

Recognizing ‘Red Flags’ At CH2M HILL

By Andrew Singer

CH2M HILL (Englewood, CO), the design, construction, and engineering firm, does business “in some of the most difficult places on the planet (as rated by Transparency International),” according to the \$6.4 billion (annual revenue) company, which is why its anti-corruption training program is viewed as so critical.

In workshop training sessions, the firm’s employees are taught how to recognize certain “red flags” that could be evidence of possible corrupt business activities.

These include such telltale phrases, Neil Holt, Director, Ethics & Business Conduct, International Operations, tells *Ethikos*, as:



Neil Holt

“No one will ever know.”

“This conversation never happened.”

“It doesn’t matter *how* it gets done, as long as it gets done.”

What they all suggest is a lack of openness or transparency in the way business is being conducted, which can be costly—both financially and in reputational terms—for a company that operates in 115 countries across five continents.

The above are “personal red flags,” explains Holt, but there are also *company* red flags that can put the company at risk of Foreign Corrupt Practices Act (FCPA) or UK Bribery Act violations. If the

firm is bidding for work in a foreign country, and a potential client recommends that it hire a local business partner to “help the strength of your bid” – that would amount to “a very big red flag.” At the least, the company would have to explore in depth the relationship between the potential client and recommended local business partner.

They could still do the deal. The client might have *only* been saying, in effect, “This is the best local consultant.” On the other hand, the subtext could have been: “Hire my brother if you want the contract.” The level of due diligence required rises substantially in such cases.

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Regarding investigations: 'It's worth going the extra mile, interviewing a few more people, because getting the right result is the most important thing.'

Another red flag is if the prospect talks extensively about local “customs,” as in “we do things another way here.”

A ‘big’ red flag would be a supplier wanting to be paid through a secret bank account. CH2M HILL doesn’t see this sort of request too often, however, Holt concedes—maybe because the company’s reputation for *not* paying bribes precedes it.

Holt recommends that employees ask themselves when contemplating an action: “If this appeared on the front page of the newspapers: Would you be embarrassed? Would the company be embarrassed? Would your partners be embarrassed?”

CH2M HILL appears to be doing something right. In March, it was recognized for the fourth consecutive year by the Ethisphere Institute as one of the ‘World’s Most Ethical Companies.’

The company’s overseas reps typically begin a conversation with a potential client by explaining “the way we do business.” This tends to scare away some potential malefactors and has proved “hugely beneficial” in terms of avoiding anti-corruption and bribery missteps, suggests Holt.

Investigations

The firm takes a multi-disciplinary team approach when it comes to investigating wrongdoing. A member of the ethics team views all reports, including those from the company’s GuideLine (helpline). If the ‘reporter’ has not opted for anonymity, the company will conduct an interview with him/her. Assuming the case requires further investigation, they will bring in other experts – including those from security, finance, human resources (HR), legal, and even facilities management—when a question is raised about the procurement of an office cleaning contract, for example, “we had a perfectly good company doing the cleaning before...”

Many reports have a “human dimension” (e.g., harassment, discrimination), notes Holt, which would usually

mandate the participation of HR; or a “safety dimension,” which would bring in an expert from the security department. They don’t necessarily engage team members from each department on every case.

Moreover, if and when an allegation implies the involvement of the [non U.S.] HR department as a part of the problem, then Holt would refer the case to HR in Denver. Holt, based in the United Kingdom, handles investigations outside the Americas; Marlys Roehm, corporate counsel, runs investigations in the Americas—e.g., U.S., Canada, and Latin America.

In addition, investigations that involve personnel and projects on U.S. government facilities, even as far afield as Diego Garcia in the central Indian Ocean, are handled by Roehm—the complexities of the U.S. corporate/government relationship, an area that often proves somewhat “mystifying to a Brit,” Holt notes.

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Investigations are overseen by Bill Brierly, Chief Counsel for Ethics and Integrity Management. If Holt is overloaded with his own investigations, Brierly may step in and conduct some himself. Importantly, Brierly provides another set of eyes, and a kind of “sanity check” vis-à-vis investigations. It’s easy to formulate an opinion early on. “It’s a risk we all run.” It’s important to “stay objective,” says Holt, “and retain an open mind.”

Brierly exerts “quality control” and makes sure an investigation isn’t drawn out too long. He makes sure all investigations are closed.

The key thing in an investigation is to make sure it’s done properly, says Holt. “It’s worth going the extra mile, interviewing a few more people, because getting the right result is the most important thing.” Otherwise, the investigation can jeopardize a person’s reputation. People expect the public authorities to do their investigations fairly and effectively. “We are no different here.”

Regarding the company’s *GuideLine*, most contacts are typically human resources-related, like bullying, discrimination or harassment. That’s the case at other U.S. firms, as well as European companies, based on reports examined by Holt—though these contacts can vary in some Asian countries where there is sometimes a cultural bias against hotline reporting. According to the company’s website:

“In 2011, we received 213 contacts via *The GuideLine*, which is an increase of 22 percent year over year. Of the 213 matters reported, 44 percent were Human Resources-related (categorized as harassment, discrimination, or employee relations), down from 56 percent of the year’s total for 2010. We believe this drop results from the partnership between our Human Resources and Legal teams to upgrade our employee relations practices and processes as well as our renewed focus on proactive performance management and employee communication. This group actively trained managers and supervisors to recognize and address problems early, before the issues escalated, and communicated clearly to employees around the world.”

In some far-flung parts of the company, employees may prefer to go to their line managers rather than use the *GuideLine*.

“If they don’t want to use the *GuideLine*, if they want to waive anonymity, it’s actually easier,” says Holt. “We can talk with them. Still, we stick it [the report] in the *GuideLine* database” where it is counted as a contact, “because

‘It’s real important to have some ethical champions in the organization—who won’t take no for an answer—and who will hear what employees are saying.’

we want some robust statistics.” They want to know what is happening in different parts of the world – they may make changes to their ethics and business conduct training as a result.

