



# ETHICS FOR THE C SUITE

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# Are You Ethical?

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# Ethics In The C Suite

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- Is there anyone here who thinks that he or she needs more ethical training?

# Ethics In The C Suite

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86% of observed incidents of corporate fraud were known to or perpetrated by senior management.

-Compliance and  
Leadership Council (2006)

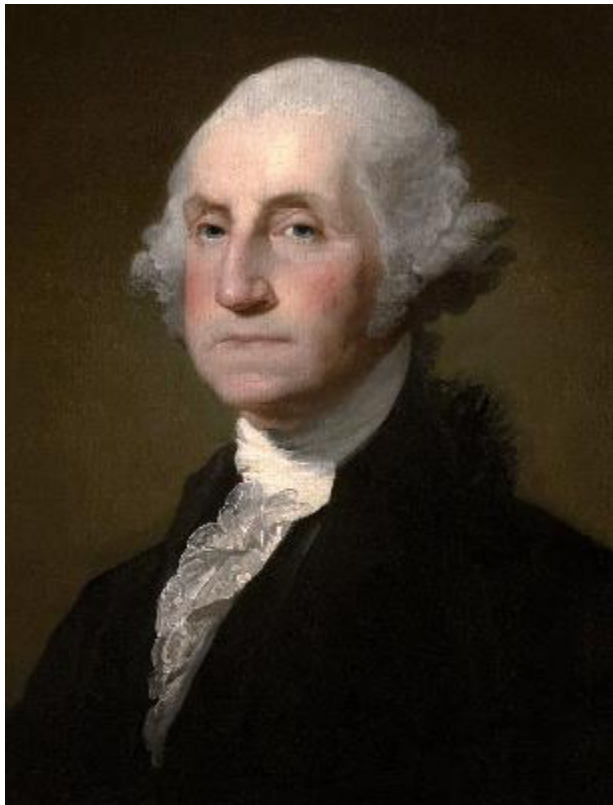
# Ethics In The C Suite

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- High profile instances of senior executive misconduct result in:
  - highly consequential damages to companies and their shareholders
  - financial and non-pecuniary damages associated with loss of reputation

# Ethics In The C Suite

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# What is Ethics?

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# What is Ethics?

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Morals – an individual's sense of right and wrong; morals define a person's character

Ethics – a code of conduct defined by a group; a social system where morals are applied

Laws – rules of conduct established and enforced by sovereign authority



# What Is Ethics?

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Principles Based vs. Rules Based

Good behaviors are rooted in principles, not rules.

The reason for all laws is that moral agreements break down

# Sources of Ethics

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Individual Morality

Custom/Culture

Codes of Conduct

Laws

P2P

# Sources of Ethics

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## — Codes of Conduct

- Fair Dealing with others
- Conflicts of Interest
- Confidential Information
- Corporate Opportunities
- Compliance with Law
- Accountability - Whistleblowers

# Why Do Ethical Lapses Occur?

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Unique compliance and ethical risks are posed by the C Suite setting.

C Suite provides

- means, motive and opportunity for poor ethical judgments and misbehavior; and
- situational and social influences that undermine ethical decision making.

# Why Do Ethical Lapses Occur?

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## Power and Freedom

- Over business strategy, tactics and execution
- Over employees and their careers
- Over compliance and compliance sensitive activities
- From supervision and hard controls

Power breeds overconfidence and increases risk taking out of a mistaken assurance that one can do no wrong

Rank has its privileges – privilege translates to Private Law

Power reduces inhibitions making undesirable behavior more likely – behaviors that are desirable in moderation – like risk taking – become undesirable when limits are lifted.

Power facilitates the suppression of dissent and the further eroding of controls

# Why Do Ethical Lapses Occur?

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## Money

- Strong incentives = strong temptations
- Pay, status, career prospects

53% of survey respondents think career progression at their firms would be difficult without being flexible on ethical standards

- The Economist Intelligence Unit

- Accumulation Fever

# Why Do Ethical Lapses Occur?

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Velocity – things happen fast

- Business necessity
- Quarterly reporting cycles
- Quick decisions/complex problems
- Forced choices between competing values

“People challenged simultaneously by a demanding cognitive task and temptation will yield to temptation.”

-Daniel Kahneman

*Thinking Fast and Slow*

# Why Do Ethical Lapses Occur?

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## Pressure to Perform



# Why Do Ethical Lapses Occur?

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## Conflicts of Interest

It is difficult if not totally impossible to be truly objective about a decision when you have a significant interest in the outcome

# Why Do Ethical Lapses Occur?

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Motivated Blindness – we ignore inconvenient facts if we have a substantial interest in not noticing them

Time Pressure – a form of motivational blindness when we are in a hurry

# Why Do Ethical Lapses Occur?

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## Irrational Loss Avoidance

We are more likely to act unethically and take risks to avoid losses than to obtain equivalent gains – WHY?

# Why Do Ethical Lapses Occur?

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## Overconfidence

Leads us to take more risk than we intend to and, in certain situations, to think we won't get caught

# Why Do Ethical Lapses Occur?

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## Group Dynamics

- C Suite is a small, insular group that develops its own identity, behavioral norms and culture
- The risk and influence of Group Think cannot be discounted

# Why Do Ethical Lapses Occur?

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## The House Doctrine

*Everybody Lies*

# Effective Compliance And Ethics Programs

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Federal Sentencing Guidelines for Organizations – define what an effective compliance program needs to look like

- Just Punishment
- Deterrence – Mitigating Credit for an effective compliance program
  - prompt reporting to authorities
  - no involvement by high level personnel in actual criminal conduct
- DOJ is committed to prosecuting executive offenders whenever evidence supports it.

# Effective Compliance And Ethics Programs

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Responsibility for Corporate Culture is the Board's

- Stand-Alone Board Compliance Committee (separate from the Audit Committee)
- Model The Message
- Consistently repair broken windows
- Challenge Senior Management to take ownership and be accountable



# Effective Compliance And Ethics Programs

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## Empower independent Chief Compliance Officer

- Senior Executive status
- Direct report to the Board or Compliance Committee
- Separate from general counsel

# Effective Compliance And Ethics Programs

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## Rigorous Compliance and Ethics Program

- Company-wide training
- Accountability – Whistleblower Protection
- Investigations
- Assessments
  - regular employee surveys
  - 360° evaluations of senior management by peers, Board and direct and indirect reports

# Effective Compliance And Ethics Programs

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## Leadership Selection

- The Board is responsible to hire the right people and avoid hiring the wrong people
- The Group of Thirty says a “Very Good” CEO is preferable to a “Star.”

“Very good CEOs care more about doing the right thing than being right.”

- Jim Collins, *Good to Great*

- Executive compensation policies should make incentive compensation contingent on meeting compliance standards.

# Ethical Self Inquiries

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Is this action in compliance with my company's code of conduct, P2P contracts and the law?

Is this action ethical in every way?

Could this action create an appearance of impropriety?

Does it feel right?