

# Modeling the Message: Communicating Compliance through Organizational Values and Culture

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“Culture, more than rule books, determines how an organization behaves.”

Warren Buffett<sup>1</sup>

## INTRODUCTION

Compliance professionals do a lot of communicating. We publish codes, policies and procedures, newsletters, training materials, posters, and tips-of-the-month. We write, meet, blog, and tweet. Most of these communications are content-rich and operationally focused on objective requirements for legal and policy compliance. They play the essential role of defining clear boundaries of acceptable behavior so that employees have the basic knowledge they need in order to avoid trouble.

But how can we most effectively motivate people to stay within these carefully-defined boundaries? What kinds of communications—what channels, themes, and content—actually exert a measurable positive effect on employee behavior? In short, once the essentials of a compliance program are in place, what does the evidence tell us about how we should deploy scarce company resources to promote compliance? The answers would surprise many corporate executives and probably most lawyers as well.

Over the past decade and a half behavioral scientists—cognitive, organizational, and social psychologists and behavioral economists—have devoted considerable attention to compliance issues, and the state of the art has advanced dramatically. One lesson from the research is clear: it’s not enough to educate employees about their responsibilities, provide them with written guidance, and warn them of the consequences if they stray. We need to expand the scope of the “communications” discussion in at least two ways. First, our explicit compliance messaging must appeal broadly to workers’ best values and aspirations, engaging and activating those values so that they are expressed in workplace compliance decisions. Second, we should acknowledge, and harness, powerful drivers of ethical behavior that, while not usually thought of as communications channels,

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1. Memorandum from Warren Buffet to Berkshire Hathaway Managers (July 26, 2010).

nevertheless send unmistakable messages which employees internalize and act upon. Along the way, our conception of what constitutes a compliance communication, and of who the key communicators are, should expand.

This article focuses on the benefits of values-based communications and on the communicative effects of compliance program orientation, corporate cultural attributes and management behaviors, all three of which have been proven to dramatically affect both employee compliance and internal reporting of misconduct. We will lean quite strongly on the behavioral science evidence of these effects, with the aim of showing not only what works, but why.

This essay is organized as follows. We set the stage with two examples from the experimental literature that show how ambient ethical messages in one's immediate environment can profoundly influence behavior. After a brief excursion into the relationship between communication and culture, we critique the "command and control" messaging that is at the heart of most corporate compliance programs (and dominant in first-generation programs), exposing flaws in its underlying assumptions, and showing how messages implicit in a strong command-and-control regime can sometimes undermine program goals.

We then review two key psychological mechanisms—decision framing and group membership dynamics—and their relationship to organizational culture, values, intrinsic motivation, and ultimately to compliance. This leads us to the behavioral-science findings on how these mechanisms can be harnessed—via a positive ethical culture, a values-based compliance regime, and management practices informed by notions of integrity, fairness, respect, and dignity—to drive measurable improvement in employee compliance and reporting of misconduct. Finally, we offer suggestions as to how these teachings can be applied in practice, using communication in the broadest sense to create the effective "culture of compliance" that the federal Sentencing Guidelines demand.

## I. ENVIRONMENTAL MESSAGES AND ACTIVATION OF VALUES

A person's behavior in a given situation is not influenced solely by communications that explicitly address that situation, such as workplace rules, policies, and procedures. Our decisions are also influenced by values and beliefs that we bring to work, by a broad range of incentives, disincentives, and internal and social motivations, and by cues in the work environment that "nudge" our behavior in one direction or another.<sup>2</sup> Some of those nudges<sup>3</sup> come from messages about topics other than the situation at hand.

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2. For a highly accessible review of some of the factors that affect our decision-making, many of them hidden or irrational, see JONAH LEHRER, *HOW WE DECIDE* (2009).

3. This apt term is borrowed from RICHARD THALER & CASS SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH AND HAPPINESS* (2008), which proposes that as a society we should seek to compensate for the inherent limitations and quirks of individuals' cognitive and decision-making faculties by designing "choice architectures" that can improve the quality of decisions on important but complex issues.

Consider Dan Ariely's investigation of the circumstances under which people either cheat or don't cheat.<sup>4</sup> He gave college students a 20-question timed math test and promised to reward them based on the number of correct answers. Baselines were established for the difficulty of the test and the propensity for cheating by manipulating whether cheating could be detected. When it was impossible to cheat, the students averaged four correct answers; but when conditions were changed so that it was not just possible to cheat, but obviously impossible to *get caught* cheating, the students reported getting an average of seven answers right.

Next, the version of the experiment that permitted risk-free cheating was repeated, but with an added warm-up task. Half the students were instructed to try to list up to ten books they had read in high school. As expected, this group averaged seven right answers. The other students were asked to try to list the Ten Commandments before taking the test. That group averaged four answers right: statistically, at least, cheating had been completely eliminated.

Ariely believes that thinking about the Ten Commandments served as a powerful, just-in-time reminder to the students of their own internal values. In psychological terms it increased the salience<sup>5</sup> of ethics in the context of the test. And that small ethical prompt "primed" the students to adhere to their values even in the presence of financial temptation and in the absence of any form of monitoring. The Ten Commandments task was presented as a memory exercise, not as a communication, and certainly not a communication *about* the math test—but nevertheless the students received and acted upon a powerful message.<sup>6</sup>

Admittedly, this experiment involved low stakes, and it took place in a laboratory setting with no authority figures, performance pressure, group ties, or continuing relationships. Still, it is natural to ask whether a compliance and ethics program and an ethical corporate culture can operate in the same way as the Ten Commandments in the experiment, surrounding employees with messages and cues that bring their values to the fore and influence them to behave ethically even when there is no risk of detection. It is fair, too, to ask what other messages

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4. Several variations of this experimental paradigm are discussed in Nina Mazar, On Amir, & Dan Ariely, *The Dishonesty of Honest People: A Theory of Self-Concept Maintenance*, 45 J. MARKETING RES. 633-644 (2008); DAN ARIELY, PREDICTABLY IRRATIONAL 195-216 (2008); Dan Ariely, TED talk, *Why We Think It's OK to Cheat and Steal (Sometimes)* (Mar. 18, 2009), available at <http://www.youtube.com/watch?v=nUdsTizSxSI>.

5. Salience can be thought of as the percentage of a person's cognitive windshield space occupied by an idea. Everyone has an idea of chocolate lurking in their mind, but if you want to increase its salience you might, in order of increasing effectiveness, ask them whether they like chocolate; show them a box of chocolates; or give them a sample to taste.

6. To determine whether these results were specifically driven by religious beliefs, in another variation of the experiment, instead of the Ten Commandments task the students were asked to acknowledge that their school's honor code applied to the test. In that instance cheating was also eliminated, *whether or not the school actually had an honor code*. In contrast to the use of the Ten Commandments as discussed above, though, the "honor code" condition was explicitly expressed not as an apparently unrelated quiz, but as a communication to the students, and one directly applicable to the test and to cheating.

transmitted in the workplace may *lower* the salience of ethical values and thereby undermine compliance efforts.

This latter danger is illustrated by another experiment<sup>7</sup> in which business students played the part of corporate managers and performed a prescribed series of office tasks such as reassigning sales personnel, ordering supplies, etc. The two tasks relevant to the experiment were reading a memo from the CEO that praised the company culture and, later, filing a property insurance claim. Students randomly received one of two versions of the CEO memo: the first described the company culture as one “that emphasizes success—we do what it takes to be competitive!” while the other version described it as a culture “that emphasizes values—we will always do what is right!”

On the insurance matter, all of the subjects received a collection of data from various legitimate and dubious sources that could be selected and marshaled in ways that would support either an honest or an inflated claim. Separately, the students were tested to find out their underlying beliefs as to whether “business” was, in general, inherently moral or immoral.

The hypothesis was that people who have a strong implicit faith in the notion that business is inherently moral might be less inclined to examine the ethical implications of their actions at work: essentially, that if an action felt like business, they would tend to assume it must be acceptable. Moreover, these same people might be more vulnerable to environmental cues—like the “do what it takes” CEO memo—that could be interpreted as encouraging or implicitly accepting questionable business behavior.

The results were stunning. Subjects who considered business to be inherently on the low end of the morality scale filed very few inflated insurance claims regardless of which memo they received. But those who believed strongly that business is inherently moral and also received the “we do what it takes” memo were *33 times* more likely to file an inflated insurance claim than the average study participant.<sup>8</sup> The memo was not “about” filing insurance claims, but the participants got the message<sup>9</sup> . . . and acted on it.