Gifts

Gifts can be a tricky area from a business conduct standpoint. “Here in the UK, different agencies have different rules. Some [government officials] can’t even have a biscuit and a cup of coffee with a company representative.” If the company offers a sandwich to some agency employees, they’ll have to report it.

Company employees have to be mindful of such circumstances. “A lot of it is knowing the client, knowing the people you’re dealing with.” It’s about not causing embarrassment for the client in some instances. “We don’t do gifts as a company” other than the most nominal gifts.

Regarding communications, the firm’s senior leaders make a point to send messages regularly about ethics and expectations on how CH2M HILL does business—including featured news stories, reminders, links, in-house social media, face-to-face and e-mail-direct communications.

“A real thought leader in this area,” according to Holt, is Margaret B. McLean, Senior Vice President, Chief Legal and Compliance Officer, and Corporate Secretary for CH2M HILL Companies, Ltd. He characterizes her as a feisty individual – one who “won’t take no for an answer” when it comes to ethics and business conduct.

“It’s real important to have some ethical champions in the organization,” someone who will hear what employees are saying, at the level below CEO (though of course the CEO’s support is critical too).

Ethics ambassadors

The company launched an Ethics Ambassador program in December 2010. The idea is to give employees direct access to local senior leaders who understand how business is done in local geographies and are able to translate

In the United Kingdom, a company did not speak publicly about bribery and corruption seven years ago. It was the 'crime that had no name.' All that has changed.

expectations about doing business with integrity into the local commercial context. “Our Ethics Ambassadors are respected by their local peers and are perceived as safe and reliable sources of information and guidance,” notes the company on its website. It has more than 175 of these subject matter experts who serve in more than 90 global locations.

Holt himself came to business ethics indirectly. He worked at Barclays Bank for 21 years, in international and commercial lending. After brief stint in Academia, he moved over in 1998 to UK-based Halcrow, an infrastructure company, to head its Rural Management Division, eventually becoming group board director. He helped to develop Halcrow’s Guidelines on the Practice of Business Integrity and was a founding member of the UK Anti-Corruption Forum; he joined the board of Transparency International-UK in 2006. Halcrow was acquired by CH2M Hill in November 2011.

Ethics and remuneration

Holt was scheduled to lead a session on “ethics and remuneration” at the European Business Ethics Forum in Amsterdam in January 2013. This topic elicits more conversation these days – especially given the increased press commentary as a result of the bank scandals in the UK. “It’s on people’s lips,” says Holt, but they don’t link ethics and compensation at CH2M HILL, an employee-owned firm with 30,000 workers. If additional remuneration were to be paid for better business conduct, it would imply that employees are doing more than they are expected to do, whereas “we expect everyone to behave in an ethical manner,” says Holt.

Employees who witness unethical behavior, or believe that they have witnessed it, are expected to report it. That said, the company has an obligation to ensure that ‘reporters’ of wrongdoing do not experience retaliation (provided, of course, that reports are made in “good faith,” i.e., not in a mischievous manner).

‘The crime that had no name’

With regard to anti-corruption and bribery, the climate has changed substantially in many parts of the world. In the United Kingdom, one did not speak publicly about bribery and corruption seven years ago. It was the “crime that had no name,” according to Holt. If you mentioned it, it was assumed that *you* were embroiled in corruption and bribery in some manner.

When the UK Anti-Corruption Forum was founded seven or eight years ago, many companies said they didn’t want their names on the website, Holt recalls. A few companies were happy to be publicly associated with the forum, which includes organizations and companies with interests in the domestic and international infrastructure, construction and engineering sectors. “Our company was happy to stand on the platform and talk about business ethics,” recalls Holt. “But we were in the minority.”

All that has changed, and one big reason has been the UK Bribery Act, many years in the drafting, “but worth waiting for.” (Holt was among those who worked with the ministry drafting the legislation.) Crucially, the Bribery Act “encourages companies to do the right thing for the right reasons.” Bribery ultimately hurts the payer of bribes as well as the receiver of bribes, and it distorts and darkens the overall business climate to the detriment of all.

As noted, CH2M HILL has been designated among the “most ethical” companies four years in a row by the Ethisphere Institute. Even allowing for questions regarding the awards’ methodology—companies must complete a long survey to be considered, which means they must *apply* for the designation—four years can’t be overlooked, Holt suggests. He draws an analogy with the Oscar awards. Is a bad or mediocre actor typically nominated for the film industry’s most esteemed award four years in a row? One year, maybe, but *four*? Unlikely.

‘Real value’

“There is some rationale behind it,” he says of the Ethisphere designation. “We do have a sustainable, well-embedded ethical culture.” Employees know they won’t be punished when they do the right thing, even if it hurts the company’s financial performance—causing it to lose money.

As Lee McIntire, the firm’s CEO, has said, it took a long time and effort to build the firm’s ethics reputation, yet one can lose it in a moment. Constant vigilance is required.

“Our reputation has real value” in a business sense, adds Holt. “Our clients tell us that.” □

Avis Drives Greater Distances with New European Business Ethics Initiative

By Alexandra Theodore

When it comes to developing an effective business ethics and compliance program, Avis Budget Group (Parsippany, NJ) finds that it is a message that needs to be delivered on all levels.

“Thomas Gartland, president of our North American branch, has traveled across the country. He visits 92 locations, and every place he goes he talks about our company values,” Robert Muhs, Avis Budget Rental Group’s Vice President of Government Affairs, Corporate Compliance & Business Ethics, tells *Ethikos*. “It’s a big thing to have your CEO get off a bus and talk with 400 employees about family and doing the right thing.”



Robert Muhs

Delivering the message is more critical today given the company’s recent expansion into Europe. “We only acquired our European business a year ago,” says Muhs, a 19-year-veteran of the 29,000-employee vehicle rental company.

