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OBSERVATIONS ON THE NEED TO REDESIGN ORGANIZATIONS AND TO REFOCUS  
CORPORATION LAW TO PROMOTE ETHICAL BEHAVIOR AND DISCOURAGE  
ILLEGAL CONDUCT

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SUMMARY:

... The social psychology researches of Milgram, Zimbardo, and others, show that good people can do bad things when placed in organizational structures and pressured by a strong corporate culture to be a "good team member." ... Beginning in the early 1960s, the expectation that businesses would protect the environment was added. ... The Enron affair has heightened the above recognition and may have provided the tipping point for a new social mandate that society expects businesses to restrain themselves from harming others even if it is legal to do so. ... Yet, in

organizing the work processes within the company, management may put pressure on employees to do what is illegal or unethical. ... Success at networking-looking up and around-requires fitting into the style of the company so that others will be comfortable that the individual manager is one of them. Having the proper style, appearance, and teamwork ethic allows the manager to put others at ease. ... There is a rich literature on organizational structures and behavior, on leadership, and on corporate culture, which can be mined for creative ways to redesign the work environment to promote legal compliance and ethical behavior. ... The so-called "box" should be redesigned to compel all employees to face the legal and ethical issues inherent in today's management environment. ...

TEXT:  
[\*43]

## Abstract

The social psychology researches of Milgram, Zimbardo, and others, show that good people can do bad things when placed in organizational structures and pressured by a strong corporate culture to be a "good team member." Much of corporate law and applied ethics, to the contrary, focuses on the intentions and character of individual decision-makers as if they operated in a vacuum. While assigning responsibility to individuals is essential in law and ethics, this article argues for a broader, multi-disciplinary approach to understanding why legal and ethical meltdowns occur in businesses. To avoid such meltdowns, businesses must appreciate the changing nature of societal mandates and demonstrate more respect for the institution of law. Next, building on the work of James Waters, organizational blocks which operate to prevent healthy ethical behavior even when both managers and employees of a business want to do the right thing, are examined. Finally, building on the work of Robert Jackall, this article reviews some of the "rules for successful careers" that work to exclude consideration of law and ethics in managers' decision making, and make some tentative suggestions for legal and organizational reforms.

[\*44]

## I. Introduction

People act differently when they are in groups than when they are not. Most people admit using a different set of moral values at work than they use at home. n1 Aware of this dichotomy, Reinhold Niebuhr, the noted theologian, n3 In fact, several fields actually have developed based upon this phenomenon: organizational behavior and organizational development; industrial psychology, social psychology; sociology; and others. Unfortunately, one of the shortcomings of business ethics, until recently, has been its failure or reluctance to acknowledge the truth of this axiom. n4

Ferrell and Fraedrich, in their well-established textbook on Business Ethics, n5 were among the first scholars, if not the first, to include chapters on "How the

Organization Influences Ethical Decision Making." n6 In a chapter on how organizations influence behavior, Ferrell and Fraedrich look at two broad categories of organizational structures: centralized and decentralized. n7

[\*45] [SEE TABLE IN ORIGINAL]

They later explain that "[m]anagement's sense of the organization's culture may be quite different from the values and ethical beliefs that are actually guiding the firm's employees. Ethical issues may arise because of conflicts between the cultural values perceived by management and the ones actually at work in the organization." n8 One of the essential criteria for ethical behavior on the job is that employees think critically and creatively. It is equally important, however, for managers to recognize that employees must work and communicate "inside the box," the organizational structure and culture of the company employing them. Even while employees are encouraged to think outside the limitations of the existing structure and culture, a better "box" needs to be designed for employees.

[\*46]

#### A. Short Review of the Literature

One of the foundational works in this area is *Modern Organizations* by Amitai Etzioni, n9 which covers the history of thought in the sociology of organizations. He starts with the definition of organizations from Talcott Parsons; n10 explains the contributions of the formal (Scientific Management) school; presents the contributions of the informal (Human Relations) schools; discusses the emerging synthesis represented by the Structuralist approach; summarizes Max Weber's theory of bureaucracy (Early Structuralist); and then concludes with applications of the structuralist approach to organizations as they relate to clients and the larger environment. n11

Organizations are social units deliberately constructed and maintained to seek specific goals. n12 They are characterized by three attributes: (1) "divisions of labor, power, and communication responsibilities"; (2) "one or more power centers" directing the organization toward its goals; and (3) free "substitution of personnel" through removal, promotion, recombination, or transfer. n13 There are various ways in which goals of modern organizations become either distorted or displaced, thereby becoming the master or servant of the organization. n14 "[O]ne of a larger category of distortions" arises from the over-measurement of some aspects of an organization's output to the detriment of others. n15 This problem may be particularly acute in organizations such as churches and schools whose output is not material and, hence, whose efficiency is extremely difficult to measure. n16

The formal (Scientific Management) school assumed no conflict between man and organization. n17 Its perspective of the organization came from a strong managerial stance, and the underlying assumption was "what [\*47] was good for management

was good for the workers." n18 The informal (Human Relations) school taught that "workers have many needs other than purely economic ones," and it argued that the formal school approach did not benefit the workers or the management. n19 The informal school posited approaches under which management, by acknowledging the non-economic, social and cultural needs of the workers, could both increase worker satisfaction and raise productivity. n20

The Structuralist School viewed some conflict and tension between workers and the organization as inevitable and not always undesirable. n21 Essentially, the Structuralist School promoted a synthesis of the formal and informal approaches, influenced by the work of Max Weber, and, to a limited extent, the work of Karl Marx. n22 "Structuralist writers [were the] first [to] recognize fully the organizational dilemma: the inevitable strains . . . between organizational needs and personal needs; between rationality and non-rationality; between discipline and autonomy; between formal and informal relations; [and] between management and workers, or, more generically, between ranks and divisions." n23 One survey of the federal government even suggests the incompleteness of the informal school is that the importance of material (formal) rewards in organizations is not reduced by the importance of social rewards, a matter addressed by the Structuralist School. n24

## B. Centers of Control in Organizations

The formal (Scientific Management) school, which had its foundations in the scientific management theories of Frederick Winslow Taylor, n26 Division of [\*48] labor, however, according to formal school thought, had to be balanced by a "unity of control." n27 To explain, "[t]he tasks [of the organization] have to be broken up into components by a central authority in line with a central plan of action; the efforts of each work unit need to be supervised; and the various job efforts leading to the final product have to be coordinated." n28 Since each supervisor had a limited span of control, it was necessary to have so many first-line supervisors, second-line supervisors, and so on. n29 There is no definite number for span of control; however, most classical writers believe the optimal span of control was five to ten, with the higher end numbers (eight to ten) appearing at the top of the organization chart where the greater resources needed to support diverse decision making were likely to be found. n30

This classical (formal) model, demonstrates how armies, churches, universities, and many corporations are organized and explains why it is appropriate to group armies with churches and schools, which is not necessarily ideal but nonetheless appropriate. n31 Out of the centers of control arise orders, job descriptions, bonus decisions, production, and sales quotas, n32 followed by a need to motivate, manipulate, or coerce workers and their supervisors into meeting these demands and expectations. n33 It is frequently at this exact juncture that a number of business ethics issues and dilemmas arise, some conscious and visible, some neither conscious nor readily apparent. n34 Very powerful forces of [\*49] environment,

context, peer pressure, role assignments, or role expectations assist the supervisor in "motivating" the worker at this juncture. n35

### C. The Law of Organizations

The Law of Business Organizations has traditionally consisted of the law of partnerships and corporations. The law of corporations usually is based on the Model Business Corporation Act (MBCA). n36 For purposes of this article, partnership law and laws relating to close corporations will not be addressed. n37 The underlying principle of the MBCA is the traditional notion of property rights and contracts. n38 The idea of ownership and control going hand-in-hand is perpetuated, if not raised and exalted.