## II. CULTURE SIMPLIFIED: COMMUNICATION THAT STICKS

Organizational culture can be easy to identify—we know it when we see it—but hard to define in a way that actually helps us change or reinforce a given

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7. Scott J. Reynolds et al., *Automatic Ethics: the Effects of Implicit Assumptions and Contextual Cues on Moral Behavior*, 95 J. APPLIED PSYCHOL. 752-760 (2010).

8. This result was statistically significant at the .01 level of probability.

9. The potency of the contextual cue furnished by the CEO memo was likely amplified by the “authority bias,” the tendency of people to defer to authority rather than exercising independent judgment that was memorably demonstrated in the famous Milgram electric shock-administration experiment. See Stanley Milgram, *Behavioral Study of Obedience*, 67 J. ABNORMAL AND SOCIAL PSYCHOL. 371-378 (Oct. 1963). The implications of this bias for corporate messaging should not be overlooked.

culture. One good “soft” definition tells us that culture is “the set of enduring and underlying assumptions and norms that determine how things are actually done in the organization.”<sup>10</sup> A coherent culture is based on shared values and beliefs, and the proof that they are shared is that they shape behavior across the organization. But how do we instill or modify those “enduring assumptions and norms”?

Up close, culture is about communication in the broadest sense. In his book *Explaining Culture*,<sup>11</sup> Dan Sperber proposes that culture is the summed effect of communications within a group over history, the stable “precipitate of cognition and communication in a human population.”<sup>12</sup> All cultural transmission is effected by someone either making public (communicating) an idea or other mental representation, or, conversely, taking an external experience, message, or communication, and internalizing it.<sup>13</sup>

Sperber’s work bridges the gap between psychologists, who are concerned with the internal world of individual mental representations and processes, and social scientists, who study representations that are in some sense collective or shared. Communication via countless individual interactions and messages is the means by which groups instantiate ideas, norms, and beliefs in individuals (“equal justice under law”), as well as the means by which individuals can perpetuate or influence culture (“I have a dream”). To the extent that a group of people internalize the same messages—beliefs, values, ideologies, aesthetics, symbols and stories—they share a culture. Thus, communication is the fundamental means by which we can build, transmit, or change an organizational culture.

Most communications, of course, are transitory and culturally insignificant—they do not contribute to the inculcation of beliefs or values that are shared by large numbers of people and that remain stable over time. Messages have a better chance at cultural impact if they hang together as a coherent story; if they draw on already-established ideas, themes, or symbols; if they are consistent and frequently repeated through multiple channels; if they come from admired or authoritative sources; if they are relevant to our status in a group we consider important; if they resonate with experience (or constitute experience!); if they are broadly useful; and if they carry a strong emotional charge.

The more consistent and pervasive the messaging is within an organization—explicit messaging and, crucially, messaging through behavior—the more likely that employees will internalize the corresponding values and principles, will frame decisions in terms of those values, and will put them into action.

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10. John C. Lenzi & Timothy T. Lupfer, *Measuring Corporate Culture: Enhancing the Board's Understanding*, Deloitte Corporate Governance presentation (Aug. 8, 2007).

11. DAN SPERBER, *EXPLAINING CULTURE: A NATURALISTIC APPROACH* (1996).

12. *Id.* at 97.

13. In Sperber’s model, the study of cultural change and transmission is likened to an epidemiology of communicable ideas.

Let's look at some of the workplace messages that are relevant to compliance, and at the evidence of their effects on compliance and reporting.

### III. COMMAND-AND-CONTROL MESSAGING

Contrast the indirect messaging in the cheating and insurance fraud experiments with the direct, rules-based, results-focused, and absolutely necessary communications at the heart of most compliance programs: codes, policies, training materials, and procedures. Like the laws they emulate, these documents explain the applicable rules, lay out specific processes for compliance, and prescribe consequences for failure to comply. They educate and instruct workers about compliance requirements and, often, include built-in monitoring or auditing processes.

Compliance programs that place primary or exclusive emphasis on communications of this type are often described as "command-and-control" oriented programs. These programs, and their associated communications, aim to govern employee behavior largely through concrete incentives, principally deterring misconduct via monitoring and detection mechanisms and the threat of punishment. The explicit message is the same as the message from law enforcement: follow the rules or pay the penalty.

It's an important message, but when we unpack it, we find other messages inside. The command-and-control approach is based on the assumption that workers will behave like the "rational actors" of economic theory:<sup>14</sup> they will weigh the costs and benefits of compliance versus rule-breaking and make a rational, self-interested decision to avoid the risk of punishment.<sup>15</sup> The greater the emphasis on monitoring, detection, and punishment, the more this assump-

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14. Gary Becker's Nobel Prize was awarded in part for his work on the rational-actor theory of criminal decisionmaking. One day in the 1960s he realized that for a relatively short stop it made economic sense to park illegally in New York City, given the cost of private parking, versus the cost of a parking ticket multiplied by the likelihood of being ticketed within that time span. Being a future Nobel Prize-winning economist, he immediately thought, in effect, "I'll bet all the other lawbreakers think just the way I do!" and a theory was born. Gary S. Becker, *The Economic Way of Looking at Life*, Nobel Lecture (Dec. 9, 1992).

15. Roughly, the rational-actor formula is: compare the expected reward for rule-breaking to the risk of punishment. That risk is equal to the severity of the punishment, multiplied by the likelihood of getting caught. Though this model is intuitively persuasive and often right, behavioral economists and cognitive psychologists have made mincemeat of the "rational" assumption, exposing a large number of variables that distort our perception of risks and rewards, or influence whether proposed behavior is even perceived as noncompliant or punishable in the first place. Examples of these variables include motivated reasoning, rationalization, over-valuing present rewards while under-valuing remote consequences such as the risk of getting caught, the self-serving bias, the authority bias, in-group norms and conformity pressures, and the ever-amusing Dunning/Kruger effect. See generally, David M. Messick & Max H. Bazerman, *Ethical Leadership and the Psychology of Decisionmaking*, SLOAN MGMT. REV. (Winter 1996); Sung Hui Kim, *The Banality of Fraud: Re-situating the Inside Counsel as Gatekeeper*, 74 *FORDHAM L. REV.* 983 (2005); Joyce Ehrlinger, Kerri Johnson, Matthew Banner, David Dunning, & Justin Kruger, *Why the Unskilled are Unaware: Further Explorations of (absent) Self-Insight among the Incompetent*, 105 *ORGANIZATIONAL BEHAVIOR AND HUMAN DECISION PROCESSES* 98-121 (2008).

tion rises to the surface.

The implicit message, then, is one of pursuing self-interest (avoiding punishment) rather than one of doing the right thing: the employee is encouraged to frame the question in terms of personal risks and rewards. And if you frame compliance as an essentially economic proposition, you invite misconduct whenever its reward is significant and either the risk of detection, or the punishment if caught, is perceived as acceptably low.<sup>16,17</sup> Instead of conveying the message that compliance is non-negotiable, risk/reward framing implies that it may be negotiable if the price is right. A tragicomic instance of this phenomenon occurred when experimenters persuaded several day care centers to impose small fines on parents who were late picking up their children, on the theory that an economic incentive would reduce lateness. But unwittingly, the day care centers were giving parents a cue to re-frame the situation, not as a non-negotiable social obligation, but as an economic transaction at a bargain “price.” Rather than diminishing, the incidence of lateness nearly doubled.<sup>18</sup>

By no means should we conclude that incentives are irrelevant to compliance or uniformly counterproductive: people do respond to incentives, positive and negative, particularly if the punishments or rewards are large. The point is that incentives send messages too. In some cases, the message may have more impact than the incentive itself: an affordable fine signals that lateness, which the fine was intended to prevent, is actually acceptable. In other cases the incentive’s message may be so loud that it drowns out other messages of equal or greater importance: the prospect of a large<sup>19</sup> bonus for achieving a certain goal may signal that reaching the goal is all that matters, regardless of the method used to get there. In both cases, the incentive’s message has displaced, or “crowded out,” a competing social expectation or ethical norm.<sup>20</sup>

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16. As one commentator put it, “*homo economicus* is—not to put too fine a point on it—a psychopath.” LYNN STOUT, *CULTIVATING CONSCIENCE: HOW GOOD LAWS MAKE GOOD PEOPLE* 45 (2011).