“We’ve drilled out a new anti-corruption program that all our employees are now being trained on,” including senior management. In the past, Avis relied on webinars, e-newsletters, and frequent discussions with employees in all branches across the world to address issues of ethics and compliance. While Muhs foresees doing that in the future too, Avis’ most recent effort is an online video, 29 minutes long, which focuses on global ethics and compliance concerns. “We’ve driven it out in Australia, Canada, and some countries in Europe, already.”

It will continue to be rolled out as they get their foreign translations completed. The video is to be watched by all employees from station manager up—employees who could find themselves in the position where FCPA or UK bribery concerns might come up.

Real scenarios

“One of the benefits of the video is its trackability,” says Muhs. Avis is able to tell when employees have clicked the video and how many have viewed it. It’s also good in that it gives employees flexibility for when they choose to engage the material — as opposed to having to clear their schedules to have a half hour discussion with Muhs, although he does note that that has its place as well.

The video uses actual issues that might be encountered by Avis employees. “One of the better examples shows an employee waiting for certain automotive parts. They’re told it’s stuck in port, but if they make a quick payment it can be rushed along — this is something that could theoretically happen.”

Employees are asked to answer questions based on these scenarios. “It’s a quiz that goes along with the video.” For example, if an employee says they would make the pay-

‘Thomas Gartland, president of our North American branch, has traveled across the country. It’s a big thing to have your CEO get off a bus and talk with 400 employees about family and doing the right thing.’

‘One of the biggest challenges is the cultural differences,’ says Muhs, who admits as an American he has struggled with the European concept of works councils – used to regulate employment programs.

ment, they get a little red ‘x.’

Avis tries to incorporate compliance in all aspects of its communication with employees — regular e-newsletters that will discuss present compliance issues, such as a recently completed risk assessment of Avis’ new European branches.

Another issue addressed in Avis’ training programs is just what constitutes a government employee. Many employees don’t consider, for example, that members of an international relief organization could fall under that definition.

With the advent of the UK Bribery Act, understanding the differences is more important than ever.

‘Are we donating to the Olympics?’

Muhs places great trust in Avis and their new European partners. “I was over in Europe in the last year and one of the questions was ‘Are we donating to the Olympics?’” Participation in the 2012 London Olympics had been a big issue for companies operating overseas — donations in return for tickets and other benefits has generated debate as to whether or not such participation could fall under the auspices of the UK Bribery Act. Avis’ response?

“The answer was very much, ‘No! We’re not [donating]!’” Avis’ European team had never even considered it — although if they had, processes were in place to review such an intention. Employees would have to go through the legal team before such an action could be even considered.

“We have a good legal team in Europe,” says Muhs. “The president, Larry De Shon, has worked with us five or six years and he knows just what to do.” De Shon is president of the Europe, Middle East & Africa (EMEA) division of Avis.

“Gail Jones, head of our legal group over there, certainly knows how to broach the issue with understanding. She’s the voice of compliance in our European branch.” Muhs and Jones work in close correspondence.

“One of the biggest challenges is the cultural differ-

ences,” says Muhs, who admits as an American he has struggled with the European concept of works councils. (Works councils are the way in which European countries guide and regulate employment programs.) These guidelines are very different from U.S. guidelines. While a U.S. code of conduct can be laid out and enforced — i.e. an employee can be terminated for violating the tenets of the code—that’s not the same process employed by a works council.

“So we’ve had to really tailor the code of conduct to be adaptive,” says Muhs, including clear definitions of the role of business ethics.

A continued practice

Muhs sees business ethics as something that has and will continue to be an integral part of overall business practices. “We don’t want to be seen as the police. We try to be facilitators. We want to be a part of the business program of any initiative.” It’s about being able to approach potential partners, say, Lockheed Martin, and say that they [Avis] go ‘above and beyond.’

“If you see the old ads, you see customers going ‘I can fix it, I’m an owner,’” says Muhs, referring to Avis’ shareholder initiative programs — programs intended to place an emphasis on consumer trust, important for an organization that deals frequently with customer data. (Data privacy is one of the biggest risk areas for Avis, which deals with insurance and medical records of customers. The security system in place to protect this information is given a thorough inspection by the compliance team on a two-year basis.)

Avis has a “robust” code of conduct that everyone in the company reads and is trained on, as well as a Vendor Code of Conduct that is publicly available on their website. Vendors are expected to meet Avis’ standards. This includes a section in which vendors are expected to conform with the Foreign Corrupt Practices Act and other anti-bribery legislation:

“Corruption, extortion, embezzlement, and other questionable/inappropriate business practices, in any form are strictly prohibited. Vendors shall not violate the Foreign Corrupt Practices Act (FCPA), any international anti-corruption conventions, and applicable anti-corruption laws and regulations of the countries in which they operate, and shall not engage in corruption, extortion, or embezzlement in any form. Vendors shall not offer bribes or other means to obtain an undue or improper advantage. Vendors

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IRD appeals to its employees' 'sense of fairness'

By Alexandra Theodore

Compliance training may not be the first thing that comes to mind when one thinks of International Relief and Development (IRD), the not-for-profit organization responsible for implementing relief, stabilization, and development programs worldwide. But the IRD (Arlington, VA), which operates in 42 countries, has to overcome its share of cultural differences when it comes to training its nearly 3,000 employees.

"It's a lot of talking to people," Jean Hacken, chief of compliance, who conducts the training, tells *Ethikos*. "In America, we're not perfect, but we know if we get pulled over by a police officer on the road we're not going to be asked to pay a bribe. We know

that a police officer who does something like that will get in trouble."

"And people actually appreciate it," she notes, referring to the two hour discussions held with new employees. "It does appeal to their sense of fairness."

A first step in improving IRD's compliance training regimen was the simplification of the organization's Code of Ethics and Conduct. Technical language can be difficult to translate into other languages. Take the term 'whistleblower.' It doesn't translate well into cultures with only a limited understanding or context for what it means to 'speak up.' In its place IRD has a section in its code related to non-retaliation, explaining that if an employee wishes to bring up issues of wrongdoing, they do not have to fear being punished for it. In essence, this is about whistleblower protection, but explained in more



Jean Hacken

universal terms.

