The Federal Sentencing Guidelines for Organizations: A Framework for Ethical Compliance

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ABSTRACT. After years of debate over the importance of ethical conduct in organizations, the federal government has decided to institutionalize ethics as a buffer to prevent legal violations in organizations. The key requirements of the Federal Sentencing Guidelines (FSG) are outlined, and suggested actions managers should adopt to improve ethical compliance are presented. An effective compliance program is more a process and commitment than a specific blueprint for conduct. The organization has the responsibility to create an organizational climate to reduce misconduct. The adoption of a FSG compliance program has the potential to substantially lessen organizational penalties if there is due diligence to prevent misconduct. Federal courts determine the effectiveness of an FSG program after a violation occurs.

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Ethical and legal issues continue to be at the forefront of organizational concerns as managers and employees face increasingly complex decisions. Questionable use of corporate funds, false accounting records, and controversial sales techniques are common in this decade (Lublin, 1994; Steinmetz, 1994; Stern, 1994). Often these decisions are made in a group environment comprised of employees with different value systems, competitive pressures, and political concerns that contribute to ethical conflict. Nearly one-third of the employees in a national survey felt pressured to engage in misconduct to achieve business objectives (Goodell, 1994)..In addition, nearly one-third of employees are seeing misconduct, but less than half are reporting it to their company (Goodell, 1994). What are organizations doing to support ethics initiatives within their organizations? Over half maintain a code of ethics (60%), some offer ethics training (33%), and some have an ethics officer (33%) (Goodell, 1994).

An organizational ethics program establishes formal accountability and responsibility for appropriate business conduct with top management. An effective ethics program has the potential to encourage all employees to under-

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stand the values of the business and comply with policies and codes of conduct that create the ethical climate of the business. It takes into account company values and legal requirements, helping an organization develop trust and prevent misconduct. Examples of issues in the development of an organizational ethics program include the establishment of a code of conduct, organizational responsibility for ethics programs, ethics training, employee control mechanisms, and procedures for feedback on, and improvement of, the ethical compliance program. Business ethics issues often covered in training include breaches of confidence, falsifying records, conflict of interest, abusing drugs or alcohol, misuse of organizational assets, discrimination, and sexual harassment (Moore and Dittenhoffer, 1992).

A key problem in administering an ethics program is making ethics a part of an organization's culture. The influence of managers and co-workers, as well as opportunity to engage in misconduct, have been found to be key determinants of ethical conduct (Ferrell and Gresham, 1985). While there is limited information concerning the long-term effectiveness of ethical compliance programs, companies such as Hershey Foods, Caterpillar, and Texas Instruments express the belief that their comprehensive ethics programs have been effective in reducing misconduct. Top management has often failed to develop an effective ethical compliance program in companies where serious allegations of ethical misconduct have occurred. Examples of firms without effective ethics programs are Archer-Daniels-Midland and Bausch & Lomb (Maremont and DeGeorge, 1995; Whitacre and Henkoff, 1995). In the latest Ethics Resource Center study, nearly one-fourth of the respondents believe that their companies engage in unethical behavior to meet business goals, and one-sixth believe their organization encourages misconduct to achieve business goals (Goodell, 1994).

The government's response to deterring white-collar crime is the Federal Sentencing Guidelines (FSG), and its goal is to reward organizations for establishing a legal/ethical compliance program. The guidelines are so powerful and explicit that "expectations for reasonable business conduct will never be the same" (Dalton et al., 1994, p. 7). The effectiveness of a compliance program is determined by its success in preventing misconduct by focusing on the risk associated with a particular area of business. It should be emphasized that it is impossible to take a strict legalistic approach in developing an ethical compliance program. Failing to incorporate the program within the corporate culture will result in greater culpability and increased penalties.

The purpose of this article is to provide a framework for understanding the legal and ethical ramifications of the Federal Sentencing Guidelines of 1991. First, we delineate the nature of the guidelines and the process by which organizations are penalized for employee misconduct. Second, we examine the guidelines' impact on business ethics programs. The government's requirements for compliance programs are discussed in the context of ethics training and organizational culture. This article should encourage research to assess the effectiveness of FSG programs on the ethical climate of organizations.