17. See Ann E. Tenbrunsel & David M. Messick, *Sanctioning Systems, Decision Frames, and Cooperation*, 44 *ADMIN. SCI. Q.* 684 (1999). As suggested in note 15, *supra*, a number of cognitive and social influences may cause people to underestimate the risks, or expected costs, of misconduct, but attempting to compensate for this by raising the stakes for violators has its own drawbacks for employers: monitoring is expensive, and if the punishment for a given offense is felt to be unfairly harsh, reporting of misconduct will suffer.

18. See ARIELY, *PREDICTABLY IRRATIONAL*, *supra* note 4, at 67-88; Uri Gneezy and Aldo Rustichini, *A Fine is a Price*, 29 *J. LEGAL STUDIES* 1 (2000).

19. “Large” is in the eye of the beholder and incentives can misfire at any pay grade: when Green Giant sought to improve quality by offering incentives to employees who found and removed insect parts from its food products, some employees apparently responded by bringing insects from home, “finding” them, and claiming the bounty. Adam Grant & Jitendra Singh, *The Problem with Financial Incentives—and What to Do About It*, *KNOWLEDGE@WHARTON* (Mar. 30, 2011) <http://knowledge.wharton.upenn.edu/article.cfm?articleid=2741>.

20. There is a substantial literature on the “crowding out” of internally driven, or intrinsic, motivation by external incentives, particularly in the area of altruistic behavior, which can actually be suppressed by the offering of financial incentives. You may experience a strong feeling of reward for performing an altruistic act, one that is rooted in your values and makes you feel good about yourself, but if someone pays you to do it, you are robbed of this altruistic reward. Once the act is re-framed as an economic transaction, you will be less likely

Another implicit message in a strong command-and-control communications focus is that management does not trust employees.<sup>21</sup> Potential side effects of this message range from resentment, to an “us-versus-them” attitude towards management, to a reverse-Pygmalion effect<sup>22</sup> in which employees may tend to “live down” to the low expectations that are projected upon them.

Without being overly alarmist about these side effects, we must recognize that they are real and can be triggered in ways that may be subtle in individual cases, but are measurable across employee populations. At a minimum, we should ask how other, more values-based, messages can counteract these effects, priming employees to frame compliance decisions in terms that are both more absolute and more compelling.

#### IV. VALUES, FRAMING, AND GROUP DYNAMICS

The three experiments described earlier are best understood as instances where external messages, or cues, affected the *frames of reference* that guided the subjects’ decisions. Framing is how we answer the question, “What kind of situation is this?”<sup>23</sup> That is, is it social, economic, romantic, legal, ethical, competitive, cooperative, political? Which set of rules applies? We know that in ambiguous situations, cues that seem to resolve this question in one direction or another can be enormously potent. For example, in Prisoner’s Dilemma games,<sup>24</sup> which involve a decision by each of two players to either cooperate or go it alone without knowing what the other player will do, cooperation rates can be roughly doubled simply by changing the name of the game from The Wall Street Game to The Community Game.<sup>25</sup> The first cue signals that the appropriate response to the situation is the competitive pursuit of self-interest; the second suggests that the game is about achieving the best total outcome for the participants.

As we’ve seen, issues that are framed as purely economic decisions—“it’s just

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to perform the act unless the pay is high enough to create a motivation as strong as the altruistic motivation that it displaced. See generally, e.g., Bruno Frey & Reto Jegen, *Motivation Crowding Theory*, 15 J. ECON. SURV., 589 (2011); Bruno Frey & Felix Oberholzer-Gee, *The Cost of Price Incentives: An Empirical Analysis of Motivation Crowding-Out*, 87 AM ECON REV, 746 (1997). See Uri Gneezy and Aldo Rustichini, *Pay Enough or Don’t Pay at All*, 115 Q. J. OF ECON. 791 (2000).

21. See generally Michael E. Enzle & Sharon C. Anderson, *Surveillant Intentions and Intrinsic Motivation*, 64 J. PERS. SOC. PSYCH 257 (February 1993) (finding that surveillance that is perceived as having the purpose of control, such as evaluating performance or detecting rule violations, has a significant negative impact on intrinsic motivation to perform a task, and also finding that absent a benign explanation for task surveillance, subjects are likely to infer both evaluative and distrusting intent).

22. See J. Sterling Livingston, *Pygmalion in Management*, HARV. BUS. REV., Aug. 1969, at 81.

23. This elegant explanation of framing is from JAMES G. MARSH, PRIMER ON DECISION MAKING: HOW DECISIONS HAPPEN 58 (1994).

24. Prisoner’s Dilemma and similar social dilemma games are basically the white lab rats of the social psychology and game theory set.

25. Varda Liberman et al., *The Name Of The Game: Predictive Power Of Reputations Versus Situational Labels In Determining Prisoner’s Dilemma Game Moves*, 30 PERS. & SOC. PSYCHOL. BULL. 1175, 1177 (2004).

business”—are always negotiable. Ethical issues may sometimes be difficult and subtle, but any clear-cut choice between right and wrong, between compliance and misconduct, should be non-negotiable.

We know that framing decisions about conduct in terms of values, or in terms of positive group norms, can promote compliance more effectively than framing in terms of external risk and reward. In two large-scale studies of compliance in the workplace, Tom Tyler and his colleagues found that over eighty percent of compliance choices were motivated by internal perceptions of the legitimacy of the employer’s authority and by a sense of right and wrong, while less than twenty percent were driven by fear of punishment or expectation of reward.<sup>26</sup>

When motivation derives from internalized ethical values, it follows that making the right choice is less dependent on external factors such as monitoring and the possibility of detection, rewards, and punishments. In short, a person’s values work even when no one is looking. And most of the time, at work, no one is looking.

This distinction between internally-driven, or intrinsic, motivation and externally-driven motivation has important implications. Intrinsic motivation relates to activities that you do for their own sake—because they are inherently enjoyable or satisfying in some way. This includes doing something because it fulfills a duty that you believe in, advances a goal you want to achieve, or promotes a value that is important to you.<sup>27</sup> Hence one goal of a values-based compliance program is to instill or reinforce the employee’s ethical values and thus generate intrinsic motivation. Another goal is to keep those values near the top of mind so that they will be readily available when events call for their use in framing the situation and choosing what to do.

An important advantage of values-based decision framing is that it is empowering when most needed. People who are encouraged to act in accordance with their values have a source of internal guidance in novel situations<sup>28</sup> and those in which authoritative guidance like policies, procedures, or an FCPA

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26. Tom R. Tyler et al, *The Ethical Commitment to Compliance: Building Value-Based Cultures*, 50 CALIF. MGMT. REV. 31, 35 (2008); Tom R. Tyler & Steven L. Blader, *Can Businesses Effectively Regulate Employee Conduct? The Antecedents of Rule Following in Work Settings*, 48 ACADEMY MGMT. J. 1143, 1153 (2005). For a similar study in the criminal context finding that only about five percent of the variance in controlled-substance violations is attributable to the risk of punishment, see Robert J. MacCoun, *Drugs and the Law: A Psychological Analysis of Drug Prohibition*, 113 PSYCHOL. BULL. 497, 501 (1993).

27. See Frey & Jegen, *supra* note 20 with respect to the risk of “crowding out” of intrinsic motivations by external incentives.

28. For a dramatic example see Alex Spiegel, *Heroes of the Taj Hotel: Why They Risked Their Lives*, NPR (Dec. 23, 2011) available at <http://www.npr.org/2011/12/23/144184623/mumbai-terror-attacks-the-heroes-of-the-taj-hotel> (describing the corporate-culture roots of the heroism of Taj Mahal Hotel employees, remaining behind to see to their guests’ safety in the wake of the 2008 terrorist attack. The Taj explicitly hired for compassion, respect and empathy, trained for kindness, promptly rewarded workers for every compliment expressed to management by a guest, and had a culture based on exceptional customer service. The workers needed no further guidance when the unprecedented attack occurred).

specialist are otherwise unavailable. By contrast, a strong command-and-control environment sends the message that employees should look externally for guidance—and in the absence of on-the-spot authoritative direction from the company, external guidance may sometimes appear in the unlovely form of a high payoff for misconduct, a low likelihood of detection, or a toxic and persuasive co-worker.

Framing compliance issues in ethical or values-laden terms may also affect internal reporting of violations—the most desirable brand of whistleblowing. In one study, researchers examining the effect of incentives on the reporting of compliance violations encountered dramatically different effects depending on whether the subjects considered a particular infraction morally repugnant or not. For violations that did not provoke a sense of moral outrage, external incentives made a substantial difference in reporting; but where the violations offended the person's values, reporting was *much higher across the board*, and incentives to report made very little difference.<sup>29</sup> The motivation to report morally offensive behavior is intrinsic. The lesson I draw from this is that we should try to ensure that employees connect compliance mandates to basic values like honesty, integrity, respect, teamwork, loyalty,<sup>30</sup> citizenship, and accountability, thus triggering their intrinsic motivation to report and reducing the need for extrinsic incentives.