"People have to be able to read it and understand it," says Hacken.

Broaching cultural differences

Culture looms large in all this. "We've developed an introductory module and it's an open-ended set up." The initial compliance training at IRD consists of a two-hour discussion held with employees, in which one of the first subjects broached is cultural differences.

"We talk about cultural aspects, of time, and family, and business." It's discussed with employees what those differences are, and why they are different, and how and why things are going to be done the way they are with IRD.

"We requested assistance from American University," recalls Hacken. "They have a whole program for it," i.e., discussing cultural differences. American University's International Communications program includes a certificate in Cross-Cultural Communica-

"In America, we're not perfect, but we know if we get pulled over by a police officer on the road we're not going to be asked to pay a bribe."

Fairness is the jumping off point when it comes to engaging in a conversation about ethical behavior. ‘We’ll sit down with people and say: “All right, what are some of the instances where you’ve witnessed wrongdoing?”’

tion. American University’s is just one of such programs.

Fairness is, in fact, the jumping off point when it comes to engaging in a conversation about ethical behavior. “We’ll sit down with people and say, ‘All right, what are some of the instances where you’ve witnessed wrongdoing?’ And they’ll talk about it, sometimes very heatedly.”

Local challenges

A relief organization must be involved in all aspects of a region. While the chief compliance officer of a corporation may find him- or herself focused on company involvement in its main sector, IRD’s must concern themselves with a bevy of local challenges: building healthcare facilities, water treatment facilities, roads, and schools. They work with construction contracts. They work in the agricultural sector—to say nothing of the security concerns. Many times they operate in conflict zones, or regions that have been hit by a natural disaster.

“Rather than just delivering clean water to residents of the Horn of Africa, IRD tackles the underlying problem of upgrading community water storage and management systems,” says IRD, in its mission statement. “Rather than handing out seeds and fertilizer in Afghanistan, IRD trains farmers in improved agricultural methods that increase jobs, incomes, and confidence of Afghans in their government.”

When it comes to working on a local level, IRD is working with people who sometimes have lost everything. “People in desperate straits,” says Hacken. “People looking for new homes, new occupations, new lives, basically.”

In that respect, IRD is by its nature an organization that works on a local level. “I think the big twist on this is that we operate ‘on present,’” says Hacken. Most of IRD’s branches seek to establish a staff and a facility run mainly by individuals in the 42 countries where IRD operates. “We hire locally. We are a part of the community.”

It is not a mode without challenges—with the hiring and training of personnel on such a large, international scale. “Their business practices are different from ours. In the U.S., we hire based on merit and qualifications.” This is a luxury that may not be enjoyed in other countries where procurement practices can be heavily weighted toward ‘Who can pay to get the job.’

“We try to stay vigilant,” says Hacken. It’s often an uphill battle, but she finds much is to be gained from simply speaking to people.

Hacken sometimes gets creative with ethics and compliance training. “I found this free program, ‘Go Animated,’ where you can create little animated figures, change their voices, and have them talk to each other.” Hacken had a lot of fun creating figures to discuss issues such as supply-chain procurement ethics, in a cute, humorous way.

The result of this experiment was “a bit of a mixed-bag,” admits Hacken. While humor can be a powerful tool in compliance, and a good way to break the ice—and some employees found it entertaining—others found the topics addressed too serious for such a light approach. Nevertheless, Hacken continues to look for new ways to broach the subject with employees.

Spot checks

It’s a well travelled compliance group. Melissa Price, Senior Communications Officer, notes that “there are at least ten or twelve people going out every week” to various countries to train and talk with new personnel in compliance. “It’s good for all of us to be compliance officers.”

One of the things these people are tasked with are ‘spot checks.’ The idea is that compliance officers arrive with a single sheet of paper (though it can also be in PDF form) on which are written basic reminders of matters to be addressed during their time on site. It’s short, simple, and good way to get across to local staff just what that officer is ‘OK’d to do. “It’s worked well so far; we’re hoping to incorporate it more in the future.”

Price returned recently from a visit to a facility in Niger, where she conducted one of the ‘spot checks’ in question. Consistency is a big part of the program, she’s found, and there’s definitely a learning curve, especially in countries that are not familiar with such open communication – a luxury often taken for granted in the U.S.

“For a lot of cultures, information is power,” says Hacken. “There is a lot of possessiveness over it and the idea of sharing information can be seen as leaving yourself

vulnerable.” Employees locking their desks after hours, HR refusing to hand over records – these are just some of the issues that can be encountered in a warier culture. IRD approaches information with a perspective of openness and transparency, but this is a concept that has to be slowly learned in countries where transparency can have severe risks – especially in locations with corrupt governments that could crack down on individuals who ‘speak up’ in any way.

“Americans are loudmouths, we’re used to speaking up and speaking up often,” says Hacken. “It’s not the same in other countries.”

In those cases, the best way to earn employee trust is to lead by example, and allow workers to see over time that speaking up will not get them in trouble, at least not at IRD.

Increased regulation

IRD is not unfamiliar with the growing strictness of the international regulatory environment. “We do training in Foreign Corrupt Practices,” says Hacken, who notes the organization’s biggest recent concern is from a piece of U.S. legislation signed into law in 2012 by President Obama that approved enhancements to Trafficking-in-Persons regulations ([http://www.whitehouse.gov/the-](http://www.whitehouse.gov/the-press-office/2012/09/25/fact-sheet-obama-administration-announces-efforts-combat-human-trafficki)

[press-office/2012/09/25/fact-sheet-obama-administration-announces-efforts-combat-human-trafficki](http://www.whitehouse.gov/the-press-office/2012/09/25/fact-sheet-obama-administration-announces-efforts-combat-human-trafficki)). This will tighten all transport regulations in the procurement area. Under the enhancements, which are to come into effect March of 2013, all government contracts over \$500,000 must submit a compliance program report, and have it posted electronically.

IRD already has a strong program in place, but they have been working recently to meet the new requirements. “We’re working on how to identify risk, but I will provide the template program” — not just for contracts over \$500,000.