The Federal Sentencing Guidelines

The Federal Sentencing Guidelines were developed because of an increase in white-collar crime and the government's determination to place the responsibility for such crime with organizations, not just individual decision makers (Paine, 1994). A wide range of organizations can be held accountable under the Federal Sentencing Guidelines for Organizations, including corporations, associations, unions, governments, unincorporated organizations and non-profit organizations (Ettorre, 1994). The guidelines were developed by the U.S. Sentencing Commission and became effective November 1, 1991. These guidelines provide guidance to organizations and encourage internal control systems by mandating punishment and possible restitution if the organization's internal systems fail.

The Sentencing Reform Act of 1984 authorized the U.S. Sentencing Commission to create categories of offense behavior (i.e., bribing government officials with over $25,000) and offender characteristics (i.e., first or second offense) that are used to develop appropriate sentence and fine levels. The court must choose a sentence from these guidelines, which differentiates among similar crimes and similar offenders. The FSG are designed to enhance the ability of the justice system to fight crime with an effective and fair sentencing system.

Under this mandate, an organization is held accountable and responsible and may be indicted if a federal crime is committed by one or more of its employees. Both federal and state governments are moving toward organizational accountability for crime occurring within organizations and will act on it accordingly. In the past, laws limited the enforcement action to those employees directly responsible for an offense. Due to the lengthy litigation process, by 1995 approximately 280 cases had been prosecuted based on the 1991 FSG. A large number of cases based on the FSG will probably be produced over the next few years.

The government has placed the responsibility for controlling and preventing illegal and unethical activities squarely on the shoulders of top management (Dow and Muehl, 1992; Fargason, 1993). Managers are responsible for their own actions and those of individuals they supervise. The guidelines include the principle of vicarious liability which means managers must demonstrate due diligence in attempting to prevent misconduct. Historically, companies have incorporated for limited liability, but the principle of vicarious liability means that now organizations can be held liable if they have not followed the minimum requirements of the Federal Sentencing Guidelines for organizations.

To demonstrate due diligence, a company has to create and document an effective internal compliance program to ensure an ethical corporate culture. Moreover, ethical and legal standards must be communicated to the entire organization (U.S. Sentencing Commission, 1994). The objective is for an ethics compliance program to act as a buffer so that legal violations do not occur. When violations occur, management must prove that a proactive compliance program was in effect.

One of the main reasons for ethics program ineffectiveness is the failure to develop an ethical climate. A number of empirical studies support the view that organizational ethical climate has a significant impact on misconduct (Ferrell and Weaver, 1978; Morgan, 1993; Wahn, 1993; Bruce, 1994; Grover and Hui, 1994). If the corporate culture provides rewards or the opportunity to engage in unethical behavior through decentralization, weak internal control systems, or a lack of managerial concern, then the firm is in danger of high penalties based on the FSG (Golden, 1993). On a more positive note, many companies attempt to set standards much higher than legal compliance. Corporations such as Lockheed Martin, NYNEX, General Motors, Waste Management, Teledyne, and Dun & Bradstreet have codes of ethics, ethics training, compliance programs, and depending on the issue, use various punishments to impede employees' misconduct as defined by company standards. Still all of these firms have both legal and ethical misconduct issues to resolve. Dow Corning had a vaunted ethics program that was a model for corporate America. this program did not prevent the controversy of silicone breast implants from pushing the company into bankruptcy (Byrne, 1995).

The purpose of the FSG

The main objectives of the Federal Sentencing Guidelines are to self-monitor and police, aggressively work to deter unethical acts, and punish those organizational members or stakeholders who engage in unethical behavior. The sentencing of organizations is accomplished with four considerations in mind. First, the court will order the organization to remedy any harm caused by the offense. Second, if the organization operated primarily for criminal purpose, fines will be set sufficiently high to divest the firm of all assets. Third, fines levied against the organization are based on the seriousness of the offense and the culpability of the organization. Fourth, probation is an appropriate sentence for an organizational defendant when it will ensure that the firm will take actions to reduce future criminal conduct (U.S. Sentencing Commission, 1994). The guidelines require federal judges to increase fines for organizations that tolerate misconduct and reduce fines for firms with extensive ethics and compliance activities. The main thrust for an organization is to avoid the mandatory restitution, monetary fines, and affirmative action steps which result from violations.