Those last four values—teamwork, loyalty, citizenship, and accountability—lead us to the connection between group membership and compliance.

One of the strongest human needs is to feel good about ourselves,<sup>31</sup> and as social animals we use groups to support and nourish our identities and cultivate positive self-concepts.<sup>32</sup> Groups can be unforgiving of behavior that deviates

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29. See Yuval Feldman & Orly Lobel, *The Incentives Matrix: The Comparative Effectiveness of Rewards, Liabilities, Duties and Protections for Reporting Illegality*, 87 TEX. L. REV. 1151 (2010).

30. Consider for example a pure “regulatory” offense that has little inherent moral force, such as a reporting requirement designed to support the compilation of government statistics. To the extent the company is vulnerable to punishment for failing to adhere to the requirement, a sense of loyalty to the company could imbue the issue with a values dimension: a loyal employee's motivation to report an infraction in order to “keep the company [or her workgroup] out of trouble” might be much stronger than the motivation to report it for its own sake.

31. This powerful motivation to maintain a positive self-concept played a major part in the analysis of the Ten Commandment experiments by Ariely's team. First, it helps explain why people cheated “just a little” when they had an unlimited cheating opportunity: the notion is that, via rationalization or self-deception, people are able to cheat, but only to a plausible degree, without affecting their positive self-concept. Imagine thinking “I *could* have gotten seven answers right (but not 15 or 20).” Second, in the follow-up experiment the Ten Commandments ethical prompt may have counteracted this fudge factor, such that a positive self-concept could be maintained only by much stricter adherence to ethical values.

32. See Steven L. Blader & Tom R. Tyler, *Testing and Extending the Group Engagement Model: Linkages between Social Identity, Procedural Justice, Economic Outcomes, and Extrarole Behavior*, 94 J. APPLIED PSYCHOL. 445, 457 (2009) (noting that “. . . the basis of employees' relationship to their organizations is primarily linked to the role the organization plays in determining how employees think and feel about themselves”).

from group social and behavioral expectations, and so the desire to be regarded as a member in good standing of an important group is a powerful motivator of behavior. We place a high value on membership in groups that treat us as if we are important, because they reinforce our own feelings of importance. We also prize membership in groups that we admire, because we can “borrow” some of their virtues or status for ourselves. And we admire groups that share our values, both in word and in deed.<sup>33</sup>

When membership in a group is important to us, we identify positively with the group, forming an emotional commitment to it; we internalize the group’s values, expectations and norms (or, in a larger group, its culture), we become intrinsically motivated to adhere to the values and expectations that we have internalized, and we govern our behavior within the group by those norms. Even where group norms may not be internalized, if we consider a group important, we frame decisions in terms of their impact on group relationships.<sup>34</sup> We pay our civic association dues, attend interminable meetings, and participate in Neighborhood Watch because we are serving worthy community values and because it’s what good neighbors do.

Researchers have looked specifically at cultural factors that contribute to employee commitment to the organization, and at the effects of the resulting commitment on workplace compliance. For example, a Deloitte study showed strong links between employees’ organizational commitment and their perceptions that management’s actions show character and integrity and that management is receptive to those seeking advice about reporting policy violations. Training on acceptable behavior is also strongly associated with increased commitment.<sup>35</sup> Another research team examined the effects of nine different indicia of a positive ethical culture and discovered that all nine measurably amplified employee commitment.<sup>36</sup>

Commitment, in turn, has been shown to promote voluntary adherence to rules, reporting of violations, and going above and beyond job requirements to benefit the organization, as well as to reduce the need for external monitoring.<sup>37</sup>

When group norms and ethical values coincide and reinforce one another, the effect is doubly powerful. Have you ever participated in a blood drive? Frame the

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33. Tom R. Tyler & Steven L. Blader, *The Group Engagement Model: Procedural Justice, Social Identity and Cooperative Behavior*, 7 PERS. & SOC. PSYCHOL. REV. 349 (2003).

34. We should be mindful of the implications of this principle with respect to toxic leaders who create noncompliant subgroups within a company: the group dynamic is a two-edged sword.

35. Tiffany McDowell, *The Hidden Bonus in “Doing the Right Thing,”* DIRECTORS’ MONTHLY, Sept. 2006, at 13.

36. Linda K. Treviño et al., *Managing Ethics and Legal Compliance: What Works and What Hurts*, 41 CAL. MGMT. REV. 131-151 (1999). For a listing of some of the cultural factors evaluated, see the further discussion of this study in the next section.

37. Tyler et al., *supra* note 26 at 33; Ethics Resource Center, National Business Ethics Survey, 4 (2009), <http://www.ethics.org/files/u5/NBESResearchBrief2.pdf>.

issue economically and ask how much a for-profit blood bank would have to pay you to buy a pint of your blood for resale. Your answer would probably be, “a lot,” or perhaps, “it’s not for sale.” But blood drives are not usually presented as economic transactions: you give your blood away for free because it saves people’s lives, it’s the right thing to do, and it makes you feel good about yourself—and maybe also because all your co-workers down the hall are giving blood too, and it’s expected of you. Values, plus group norms and commitment, equals voluntary compliance.<sup>38</sup>

Attentive readers will have noted that a company’s values-based messaging can operate simultaneously and beneficially in two directions: on the one hand, influencing employees by instilling and articulating values that the company wishes its people to internalize and follow; on the other, explicitly aligning the company with admirable values that most employees already accept, making it more evident that the company is a group worthy of commitment. Both effects, if achieved, should foster convergence between employee values and employee perceptions of the company’s values. When large numbers of employees perceive alignment between their own values and those of the company, the cultural build-out is complete: those employees have become the carriers of the organizational culture.

In sum, values-based messaging and a positive corporate culture can promote employee identification with and commitment to the company, harness the employee’s ethical values, and bring those values to the surface in the work setting to produce voluntary compliance.<sup>39</sup> It is time to drill down and explore how, exactly, we should go about achieving this.

A values-based communication paradigm recognizes that people—and they are mostly good people—show up at work every day with a full set of values, mostly good values. It seeks to engage those existing values so that workers identify positively with the company, accept the legitimacy of the company’s authority and leadership, and voluntarily follow the rules. Effectively engaging these positive values requires a communications plan whose dominant message is about integrity, honesty, and ethical behavior, as opposed to one that frames compliance primarily in terms of external incentives or mandates.

Most importantly, an effective values-based communications program is one whose message is consistently reinforced by the actions of the company and its management at all levels.

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38. In another context, the power of group norms of this type—and the shortcomings of “rational actor” self-interest theory—are vividly illustrated by the sustained success of the open-source software movement and of Wikipedia.

39. Much of the research on the benefits of a values-based compliance regime owes its inspiration to a groundbreaking essay by Lynn Sharp Paine. See Lynn Sharp Paine, *Managing for Organizational Integrity*, HARV. BUS. REV., Mar.-Apr. 1994, at 106.

## V. COMPLIANCE PROGRAM ORIENTATION AND CORPORATE CULTURE: WHAT WORKS

What is the evidence about the efficacy and impact of this approach? In a landmark large-scale survey, “What Works and What Hurts,”<sup>40</sup> Linda Treviño and others compared compliance programs that emphasized traditional command-and-control elements to programs that expressed a more values-oriented message. They wanted to learn whether program orientation—the overall thrust or message or dominant theme of the program—made a difference in the achievement of key compliance goals such as reducing unethical conduct, promoting the reporting of misconduct, better ethical decision-making, increasing awareness of ethical issues and comfort delivering bad news to management.

The study showed that a values-based approach produces significant<sup>41</sup> benefits across the entire spectrum of compliance goals, and works better than the command-and-control approach.

Separately, the researchers assessed the effect of a set of cultural factors on these compliance goals. These factors were not compliance program elements or explicit management messages, but measures of how the *employees* perceived the *company*, on such issues as:

- commitment to ethics on the part of executive leadership and direct supervisors,
- fair treatment of employees,
- rewarding ethical and punishing unethical behavior,
- open discussion of ethical issues, and
- consideration of ethical issues in decision-making.