A code of ethics needs to be relevant and understandable, even in translation. Even though different cultures may place different emphasis on business practices, the concept of fairness remains largely universal. Being a

‘For a lot of cultures, information is power. There is a lot of possessiveness over it and the idea of sharing information can be seen as leaving yourself vulnerable.’

part of an organization whose job is to help countries in need is rather a boon in getting the message across: Most employees truly want to do good. “They’re here because they want to save lives,” says Hacken. The key thing to take into account: “It’s about trying to appeal to people’s sense of decency. They see ‘justice’ and ‘unfairness.’”

Even issues of ‘conflict of interest’ are oddly universal, Hacken finds, though often difficult to recognize. Most people, if not taught to reflect on an issue, often don’t consider when actions may pose a conflict.

Behavioral ethics is therefore a part of the introductory compliance training module. “We talk about rationalization and denial,” says Hacken. “I take local newspaper clips, where you have people in front of the judge saying ‘I don’t think I did anything wrong.’ and we go: ‘Huh, what’s that about?’”

One of the training exercises involves an online polling system in which employees are faced with a case study in which a fictional employee, Johnny, is faced with an ethical dilemma. Employees are asked to pick from a number of options that they think Johnny should pick when faced with this dilemma. “Sometimes 15 people will say ‘report it,’ and three people will say Johnny should just stay quiet and not get in trouble.” The polling is anonymous, but afterwards employees discuss the results. “We say, ‘Well, what’s this about?’ There’s a real discussion.” And not just with Hacken. “They talk with each other, they laugh about it, even.” Sometimes there’s an even split in the results. Discussion is actively encouraged.

In the compliance world Hacken finds she occupies a somewhat unique position, working with compliance issues across more than one industry, and for an organization whose reason for being goes beyond sales and profits. But insofar as her organization is seeking to expand into new territories, including the developing world— with all the attendant risks that brings—she still shares much in common with other compliance officers. □

An Animated Approach to Business Ethics

By Alexandra Theodore

When the University of Texas' McCombs School of Business set out to create a set of educational ethics videos for students of business, the visual component was critical.

"We realized a lot of our students are visual learners," Robert Prentice, professor of business law and business ethics in the Department of Business, Government & Society, told *Ethikos*. "They respond to visual cues, they love to watch videos on YouTube."

With that in mind Prentice and his colleagues decided to create a series of 'short, to the point' videos to explain important ethical issues to its students. The result was *Ethics Unwrapped*, a series of free ethics teaching videos ranging from a documentary

featuring disgraced lobbyist Jack Abramoff to more than a dozen animated shorts. The shorts, each approximately five minutes long, feature experts and students discussing ethical issues such as 'role morality' and 'conflicts of interest' — all punctuated by a series of animated cartoons, often humorous in nature.

This was not the first concept McCombs had in mind. "When we first had our idea for this series, we had a more 'talking heads' approach," says Prentice. The idea was to have the videos be a series of interviews with experts in the field, in which they would talk about current issues in business ethics — an approach which *Ethics Unwrapped's* project director, documentary filmmaker Cara Biasucci, nixed.

"She said 'no, no, no, talking heads don't work,'" recalls Prentice. It was decided that the project needed a more visu-

ally arresting way to grab students and keep them engaged with the material. To that end, McCombs turned to illustrator and cartoonist Joel Hickerson, an artist who had worked in 'how to draw' programs for kids' programming on PBS in the 1990s.

Why short videos? Some of it is simply that the intended audience is more used to condensed material, with today's student having a shorter attention span than they might have in the past. "They like having things chopped up for them," says Prentice, and use of video in lessons has been growing both in colleges and business.

Still, when it comes to getting business students engaged with the material, the time has never been better, says Prentice.

"Generally students are more receptive to business ethics than they were in the past," he notes. Overall, students of business ethics are more aware today of scandals of the past. "Enron may seem to be ancient to these students, but they've seen the dot-com scandal,

A series of free ethics teaching videos ranging from a documentary featuring disgraced lobbyist Jack Abramoff to more than a dozen animated shorts.



Robert Prentice

the sub-prime [mortgage] scandal.” They also hear more from their parents about scandals in the past, and that has imparted on business students a greater willingness to confront these issues.

Contributors to the web-series included Washington University’s Olin Business School’s Lamar Pierce, an associate professor of strategy; Babson College’s Mary Gentile, author of ‘Giving Voice to Values’; and Deni Elliott, professor and Eleanor Poynter Jamison Chair in Media Ethics, University of South Florida.

Behavioral ethics

The series covers a variety of topics, but a large emphasis, at least in the first few videos, have been on behavioral ethics, a ‘hot area’ in the field, says Prentice.

Why behavioral ethics? “I think it’s because we know so much more about people today,” says Prentice. He cites Daniel Kahneman’s and Amos Tversky’s work in the 1980s on the anatomy of how people come to decisions – a forerunner to understanding why employees might make the wrong decisions in business today. Behavioral ethics is therefore an approach Prentice predicts will grow increasingly common as we come to understand more about the human psyche and how it factors into decision-making on the job.

It’s important, especially as greater access to visual media means that young business students confront these scandals on a more human level than ever before. “They see these people. They see these white-collared criminals doing the perp walk. Then they see interviews with their neighbors, their friends, their families, talking about: ‘Oh, what a nice guy he was!’ and students then wonder how someone like *that* could have wound up in prison.”

‘Generally, students are more receptive to business ethics than they were in the past,’ and they have ‘a greater willingness to confront these issues.’

It’s not just students who ask these questions. Businesses have also found the Ethics Unwrapped videos useful, providing an easy-to-digest supplement to their training programs.

The videos have drawn interest beyond the business ethics and compliance community. Prentice recalls a conversation with one of his colleagues, a professor of finance, after showing his students the Abramoff documentary. “She ran into me in the hall and said ‘Oh, that’s relevant, I’ll show my students.’” She showed the documentary to her students — which inspired an ‘animated’ discussion on Abramoff, ethics, and wrongdoing.

