AGENDA

Consequences:
- Why they matter
- What they are
- How to use them
DISCLAIMERS

- Covers full spectrum of unethical behavior
- Not meant to be exhaustive
- Examples were chosen because they are easily recognizable
- Based on latest information available
- Consequences are not the only way to influence behavior

WHY CONSEQUENCES MATTER
CONSEQUENCES SHAPE BEHAVIOR

- What would the world look like if there were no consequences?
  - Bank vaults would be empty
  - No one would obey the speed limit
  - No one would learn to play nice in the sandbox
  - Kind of like that movie “The Purge”

OPTIMISM BIAS

- “An overoptimistic, skewed perception of risk that leads us to believe we are personally immune from hazards”
- Also see it in other behaviors and decisions
  - Smoking
  - Thrill seeking activities
  - Unprotected sex
- Employees who are considering engaging in misconduct can use this bias to rationalize their behavior
  - It won’t happen to me
  - No one will ever find out
  - The odds are in my favor
THE FRAUD TRIANGLE

POSSIBLE CONSEQUENCES
THE THREE Ps

PROFITS

PEOPLE

PLANET
FINES AND SETTLEMENTS

BNP PARIBAS

- Charged with violating the International Emergency Economic Powers Act (IEEPA) and the Trading with the Enemy Act (TWEA) by processing billions of dollars of transactions through the U.S. financial system on behalf of Sudanese, Iranian, and Cuban entities subject to U.S. economic sanctions
- “BNP Paribas went to elaborate lengths to conceal prohibited transactions, cover its tracks, and deceive U.S. authorities.”
- $8.9 billion dollar settlement – forfeited $8.830 billion and $140 million fine

DEBARMENT OR EXCLUSION

CHURCH STREET HEALTH MANAGEMENT

- Operated 70 Small Smiles dental clinics
- Excluded from Medicare and Medicaid programs for 5 years for a variety of deceptive business practices
- No longer in business, so far as I can tell
CRIMINAL CHARGES

ALSTOM
- Pleaded guilty to charges of bribing officials in Indonesia, Saudi Arabia, Egypt, and the Bahamas
  - Paid $75 million to secure $4 billion in contracts
  - Settlement of $772 million with the DOJ
  - One of the largest FCPA fines ever levied

REPUTATIONAL DAMAGE

TARGET
- 2013 data breach resulted in theft of the information for 70 million customer credit and debit cards
- Perception of Target's brand fell 45 points in the days immediately following the breach
- Net income fell accordingly, down 46% in 4Q13
LOST REVENUES

VOLKSWAGEN
- Defeat device falsified emissions data during inspections and testing
- 11 million vehicles affected worldwide
- Sales fell 4.8% in 2015 in the US, first time in 11 years
- To buy the Jetta, or not?

COLLAPSE

ENRON
- Multiple accounting frauds led to catastrophic bankruptcy and collapse
- Forever remembered as a symbol of “what not to do in business”
- Played a large role in creation of Sarbanes-Oxley
**INVESTIGATION COSTS**

**WALMART**
- New York Times article exposed alleged improper payments made through Walmart’s Mexican subsidiary
- Walmart spent $650 million investigating
- No charges to date

**MANDATED COMPLIANCE OVERSIGHT**

**DUKE ENERGY**
- Plead guilty to 9 misdemeanor violations of the Clean Water Act
- $68.2 million in fines and restitution and $34 million in community service and mitigation
- 5 years of compliance obligations
- Company required to retain and pay for an independent monitor
JOE EMPLOYEE

- Be sure your policies and communications publicize the fact that misconduct will not be tolerated
- Typical language - “disciplinary action up to and including termination of employment”
- Have language reviewed by a lawyer if you publicize case information to abide by relevant labor laws
IMPRISONMENT

RAY NAGIN
- Subsidized his salary as Mayor of New Orleans by receiving lavish trips from vendors and using his son's granite business to fulfill city contracts
- Convicted on 20 of 21 counts of bribery, fraud, and money laundering in connection with the scheme
- Sentenced to 10 years in a federal correctional institution in Texarkana

FINES AND SETTLEMENTS

JORDAN BELFORT
- Plead guilty to manipulating the stock prices of 34 companies and conspiracy to engage in insider trading while running the firm Stratton Oakmont
- Cheated investors out of $200 million
- Served 22 months of a 4 year sentence and ordered to pay $110.4 million in restitution (50% of his income until paid in full)
**DEBARMEMT OR EXCLUSION**

**THOMAS NELSON BARNES III**
- Distributed identity badges that control access to Baghdad's heavily fortified Green Zone to people not allowed to receive them while working as a federal contractor for DynCorp International
- Pleaded guilty to one misdemeanor count of theft and embezzlement of US property
- Sentenced to 30 days in jail, 30 days of home confinement, and 1 year of supervised release and was disbarred for 4 years