In other words, they studied the implicit messages about the company’s values that employees absorbed through their own experience and believed, as opposed to only the explicit messages that the companies sought to convey.

It turned out that the presence of these positive cultural factors had an even greater effect on achievement of compliance goals than which type of compliance program was in use. In fact, every one of the nine positive cultural factors they studied had a significant positive effect on every one of the seven compliance goals. Evidently, compliance program orientation sends a certain kind of beneficial message, but how the company behaves sends a much more powerful one: actions speak louder than codes.

The cultural message, of course, can be positive or negative: one study distilled forty-five potential predictors of misconduct down to five “vital factors” that

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40. Treviño et al., *supra* note 36.

41. “Significant” in both senses: substantial and statistically significant.

strongly predict the frequency of misconduct within an organization.<sup>42</sup> At the top of this final five<sup>43</sup> was “fear of retaliation and discomfort with speaking up,” the polar opposite of Treviño’s “open discussion of ethical issues” and “rewarding ethical behavior.”

One way a company can send a demonstrably beneficial values message is simply to conspicuously implement a compliance program. Recently, KPMG measured employee attitudes about their employers, comparing companies that had a comprehensive compliance program (meeting nine distinct requirements) with those that had anything less than a comprehensive program (meeting between zero and eight).<sup>44</sup> Companies with comprehensive programs scored more than twice as high as the other group on employee perceptions of “tone at the top,” the belief that appropriate action would be taken if misconduct were discovered, the belief that a whistleblower would be protected from retaliation, and comfort with reporting violations to the legal department. They also scored substantially higher on employee comfort in reporting violations to their immediate supervisor, and actual observed misconduct was lower. This is powerful evidence that a compliance program can directly affect not only objective compliance outcomes, but also employee attitudes and beliefs about the company’s culture.

#### VI. CULTURE, LEGITIMACY, AND VOLUNTARY OBEDIENCE TO WORKPLACE RULES

We move now to the messages implicit in key company behaviors, which can either reinforce, undermine, or obliterate explicit compliance messages. All the values-based training, admonishments, and exhortations in the world will be of little use if employees do not believe management means what it says. Employees measure the credibility of management’s words about ethics and compliance, and thus the legitimacy of the company’s compliance rules, by observing management’s deeds in a handful of critical arenas.

Tom Tyler, who early in his career was known for his work on why people

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42. See Michael Griffin & Tracy Davis, Corporate Executive Board Research Alert, Sourcing Competitive Advantage from Organizational Integrity: the Hidden Cost of Misconduct, *available at* [https://www.celc.executiveboard.com/public/CELC\\_ResearchAlert.html](https://www.celc.executiveboard.com/public/CELC_ResearchAlert.html). Interestingly, this summary of a proprietary 2007 study by the Corporate Executive Board’s Compliance and Ethics Leadership Council also indicated that variations in an organization’s compliance control environment “do not appear to meaningfully influence the frequency of observed misconduct.”

43. According to Lenzi & Lupfer, *supra* note 10, the Corporate Executive Board study found that fear of retaliation was almost twice as important a predictor of misconduct as all the other factors in the study combined. This seems to suggest that fear of retaliation may not only be significant in and of itself, but may be a proxy indicating the existence of a variety of other toxic cultural factors, such as distrust of management generally, that could lead to fear of retaliation.

44. KPMG LLP, KPMG Integrity Survey 2008-2009, (2009) *available at* <http://www.kpmg.com/global/en/issuesandinsights/articlespublications/pages/integrity-survey-2008%E2%80%932009.aspx>.

obey the law in general,<sup>45</sup> later applied and tested his findings in the specific context of corporate compliance. He tried to sort out exactly what factors have the greatest impact on voluntary compliance in the workplace, also known as individual self-regulation.<sup>46</sup>

The short answer is that we will voluntarily obey authority if we believe it is “legitimate,” that is, that the company is entitled to have its rules followed. A company’s authority is considered legitimate only to the extent that the organization is perceived as being ethical and fair in its interactions with employees and third parties. In essence, when managers say “ethics,” employees hear “fairness.”<sup>47</sup>

Treviño’s team reached the same conclusion, both in the “What Works and What Hurts” study<sup>48</sup> and in another aimed specifically at exploring the role that workplace fairness perceptions play in compliance.<sup>49</sup> They found that employee perceptions of overall fairness in the workplace are very strongly correlated with the incidence of misconduct—the more fairness, the less misconduct—and the link between fairness and voluntary internal reporting of misconduct was even stronger.<sup>50</sup>

Tyler also found that a person is more likely to follow rules if he believes that the company’s values agree with his own. This is the command-and-control paradigm turned upside-down. Command-and-control is about coercing the “bad” employees to follow the law and the company’s rules, but here the roles are reversed: the employee observes the company’s conduct and judges whether the company’s values live up to his expectations, and thus whether the company’s ethical leadership is credible.<sup>51</sup>

Both perspectives have merit. Around three or four percent of any sizable group operate largely without a conscience,<sup>52</sup> and command-and-control is the

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45. See generally TOM R. TYLER, *WHY PEOPLE OBEY THE LAW* (1990).

46. The following discussion draws principally on Tyler et al. and Tyler & Blader, *supra* note 26.

47. This epigram is attributed to Kent Druyman, former ethics officer at General Dynamics, in Treviño et al., *supra* note 36.

48. See the discussion in the previous section of the influence of cultural factors, including fair treatment of employees, on compliance outcomes as measured in the What Works and What Hurts study.

49. LINDA K. TREVIÑO & GARY R. WEAVER, *MANAGING ETHICS IN BUSINESS ORGANIZATIONS: SOCIAL SCIENTIFIC PERSPECTIVE* 267-92 (2003).

50. *Id.* The correlation coefficient between workplace fairness and incidence of misconduct was a negative 0.49 and that between fairness and willingness to report internally was a positive 0.71; both results were statistically significant.

51. As suggested earlier, this result may be related not only to legitimacy, but also to the attractiveness of committed membership in the group.

52. TIMOTHY T. LUPFER & AJIT KAMBIL, *MANAGING THE BAD APPLES AND PROTECTING THE BARREL* (2009) (noting that antisocial personality disorder is *diagnosed* in approximately three percent of males and two percent of the general population, and estimating the likely percentage of persons in the general population who manifest “antisocial personality disorder.” (the condition formerly known as psychopathy or sociopathy) or other conditions characterized by absence of conscience as falling somewhere between three and ten percent). Similarly, the 2001-2002 National Epidemiologic Survey on Alcohol and Related Conditions found that 3.6

only way to govern these amoral actors. But compliance is a numbers game, and compliance officers must focus on factors that can influence the behavior of the great middle of the bell curve—people who are neither amoral nor saintly, whose behavior is subject to change depending on the circumstances. These people have a conscience and most of them embrace accepted ethical values. Living up to employees' values should not be a difficult threshold for a company to meet in general, but a given employee's experience at work is highly specific and heavily dependent on the behavior of immediate supervisors and peers.

Surprisingly to adherents of the rational-actor model, Tyler's research indicated that these two overarching factors, legitimacy and value congruence, were actually more influential on compliance than either rewards for good behavior or fear of punishment for transgressions.

Drilling deeper into the relationship between legitimacy and fairness, Tyler uncovered two critical components that drive compliance:

- Does the company observe *procedural fairness* in decisions affecting employees, such as hiring, promotions, compensation, transfers, and discipline?
- In its interactions with employees, does the company treat them with respect, dignity, courtesy, and trust?

The elements of procedural fairness are familiar to lawyers under the rubric of due process: an opportunity to be heard; clear, understandable rules and decision processes; consistency of management decisions over time and across cases; articulated reasons for decisions; and application of the same rules to everyone regardless of position or status.<sup>53</sup> Unless these foundations of basic workplace justice are in place, the company's claim to moral high ground will ring hollow. What is startling about Tyler's findings is that the presence of these structural attributes actually turned out to be more influential on employee compliance than whether employees thought the company's actual decisions were substantively fair, or whether the company's policies were considered favorable to the employees.<sup>54</sup>

Quality interpersonal treatment in the workplace is also a key barometer of a company's values, as far as employees are concerned. Respecting the employee's legal rights is necessary but not sufficient; what resonates here is when people

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percent of a large random sample of the noninstitutionalized U.S. adult population met the diagnostic criteria for antisocial personality disorder specified in the Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition. NATIONAL EPIDEMIOLOGIC SURVEY ON ALCOHOL AND RELATED CONDITIONS, NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM OF THE NATIONAL INSTITUTES OF HEALTH (2004).