[\*50]

This concept was seriously undercut by the important contribution of Adolf Berle and Gardiner Means in 1932. n39 They showed that ownership and control had been severed in large, publicly traded corporations. n40 This significant discovery has become even more important in this age of mergers, acquisitions, and global capitalism with large transnational corporations emerging more powerful than even most nation states. As far as can be determined, however, the law of corporations has not meaningfully responded to this rather fundamental discovery.

Another significant addition to the debate about the role of law in regulating corporations came with the publication in 1975 of Christopher Stone's landmark work, *Where the Law Ends*. n41 Professor Stone argues that regulation of business is always behind the learning curve. The law focuses on regulating yesterday's problem while the fertile brains of corporate managers are already moving into new areas. n42 There are a number of ways to influence the process by which corporations make decisions, such as establishing new positions at the top of the hierarchy such as vice president for environmental affairs, n44 instituting public directorships-both general and special, n46 To date, there are no takers.

Currently, following the crash of Enron, n48 Martha [\*51] Stewart, n49 and others, segments of American society are anxiously looking for "fixes" for what some perceive as unethical behavior, but others see as another round of white-collar crime. The Sarbanes-Oxley Act was the first step by Congress on the path to reassuring an anxious public that corporate stocks would once again be safe investments. n50 Sarbanes-Oxley, while certainly well-intentioned, falls short for several reasons. n51 It might more accurately be considered a modest first step by Congress rather than a solution. n52

One reason that Congress has not been better equipped to deal with what some consider a public confidence crisis in the markets is that many, if not most, members of Congress view the world through the dominant [\*52] property-rights-contracts-free-markets political ideology. When ideology is challenged by facts, the facts can

sometimes get ignored. n53 The hard news for some ideologues is that unregulated markets may be part of the problem rather than part of any solution. n54

#### D. Brief Introduction to the Psychology of Authority, Peer Pressure, and Roles

Professor Stanley Milgram of Yale University did some ground-breaking studies on authority in the early 1960s. n55 Milgram discovered that a simple white lab coat and an instruction that "[t]he experiment requires that you go on" were sufficient to get subjects to apply increased doses of electricity to supposedly suffering human subjects. n56 As Milgram noted in the "Postscript" to one of his articles:

With numbing regularity good people were seen to knuckle under the demands of authority and perform actions that were callous and severe. Men who are in everyday life responsible and decent were seduced by the trappings of authority, by the control of their perceptions, and by the uncritical acceptance of the experimenter's definition of the situation, into performing harsh acts. . . .

[\*53]

The results, as seen and felt in the laboratory, are to this author disturbing. They raise the possibility that human nature, or-more specifically-the kind of character produced in American democratic society, cannot be counted on to insulate its citizens from brutality and inhumane treatment at the direction of malevolent authority. A substantial proportion of people do what they are told to do, irrespective of the content of the act and without limitations of conscience, so long as they perceive that the command comes from a legitimate authority. n57

In the summer of 1971, Philip Zimbardo of Stanford University led an incredible experiment using the psychology building on campus as a makeshift prison. n58 He and two graduate assistants, Craig Haney and Curtis Banks, assembled a group of college-aged volunteers, sorted them for emotional stability, and randomly assigned them to positions of either guard or prisoner. n59 Within a few days, the guards assumed the roles of guards and the prisoners started to display the attributes of "first-timers" at real prisons. n60 Within six days, the experiment had to be terminated because the situation became "too real" and too intense, with several prisoners having to be dismissed because of psychological trauma. n61 This experiment unmasked the amazing power of role expectations as a major force in how people make decisions and a massive factor in how people see their situations. n62

The power of context and environment in determining how people perceive others as well as in determining underlying assumptions was demonstrated dramatically by another Stanford experiment. n63 In that experiment, healthy investigators got themselves admitted under false names with false diagnoses to various mental hospitals. n64 The physicians [\*54] and other hospital workers treated them as mentally ill, even though they were not, because they were, after all, "inmates" in

wards for the insane. The power of the underlying assumption (they would not be here if they were not mentally ill) prevented the staff from recognizing mentally healthy patients. n65

### E. When Good People Do Bad Things

Certainly, some illegal and unethical business activities are carried out by those who may be considered bad people. Most people in business, however, are good people who sometimes do bad things. Most people are part of social networks that encourage following the law and being ethical. Most people live in communities to which they have ties. They have friends, raise families, care for their parents, practice their religion, vote, pay taxes, and follow the law. When the business in which they work, however, threatens their welfare unless they act illegally or unethically, or conditions rewards on illegal or unethical actions, good people will do bad things. n66

Many recent cases of business misconduct support this view: the Sears auto repair scandal n68 State Farm's medical claims denials n70 to name a few. An analysis of how basically good companies can pressure basically good employees to do such wrongs will help inspire the creation of a better "box" for companies.

Experiences in higher education, business, and the military drive home the idea that the hard work of ethics goes far beyond learning the right thing to do. While it is important to know what is right, the more daunting challenge in ethics is to discover how to get yourself and others to do the right thing and to avoid doing the wrong thing. n71 Such an undertaking or inquiry into "moral dynamics" requires an appreciation of human nature, n72 an understanding of the power of the environment/situation on human choices, n73 and some knowledge of how humans are motivated to do good and to do evil. n74

This note will examine how to get people who have to work "inside the box [cubicle]" in organizations to do what is legal and right and avoid doing what is illegal and wrong. In order to do so, it is necessary to understand both how businesses are organized and operate and how [\*56] individuals make business decisions and are motivated. n75 Businesses need to keep out of the back seat of the car on the back row of the drive-in movie because, as our priests, teachers, and parents would say, if you go there, putting yourself in that near occasion of sin, you are going to fall. Likewise, if businesses go there, if they organize themselves in certain ways, those businesses are going to fall into illegal and unethical conduct. Four analytical frameworks will be suggested for examining the causes of legal and ethical failures in business, followed by a brief exploration of some solutions that might aid in the design of better business structures and company cultures. Finally, some initial suggestions will be made about how the law of organizations might adjust its focus to promote more ethically justified conduct and discourage white-collar crime.