Legal/ethical ramifications of the FSG

The escalation of organizational misconduct to the Federal Sentencing Guidelines began with federal acts relating to conflict of interest, racketeering, privacy, labeling and copyright trademark infringement, price fixing, as well as other corporate crime. The following legislation (see Table I) requires managers to understand legal issues and develop effective compliance programs to prevent misconduct that could result in an offense. For example, managers can be prosecuted under the RICO Act for deriving income through racketeering which is often interpreted as co-worker conspiracy to achieve goals through unlawful activities. Once a crime has been detected, the government will consider previous efforts by the company to deter such acts when determining its fines and penalties.

If not resolved, most ethical issues related to laws identified in Table I could result in illegal conduct. Legal violations often result from managers stretching the limits of ethical standards, then developing identifiable schemes to knowingly or unwittingly violate the law.

Many federal laws are so complex that legal training is necessary to develop training materials for the prevention of misconduct. If a company used only moral philosophy as its foundation for deriving ethical training, it could be deficient in providing direction for preventing violations of law. Therefore, an ethical compliance program must incorporate both the values and moral foundations of the company as well as directions for preventing legal violations. Laws governing business are not necessarily developed in a rational manner that is consistent with the moral rules that individuals use in their personal lives.

Offenses and resulting penalties under the FSG

The offenses under the FSG include all federal felony and Class A misdemeanor offenses. Major offenses governed by the FSG include bid rigging, fraud, customs violations, theft, embezzlement, extortion, drug offenses, civil rights violations, antitrust violations, conflict of interest, invasion of privacy, forgery, racketeering, tax fraud, transportation of hazardous materials,

TABLE I
Major federal legislation affecting business managers

Sherman Antitrust Act (1890)	Prohibits restraint of trade
Clayton Act (1914)	Prohibits specific practices such as price discrimination, exclusive dealer arrangements and the creation of monopolies
Federal Trade Commission Act (1914)	Commission to prevent unfair methods of competition
Robinson-Patman Act (1936)	Prohibits price discrimination among wholesalers and retailers
Wheeler-Lea Act (1938)	Prohibits unfair and deceptive acts regardless of injury
RICO Act (1964)	Prohibits racketeering activity and the investment of such gains in interstate or foreign commerce
Lanham Act (1964)	Prohibits advertising from misrepresenting product characteristics
Foreign Corrupt Practices Act (1977)	Promotes effective internal control systems in international business
Trademark Counterfeiting Act (1980)	Provides penalties for counterfeit consumer goods
Nutritional Labeling and Education Act (1990)	Prohibits false health claims on processed foods

copyright infringements, and environmental crimes (U.S. Sentencing Commission, 1994).

Penalties. The penalties for these offenses are based on two premises, the seriousness of the offense and the culpability of the organization. Seriousness is measured in terms of the monetary gains or losses suffered as a result of the wrongful conduct. An organization's culpability is determined by the organization's efforts to prevent and detect criminal conduct and the organization's involvement in or tolerance of the conduct by high level personnel or those with substantial authority. The final consideration in determining culpability is the actions of the organization after an offense has been committed.

Severe mandatory penalties are required by the guidelines, with base fines ranging from $5,000 to $72,500,000 (see Table II). In the past, U.S. district judges had much discretion in imposing fines and sentences. Under the new guidelines, judges utilize a formula to determine the fine ranges from which they choose the final fine. Since the government does not have the resources to regulate compliance, federal judges were given the power to impose fines on an organization based on the seriousness of the offense and the culpability of the organization. Management's lack of knowledge or association with the crime is not an adequate mitigating defense (U.S. Sentencing Commission, 1994).