53. One of the most common and effective ways to sabotage employees' perceptions of workplace fairness is, of course, giving top performers a pass on expectations that apply to everyone else.

54. See Tyler et al., *supra* note 26, at 36 (stating that as between procedural fairness, distributive fairness (outcomes), and policy favorability (when employees believe that a policy benefits them), procedural fairness accounted for seventy-four percent of the variance in voluntary rule-following in the workplace. Again, a "rational actor" model based on self-interest alone would not predict this result).

feel respected, listened to, trusted,<sup>55</sup> and valued as members of the team. Recall that people identify with and feel committed to groups that treat them as important, as well as groups that are admirable: how a company treats employees in everyday interactions strikes both of these chords. As Treviño and Weaver have noted, the fact that more than half the calls to corporate ethics hotlines relate to human resources issues such as hiring, promotion, performance appraisal, fairness, and appropriate treatment tells us something about how employees link company ethics, personnel decision-making, and interpersonal treatment.<sup>56</sup>

These findings about the importance of positive relationships with management have been replicated on the dark side as well: among the five leading indicators of employee misconduct identified by the Corporate Executive Board's Compliance and Ethics Leadership Council was "direct manager lacks trust in and respect for employees."<sup>57</sup> On the other side of the trust ledger, the 2007 National Business Ethics Survey showed a strong relationship between a lack of employee trust in direct supervisors or in top management and the incidence of workplace misconduct.<sup>58</sup>

As these two studies suggest, relationships are two-way streets: it is not easy to respect someone who belittles you or to place your trust in someone who is distrustful of you. Whatever may be the compliance-related effects of feeling mistrusted or disrespected, the fallout when employees hold the converse opinions about supervisors is intuitively clear: you probably would cede no more authority than absolutely necessary to someone you do not respect, and it is hard to imagine reporting misconduct to, or openly questioning a compliance choice made by, a superior that you do not trust. Not surprisingly, Tyler and others have pointed to trust in management as another element that supports organizational legitimacy.<sup>59</sup> Employees gather an abundance of data points on this, every day

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55. The observation that whether employees feel trusted affects the likelihood of compliance is consistent with the notion expressed earlier that overly intrusive command-and-control and monitoring systems may undermine compliance, at least for some employees.

56. See TREVIÑO & WEAVER, *supra* note 49, at 287.

57. See CORPORATE EXECUTIVE BOARD RESEARCH ALERT, *supra* note 42.

58. Ethics Resource Center, National Business Ethics Survey, 2 (2007), <http://www.ethics.org/resource/2007-national-business-ethics-survey>. This survey of over 3450 employed adults examined the relationship of six indicia of a "negative work environment" to observed misconduct at work. Two of the six were lack of trust that top management and direct supervisors, respectively, would keep promises and commitments. At companies where none of the six negative factors were present, an average of thirty-seven percent of employees had witnessed misconduct within the previous year. With any two of the six negative factors present, the observed-misconduct number jumped to seventy-four percent, and with any three, it rose to eighty-eight percent.

59. Tyler et al., *supra* note 26, at 40. In addition, recall that in the "What Works and What Hurts" study, leaders' perceived commitment to ethics was one of the most influential cultural factors affecting compliance outcomes (along with fair treatment of employees). Treviño et al., *supra* note 36, at 136-137, 141-142.

and across multiple contexts, including management's dealings with fellow employees, customers, and other third parties.<sup>60</sup> And negative experiences are much more salient, memorable and influential than positive ones.<sup>61</sup> If we consider all the management interactions that workers are exposed to, at all levels of management, and imagine the impact of a single betrayal of trust when an employee is directly involved,<sup>62</sup> it's easy to see how a few treacherous, deceitful, or hypocritical leaders can rapidly dismantle employee trust in the organization. A little sleaze goes a long way.<sup>63</sup>

Against this background, we might think of trust in management as the glue that holds all the data together, so much so that causation seems to go in circles (virtuous or vicious as the case may be). We trust leaders whom we believe to be ethical, while at the same time one of the main ways we judge a leader's ethics is by observing whether their actions justify our trust. We also attribute leaders' ethical character to the organization, trusting our company to the extent we trust its leadership. And if we trust the company, we tend to admire it, identify with its goals and interests, grant legitimacy to its rules, and behave accordingly. Yet, in the other direction, fair rules and policies, fairly applied, show an ethical commitment at the corporate level that may confer a corresponding halo effect on company leadership. The causation may be intricate and recursive, but what we know is that compliance rises and falls with our trust in the ethical values of our leaders and our organization.

Have we wandered completely away from our theme of communications and compliance? Not at all. First, we can use explicit communications to improve management transparency, which supports both procedural fairness and quality interpersonal treatment—and also has been linked independently to compliance

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60. For example, it is fair to wonder about the impact of large-company procurement departments on company culture. What values messages do line employees take from the required insistence on form procurement contracts that make no pretense at logical allocation of risks to the party that can best control them, but rather exploit the buyer's bargaining leverage to achieve cross-the-board risk transfer as a goal that trumps everything else?

61. See Roy F. Baumeister et al., *Bad Is Stronger Than Good*, 5 REV. GEN. PSYCH 323, 323-70 (2001), for a classic review of the disproportionate effects of negative experiences across a large number of psychological contexts, including trust and other evaluations of character.

62. See Dwight R. Risky & Michael H. Birnbaum, *Compensatory Effects in Moral Judgment: Two Rights Don't Make Up for a Wrong*, 103 J. EXPERIMENTAL PSYCHOL. 1, 171-73 (1974) (concluding that judgments of the overall goodness of a person are determined mostly by his worst bad deed: "Given a person has done evil, an infinite number of good deeds may not produce a favorable overall impression").

63. These results dovetail with another of Treviño and Weaver's findings: that less management follow-up on reports of misconduct, including disciplining violators, leads to diminished reporting of violations. See *supra* note 49. Whether management deals appropriately with reported violations touches on both fairness (to the company and to the whistleblower) and the trustworthiness of management: if I report, and you do nothing, you have broken faith, and I will not bother to report again—at least not internally. Externally there are always people willing to listen. See, e.g., Dodd-Frank Wall Street Reform and Consumer Protection Act, 15 U.S.C. §§ 78u-6, 78u-7 (2011) (creating whistleblower awards and protection).

outcomes.<sup>64</sup> In terms of procedural fairness, it is much easier for an employee to make reliable judgments about ethical commitment and trust if the company communicates in advance what its principles, rules, and decision processes are, and is willing to be held accountable for its own adherence to them. Likewise, at the interpersonal level, employees feel respected and valued if their input is sought and their interests explicitly considered on matters that affect them and if decisions are explained.<sup>65</sup>

Second, all the management practices we have outlined send powerful, incessant, and inescapable implicit messages about the company's values, the sincerity of its ethical leadership, and the legitimacy of its claim to authority. These messages affect allegiance to the company, and they can either reinforce our explicit compliance communications or cancel them out.

Explicit compliance communications are not enough. Compliance officers must reach across functional boundaries to executive management and the human resources group and, if necessary, educate them about the principles of employee engagement and the value of consistent explicit and behavioral messaging that activates the employees' values and brings out their better natures.<sup>66</sup> Compliance officers must secure the active cooperation of these groups not only in transmitting the right words, but also in modeling ethical behavior, trustworthiness, fairness, and quality interpersonal treatment of employees. Equally, their cooperation is critical to ensure that this modeling is replicated and enforced all the way down the management chain via careful hiring of managers, leadership and soft-skills training at all levels of management, reinforcement of respectful treatment, and judicious firing of those who refuse to get on board. In short, hire your values, value your hires, and tolerate no jerks.

## VII. PUTTING IT ALL TOGETHER

If this essay so far seems long on science and short on specific suggestions for implementation, I have my reasons. First, unless you are convinced by the

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64. The six "negative work environment" factors linked to elevated misconduct included two transparency measures: lack of satisfaction with information from top management and lack of satisfaction with information from supervisors. See National Business Ethics Survey, *supra* note 58.

65. Tyler et al., *supra* note 26, at 39-40. For examples of company communications that explain decisions in the compliance arena. See *infra* the text accompanying note 69.