## II. Understanding the Changing Social Mandates for Business

One cause of legal and ethical failures in businesses is a lack of understanding of the changing social mandates for business. n76 One scholar suggests that in return for granting businesses their franchise to operate, society has expectations of what businesses will provide and how they will behave. n77 These expectations develop and change as societal needs and the relations among its members change. n78 With the rapid growth of industrialization in the United States after the Civil War, businesses were expected to add to the wealth of the society by producing more, cheaper and higher quality goods to raise the general standard of living. n79

By the early 1900s, this mandate had expanded to include the expectation that businesses would protect the health and safety of their workers n80 and allow them to bargain collectively in order to raise their [\*57] standard of living. n81 Businesses were also required to respect the operation of free markets through antitrust laws n83 Beginning in the early 1960s, the expectation that businesses would protect the environment was added. n84 The decade of the 1960s also saw the advent of demands for consumer information and protection. n85 In the 1980s "stakeholder" language began to recognize the concerns of society that hostile takeovers not harm the workers and communities, and that corporate decision makers acknowledge other constituencies that contribute to corporations. n86

These changes in societal expectations were reflected in a Business Week poll conducted during 2000. n87 Only four percent of respondents agreed with Milton Friedman and the neo-classical economists that the sole [\*58] purpose of business is to increase the wealth of its stockholders. n88 Ninety-five percent thought the purpose of business included benefiting workers and communities. n89

Because social mandates do change, following the law is not enough to keep businesses out of trouble with society. n91 Suggestions by the experts and excuses by the participants that neither Enron executives nor their Arthur Andersen auditors actually broke the law have not blunted the nearly universal condemnation of them. n92 The law does not usually change quickly enough to reflect the current expectations of society. n93 Additionally, society has begun to recognize that the current political system often allows corporate money to influence the writing and enforcement of the laws for corporate benefit rather than to the benefit of society. n94

[\*59]

The Enron affair has heightened the above recognition and may have provided the tipping point for a new social mandate that society expects businesses to restrain themselves from harming others even if it is legal to do so. n95 Society may be developing a view that law and ethics should be combined into a single system that would provide guidance for managers, restrain abuses of economic power, promote general welfare, and prevent harm to others. n96 According to this view, conduct

within the law is no longer seen as self-justifying because the law is not seen as a complete system. n97 Ethics completes the law in that promotion of the general good and avoidance of harm to others are seen as the overall purposes of law. n98 When following the law does not advance these purposes or others are harmed, society expects companies to restrain their conduct by applying ethical standards. n99

If a new mandate to operate under the guidance of law and ethics rather than justifying conduct by its legality has in fact come into general acceptance, then businesses should be wary of using the legality of an action-"We did not break any laws"-as a defense when the following conditions apply:

(a) When others' interests are seriously harmed by following the law (Enron and Arthur Andersen n100);

[\*60]

(b) When large segments of the population reject the law or its purpose (Freeport MacMorran in West Papua, Indonesia n101);

(c) When the political institutions making or enforcing the law are unjust or corrupt (Exxon in Grand Bois, La. n102);

(d) When good consequences of the law are threatened by outrage over its bad consequences in a particular instance (Exxon in Grand Bois, La. n103); and

(e) When enactment or enforcement of the law is significantly influenced by the company's or its industry's involvement (Enron n104).

A second social mandate that may be evolving in this new century is the concern that businesses respect the institution of the law as a means of resolving disputes and compensating the injured. n105 Corporations should aim to benefit stockholders and other inside stakeholders by winning their legal battles, but they should employ legal tactics which respect rather than weaken the procedural rules in the legal system itself. While society recognizes that both sides in an adversarial system should put on their best case and attempt to discredit the case of their adversary, the use of "scorched earth" litigation tactics such as the reliance on endless motions designed to bankrupt adversaries that are not well financed renders the [\*61] courts less effective and weakens society's confidence in their ability to serve their purpose. n106

Businesses that ignore changing social mandates and operate contrary to societal expectations may see their franchises chipped away bit by bit. n107 They may be subjected to larger jury awards and settlement demands, as Exxon has in recent cases in Alabama n109 Also, actions of such companies may trigger a change in the

regulatory and political climate as the Enron/Andersen situation n110 and the recent Merrill Lynch securities analysts' compensation settlement show. n111

### III. Organizational Structures That Block Good Conduct

A second cause of legal and ethical failures in businesses is organizational structures that are instituted to promote efficient operation of the firm but consequently inhibit legal and ethical action by employees. n112 This effect may be unintended both on the part of the [\*62] company and the employees. The management of the company may well understand the costs of illegal and unethical activities from criminal penalties, loss of reputation, the opportunity costs of investigating and remedying wrongdoing, and from the corrosive effects on the internal morale and employee retention at the company. Yet, in organizing the work processes within the company, management may put pressure on employees to do what is illegal or unethical. n113 The following organizational needs and practices required to run a company inherently create this pressure, and are thus considered "organizational blocks."

#### A. "Ambiguity about priorities" n115

When employees are not sure how high a priority the company attaches to acting legally and ethically, especially when those principles conflict with productivity and short-term profits, they may feel pressure to fulfill the measurable or "hard criteria" at the expense of following the "soft criteria" of law and ethics. n116 The company may give a high priority to both profits and good conduct but not provide guidance on how to reconcile conflicts between the two. n117 Andersen employees who were told to follow the law but to shred "excess" documents may have felt pressure to widen their view of what was really "excess" in order to protect the company and their own jobs from another auditing failure. n118 State Farm employees in their zeal to protect the policyholders from higher rates may have lost sight of their company's commitment to making those policyholders whole if [\*63] they were injured in an accident. n119 Also, when Bausch & Lomb managers were told to "[m]ake the numbers, but don't do anything stupid!" they may have gotten the message that it would be stupid not to make the numbers by whatever means because that was what would be measured and rewarded. n120 Exxon may be committed as a corporation to following the rules of legal proceedings but winning lawsuits is what is measurable while playing fair is not.

#### B. Separation of Policy Decisions from Implementation n122

Decision making within large corporations is often divided into functions. Upper managers set the policies and goals, middle managers decide how to implement these policies and goals and lower managers get the actual work done. n123 Discussion in management circles has focused on combining these functions as much as possible to create flatter, more horizontal organizations that connect policymaking with its [\*64] implementation. When this connection does not exist,

managers may unwittingly make policies that require illegal or unethical action to implement. Exxon's upper managers' cost-cutting goals may have pressured field managers to seek the lowest cost disposal of hazardous wastes in spite of potential harms to local residents. n124 Keeping the revenues generated by Enron's consulting contracts may have pressured Andersen auditors to look the other way at questionable partnerships. n125 As one Arthur Andersen wag lamented to the tune of the Eagles' "Hotel California": "They livin' it up at the Hotel Cram-It-Down-Ya, When the [law]suits arrive, Bring your alibis."

#### C. "Strict line of command" n127

A "one-over-one" command structure with no access to managers higher up the chain of command prevents employees from reporting [\*65] wrongdoing by their managers. Although concern about the questionable partnerships was general water cooler talk among Enron managers, none dared take their concerns to Chairman Kenneth Lay as long as CEO Jeffrey Skilling was in charge.

#### D. "Strong role models" n129

If job training comes primarily from those already performing that function, new employees may be taught that there are no alternatives to illegal or unethical means to get the job done. Company values and alternative methods may not be learned. New hires in the turbine division at G.E. were taught that price fixing was the only way to meet sales goals. n130 The fact that Andersen did not rotate its auditors may have meant that those working on the Enron account were given a significant amount of their training by the one partner who managed the account.

#### E. "Division of work" n131

Dividing tasks by specialization or geographical division may generate efficiency, but it also may prevent employees from reporting suspected wrongdoing in other divisions. Because employees in one division may not fully understand what goes on in another, they may be reluctant to report perceived wrongdoing for fear of looking foolish. n132 An employee may report to someone in his/her division who does not feel responsible for what happens in other divisions and discourages reporting the perceived violation.

#### F. Task group loyalty n133

Employees working within a group may feel pressured not to report wrongdoing by group members because of loyalty to the group or fear of [\*66] punishment by the group. Studies of social and market disasters such as the Equity Funding debacle n135 indicate that a number of otherwise good people "went along" because of their loyalty to the group and their desire not to see colleagues and friends hurt, even though their choices injured tens of thousands of investors or killed seven astronauts, respectively.