Measures that can be imposed upon the organization, outside of the base fines, include

TABLE II
Base offense level fines

Offense level	Amount
6 or less	$ 5,000
10	$ 20,000
15	$ 125,000
20	$ 650,000
25	$ 2,800,000
30	$10,500,000
35	$36,000,000
38 or more	$72,500,000

Source: Federal Sentencing Guidelines for Organizations, October 1991.

restitution or compensation to return affected individuals to the status quo, a probationary period, a defined term of community service, and/or a notification to all victims of the organizational activity (Fargason, 1993). These measures of restitution can virtually "delimit" the amount of financial obligation imposed upon the organization since there are no fine tables for these remedial measures.

Seriousness of the offense. The fine that can be levied against an organization committing an offense is based on the greatest of either pecuniary gain, pecuniary loss, or the base offense level indicated in Table II. Pecuniary gain is the before-tax profit gained by the organization as a result of the offense. A pecuniary loss is the monetary loss caused by the knowing, intentional or reckless acts of the organization. Finally, the base fine may be determined by the number and type of offenses that the organization has previously committed. As the offense level increases, so does the base fine that must be assessed under the sentencing guidelines.

Each federal offense has been assigned a corresponding base level (i.e., 1 to 38 or more). For instance, the commercial bribery of federal, state or local government officials carries a base offense level of 10. However, this level increases if the bribe exceeds $2,000. Price-fixing and market-allocation (i.e., collusion) agreements among competitors carry a base offense level of 10 but increase as the volume of commerce exceeds $400,000.

Culpability of the organization. As a general rule, the base fine measures the seriousness of the offense. However, in order to determine the final fine ranges, a culpability score must also be assessed. Culpability is based on three interrelated principles. First, organizations become more culpable when high-ranking individuals participate, condone, or willfully ignore criminal conduct. This can be evidenced by looking at the prior history of the organization – how long has it been since a previous offense has occurred (10 years: +1; 5 years: +2). Second, in larger and more professional organizations, criminal conduct by high-level employees is increasingly a breach of trust and abuse of position. The culpability score gradually increases based on the size of the organization (10 employees: +1; 5,000 employees: +5). Third, culpability increases in organizations where management's tolerance of offenses is pervasive. Other factors directly affecting the culpability score include violations of a judicial order and obstruction of justice. Factors which can mitigate or lessen the culpability level include an effective program to detect violations of the law, self-reporting, cooperation, and acceptance of responsibility (Fargason, 1993).

The base fine depends on the organization's efforts to prevent the offense as shown by the offense level. The above fine table can be further adjusted based on severity of the offense (resulting in death or bodily injury), the potential threat to national security, the potential threat to the environment, the potential threat to a market, if the organization is a public entity, and/or if the remedial costs exceed the gains achieved by the organization (Fargason, 1993).

FSG requirements for the compliance process

The Federal Sentencing Guidelines require organizations to develop a compliance program that can prevent, detect, and deter employees from engaging in misconduct. The ethics component acts as a buffer keeping firms away from the thin line separating unethical and illegal conduct. To be considered effective, compliance programs must disclose any wrongdoing, cooperate with the government, and accept the responsibility for misconduct. Codes of ethical conduct, employee training, hotline phone numbers, compliance officers, newsletters, brochures, monitoring employee conduct, and an enforcement system are typical components of a compliance program. The risk of severe penalties can be reduced under the guidelines if the organization has established an effective compliance program. The cornerstone of an effective program is that companies must exercise due diligence in seeking to prevent and detect criminal conduct by employees (Golden, 1993).

Although criminal conduct may be defined by law, the interpretation of ethical versus unethical behavior is often a judgment even when there is a program to curb unethical behavior. Most organizations with compliance programs still have ethics violations as defined by their standards of conduct. A recent Ethics Resource Center business ethics survey of employees revealed that 55% never or only occasionally found their company's standards of conduct useful in guiding their business decisions and actions. An additional 8% had never read the standards, and 45% found ethics training to be ineffective (Goodell, 1994). Organizational ethics programs have yet to reach a level of effectiveness and usefulness desired through the Federal Sentencing Guidelines.