What is the most important thing students can take from this?

“They need to be humble,” says Prentice. Many of his students come from similar backgrounds to those white-collared criminals they see on television. Understanding just where those criminals went wrong, and why, can be a wake-up call. Ultimately, however, Prentice has faith in students today. “I think that they’re good people. They’ve been told that it is worthwhile to be a good person.” □

‘Don’t sweat the small stuff’ in FCPA Investigations, says Deloitte

By Alexandra Theodore

While the U.S. Department of Justice’s (DOJ) new guidance on Foreign Corrupt Practices Act (FCPA) enforcement has been long anticipated, few elements in the document released in November are likely to surprise anyone who has been following FCPA enforcement over the past five years. Still, according to Matt Birk, partner in Deloitte

Financial Advisory Services LLP, the guidance offers a clean, coherent summary that is easy to follow.

As to whether the guidance will have an effect on future FCPA cases as the Act passed its 35th anniversary in December, “Time will tell,” Birk tells *Ethikos*. The guidance does provide one particularly good piece of advice for individuals who might be worried about that lunch they had with a government official: ‘Don’t sweat the small stuff.’

Technology may also be an issue when it comes to how companies handle potential FCPA violations. Data security risks, Birk notes, are higher than they've ever been.

Focusing on high-risk areas

“What the government is doing is establishing a focus on higher-risk areas,” says Birk. The nature of those risks has changed over the past 10 years.

The biggest change—and the biggest difficulty—in FCPA enforcement is the way in which payments are made to foreign officials. “It’s not dropping off the bags with the millions of dollars in them anymore,” says Birk, who notes that payments made to foreign officials now come in smaller, more easily hidden forms: “Like paying for the education of a foreign official’s child.” These violations are much harder for a company to uncover.

What’s more, technology may also be an issue when it comes to how companies handle potential FCPA violations. Data security risks, Birk notes, are higher than they’ve ever been.

A recent poll released by Deloitte found that while corporate leaders are still concerned about FCPA compliance, the use of technology to manage increasingly expansive programs remains low. Just 6 percent of executives say their companies use data visualization and analytics effectively for anti-corruption purposes. More than one-third (36.1 percent) do not use analytics at all as part of their anti-corruption programs, according to the poll, which queried more than 2,100 professionals from industries including financial services, consumer products, industrial products, technology, media, and telecommunications. They responded to questions during the recent webcast, “The Foreign Corrupt Practices Act: 35 Years of Focusing on Anti-corruption.”

“The DOJ and SEC expect companies to take a risk-based approach to employing technology to support their FCPA programs,” said Bill Pollard, a partner in the FCPA consulting practice of Deloitte Financial Advisory Services LLP, in a Deloitte press release. “Throughout the new 120-page guide they provide examples of companies utilizing technology to monitor gift payments or conduct and monitor third party due diligence.”

More than one-half of executives polled plan to improve their companies’ corruption prevention and detection programs in 2013, while nearly one-quarter of respondents (23.2 percent) believe the cost of developing and maintaining those programs will be the biggest challenge companies will face in the next year.

Twenty percent viewed dependence upon third parties to adhere to corporate anti-corruption compliance programs as the greatest challenge in 2013.

What are some of the ways companies can avoid violations? “Generally the biggest thing to do is to keep third parties off your payroll,” Birk told *Ethikos*. Third parties need to be carefully listed, and companies need to be extremely vigilant.

Due diligence is paramount

“At the end of the day, it’s knowing who you’re doing business with,” says Birk. When conducting business in emerging markets, it’s about getting the right referrals and asking the right questions.

When it comes to enforcement, many countries have begun to follow the U.S. lead. China, in the past year, has rolled out a ‘FCPA-like’ law. “Mexico, too, just put in something else. There’s Canada. And the UK now has its bribery law.”

Germany, too, has been seeing greater enforcement of its anti-bribery legislation, Birk notes. “We’re seeing more countries conducting their own investigations.”

FCPA compliance remains a challenge in many emerging markets.

“Certainly there are some countries where bribery and corruption have become part of their culture. Safety is also a consideration,” admits Birk. “For example, we’d think twice before sending teams to Venezuela to investigate corruption.” Local governments can be overtly hostile to outside investigation, even putting at risk investigators’ safety. Data privacy is also a concern. In some cases Deloitte investigatory teams must consider the safety of bringing their *laptops* with them out of concern that they could be stolen and sensitive information lifted.

Much of the environment has improved when it comes to working with third parties in other countries—at least where compliance with U.S. laws and regulations is concerned. “A lot of the third parties understand it now, they understand the problems now.” More importantly, they understand that if they want the business, compliance is paramount.

Still, when things do go wrong, and a company finds

itself embroiled in an investigation, ‘feet on the ground’ may *also* be critical. “It’s important to always have a local team in an investigation,” says Birk.

It’s also about knowing where to focus the investigation.

“When faced with an investigation, the top thing a company needs to do is really isolate the allegations at hand. It’s doing the interviews, pulling the emails, reading the thousand of invoices. It’s starting small and trying to get a feel of the situation, based on interviews, of what approach needs to be taken.” A company doesn’t want to take too broad an approach and launch a global investigation when the concerns are primarily regional—wasting critical time and money in the effort. This is where technology can prove a boon. A well-entrenched analytics system, Birk asserts, can better isolate problem areas.

With the FCPA’s 35th anniversary just passed (December 19th), what has most changed in the corporate world when it comes to anti-corruption compliance? “FCPA concerns are now being addressed at much higher levels in the company,” says Birk.

The recent FCPA Guidance provides examples of companies utilizing technology to monitor gift payments or conduct and monitor third party due diligence.

That senior management involvement is crucial. The companies most likely to come out ahead in relation to the FCPA are the ones that are willing to take the hard line with their employees when it comes to anti-corruption efforts. It is tone at the top, according to Birk, but reinforcement is also key. Companies need to publicize the results of their anti-corruption efforts, both good and bad, and let employees know what measures were taken against those who were caught doing something wrong.

