu/media/ethics-center/resources/making.pdf

The Practical Approach continues

• Once employees have a full understanding of what ethics is, how do you drive the lessons home?
  – An ethics officer has a bit of a marketing and teaching job. And to reach your students and customers, you have to keep your approach fresh so the message reaches all learning styles.
  – At the end of the day, you want folks to REMEMBER your words. And employees remember things that are relatable.

• Remember when we said most programs focus on “Walk the walk”, “Tone at the Top”, and “Integrity is Core Value”?

• Those models are not wrong or bad. But you have make the delivery mechanism and content fresh and relatable.

• People remember what they can easily understand.

  BUT HOW?
Concrete and creative ideas to deliver ethics messaging

• I’m proponent of creating your own content. If it resonates with you, it will resonate with your work force. Pop Culture options:
  – Music
  – Movies
  – Book Club
  – Games

• Goofy things that kids laugh at are things employees remember—use any excuse to celebrate Ethics.

• Your own personal stories and from your community.

• Real examples from your company, shared so the lessons are learned by all.

Have Fun with Ethics: Music Example 1

For compliance leadership, your own tone is important.

Set the example, build trust, and then talk about your decision-making process so co-workers can model your behavior.

I’m starting with the man in the mirror,  
I’m asking him to change his ways,  
And no message could have been any clearer: if you want to make the world a better place,  
Take a look at yourself, and then make a change
Music Example 2

We have great controls in place utilizing Denied Party Screening, Trace, and internal audits for monitoring. All that gets us 75-80% of the way. But UPI counts on you, as experienced leaders, to tell us what red flags you see because you interact with these people. So if you get more than a feeling that something isn’t right, let’s examine it and ask questions.

So many people have come and gone
Their faces fade as the years go by
Yet I still recall as I wander on
As clear as the sun in the summer sky
It’s more than a feeling (more than a feeling)

Music Example 3

There’s lots of flexibility in what we can spend on meals/entertainment (especially as senior leaders) as long as it’s reported, to the extent possible, planned ahead and within limits. But there are a few hard rules. We love new customers, but know what’s overly frequent, lavish, and where the line is regarding bribery with corrupt intent … and then don’t cross it.

And I would do anything for love
I’d run right into hell and back
I would do anything for love
I’d never lie to you and that’s a fact
And I would do anything for love, but I won’t do that
Music Example 4

Leaders should be consistent and even-keel... and not hot and cold...

'Cause you're hot, then you're cold
You're yes, then you're no
You're in, then you're out
You're up, then you're down
You're wrong, when it's right
It's black and it's white
We fight, we break up
We kiss, we make up

Predictability is comforting and makes you approachable. It builds trust and good will, and goes a long way to setting a culture of compliance. Ensure you make ethical choices consistently, every single time.

Music Example 5

Watch your reaction for retaliation... It's a normal human tendency to be upset when you feel wronged or attacked before HR, if an employee messes up a budget without a change order, signs a contract without legal review, or orders things outside the procurement process. You might be feeling all kinds of emotions, but try not to get overly worked up...

You know the way to make me lose control
When you're looking into my eyes
You make me feel so high

You've got me feeling emotions
Deeper than I've ever dreamed of
You've got me feeling emotions
Higher than the heavens above

Stay on guard for retaliation.
**Music Example 6**

If retaliations do happen, we need to check in with those employees. We need them to speak up to make our program and company better.

*I'll Be There For You—The Rembrandts*

*I'll be there for you (when the rain starts to pour)*

*I'll be there for you (like I’ve been there before)*

---

**Music Example 7**

Results of the Ethics Survey

No one at UPI is *livin’ la vida loca*, but the economy is tough, and this impacts morale. It is your job as leaders to (1) make sure there is no added pressure to commit misconduct and (2) to create a culture that values financial gain over doing the right thing.

And to the extent that you need help in understanding the policies, counsel on how to handle an issue, or a strategy session on what to do to accomplish a goal, the Law Dept. and Ethics & Compliance will be *right here waiting for you, whatever it takes, wherever you go, whatever you do*. 

---
Ethics in Movies and TV shows

- **Harry Potter**
  - Dumbledore says "We must all face the choice between what is right and what is easy." Harry is scared to fight Voldemort, but despite his fear, he does so because it's the right thing to do.

- **Sherlock Holmes**
  - No matter the difficulty of the challenge, Holmes worked hard and demonstrated out-of-the-box thinking to solve his case. Blackwood, the villain, represents unethical practices. By finishing his case Holmes exposed those practices and as a result red England of their fear of them. We must take down and fight corruption.

- **Wall Street**
  - The theme of Wall Street is *Greed is Good* and the main character does whatever he needs to do to get the money. Throughout the movie, as the star character gains more money and power, he continues to take greater risks in crossing ethical and legal guidelines to get a 'little more' and a 'little more' and is found to be corrupt at the end.

- **The West Wing**
  - Every WW episode has ethical dilemmas re: the death penalty, drug policy, etc.

- **Aladdin**
  - Classic ethics dilemma is when poor Aladdin has to steal bread to stay alive, and the punishment is death. There needs to be some proportionate response.

- **Erin Brockovich**
  - When a paralegal discovers a coverup related to toxic water, she is determined to expose the truth.

The SCCE blog is full of good ideas too

**Ethics & Compliance Lessons in Rogue One: A Star Wars Story [SPOLERS]**

- **Lesson One**: Spread the truth when you make a mistake. One of the choices in Rogue One concerns how an intelligent droid in a scanner reveals several secrets to a rebel. The Rebel officers decide to ignore the droid's revelation because they do not wish to change the plan, despite the droid's helpfulness to expose the Death Star design. The decision is correct, but when Rebel officers attempt to stop the Rebel's plan, they end up exposing the Death Star design. The lesson is that proper communication is crucial. Miscommunication can have severe consequences, especially in situations where the stakes are high.