66. A certain number of executives (legal counsel often among them) can be expected to glaze over at the mention of "soft" concepts like culture, and an even greater number may be skeptical of the effectiveness of values-based messaging, or the notion that there may be a causal connection between compliance outcomes and personnel practices. The *homo economicus* rational-actor model has been endemic in business schools and economics courses for generations, and command-and-control is, frankly, how law is done. The thinking goes, there ought to be no more to compliance than this: people should learn the rules and having learned them, should follow them; and if they don't they should be caught and punished, which will deter the rest. Fortunately, many of these skeptics are also very smart and can change their minds if confronted with convincing evidence. This paper was written for them.

science, any suggestions for implementation would be futile. I hope we have crossed that hurdle. Second, how a company can best implement these teachings will vary according to a host of factors such as the organization's size, budget, number and location of employees, history, management structure, line of business, regulatory concerns, and, of course, its incumbent culture.

I would like to conclude, though, with a few strategy suggestions and a few examples of values-based messaging that I've found particularly effective.

#### A. GET A CHECKUP

Companies seeking to improve their culture and implement a more comprehensive, values-based communications plan would do well to begin by finding out where they stand with their employees. There are a number of available culture-assessment tools, and no shortage of qualified consultants who can help create a custom version.

Learning how your employees perceive the company's values can be an eye-opener, particularly if you can stratify the results by position, functional area, geography, or operating unit without compromising anonymity. Never assume that culture is uniform across departments or locations, or that line employees will have the same opinion of the company's values as the executives, the law department, or the human resources group. Even if a simple, one-size-fits-all anonymous survey is used, it may be useful to get the C-suite on the record in advance as to what they think employees will identify as the company's key values and cultural drivers. Later, they can compare and contrast these predictions with actual results.

By identifying both cultural strengths and areas needing improvement, a cultural assessment can guide the creation of a communications plan and culture-building initiatives that are tailored to the company's needs. In many cases, an effective strategy may be to target weak spots while simultaneously anchoring the overall message to positive values already strongly shared across the organization.

#### B. PROSELYTIZE THE C-SUITE AND ENLIST THEIR HELP THROUGHOUT THE CHAIN OF COMMAND

There is no more powerful driver of positive culture change than the committed participation of top management. By this I mean participation that is rooted in belief not only in the appropriateness but also the behavioral effectiveness of a positive ethical culture.<sup>67</sup> CEO cover memos to the Code of Conduct, introductory videos for new hires, and ghost-written inspirational stories in the company newsletter are nothing new, and initiatives like this should

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67. For senior executives who are not already convinced, an evidence-based approach may be useful. *See id.*

figure in any communications plan—but the real bonus of committed leadership comes from the impact of unscripted moments. Let me share a couple of examples.

Not long ago I was getting to know a new public-company client, and was listening to its first quarterly earnings call after they retained us. During the question-and-answer period, while addressing a question about new regulatory developments, the CEO happened to mention, with no hint of artifice, that adapting to the change was a company-wide priority within its overall efforts to maintain a firmwide culture of compliance. Here was the CEO of the largest company in its industry, to whom the phrase “culture of compliance” came as naturally as “debt covenants” or “EBITDA.” If this tumbled out in an earnings call, I could only imagine the other contexts in which compliance and ethics would be salient to him, and the impact of his attitude on the company’s employees and culture.

At another client, one with hundreds of locations and 80,000 employees, the Human Resources Vice President sent out a mass e-mail about California’s new requirements for sexual harassment training for managers and supervisors. The e-mail stated that the company was required by law to provide this training and so it would be rolled out shortly to the California locations. Within minutes, a terse Reply All arrived from the CEO stating that “we are not going to do this because it’s required, we are going to do it because it’s the right thing to do, and we are going to do it nationwide.” The message was lost on no one. No scripted video or Code cover letter could have begun to convey the conviction, the genuine tone at the top, that the CEO got across with his e-mail.

The company’s executive leadership also has the ability to put in place any number of culture-related initiatives that are beyond the authority of any Chief Compliance Officer, such as adding ethics and compliance as a component of evaluations for compensation and promotion, leveraging the assets of other functional groups such as Human Resources, Corporate Communications and Training, Risk Management, Law, and yes, even Marketing and Sales, in service of the compliance and ethics mission, and, of course, requiring cooperation with Compliance Department initiatives.

Among the most important of those initiatives would be propagating the “tone at the top” until it becomes the “mood in the middle”—soft skills and ethics training for managers and supervisors, adding “ethical moments” to management meetings, and, most crucial of all, enforcing management behavioral standards, especially for high performers. It is one thing for a manager to get a call from Human Resources about an unpleasant encounter with an employee; it’s quite another to get the same call from the division COO who controls your salary, bonus, assignments, and tenure.

The promotion of a positive, values-driven company culture is not just about compliance; creating an environment where people are proud to work has been

shown to produce many other, equally practical advantages.<sup>68</sup> Executives should be encouraged to think of the cultural initiative in terms of its potential to achieve broader, universally desirable business goals such as employee engagement, job satisfaction, reduced turnover, better attendance, and enhanced performance, not to mention a reduction in employment litigation. As we've seen, the kind of culture that achieves these goals produces compliance as a byproduct, and vice-versa.

### C. MAKE A LIST

No state requires that Articles of Incorporation list a company's core values. If your company wasn't born with a silver values statement in its mouth, you have to find out what they are or determine what they should be. By its nature, a core values list must be short, and cannot be exclusively concerned with ethics and compliance. With or without the benefit of a cultural assessment, the compliance group should work with executive management to develop a focused values list that resonates with the company's particular mission, objectives and structure, sets expectations, guides behavior in key areas, and can inspire employees and earn the board's endorsement.

The values statement is an opportunity to distill the most important elements of a positive culture while at the same time defining in broader terms "how things are done around here." For example, the biopharmaceutical company Amgen begins with a three-word mission statement ("To serve patients"), proceeds to an aspirational statement of goals, lists eight core values, and concludes with four leadership attributes. Every one of these statements can function as an independent guide to behavior, all are consistent with an overall vision, and many are business values, as opposed to distinctly ethical ones. The lead value, "Be Science-Based," speaks clearly about the industry and about what it takes to succeed with integrity in that industry.

Hewitt-Packard pairs its "Shared Values" list with "Our Corporate Objectives," implicitly inviting the reader, and the employee, to map one list onto the other. Along with distinctly ethical values such as "Uncompromising Integrity" and "Trust and Respect for Individuals," we see in "Speed and Agility" and "Meaningful Innovation" the formula for success in the fast-changing technology sector.

Discover what specific core values work for *your* company, and do not take the task lightly.

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68. See generally James K. Harter et al., *Well-Being in the Workplace and its Relationship to Business Outcomes: A Review of the Gallup Studies*, *FLOURISHING: THE POSITIVE PERSON AND THE GOOD LIFE* 205-224 (Corey L.M. Keyes & Jonathan Haidt, eds., 2002) (analyzing the connection between positive workplace affect and variables such as turnover, customer satisfaction, productivity, and profit).

#### D. TELL STORIES

Stories have a special appeal. People are natural storytellers; we like to make sense of things, to weave our experiences into a coherent narrative (whether the experience is actually coherent or not). Stories are easy to remember and pass along, and with this durability and reach, it's not surprising that every culture replicates and renews itself through stories. In the context of ethics and values, stories help make abstract issues concrete and accessible, especially when we can sympathize or identify with one of the characters.

There are several kinds of stories we can tell. First, we should tell stories that illustrate compliance or ethical issues in the workplace, how they are encountered, approaches for dealing with them, and especially successful outcomes. The best ones are true and come from the particular workplace—these stories have a chance of being spontaneously repeated and could even become self-sustaining vectors of culture transmission. In a large company it is not at all hard to come by a substantial collection of exemplary stories. The best example I know of is on the website of Best Buy's Chief Ethics Officer, Kathleen Edmond.<sup>69</sup> Edmond collects stories of ethical or compliance issues that come up at her company, discusses how individual (anonymous) employees have grappled with these issues, sought advice, or stumbled, and how things turned out for the company and for the employee. Woven in with all these object lessons are short, accessible commentaries on recent research in the behavioral science of ethics, and brief lessons on recurring ethical issues such as conflicts of interest, the "everyone does it" defense, and the "slippery slope" problem.

A second kind of story is the type we usually use in training: stories that could plausibly happen at the company, that illustrate problems one is likely to encounter in the specific context of that company's business, and that represent areas of significant risk to the company. Compared to those harvested from real life, these stories usually have a more carefully structured narrative designed to provoke discussion and to make specific points efficiently. Like Edmond's blog, values-based training stories illustrate recurring ethical or compliance issues, with the primary goal of enabling workers to spot issues and the secondary goal of teaching them how to navigate these issues successfully, including seeking help where appropriate.