**COLLATERAL DAMAGE**

**LISA LAWLER**
- Founder of whitecollarwives.com and author of *House on Fire: A Cautionary Tale*
- Shares her experience with her ex-husband’s fraud, including the dissolution of her marriage, the financial ruin, and the disenchantment of her children
- Hopes that her personal story will empower other families dealing with the shame and isolation of their loved one’s crime
**WORLDCOM**
- CFO and Controller engaged in improper accounting of $3.8 billion that led to the collapse of the organization
- Filed for bankruptcy, investors lost $180 billion
- 30,000 employees lost their jobs

**BERNIE MADOFF**
- Admitted to running a $65 billion Ponzi scheme and sentenced to 150 years in federal prison
- Approximately $6.5 billion of the $17.5 billion in initial investments is still unaccounted for
- Average investor has only recovered 57% of their investment
BP

- Explosion at Macondo well expelled 4 million barrels of oil into the Gulf of Mexico over 87 days
- Spill contaminated more than 1,100 miles of coastline, at least 1,200 square miles of the deep ocean floor, and 68,000 square miles of surface water
- $8.7 billion projected impact to local fisheries and $22.7 billion impact on tourism
- 5000 marine mammals, 1000 sea turtles, and nearly 1 million sea birds perished
HUMAN RIGHTS VIOLATION

SHRIMP INDUSTRY

- Recent AP investigation revealed seafood suppliers using slave labor to peel shrimp
- Implicated suppliers sold shrimp to major US establishments
  - Supermarkets: Wal-Mart, Kroger, Whole Foods
  - Restaurants: Red Lobster and Olive Garden
- AP found shrimp products from supply chains that engage in slave labor in all 50 states

INJURIES AND FATALITIES

PACIFIC GAS AND ELECTRIC

- Flawed record keeping and insufficient maintenance led to explosion of the San Bruno natural gas pipeline
- 38 houses destroyed, 66 injuries, and 8 fatalities
- $106 billion penalty from CPUC, and facing an additional $1+ billion fine related to federal criminal charges
- $500+ million in settlements
DEVELOPING COUNTRY

- Systematic corruption erodes at social and political institutions, evokes indignation in populations, and leads to social unrest and insurgency
- “Fair competition and the rule of law are a precondition for a peaceful and open world that can nurture its growing population”

WAYS TO USE CONSEQUENCES
BLOG OR PODCAST

- Investigation Results
  - Reinforces transparency
  - Demonstrates consistent and appropriate follow-up and accountability
  - Frames investigations as opportunities to make improvements

- Beware: Be sure to share neutral or positive outcomes as well

COMPANY PORTAL

- News Articles
  - Give real life examples of the consequences
  - Make the potential consequences real

- Beware: Take care if reporting cases involving business partners or suppliers
  - What message does it send to employees? The business partner?
  - If you do, be sure to indicate how you are addressing the issue
COMPUTER BASED TRAINING

- Video: “The Cell”
- Beware: Licensing if not created in house

INSTRUCTOR LED TRAINING

- Slides
  - Include a slide or section of your training to cover consequences
  - Create a visually interesting graphic
  - Use plain language
- Beware: Use consequences that make sense for the type of training
INSTRUCTOR LED TRAINING

- Entire Training
  - Create an entire training to evaluate a breach or case of misconduct
  - Consider what went wrong and how the situation could have been prevented
  - Promote company resources that could have made a difference
  - Sends the message that “we learn from our mistakes”

- Beware: Ensure conversations and desire to learn from the past and move forward are authentic
PERSONAL ACCOUNTS

- The Perpetrator
  - Personalizes and humanizes the risks associated with misconduct
  - Reduces optimism bias
  - “That could happen to me”
  - Several now speak in corporate settings

- Beware: The Cost

PERSONAL ACCOUNTS

- The Family
  - Family members are also available to speak to your teams
  - Key message: Your actions affect your families
  - “Consider the things you’ll miss”

- Beware: The Cost
BOOK CLUB

- Both families and perpetrators have written books about their experiences
- Consider holding a book club in your office or on location if multiple sites
- Great opportunity for liaisons if you have them

- Beware: Select a topic that applies to your audience and is culturally appropriate

FILM FESTIVAL

- Create a series of short videos that depict a decision and its outcome
- Could also turn it into a contest
- Broadcast during compliance week and archive for later viewing

- Beware: If a contest, provide guidelines for submission to ensure appropriateness
CONCLUSION

- Consequences can be used to reduce optimism bias and prevent rationalization
- Misconduct can have far-reaching effects
  - Profits
  - People
  - Planet
- When using them in your trainings or communications:
  - Use interesting visualizations or multimedia
  - Keep messages simple and use plain language
  - Convey the message through multiple channels for reinforcement
  - Make the examples relevant to your business and easily recognizable
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