#### G. "Protection from outside intervention" n136

Employees may hesitate to report wrongdoing within the company for fear that an internal investigation of the incident may be leaked to the outside and cause harm to the company.

#### H. Believing Your Own Story Too Much

Employees may justify departures from law and ethics because of the good that the company is doing. Enron's belief that they were totally redesigning the way energy and other commodities were sold for the great [\*67] benefit of these markets may have led employees to overlook their methods of financing these operations. n137

#### I. Giving Yourself Too Much Credit

Psychological test data indicates that because individuals are more familiar with their own contributions they tend to give themselves more credit than they objectively deserve. n138 Thus companies and individuals within companies may be willing to engage in illegal or unethical behavior in order to continue to operate because of an exaggerated sense of their own importance to the marketplace or to their company.

#### J. Circling the Wagons and Demonizing Critics

This blocker is related to "Protection from Outside Intervention." In this case, companies may react to any criticism from outside as a threat to the continued existence of the company. It is also related to "Task Group Cohesiveness" in that members of the company do not see criticisms from outside as an opportunity to learn from others but as an opportunity to show loyalty to the company. During the Watergate crisis, President Richard M. Nixon's advisors were particularly harsh on their critics and were also very brutal toward anyone in the inner circle who even seemed somewhat "soft" on how things were managed. n139

[\*68]

#### K. Praising A and Rewarding B

There is often ambiguity about priorities in that a company may expect legal compliance and ethical behavior but have no mechanisms for rewarding conduct in either its evaluation or compensation systems. Behavior that gets the job done may be rewarded while legal practices and ethical conduct are only discussed.

Demands such as, "Lieutenant, just get the job done, I don't care how you do it, and I don't want to know," are not found just in the military. Many colleges and universities pay lip service to the virtues of good teaching, but they distribute

promotions and salaries that correlate heavily to publications. n140 Some companies may send similar signals by spending only minimal funds on environmental compliance or ethics staffing and training while featuring one or both prominently in their Mission Statements or Ethics Codes.

#### L. Undervaluing the Public Good

Social Psychology literature has repeatedly pointed out that the public, when asked to estimate the share of a public good in places such as state parks, schools, or highways, tends to undervalue the fair share of what it costs for the state to provide that good. n141 In a sense, this is the [\*69] underlying mental condition for "The Tragedy of the Commons." n142 This mindset extends to the issue of how corporate managers should rate or value good will, the company's public image, clean water, and cleaner air. It follows that these considerations frequently come up short when decisions are made about company plans and priorities.

For example, top managers at one large timber company shared the mindset that a tree only had value when it was converted into pulp or board feet. n143 This perspective became part of the corporate culture and was displayed repeatedly in various public forums. n144 That a tree or a stand of trees could have aesthetic value, or could help prevent erosion on a mountainside, or could help in the oxygen cycle did not rise to the level of expression for them. The same managers, however, seemed shocked when their company was chosen as the target for an environmental campaign. n145

There are certainly more organizational blocks to be discovered based on the analysis of companies that have failed. Were there organizational factors that made it difficult for individuals in those companies doing the right thing? Also, are these factors different for smaller companies or for entrepreneurial companies?

#### IV. Rules for a Successful Career in the Organization

A third level of analysis of the causes of illegal and unethical behavior in businesses examines the rules of behavior for building a successful career in large organizations. Robert Jackall suggests that in [\*70] order to negotiate the "moral mazes" in large corporations, individual managers must strip themselves of their ordinary sense of law and ethics and adopt new ways of thinking about doing the right thing. n146 The following new ways of thinking may lead to a more successful career.

##### A. Look Up and Look Around-But Do Not Look Outside the Company n147

The actions of individual managers have very little effect on the outcomes of large corporations-on the financial performance of the company and on how the company impacts consumers or the environment. Market forces, such as the state of the global, national, or regional economy, changes in the regulatory or competitive

environment, and technological developments largely determine financial performance. All of these forces are totally outside the control of individual managers or even the company as a whole. The company's responses to these market forces are determined by a series of fragmented and bureaucratized decisions about which individual managers have little say. n148 This lack of control over outcomes creates a constant anxiety in managers about the security of their jobs. A recession, a change in ownership, or a decision to close a plant or a division of the company may result in a premature end to an individual's career, whereas good conditions can provide good career development opportunities. The individual can only hope that he or she has the good luck to be in the right place at the right time. n149

The one factor over which the individual can exercise some control is his/her relationships with others. Being networked with the right individuals in higher management and the right peers can mean that the individual will move up when this network is favored by luck to move up. n150 The first rule requires that managers look up to develop relationships with mentors and around at peers, and not be concerned with the effects of the company's actions on the society or on the environment. These effects on others outside the company, however, are the primary focus of law and ethics, both of which are aimed at doing good and avoiding harm to others. If individual managers perceive that they have little control over these effects on others, they will never focus on the legal and ethical aspects of the company's behavior.

[\*71]

#### B. Fit In by Making Others Comfortable with You

Success at networking-looking up and around-requires fitting into the style of the company so that others will be comfortable that the individual manager is one of them. Having the proper style, appearance, and teamwork ethic allows the manager to put others at ease. n151 If discussions about legal compliance and ethical conduct are not a part of the corporate culture, if talking about these subjects makes others uncomfortable, then career success will require managers to forego talking about ethics and the law. One can imagine that individual managers hide their ethical principles behind a glass door like the old fashioned fire extinguishers, with a label reading "Ethics Principles. Break Glass only in severe crisis! Ethics discussions are embarrassing to your bosses and peers. Mentioning ethics or law may be hazardous to your career!"

#### C. Get the Job Done

Successful managers are those who get the job done even if they have to do what is unpleasant, unethical, or even illegal. n152 The individual may have to break a few eggs but the omelet gets made. The law and ethics can come to be seen as barriers that the successful manager has to be tough enough to overcome. n153

The rules for career success can prevent the law and ethics from being discussed or used as serious factors in corporate decision making. Managers will not raise legal or ethical questions because they are not related to the network of relationships that make for a successful career, or can work against relationships by making others uncomfortable, or because legal and ethical issues can interfere with getting the work done on time and on budget.

What these three levels of analysis are suggesting is that working inside the corporate box can lead good individuals to do bad things by changing the factors that are used to make decisions. A misunderstanding of societal mandates can focus the individual manager on goals and values that are incompatible with or do not include all of society's expectations for businesses. Organizational structures designed for efficient workflow inside the box can block individuals from being ethical or following the [\*72] law. The rules for career success within the box can make operating on the basis of, or even discussing law and ethics, a risky business for individual managers. Because of these three conditions for working inside the box, management decision making is not a choice between following law and ethics on the one hand and personal and corporate power and gain on the other. Managers do not see their decisions as requiring a choice between the benefit of the consumer and/or society and the benefit of the company.

Decision making inside the box is much more complex than "us against them" or "illegal and unethical versus legal and ethical." Managers focus on goals and values that are not in themselves illegal or unethical but exclude consideration of the law and ethics. Decisions are made to increase shareholder value to the exclusion of other societal expectations. Decisions focus on corporate goals and groups and not on their effects that cutting costs or protecting my task group will have on others. Decisions are governed by the need to look up and around, to fit in and to get the job done if the individual manager is to succeed, rather than on the importance of looking out. The law and ethics are effectively left out of corporate decision making by these factors.