One well-known curriculum, the Giving Voice to Values program,<sup>70</sup> uses hypothetical situations to achieve several training goals such as showing employees that it is often possible to talk through ethical issues with co-workers successfully and that occasional ethical conflicts are a normal part of life; training

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69. See generally KATHLEEN EDMOND, BEST BUY'S CHIEF ETHICS OFFICER [www.kathleenedmond.com](http://www.kathleenedmond.com) (last visited June 3, 2012).

70. This curriculum, commonly known as GVV, was developed by the Aspen Institute and the Yale School of Management and is curated by Professor Mary Gentile at Babson College.

employees in useful ways of thinking about and talking through ethical issues; familiarizing them with the common “reasons and rationalizations” used to justify ethical breaches (“everyone does it”; “it was only that one time”); and providing counter-arguments for the latter. Although this curriculum was designed for business school courses and in its original form is too extensive for practical use in employee training, its principles have been distilled by some companies for training use.

Stories are even better if we can be a part of them, and Parsons Corporation has taken advantage of the flexibility of web-based communications to that end. Parsons publishes “Ethics Challenges” on its intranet, describing ethical scenarios and inviting employees to involve themselves in the story by voting on how the person in the story should deal with the situation. Employees can also post narrative comments. The votes are then counted and the results published on the intranet, along with a sample of the comments received and an analysis of the problem by the company’s ethics committee.<sup>71</sup>

The final group of stories I want to mention are those dealing with the company’s response to ethics and compliance violations. Recall that whether a company is perceived as following up on ethics violations and dealing appropriately with the culprits strongly affects the rate of internal reporting of misconduct. Yet in most cases, the outcomes of disciplinary actions are kept confidential, mainly for fear of privacy or defamation claims by disciplined employees. This invisible discipline can lead others to assume that the company is not following up on misconduct, which in turn could suppress reporting. Certainly the privacy of the disciplined employee is a consideration, but it is not always an issue. In notorious cases where there has been a “public hanging”<sup>72</sup> and, say, law enforcement involvement, there may be no privacy to breach; and in larger companies, there are usually many opportunities to tell true stories of crime and punishment in a way that ensures anonymity. In such cases the multiple benefits of providing employees with feedback about the company’s disciplinary actions—demonstrating management’s commitment to compliance, encouraging internal whistleblowers, and deterring wrongdoers—can far outweigh the risks.

#### E. REPEAT YOURSELF

Remember that in the Ten Commandments and insurance-fraud experiments, the cues that successfully influenced behavior (for better or worse) occurred very close in time to the target behavior. Both memory and salience have short half-lives, especially the latter. As with any communications or marketing campaign, the goal is to be both persuasive and pervasive, to flood the

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71. See Charles L. Harrington, *Ethics and Organizational Culture*, ETHISPHERE (Mar. 26, 2010), <http://ethisphere.com/ethics-and-organizational-culture/>.

72. A “public hanging” is, of course, a potent message all by itself.

environment with positive cues so that the desirable mental associations surface readily when needed. This means communicating consistent messages as often as possible and through as many channels as possible. Returning to where we started, we can write, meet, blog and tweet, and use screensavers, posters, awards and recognition, e-mails, web pages, and videos.

We sometimes overlook the fact that you can say something once and deliver the message many times, if the medium is durable and prominent and people are repeatedly exposed to it. I recall clearly the day in 1996 when I walked into a Johnson & Johnson subsidiary's building, and it was necessary to go right or left to get around a large print of the famous Credo that Robert Wood Johnson himself composed for the company in 1943. Of course there may be a habituation effect, but given its prominent placement facing the building's entrance, I find it hard to imagine that this particular copy of the Credo has ever quite sunk to the status of mere wallpaper.

Similarly, as a Fortune 500 Chief Compliance Officer once said to me, "Never underestimate the value of tchotchkes." Plenty of these mementos and promotional gifts do get promptly discarded, and others have inherently limited lives, but a really good tchotchke can be a daily messenger. There is one on my desk, a coffee coaster with my firm's Core Values on it. I see it every day, and it's meaningful to me. Judging by the number of my colleagues who also use them, more than three years after they were delivered in connection with a merger, I'm not alone.

#### F. RECOGNIZE AND REWARD

Recognition is a powerful motivator<sup>73</sup> and sends a beneficial message. Even if given privately, it tells the recipient that the organization values both the relevant behavior and, by extension, the recipient, and will tend to reinforce the employee's commitment to the organization and her acceptance of its authority.<sup>74</sup> If public, the benefit is multiplied as others in the organization witness this affirmation of the company's commitment to ethics and compliance: the gift reflects well on the giver.

As we have seen,<sup>75</sup> material incentives, both positive and negative, can be tricky, and we must be wary of the law of unintended consequences. As suggested earlier, a reward program for turning in violators of the company's policies could be valid in theory and positive in direction, but disastrous in practice. It could appeal to the best instincts in some workers and the worst in others, such that any

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73. Recall Napoleon's message to the captain of HMS Bellerophon in 1815 that "A soldier will fight long and hard for a bit of colored ribbon." ROBERT DEBS HEINL, *DICTIONARY OF MILITARY AND NAVAL QUOTATIONS* 22 (Naval Institute Press 1966).

74. See *supra* the discussion of group commitment accompanying note 33.

75. See *supra* the discussion accompanying notes 18 and 19.

positive results in uncovering noncompliance would be more than offset by the undertow of false accusations,<sup>76</sup> reports of petty or borderline issues, breakdown of workplace trust and destruction of team cohesion and, of course, re-framing of reporting from an ethical to an economic proposition.<sup>77</sup>

But many recognition, reward, and incentive programs can convey positive cultural messages with little, if any, risk.<sup>78</sup> Examples of low-hanging fruit in this area include consideration of ethical leadership and compliance in performance reviews, compensation and promotion decisions, especially for managers;<sup>79</sup> recognition of employees who have conspicuously done “the right thing” in difficult situations; and time off or a pizza party for the work group that finishes compliance training first.<sup>80</sup>

#### G. KEEP IT SIMPLE

One of the great virtues of basic ethical values is that they are simple. Take advantage of this and create simple, memorable messages. Make the core values statement a mantra. Train mainly for ethical awareness and issue-spotting, and on the procedures for seeking advice and reporting problems. Not everybody needs to understand the complexity of the Sherman Act and all the cases interpreting it: they need to understand that collusion with competitors might be a red flag, and they need to know where to find someone who can expertly deal with the issue. The goal is not to create an amateur legal corps, it is to help people recognize when something malodorous may be afoot and to give them options for dealing with the situation.

#### CONCLUSION

We now have ample evidence of how communication of positive values and the projection of an honorable, respectful, and fair ethical culture can dramati-

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76. If manufactured or exaggerated reports of misconduct in response to a reward program seem implausible, see Grant & Singh *supra* note 19 and contemplate the impact of even a small number of “bugs in the beans.”

77. An apt admonition for those designing financial incentive programs might be “scrutiny on the bounty.”

78. Moreover, the use of incentives is encouraged by the federal Sentencing Guidelines’ standards for what constitutes an “effective compliance and ethics program.” Standard 6 requires that the company promote its program through “appropriate incentives” for employee compliance. As Murphy observed, the context of this standard makes it clear that the intent is to encourage positive incentives for ethical behavior, not just “incentives” in the form of punishment for violations. See *infra* note 80; see U.S. SENTENCING GUIDELINES MANUAL, § 8B2.1(b)(6) (2011).

79. Of course, at the level of actual and potential “substantial authority personnel,” the federal organizational sentencing guidelines require consideration of a person’s prior illegal behavior or “conduct inconsistent with an effective compliance and ethics program” in connection with employment and promotion decisions. See *id.*, at § 8B1.2 (b) and § 8B1.2 (b) cmt., n.4(B).

80. See generally JOSEPH E. MURPHY, SOCIETY OF CORPORATE COMPLIANCE AND ETHICS, USING INCENTIVES IN YOUR COMPLIANCE AND ETHICS PROGRAM (2011) (providing a thoughtful and thorough discussion of incentive, recognition, and reward systems in the corporate compliance arena, to which the author is indebted for much of the above analysis of incentives.).

cally affect compliance and reporting. If command and control is at the heart of every serious compliance program, culture is its soul, and culture is built through communication in both word and deed. The tools for achieving this are available to everyone and do not require great financial investment.

Culture change is seldom easy and never fast; but with knowledge of the critical factors and use of the right messaging strategy, it is achievable. And it is worth the effort.