- **Lesson Two**: Leadership should be strong and decisive. Imperial Officer Orson Krennic from Rogue One works to uncover the Death Star design. His actions are driven by his desire to expose the truth and expose the Rebel's plan. His decision to continue the mission despite the Rebel's objections is commendable. It shows the importance of strong leadership in times of crisis.

- **Lesson Three**: Consider the consequences of your actions. Before you act in order to assist an ethical dilemma, there must be some thought given to how your actions may further or lessen the impact of the issue. In Rogue One, the Rebel's decision to expose the Death Star design is driven by their strong sense of justice. However, the decision has severe consequences, as it leads to the Rebel's defeat.

**Lesson Four**: Not all criminals are employees in report violations and truth should be known to all. In Rogue One, the Rebel's actions are driven by their desire to expose the truth and protect the Rebel's mission. The Rebel's actions are driven by their strong sense of justice. However, the decision has severe consequences, as it leads to the Rebel's defeat.

**Lesson Five**: The Rebel's actions are driven by their desire to expose the truth and protect the Rebel's mission. The Rebel's actions are driven by their strong sense of justice. However, the decision has severe consequences, as it leads to the Rebel's defeat.

**Lesson Six**: Conducting a risk analysis is important to determine the severity of the consequences to an unethical action in order to achieve a good goal. Determined at the Rebel leadership's decision, the Rebel's actions are driven by their desire to expose the truth and protect the Rebel's mission. The Rebel's actions are driven by their strong sense of justice. However, the decision has severe consequences, as it leads to the Rebel's defeat.
Book Club

- UPI’s Book Club has been slow to take off with the dip in the price of oil and everyone focused on staying billable, but here are great ideas:
  - Any John Grisham book has ethics in it. *The Firm*, *The Pelican Brief*, *A Time to Kill*, *The Rainmaker*. (and since these have movies, your employees can still discuss the books without having read them)
  - *The Dinner*, by Herman Koch as mentioned earlier or *Defending Jacob*, by William Landay. (The DA’s son is accused of murder and Dad believes he’s innocent, but there is damning evidence—how far do you go to protect your child?)
  - *Midwives*, by Chris Bohjalian. (A midwife takes desperate measures to save a baby by performing a Csection in rural Vermont when she believes the mother has died. But what if the patient wasn’t dead and the midwife killed her?)
  - *A Civil Action*, by Jonathan Harr or *The Buffalo Creek Disaster* by Gerald Stern (environmental issues like *Erin B.*)

Games

- There are lots of vendors that can help you with content, including *Compliance Wave*
- For those on a budget or at smaller companies, look online for websites that help teachers. We did a great crossword puzzle and word search for $1 each. Clues included:
  - Fazal is the business conduct officer that you can talk to if you have an ethical dilemma
  - We do the right thing even when no one is ________.
  - The nice thing about doing your own games and content is that you can make it personal to your company.
  - As engineers, we like math, so we celebrate Pi Day (3.14) and Tau Day (6.28) which some say is the better constant for area of a circle. Why? Just because! It’s part of our culture now.
ETHICS
Visible Reinforcement: Coins, Pi/ Tau Day

Pi Day! 3.14.17

Fave Pi-Kus: 3 syllables, 1 syllable, and then 4 syllables

UPI
Growth
We're on the way

Honesty
Truth
It's who we are

Transparent
Clear
Tom's Open Door

Compliance
Now
Ethics Starts Here

Character
Trust
It's Up to Us

Procurement
Shops
With no Kickbacks

Working Here's
Fun
People are Great

Our culture
Is
Integrity

Oil and Gas
Build
Engineering

Principles
Ethics
It's What We do

Ethical
Choice
Make the right one

United
In
Diversity
Tangible reminders—bulletin boards, newsletters, and more

**President’s Ethics Moment**

- The President of our company has a daughter who is getting her Ph.D. in Mechanical Engineering. She had a write a thesis before she graduated, and had a committee of advisors who critiqued her work.
  - One of them happened to be a Chief Master Sergeant in the Airforce, as she was doing some analysis of airplane mechanics.
  - At graduation, he placed her doctoral robes around her neck, and our President was very moved.

- He wanted to buy (with his own money) an expensive Mont Blanc pen on behalf of himself and his wife to give to the Chief Master Sergeant as a thank you for helping his daughter, but then paused and thought about appearances.
  - Our parent company is a defense contractor
  - The Air Force has rules about gifts.
  - He refrained from doing so.
How the Fraud Triangle works, at age 41 and 12—a personal story

My son, age 12

- Cafeteria monitor before school can give kids a pass to go to the library.
- M, T, W = pass. Told no on Thursday because “you’ve been going to the library all week, so sit down and draw a picture with your sister today.”

How the Fraud Triangle legs come together

- Complaints at dinner.
- Mom says “you solve this problem.”
- The library pass is the size of a square post-it note, a simple color copy with 12 images on an 8 ½ x11” sheet of paper.
- Friday, the Student Council privileges at the copy machine were utilized.
The Takeaway

• Rationalization
  • 12 year old thoughts: “This is a dumb rule.”
  • Takeaway for us: Explain the purpose of the rule, esp. if we’re trying to develop a workforce of critical thinkers who understand ethics

• Opportunity
  • 12 year old thoughts: “I know how avoid this issue next time and no one will ask me questions.”
  • Takeaway for us: Controls, audits, and approval or other kinds of procedures can minimize opportunity for wrong doing.

• Pressure
  • 12 year old thoughts: “She told me to solve my problem.”
  • Takeaway for us: Offer guidance and parameters to achieve a goal, and remind folks that we want to accomplish it in the right way.