## V. Acknowledging the Power of Group Dynamics and Role Expectations

In addition to the first three frameworks for analyzing causes of ethical and legal failures in organizations, it also seems that many businesses fail to appreciate and respect the tremendous psychological power of role expectations within the organization and its corporate culture. Aristotle taught that we tend to become what we do. n154 It is sage advice, but the gradual effects can often be insidious. People are very suggestible when it comes to the unspoken admonitions of the situation and what they perceive as the demands of the organization and their role in it. n155

[\*73]

Over twenty years ago, an NEA local struggled with an anti-teacher board of education in a small town in the upper Midwest. n156 The union's lawyer and the NEA local organizer decided to run "one of their own" for the board in a non-bargaining election year. They backed a college professor who was married to one of the union activists. n157 Their hope was that by getting an educator on the otherwise hostile board they could, at a minimum, get someone who understood and was sympathetic to their position inside the school board. Arguably, this would improve their chances for negotiating a favorable agreement without a strike.

This tactic, however, backfired. The professor was soon acting and talking like any other elected board member, trying to impress the other board members with his concern for the taxpayers' dollars. After one year, the professor was elected president of the board. That year, the town experienced its first teachers' strike in history. n158 The household of the college professor was torn; a line separating management and labor went down the middle of the kitchen. The town was divided. Social scars still linger in the teachers' lounges two decades later. n159 What happened? The college professor had become "one of them." He was no longer playing the role; rather, the role was playing him.

The power of such a situation was vividly demonstrated in Zimbardo's famous Stanford Prison experiment. n160 In 1971, Professor Zimbardo and two graduate assistants, Haney and Banks, conducted an experiment in the psychology building at Stanford University. n161 A group of twenty-four, paid, white male college students were selected for an experiment and subsequently screened for mental health and stability. n162 [\*74] Then, prisoner and guard roles were determined by a flip of a coin. The experiment was scheduled to last two weeks, but had to be called off after only six days because the situation had become too real. n163

Guards had become sadistic and aggressive and, at least in one case, were abusing the prisoners. The prisoners had started to act like "first-timers" in real prisons and experienced "a loss of personal identity." n164 They also displayed signs of "passivity, dependency, depression, and helplessness." n165 In less than thirty-six hours, one of the prisoners showed signs of severe psychosomatic disturbance and had to be released early. Four other prisoners who developed signs of severe psychological symptoms were also released. The guards enjoyed the exercise of power and volunteered for extra duty without additional pay. When the experiment was terminated early, the guards were disappointed, while the remaining prisoners were elated. n166 In 1982, Professor Zimbardo explained his observations and why the experiment had to be terminated:

At the end of only six days we had to close down our mock prison because what we saw was frightening. It was no longer apparent to most of the subjects (or to us) where reality ended and their roles began. The majority had indeed become prisoners or guards, no longer able to clearly differentiate between role playing and self. There were dramatic changes in virtually every aspect of their behavior, thinking and feeling. In less than a week the experience of imprisonment undid

(temporarily) a lifetime of learning; human values were suspended, self-concepts were challenged and the ugliest, most base, pathological side of human nature surfaced. n167

If such major behavioral changes can be induced in volunteers who were paid minimum wage and were playing at prison, imagine the possibility in a real situation where a person's livelihood and the economic welfare of his or her family is at stake. Such situational imperatives drive [\*75] scenarios such as Equity Funding, n169 Arthur Andersen's shredding of Enron documents, n171 the Challenger disaster, n172 and numerous others. Good people will do bad things make their cubicles (boxes) are too much like Stanford's Prison. The opposite is an open environment that promotes independent thinking and tolerates questioning and dissent. In short, organizations need to be more like town meetings and less like the hierarchical organizational charts derived from military models if employees are to be good citizens both on the job and after work.

## VI. Redesigning the Boxes n173

In accordance with the prior analysis regarding managers' decision making, it is necessary to look for ways to redesign the corporate box so that working within it does not exclude law and ethics as decision-making factors. These remedies will be different from those designed to prevent the greedy, the power obsessed, or the completely self-interested from breaking the law or acting unethically. The remedies for these individuals would be to change their character by reeducation or exhortation or to change the balance of self-interest by significantly raising the penalties for bad actions. The federal uniform sentencing guidelines have motivated companies to educate workers in compliance by raising the penalties for [\*76] noncompliance. n174 Companies with these programs, however, still break the law and act unethically. For example, Enron touted the success of its RICE program. n175 Conditions for working inside the corporation need to change one way or another.

One change would be to ensure that all levels of the organization focus on societal goals and values as well as on corporate goals and values. This would require not only training throughout the corporation but also a sustained commitment by boards of directors and top managers to stay current with changing societal expectations. Corporations themselves may attempt to influence or change those expectations as they have done in promoting deregulation. Societal expectations, however, may still change for reasons unrelated to corporate influence. Boards of directors should be cognizant of societal and corporate changes and modify their corporate policies accordingly.

To mitigate organizational blocks, companies should adopt strong ethics codes based on benchmarking with successful practices. Legal compliance and ethics vocabularies need to develop within companies so that managers and employees will be as comfortable raising issues of law and ethics as they are raising concerns

about worker safety. Corporate cultures should be examined and, where necessary, strong corporate cultures might be deliberately weakened and individual voice strengthened. Companies should also adopt methods for internal whistleblowers to report perceived violations without risking their job or the acceptance of their peers. Many companies have ethics action lines for this purpose.

[\*77]

Companies should also change the rules for career success in the company. Executives need to be focused on how their company's actions affect how both internal and external stakeholders look out and not just up and around. Pay and promotion should incorporate accountability for long-term as well as short-term effects of executive decisions. Consistent efforts from the boardroom on down must be made to incorporate law and ethics into the everyday decision making of corporate managers. Some companies have accomplished this through the adoption and constant reference to company values and by annual awards for employees who creatively utilize these values in their work. n176

There is a rich literature on organizational structures and behavior, n178 and on corporate culture, n179 which can be mined for creative ways to redesign the work environment to promote legal compliance and ethical behavior. The four frameworks for analysis presented here are only a small part of what is a much-needed focus on organizational factors that contribute to ethical and legal failures in business. In a recent article about how Enron pursued "The Talent Myth," which meant that it promoted on merit but failed to provide guidance, Malcolm Gladwell noted, "They were there looking for people who had the talent to think outside the box. It never occurred to them that, if everyone had to think outside the box, maybe it was the box that needed fixing." n180

[\*78]

## VII. Summary and Conclusions

### A. Impact of Organizational Design and Corporate Cultures

Business ethics has focused almost exclusively on the issues of moral decision making and how an individual can distinguish moral from immoral or morally neutral decisions. n181 This is a necessary but insufficient approach to a much more complex dynamic. The social psychology researches of Milgram, n183 and others shed light on the issue of how good people can go so far astray when they are part of an organization such as Enron, Equity Funding, Global Crossing, or any other large organization with a toxic culture. At the very least, this information should be addressed in business ethics settings, whether it be corporate training or in business schools.

Additionally, the issue of what kinds of corporate cultures are pathological, from an ethics and legal standpoint, needs to be addressed and should be the subject of additional research. Waters n185 have identified some significant areas where culture plays a less than benign role; however, additional work needs to be done. Moreover, the strange notion that ethical, moral, and law-abiding employees need to "think outside the box" demands rectification. The so-called "box" should be redesigned to compel all employees to face the legal and ethical issues inherent in today's management environment.