An effective compliance program is more a commitment and process than an exact blueprint for conduct. There are three major components of the process. First, larger organizations are required to develop and review formal written standards and procedures for conduct. A code of ethics by itself is not enough to ensure ethical behavior within an organization or profession. On the other hand, it is possible for an effective code of ethics to provide specific guidelines to address major areas of risk within an entire industry. For example, the Water Quality Association has developed a detailed code of ethics that provides specific guidelines within the water treatment industry worldwide (Water Quality Improvement Industry Code of Ethics, 1994). Second, organizations must establish and continuously revise guidelines for specific offenses that are most likely to occur due to the nature of its business. For instance, if the organization gives salespeople great flexibility in setting prices, then it must have standards to detect and prevent price-fixing and bid rigging. Price discrimination and human resource issues such as privacy and conflict of interest must be closely monitored by all managers. Finally, the prior history of the organization may indicate offenses for which preventive action should be taken. The recurrence of similar offenses casts doubt on an organization's effort to prevent misconduct.

The ethical compliance program

An effective program is a process of continuous activities that are designed, implemented, and enforced to prevent and detect misconduct. The FSG suggest a compliance program, with the organization exercising due diligence by performing the following steps (U.S. Sentencing Commission, 1994):

1. Codes of conduct must be developed that are capable of reducing misconduct.
2. Specific high level personnel must be responsible for the compliance program (i.e., compliance officers) and support the ethics/compliance program (i.e., top management).
3. Substantial discretionary authority in the organization must not be given to persons with a propensity to engage in illegal conduct.
4. Standards and procedures must be communicated to employees, other agents (such as advertising agencies), and independent contractors (or consultants) through training programs and formal communication systems. (All relevant stakeholders should be exposed to the company code of conduct).
5. The organization must take reasonable steps to achieve compliance with its standards, by using monitoring and internal auditing systems to detect misconduct. A reporting system must allow employees and agents to report misconduct without fear (i.e., anonymous ethics hotlines).
6. Standards and punishment must be enforced consistently in an organization, and the organization must create a process to prevent further offenses.
7. A plan to review and modify the compliance program is necessary to demonstrate a continuous improvement process in self-monitoring.

These seven steps represent the minimum an organization can do to demonstrate due diligence. The end result of the process is compliance and ethics programs that reduce the opportunity for employees to engage in misconduct. Further, the program requires high-ranking personnel to be responsible for compliance. An effective compliance and ethics program can reduce both employee misconduct and an organization's penalties if crimes are committed. Thus, the reduction of fines is an incentive for firms to implement compliance programs. Table III shows the potential mitigating effect an effective compliance program can have on fines. A high culpability score has a significant impact on increasing fine levels.

TABLE III
FSG ranges based on various culpability scores

Offense level	Culpability	Fine	
		Minimum	Maximum
25	10	$5.6 M	$11.2 M
25	7	$3.92 M	$7.84 M
25	2	$1.12 M	$2.24 M

The role of ethics training

An effective ethics training program begins with the development of a code of ethics (Ferrell and Fraedrich, 1994). Usually a specific committee or person under the direction of top management serves as the manager of the code of ethics development. If employees can participate in the initiation and implementation of a code, then the values, commitments, and beliefs of the company become a catalyst for the code's creation. The development of the code serves as a value foundation for successful training and educational programs. For ethics training to be effective, the belief that unethical behavior is ever acceptable must be eliminated. The key elements of a successful ethics program should include at least the following (Manley, 1992):

1. an identification of the ethical component of a decision;
2. a mechanism to address ethical issues and identify emerging ethical issues;
3. an understanding that ethical situations are ambiguous by their very nature (i.e., the

correct decision is not always obvious and can be debatable both inside and outside the organization);
4. a provision to help decision makers realize that actions taken collectively create the firm's ethical climate.