“Reinforcement over and over again,” says Birk. It’s about “leading from the front.” □

Whistleblowing Behavior ‘Unchanged Since 2011’ — IIA Survey

Despite new SEC whistleblower provisions, internal auditors at corporations are seeing virtually no change in employee whistleblowing behavior, according to a recent survey conducted by the Institute of Internal Auditors (IIA).

Indeed, just 2 percent of chief audit executives expressed concern that employees could bypass their organization’s whistleblowing process in favor of external parties, such as the SEC, where they could potentially earn millions for reporting wrongdoing.

In recent years, internal auditors have been asked to play a more proactive role as part of the ethics and compliance structure, observes IIA President Richard Chambers: “The internal audit profession has played a crucial role helping organizations identify instances of unethical employee behavior as well as providing recommendations that have enhanced detective and preventive controls.”

The IIA’s biannual ‘Pulse of Profession Survey’ polled 545 chief audit executives and internal audit directors. “Given the visibility of the post Dodd-Frank whistleblower provisions, we were a little surprised to learn that employee

whistleblowing remains virtually unchanged since 2011,” says Chambers.

Since the SEC’s whistleblower program was established in August 2011, nearly 3,000 whistleblowers have contacted the agency. The Pulse of Profession Survey, conducted in October of 2012, asked participants to identify their level of concern with employees taking whistleblower claims directly outside the organization.

Most survey participants indicated they have little to no concern (78 percent) about employees circumventing already established reporting processes. Fortune 500 respondents were a bit warier, with 41 percent expressing “some concern.” All told, however, Fortune 500 participants indicated little to no concern (58 percent). Just 1 percent expressed ‘high concern’ in relation to the potential for whistleblowers to bypass their internal reporting mechanisms.

In addition, the survey asked respondents “to identify whether the risk of whistleblowers bypassing the organization’s internal processes has changed since the advent of the

Just 2 percent of chief audit executives expressed concern that employees could bypass their organization's whistleblowing process in favor of external parties, such as the SEC.

SEC's whistle-blower program in August 2011." The vast majority of survey participants (82 percent) indicated that the perceived risk has stayed the same. Just 15 percent said the risk has increased. Once again, risk levels were slightly different among Fortune 500 participants: most Fortune 500 respondents (66 percent) said that the risk has stayed the same since August 2011; 30 percent believed the risk has increased. "This difference could be attributed to the increased exposure and attention placed on large companies and the reward incentives built into the whistleblower rules," notes the report.

Whistleblower hotline activity doesn't appear to have changed markedly. When respondents were asked to identify whether hotline claims had increased in their organization since August 2011, the majority (84 percent) stated that the number of claims has stayed the same (including 78 percent in the Fortune 500 sector).

In terms of complaints handled annually, most orga-

nizations represented in the study receive anywhere from one to 10 complaints per year (37 percent), while a similar percentage of Fortune 500 respondents (36 percent) said that their organization handles more than 100 complaints annually.

When asked to list the general distribution of hotline/whistleblower complaints in their organization across several categories, personnel management was identified as the No. 1 hotline complaint, followed by company/professional code violations.

Twenty percent of all respondents work in Fortune 500 companies. Most internal audit departments represented in the study consist of 2—5 (35 percent) or 6—10 (25 percent) internal auditors. Seven percent of the respondents came from departments with more than 50 internal auditors.

The fact that the October 2012 survey did not find any earth-shattering news pertaining to employee whistleblowing can be taken a number of different ways, the report notes. "Positively, it could well mean that for most organizations, internal hotline practices have been working successfully and the advent of the whistleblower provisions from Dodd-Frank simply helped to remind organizations to continue ensuring their internal processes are adequately robust," says Richard Chambers.

"However, with the number of cases the SEC has self-reported, and with only the first of an expected volume of future financial payouts, only time will tell if internal audit's general lack of concern is warranted." □

Don't underestimate the value Of due diligence *after* a merger

Compliance and ethics (C&E) is something that is relatively new to the conversation when it comes to mergers and acquisitions, according to experts in a recent Corpedia webinar – and it's a conversation that can't end upon the completion of the deal.

"We've talked a lot about the ways in which compliance and ethics should be involved. There's also a very important role for the C&E department to play after the acquisition or merger takes place," says Erica Salmon Byrne, Executive Vice President, Compliance and Governance Solutions for Corpedia. "That's the point where the program has to pick

up and integrate employees into the new company."

In the past year, companies have seen a large amount of overseas activity when it has come to mergers and acquisitions. This growth has involved European companies, Chinese companies, and many smaller companies—many of which are not familiar with the tighter regulatory scrutiny that comes with being a publically traded concern.

Similarly, Byrne notes, many of this year's DPAs (deferred prosecution agreements) or regulatory actions have been focused on companies that inherited problems from acquired businesses.

A lot of these missteps were because the firm's compliance and ethics department didn't want to get in the way of the sales program. "And they didn't want to get in the way so much that they didn't exercise proper controls," says Byrne. The result was that companies ran afoul of the Foreign Corrupt Practices Act (FCPA) and paid heavy fines.

With that in mind, it behooves a company not to underestimate the value of due diligence both during and after the merger.

"It's amazing how often things can go wrong for these companies," remarks Mark Ohringer, partner with Jones Lang LaSalle, a firm that has handled many mergers and acquisitions over the years.

"Integrating the acquisition is really when the tough stuff begins. It's a mistake to assume that due diligence has done all the work," says Ohringer. "That's only a third of the work that has been done — as hard as that can be to accept."

High emotions

It's vital to have someone in place who recognizes that high emotions can be involved when employees undergo such a process. It's easy to roll one's eyes at that idea, admittedly, but "a lot of the softer stuff is where these things go wrong," remarks Ohringer. It's important for the organization to have plenty of people involved who are psychologically attuned and understand that it's not 'just business' for the people at the company.