## B. Refocusing the Law of Organizations

The Model Business Corporation Act has served its purpose and, perhaps, has outlasted its usefulness. A law that can be traced back over seventy years ago, to the Illinois Corporation statute of 1933, has a property-contract emphasis to the exclusion of human psychology, social welfare, and the vastness of global capitalism. n186 The making of specific suggestions as to how that emphasis should be re-adjusted goes beyond the scope of this article. A few general observations will be considered.

First, the modern publicly traded corporation cannot be explained by the classical model of property and contract. Such corporations should be [\*79] treated as the distinct creatures they are. Further, the idea that a board of directors is elected knowingly and thoughtfully by shareholders is simply fictional when applied to such corporations. It may be time to move toward statutes, such as those in Europe, under which employees and their unions have mandated seats on the board. A public election of a certain number or percentage of directors might be in order. The suggestions for reform offered by Christopher Stone, n187 almost thirty years ago, should be readdressed in connection with current knowledge about corporate abuses and corporate cultures. Corporations that are convicted of felonies should be facing fines based upon percentages of annual revenue or net worth and not the stated amounts contained in many codes; such numbered amounts are farcical when the criminal is a transnational giant such as Exxon n189 Additionally, some form of job tenure after a probationary period might provide the start of a corporate culture allowing employees to freely raise disturbing questions without fear of being unemployed. The university model is not ideal here, but something in that domain might be feasible. Providing a legal consequence for a no-confidence vote by employees against top management, by directors against top management, or by top management against directors also seems to be worth consideration.

Finally, white-collar crime may need to be treated for what it is: anti-social and felonious behavior. Sentencing of white-collar criminals has been limited to short times that are almost always served in federal or state minimum security prisons that too often resemble summer camps [\*80] rather than jails. n190 It is little short of hypocritical for our justice system to sentence small-time criminals to big-time sentences in harsh conditions, n191 [\*81] and then "slap the wrists" of big-time corporate criminals, some of whom have destroyed the life savings or retirement

plans of many others. n192 In short, the legal system should stop treating security fraud perpetrators and other white-collar crooks as if they were engaged in so-called victim-less crimes.

The ultimate conclusion from this study is that doing nothing about the national epidemic of corporate crime is unacceptable. n193 Tolerating the status quo is neither a viable nor a healthy alternative for the United States, for the American economy, or for the employees who have to deal with corporate America every working day of their lives. Major overhauls to the ways in which large, publicly traded corporations are treated by the law and the ways that such organizations are designed are encouraged. Both of these activities should focus on the well-being of society generally, and not exclusively on some narrow goal such as preserving the health of the New York Stock Exchange or minimizing the impact on the wealthy. The judicial system needs to consider sentencing reforms that would require [\*82] white-collar felons to serve longer sentences in more appropriate prison environments. Finally, the perspectives of many business ethics classes, if they have not already become multi-disciplinary, should be expanded beyond the traditional scope of the philosopher-decision maker to encompass a truly multi-disciplinary perspective embracing, at a minimum: law, philosophy, sociology, psychology, history, organizational behavior, and organizational theory.

#### Legal Topics:

For related research and practice materials, see the following legal topics:  
Securities Law  
Additional Offerings & the Securities Exchange Act of 1934  
Issuer Recordkeeping & Reporting  
Sarbanes Oxley Act

#### FOOTNOTES:

n1 Investigators found that only fifteen percent of a sample of business managers maintained the same moral philosophy in both work and non-work ethical decision making. John Fraedrich & O.C. Ferrell, Cognitive Consistency of Marketing Managers in Ethical Situations, 20 J. Acad. Mktg. Sci. 245, 248- 50 (Summer 1992). See Robert Prentice, Enron: A Brief Behavioral Autopsy, 40 Am. Bus. L.J. 417, 422-27 (2003) (discussing why decision makers are not rational and analyzing the behavioral factors that influence and frequently corrupt decision making).

n2 Reinhold Niebuhr (1892-1971) was an influential American Protestant theologian who won fame as an author and teacher. 14 The World Book Encyclopedia 409-10 (1990). He graduated from Yale Divinity School in 1915 and started his career as a pastor to a church in Detroit where he was an active Socialist and leader of the "social gospel" liberal wing of Christians. Id. By 1939, he had changed his mind and was a leader of the anti-social gospel wing. Id. He was Dean of the Union Theological Seminar in New York from 1950 to 1960. Id.

n3 Reinhold Niebuhr, *Moral Man and Immoral Society: A Study in Ethics and Politics* (Charles Scribner's Sons 1932).

n4 A short list of all the business ethics books that do not even mention the environmental factors that influence business decisions would easily fill a page. See Robert C. Solomon, *A Better Way to Think about Business: How Personal Integrity Leads to Corporate Success* (1999) (exemplifying that leading people in the field write book-length works that do not mention the powerful effects of organizational and environmental factors).

n5 See O.C. Ferrell & John Fraedrich, *Business Ethics: Ethical Decision Making and Cases* (1991); O.C. Ferrel & John Fraedrich, *Business Ethics: Ethical Decision Making and Cases* (2d ed. 1994); O.C. Ferrell & John Fraedrich, *Business Ethics: Ethical Decision Making and Cases* (3d ed. 1997); and O.C. Ferrell et al., *Business Ethics: Ethical Decision Making and Cases* (4th ed. 2000).

n6 See, e.g., Ferrell & Fraedrich (3d ed. 1997), *supra* note 5, at 110-32.

n7 *Id.* at 112-15. The table was modified by the addition of the last line on communication filtering based upon the authors' own experiences and readings.

n8 *Id.* at 117.

n9 Amitai Etzioni, *Modern Organizations* (1964).

n10 Organizations are "social units (or human groupings) deliberately constructed and reconstructed to seek specific goals." *Id.* at 3 (citing Talcott Parsons, *Structure and Process in Modern Societies* 17 (1960)). "Corporations, armies, schools, hospitals, churches, and prisons are included; tribes, classes, ethnic groups, friendship groups, and families are excluded." *Id.*

n11 *Id.* at 1-49.

n12 See *id.* at 3.

n13 Etzioni, *supra* note 9, at 3.

n14 *Id.* at 5-19.

n15 *Id.* at 10.

n16 Etzioni, *supra* note 9, at 9.

n17 *Id.* at 21.

n18 Id.

n19 Id.

n20 Etzioni, supra note 9, at 21.

n21 Id.

n22 Id. at 41.

n23 Id.

n24 Etzioni, supra note 9, at 48 (citing Morris S. Viteles, *Motivation and Morale in Industry* 27 (W.W. Norton & Co. 1953); Charles R. Walker & Robert H. Guest, *The Man on the Assembly Line* 91 (Harvard Univ. Press 1952)).

n25 Id. at 21-23 (discussing a pin factory in Adam Smith's *The Wealth of Nations* as the classic illustration of the effect of division of labor). Adam Smith noted that a worker by himself might produce twenty pins per day. By breaking the task of pin production down into eighteen different tasks, Smith showed that a pin factory could produce 48,000 pins in a day using ten workers. This represents 4,800 pins per worker, or a productivity increase of 240 times. Adam Smith, *The Wealth of Nations* 4-5 (Edwin Cannon ed., Random House, Inc. 1937) (1776).