Ethical training goes beyond legal requirements and attempts to communicate values that represent the heart and spirit of the organization. To be effective, the program must establish an organizational support system that represents commitment among top managers. To be most effective, codes should not focus on exceptional situations but attempt to be applicable to the daily routine and responsibilities of each employee. Most effective training sessions, although brief (two to four hours), focus on employee involvement and developing an interactive environment in which to discuss the issues. In addition, ethics should be discussed in conjunction with other business communication and activities, not just in training. If a group discussion involves strategy or performance concerns, it is an appropriate forum for the ethical implications or issues related to that particular strategy or issue.

In addition to ethics training, many organizations also incorporate an ethics task force, full-time ethics program officers, employee hotlines, publications or company policies, and certification programs. Certification requires employees to sign a statement that they are unaware of any violations against company policy (Fiorelli, 1992). Thus, an employee who is knowledgeable about misconduct and signs the statement is "lying" to the organization. Certification works well in conjunction with ethics hotlines and other activities because it moves people "on the ethical fence" into action.

Although ethics programs and training involve current employees, there are some organizations which assess potential employees' values and their fit with the corporate culture (Posner et al., 1985). This assessment occurs during the interview process and is one determinant of an individual's suitability for an employment position. Firms which have strong value systems and ethics programs may choose to only hire individuals who hold similar beliefs and values. A good "individual-organizational fit" may lead to less ethical conflict and increased performance and satisfaction on the part of employees. Sims and Kroeck (1994) found that employees prefer firms that match their ethical preferences and are less likely to leave an organization where an ethical fit exists.

Ethics programs have a positive impact on employees' behavior, as well as their attitudes toward the ethics of coworkers, superiors, and the corporate culture. The most positive improvements in ethical conduct are found in companies which have all program components, including codes of ethics, ethics training, and ethics offices (Goodell, 1994). Finally, an ethics program can only succeed if it is treated as every other core business function and is adapted and changed throughout the planning cycle (Edwards and Goodell, 1994).

Organizational culture relative to compliance program orientation

Figure 1 provides a typology for understanding the two dimensions that are evaluated by the government in a FSG case. The first concern is what actions, if any, which supported initiatives in the FSG occurred prior to the offense (i.e., codes of ethics, ethics training, ethics hotlines, etc.) These factors are important in determining the culture of the organization with respect to compliance. The scope of the compliance program is a key determinant of its effectiveness. The second dimension of the matrix addresses the actions the organization takes after the FSG

Cooperation with government investigations after an FSG offense	*Maximum*	Reactive Organization	Compliance Organization
	Minimum	Noncompliance Organization	Legalistic Organization
		Minimum	*Maximum*
		Implementation of FSG compliance program preceding the offense	

Fig. 1. Organizational orientations for federal sentencing guidelines compliance.

offense has occurred. These actions relate to the culpability of the organization through top management's participation or lack of action after the offense occurs and the time frame since a previous offense occurred indicating perhaps an ongoing tolerance by management of criminal or unethical conduct. Culpability is mitigated by reporting the offense in a timely manner, fully cooperating with the investigation, and accepting responsibility for the misconduct (Fargason, 1993).

Figure 1 presents four orientations of the organization (compliance, legalistic, reactive, and noncompliance). The compliance organization is the ideal organization and what the FSG hopes organizations will strive to represent. Such an organization has made a sincere effort to put into place programs and mechanisms in support of FSG requirements. The compliance organization also cooperates completely if an infraction of the FSG occurs. The noncompliance organization is the exact opposite of the compliance organization. It has not shown an interest in complying with the FSG and if caught with a potential violation, does not cooperate with the federal government. The reactive organization does not engage in activities in support of the FSG until an infraction has occurred, at which point they cooperate in the investigation. The final typology is the legalistic organization which has scrutinized the FSG and implemented a minimum compliance program without commitment to change the organization. When an investigation occurs for a potential violation, they are not as cooperative with investigating officials, feeling that they abided by the expectations of the guidelines and therefore any violations should be mitigated by the established compliance program. The legalistic program is not an acceptable FSG program and an investigation by the courts could render this approach useless. These four typologies were developed to show possible variance in orientation of the organization with respect to two key elements of compliance programs and organizations which are evaluated.