"Someone once told me: It's as if your wife came home one day and said, 'Honey, I'm bringing home a new husband and you're going to like him,'" recalls Ohringer. "That's the feeling of the acquired company."

Jones Lang LaSalle typically appoints a transition leader for the acquisition, "someone with good emotional intelligence." The idea is to treat both sides of the acquisition as equal. For example, calling one side Team A and the other Team 1. "In India they had Team Ein and Team Stein—even they think about small things like that," says Ohringer. "Transition leaders need to be tasked with thinking about this where successful integration is the goal."

Overcommunicate everything. What you *don't* say can have consequences. "People fill a vacuum, and it's never good when they do that." Even if you think it may seem obvious, it's still important to spell it out. "Tell people how glad you are they're part of the company," says Ohringer.

Similarly, in a situation where a larger company has acquired a smaller company, it's easy to lapse into a one-way communication.

'Be honest,' stresses Ohringer. Humility is key. 'It's easy to sit there and pretend you know everything.'

"You sort of revert to thinking that the big company did everything right, and these other guys are just going along with it," says Ohringer. Companies need to remember that the smaller company was successful, that's why you bought them. "Don't be arrogant about it. Listen to them. Solicit their input. Don't just tell them what to do."

Otherwise, employees will start hoarding information.

Collecting questions

One of the techniques LaSalle uses in these situations is to have someone collect questions from individuals with the recently acquired company, write the questions down on a piece of paper, and answer them for the whole group.

"We try to walk through with people how they do everything [at the acquiring firm], what are their policies." Similarly, be willing to look through the *other* organization's policies and codes of conduct. "They probably have some good stuff that's better than yours; take the time to line them up [the two firms' policies], see how they're different." In addition, taking the time to review these policies offers a good opportunity to engage with one's colleagues.

"Be honest," stresses Ohringer. Humility is key. "It's easy to sit there and pretend you know everything."

Joint communications can help. "We've tried to have two transition leaders jointly put out communications. You want to look like you're working together well. We'll generally have a template every week — just for the first month or so." Seeing information from representatives of *both sides* in the merger can help promote the idea of openness.

As for the language barriers that are apparent in some mergers, be attuned to who will receive the information. "If we have a population of people with different languages we'll get a translator. Go through the trouble of getting one. I think people really appreciate it."

An organization should have this framework in place prior to closing the acquisition. "Ideally, we will have people with new e-mails the day after the closing."

While communication is valuable, it's also important not to do too much to disrupt employees' accustomed schedules. "One of the things they talk about is the number of e-mails they get — originally we were bombarding

When acquiring a private company, impress on employees that there are channels in place for them to say something if they see something wrong.

them with things that were suddenly getting in the way of business,” says Ohringer. “You don’t want to pull them off of doing business for too long.”

Instead, Ohringer suggests focusing on weekly updates and employee websites – where you can set up an FAQs (frequently asked questions) page and collect your communications in an accessible e-library.

“We also try to create mentoring relationships between the senior people. They can be talking to each other, surfacing any concerns. Everyone’s watching them.”

And don’t have everyone show up and go to their desks. “Plan an orientation. Talk about what the point of the transaction was.”

Move people ‘in a smart way’

Establish trust between teams as soon as possible. “Move people as soon as you can—in a smart way. Get teams together. If they don’t start meeting each other quickly, if they don’t start ‘officeing’ together, they’re going to start making stuff up and that’s not good.”

What about the employee who has openly expressed discomfort or disapproval with the recent changes? Ohringer suggests keeping that individual active and engaged. “Find the biggest whiner on both sides and give them stuff to do,” he says. “Get them engaged so they’re not pumping out their negative energy at everyone.”

When it comes to regulatory concerns, it’s also important to explain the differences between public companies and private companies. “There are a ton of things they (private

companies) have never had to worry about.”

There are often new risks at play.

“Make them understand about [the risks of] saying things publically and how different this is at a public company.” It’s a matter of developing a sensitivity they didn’t have before. Suddenly you have people from internal audit asking a lot of questions and looking over their shoulders: a circumstance that can breed suspicion and mistrust down the line. “You have to explain why that is happening, and that it’s not that we don’t trust them.” Explain what went wrong for companies that did not do this: companies that later ran afoul of regulatory bodies.

“It’s not so obvious if you haven’t had to do it before,” notes Ohringer. “Talk about the horrors about what happens if you get that wrong.” For example, the way that poor bookkeeping and accounts can later develop into an FCPA nightmare.

A different ethos

“Typically private companies don’t have a code of ethics, they don’t have a hotline, an ombuds program, an open door policy. They’ve been able to operate on a much more informal basis on all of that.” With that in mind, when acquiring a private company, it’s important to impress on employees that there are channels in place for them to say something if they see something wrong. “Call the hotline, talk to a lawyer, do something – [tell them] how important that can be. And that’s a very different ethos than what is often found at a private company, especially a family company.

“After some months have gone by, we actually go back and sit down with them, solicit people on how it all went,” says Ohringer. They’re asked what went well, what went wrong, and how they felt about the process. The idea of course, is to promote an understanding – something that may seem ‘soft,’ but can prove vital, especially when so many employees these days are saying, “I don’t understand why we do things like this.”

— Alexandra Theodore

Avis...Continued from page 6

shall under no circumstances tolerate the giving or receiving of undue reward to influence the behavior of another individual, organization, politician or government body, so as to acquire a commercial advantage; this extends to all operations, regardless of whether bribery is officially tolerated and condoned.” (<http://www.avisbudgetgroup.com/files/2113/5482/3347/VendorStandards.pdf>)

com/files/2113/5482/3347/VendorStandards.pdf)

Doing the right thing has been in Avis’ make-up for a long time, notes Muhs, who finds that when it comes to creating an effective program, he has had an advantage:

“I’ve been blessed in two facets: the first is a board and senior management that gets compliance,” says Muhs. The second is a corporate culture that has understood from the beginning the value of ‘doing the right thing.’ □