n26 Etzioni, supra note 9, at 22.

n27 Id. at 23.

n28 Id.

n29 Id.

n30 John B. Miner, *The Challenge of Managing* 159 (W.B. Saunders Co. 1975). See also Etzioni, supra note 9, at 23 (concurring that using a "pyramid of control" the whole organization could be run from one center of authority without having one supervisor control more than "5 to 10 subordinates").

n31 Etzioni, supra note 9, at 23 (describing the four principle approach to organization: purpose of the task, process, clientele, and geographical area).

n32 Id. at 27. Compare John B. Miner et al., *The Practice of Management* 5-17 (1985) (stating that controlling and influencing (motivating) should be seen as separate managerial functions and listing ten separate functions of management), with Etzioni, supra note 9, at 25-31 (discussing the different functions of management).

n33 See generally Etzioni, *supra* note 9, at 32-41 (describing several different experiments that attempted to convince people to partake in certain actions they normally would not and the organizational aspect of such action).

n34 See generally *id.* at 34-35 (discussing the classic Hawthorne study of the Bank Wiring Room where the production rate was set socially by the workers at approximately two complete telephone switchboards per day, in order to balance what seemed to them to be an ethical encounter of the second kind: a conflict between the welfare of the group of workers and the need to be loyal and just/fair to the employer).

n35 See *infra* notes 134-47 and accompanying text.

n36 The MBCA has a distinct background that should be noted. The [MBCA] prepared by the Committee on Corporate Laws (Section of Corporation, Banking and Business Law) of the American Bar Association was originally patterned after the Illinois Business Corporation Act of 1933. It was first published as a complete act in 1950 . . . [and] should be distinguished from the Model Business Corporation Act promulgated in 1928 by the Commissioners on Uniform State Laws . . . [which] was withdrawn in 1957. The [MBCA] has been influential in the codification of corporation statutes in more than 35 states. However, there is no state that has totally adopted it in its current form. Len Young Smith et al., *Smith and Roberson's Business Law*, app. G, n. at 163 (6th ed. 1985). Moreover, since the Act itself has been revised several times and has offered addenda and alternative provisions, there is substantial variation between the statutes in the states that have used it. *Id.*

n37 According to U.S. Census Bureau data, U.S. employers had an annual payroll of \$ 3.048 trillion in 1997; of this amount, approximately ninety-seven percent of the payroll was distributed by firms having 500 employees or more. Statistics about Business Size (including Small Business) from the U.S. Census Bureau, U.S. Bureau of the Census, at <http://www.census.gov/epcd/www/smallbus.html> (last visited July 25, 2003). The firms having 500 or more employees represented less than 20,000 firms out of the 5.54 million firms surveyed; a number equal to less than 0.4% of the total firms. *Id.* Another way to look at the concentration of size in corporations is to examine gross receipts; according to 1997 data, all C corporations and Subchapter S corporations accounted for over ninety-three percent of the total receipts generated by all the firms in the United States. *Id.* In short, although there is much talk about saving the family farm and the importance of small business, the overwhelming majority of business and employment in the U.S. is generated by a relatively small number of economically powerful corporations.

n38 See Elletta Sangrey Callahan et al., *Integrating Trends in Whistleblowing and Corporate Governance: Promoting Organizational Effectiveness, Societal Responsibility, and Employee Empowerment*, 40 *Am. Bus. L.J.* 177, 180 (2002) (asserting that contractarianism sees corporations as "a nexus of contracts" and that voluntary agreements and market forces are its "central tenets").

n39 Adolf A. Berle, Jr. & Gardiner C. Means, *The Modern Corporation and Private Property* (1933).

n40 *Id.*

n41 Christopher D. Stone, *Where the Law Ends: The Social Control of Corporate Behavior* (1975).

n42 *Id.* at 93-110. Stone discusses therein three sets of concerns as to "why the law can't do it": (1) the time-lag problems, (2) concerns about the process for making laws, and (3) limitations connected to the mechanisms for implementing laws. *Id.* at 94-95. Further, Professor Stone asserts that "[c]orporations are so often moving ahead of the society that at no time will present legal rules (and even, perhaps, present moral rules) be adequate to provide them with satisfactory standards." *Id.* at 113.

n43 *Id.* at 124 (suggesting mandating for certain classes of corporations, by law, the positions of "vice- presidents for environmental affairs, or vice-presidents for consumer affairs" and establishing the functions of these offices).

n44 *Id.* at 134-51.

n45 Stone, *supra* note 41, at 152-83.

n46 *Id.* at 228-46.

n47 See Sheryl Kaiser, *The Collapse of Enron: A Business Ethics Perspective in Nancy Kubasek et al., Contemporary Business Law in a Global Economy E-1 to E-8 (inserted between 26 and 35 when bound) (2003).*

n48 See Judicial Watch, *DNC Chair Caught in Global Crossing Scandal*, (stating that "Clinton Crony" and Democratic National Committee Chairman Terry "McAuliffe turned a \$ 100,000 initial investment in the company into \$ 18 million in less than a year and a half"), at <http://www.judicialwatch.org/archive/newsletter/2002/0402a.shtml> (last visited June 27, 2003); James G. Lakely, *Ex-Labor Leader to Testify about Stock-Selling Deals*, *Wash. Times*, (discussing how labor-owned insurance and pension fund executives, many union presidents, set up so-called sweetheart deals in Global Crossing stock to benefit themselves over other stockholders. Global Crossing stock prices "soared in the late 1990s only to crash into bankruptcy by 2002"), at <http://www.washtimes.com/national/20030616-104110-4701r.htm> (last visited June 27, 2003).

n49 See Joseph Kay, *Martha Stewart: The Indictment of an American Icon*, *World Socialist Webside* (June 10, 2003) (discussing Martha Stewart and her former

broker's indictment by federal prosecutors on charges of obstruction of justice and securities fraud on June 5, 2003), at <http://www.wsws.org/articles/2003/jun2003/stew-j10.shtml>; Erin McClam (AP), Stewart's Lawyers Begin Sorting Evidence, Chicago Tribune On Line Edition (June 20, 2003) (stating that the district judge set the trial date for January 12, 2004 and that Stewart resigned as chairwoman and CEO of her company), at <http://www.chicagotribune.com/templates/misc/printstory.jsp?slug=sns-ap-martha-stewart...> On March 5, 2004, Martha Stewart was found guilty of four counts in the indictment: conspiracy, obstruction of justice, and two counts of lying to federal investigators. She faces up to a maximum of twenty years in prison, but will probably receive less than two years under federal sentencing guidelines. Stewart Found Guilty: Prison Sentence Likely, Cincinnati Enquirer (Mar. 6, 2004), at A1. Sentencing was set for June 17, 2004. Id.

n50 See Sarbanes-Oxley Act of 2002, 107 Pub. L. No. 204 (July 30, 2002).

n51 The design of Sarbanes-Oxley puts much emphasis on reforming the relationship between the audit committee of the board of directors and the external auditors. It requires auditors of public companies to register with the Public Company Accounting Oversight Board, which the Act establishes. Further, the Board is put under the SEC and subject to SEC review. The requirements for the "Financial Expert" on the Audit Committee of the Board have been made much more stringent. One potential result, it seems, is that U.S. corporations may have difficulty finding people to fill this spot for two reasons: (1) shortage of qualified candidates, and (2) lack of interest on the part of those qualified to assume such major responsibility. Meanwhile, the issues of corporate culture and white collar crime were ignored. That is why Sarbanes-Oxley should be viewed as a "first attempt" to deal with a continuing and much more complex social problem. See "Sarbanes-Oxley Act of 2002," at <http://www.gwscca.org/Summary.htm> for a concise summary of the Act.