Cases tried under the FSG

Approximately 280 cases have now been tried under the FSG (Davidson, 1995). The most frequent offenses include fraud, antitrust offenses, environmental and tax violations. The fastest growing violation prosecuted under the FSG is the evasion of import/export duties (Apel, 1995). Some of the early results are due to implications of the point system. "The guidelines have a point system for assigning penalties and fines. And since its implementation, 91 percent of organizations plead guilty because points are subtracted for this" (Apel, 1995). But of those who plead guilty, thus far, 65% of the organizations were placed on probation (Apel, 1995). Probation may mean significant cost to a firm because consultants may be required by the court to improve conduct or monitor activities. The highest fine issued was $7.5 million, and the longest probationary period established was 60 months which was not an uncommon probationary period (Apel, 1995).

A majority (93%) of the organizations sentenced under the FSG have been private organizations, although publicly held organizations may be sentenced more in the future. Small business is a major offender with 79% of all organizations sentenced having less than 50 employees. Organizations with less than 20 employees represent 56% of the cases through June 30, 1995 (U.S. Sentencing Commission, 1995). Scalia (1995) indicates that large, publicly traded firms are not being seen in current cases or have not been sentenced as much as smaller companies because of the complexity and length of the cases and prosecutors' tendencies to pursue these cases in civil, not criminal court.

Conclusions

Most crimes and unethical actions are not committed by individuals who want to advance themselves and destroy their organizations. Instead they occur because of two organizational factors: opportunity and the actions of peers and supervisors (Jones, 1991). A corporate culture that provides incentives and opportunities for unethical activity creates a climate in which infractions are possible and even encouraged. For instance, an overwhelming number of crimes in business (i.e. price fixing, product misrepresentation, copyright violation, etc.) stem from employee misconduct designed to benefit the company. Employees often believe that corporate objectives have greater importance than legal and ethical requirements and that their success is tied to the achievement of these organizational objectives.

Ethical issues arise because of conflicts among individual values, organizational values, and societal values. An ethics program to improve the ethical climate is necessary to provide a buffer zone to avoid destructive ethical conflict. While there is always some ambiguity in making the correct ethical decision, only through top management involvement and open debate and discussion of ethical issues can mistakes be eliminated. An issue, activity, or situation that can withstand open discussion between many groups both in and outside the organization and survive untarnished provides assurance that the right decision was made. An FSG compliance program with ethics training provides an organizational mechanism to create openness, discussion, and resolution of ethical conflict.

The Federal Sentencing Commission provides a strong incentive for companies to develop an ethics program. The guidelines became law in November 1991, and prosecution of larger corporations is just beginning in the long litigation process. With approximately 280 cases prosecuted to date, it is clear that organizations are being held liable for offenses committed by their agents. An important question is whether legal pressure of the FSG is sufficient to change corporate culture to become more ethical. While the initial interpretation of the FSG is that it operates in a mechanical manner, this impression is false. The Federal Sentencing Commission has made it clear that compliance programs effectiveness will be evaluated based on the firm's assessment and prevention of misconduct in areas where there is risk. A program must be widely communicated and must be established before there is misconduct in order to get credit. The only time that a company can have its program evaluated by the government is when a violation has occurred and a federal court is making a determination concerning organizational misconduct. Just because a company claims to have followed the seven minimum requirements of compliance does not necessarily mean that a court will find that the company has an effective program. Research is needed to determine if FSG programs improve a firm's ethical climate. In addition, research is needed to see if companies that have been sentenced under the FSG have changed their ethical climate to prevent future legal problems.

After years of debate over the importance of business ethics in organizations, the federal government has decided to institutionalize ethics as a required buffer to prevent legal violations in organizations. This is the incentive that organizations need to show greater initiative in the ethics area. If the guidelines do not get the attention of top management, one mid-level fine for a Federal Sentencing Guidelines violation should. The goal is that companies will see the opportunity to improve their ethical climate and reduce the need for excessive regulation by becoming a "good citizen" in society.

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