n52 The further complicating factor of the evolution of global capitalism has not been addressed in this article because it would make our task unmanageable; this is not to gainsay the urgency of addressing the abuses of trans-national corporations but merely to acknowledge the limits of one manuscript. See, e.g., Don Mayer, Community, Business Ethics, and Global Capitalism, 38 Am. Bus. L.J. 215-60 (2001) (discussing the vastly complicated moral issues caused by global capitalism).

n53 See Frank Davies, Iraq, 9-11 Myths Widely Believed, Cincinnati Enquirer, June 15, 2003, at A1. Davies reports: A third of the American public believes U.S. forces found weapons of mass destruction in Iraq, according to a recent poll. And 22 percent said Iraq actually used chemical or biological weapons during the war. Before the war, half of those polled in a survey said Iraqis were among the 19 hijackers on Sept. 11, 2001. But such weapons have not been found in Iraq, and were never used. Most of the Sept. 11 hijackers were from Saudi Arabia. None were Iraqis. Id.

n54 See, e.g., William J. Baumol, with Sue Anne Batey Blackman, *Perfect Markets and Easy Virtue: Business Ethics and the Invisible Hand* (1991); Charles Derber, *Corporation Nation: How Corporations are Taking Over Our Lives and What We Can do about It* (1998); Robert H. Frank & Philip J. Cook, *The Winner- Take-All Society: How More and More Americans Compete for ever Fewer and Bigger Prizes, Encouraging Economic Waste, Income Inequality, and an Impoverished Cultural Life* (1995); Earl Shorris, *A Nation of Salesmen: The Tyranny of the Market and the Subversion of Culture* (1994).

n55 Stanley Milgram, *Behavioral Study of Obedience*, 67 *J. Abnormal & Social Psych.* 371-78 (1963); Stanley Milgram, *Some Conditions of Obedience and Disobedience to Authority*, 18 *Human Relations* 57-75 (1965).

n56 Milgram, *Some Conditions*, supra note 55, at 67.

n57 *Id.* at 74-75.

n58 Craig Haney et al., *Interpersonal Dynamics in a Simulated Prison*, 1 *Int'l J. Criminology & Penology* 69-97 (1973); Philip Zimbardo et al., *Reflections on the Stanford Prison Experiment: Genesis, Transformations, Consequences in Obedience to Authority: Current Persepctives on the Milgram Paradigm* 193- 237 (Thomas Blass ed., 2000).

n59 Haney et al., supra note 58, at 71.

n60 *Id.* at 80; Videotape: *The Quiet Rage: The Stanford Prison Experiment* (ALSS, 1995) (statement about "first- timers" was made by Carlos Prescott, Consultant and acting as Head of Parole Board).

n61 Haney et al., supra note 58, at 81.

n62 *Id.* at 96-97.

n63 D.L. Rosenhan, *On Being Sane in Insane Places*, 179 *Science (New Series)* 250-58 (Jan. 19, 1973).

n64 *Id.* at 251.

n65 *Id.* at 257.

n66 See infra notes 111-48 and accompanying text.

n67 In October 2002, the New Jersey Attorney General filed suit against Sears, Roebuck & Co. alleging that the company overcharged hundreds of customers at car-repair centers across the state. Jake Wagman, N.J. Accuses Sears of Fraud in Auto Work, *Phila. Inquirer* (posted on-line Oct. 11, 2002), at

<http://www.philly.com/mld/inquirer/news/front/4259415.htm?template=contentModules/pr...> The lawsuit alleged that Sears' mechanics told customers that they were conducting a "free" vehicle inspection but then charged for unauthorized repairs, and allegedly charged for performing "four-wheel" alignments on vehicles on which only the front wheels were adjusted. Id. The State of New Jersey is "seeking refunds for customers and civil penalties of up to \$ 10,000 for each of 362 alleged violations" at nineteen repair centers. Id.

n68 In February 1999, a Sears, Roebuck & Co. subsidiary agreed to plead guilty to a criminal charge of bankruptcy fraud and pay the U.S. government \$ 60 million, the largest such fine in U.S. history for illegally hounding bankrupts to pay discharged debts and failing to get judicial approvals for such "re-affirmation agreements" as required by law. John McCormick, *The Sorry Side of Sears*, Newsweek, Feb. 22, 1999, at 36, available at <http://www.searsscrewcustomers.com/newsweek.htm>. Sears had improperly collected \$ 110 million from 187,000 consumers. Id.

n69 State Farm Mutual Automobile Insurance Company's medical claims-handling practices will be the subject of a national examination by the National Association of Insurance Commissioners (NAIC), a national consortium of state insurance commissioners. Joe Frey, *State Farm Under Nationwide Scrutiny for its Medical Claims-Handling Practices*, Insure.Com, at <http://info.insure.com/auto/statefarm700.html> (last visited July 18, 2003). State Farm has allegedly hired "unqualified, non-medical employees to write medical reviews" of policyholders' Personal Injury Protection (PIP) and MedPay claims. Also, lay personnel allegedly "changed doctors' written medical reports." Problems of this nature go back to the mishandling of 500 claims by a now defunct medical-review firm, CMR, which worked for State Farm between 1992 and 1996. Id. State Farm ended up paying all 500 claims to the policy limits to close the files and will now get to "pick up the tab for the multistate probe," an amount that could run hundred of thousands of dollars per month. Id.

n70 See, e.g., Mark Maremont & Gail DeGeorge, *Blind Ambition: How the Pursuit of Results Got Out of Hand at Bausch & Lomb*, Bus. Wk., Oct. 23, 1995, cover story, at 78, available at <http://www.uic.edu/classes/actg/octg594/Readings/Budgeting/BudgetBausch&L.pdf>.

n71 This statement actually inverts the Socratic error. Socrates taught that a person who really knows the good will always do the good thing. In his paradigm, knowledge led directly to action. He was unable to convince his most illustrious student Plato on this point. Plato and Aristotle taught that there was an intervening issue of will, that one must want to do the good in addition to knowing the good and having a choice of a good act to do. Consequently, some refer to this as the "epistemological fallacy." See, e.g., *Readings in Business Ethics and Social Responsibility* 3-4 (William A. Wines ed., rev. printing 1999).

n72 See, e.g., Erich Fromm, *Man for Himself: An Inquiry into the Psychology of Ethics* (Holt, Rinehart & Winston 1990); Anne Wilson Shaef, *Women's Reality: An Emerging Female System in the White Male Society* (1981); Leslie Stevenson, *Seven Theories of Human Nature* (2d ed. 1987) (providing a short but satisfactory text on human nature).

n73 See, e.g., Zimbardo et al., *supra* note 58; see also *infra* notes 135-47 and accompanying text.

n74 See, e.g., Ross Buck, *Human Motivation and Emotion* (2d ed. 1988); John Jung, *Understanding Human Motivation: A Cognitive Approach* (1978); Abraham H. Maslow, *Motivation and Personality* (1954); Bernard Weiner, *Human Motivation: Metaphors, Theories, and Research* (1996); Abraham H. Maslow, *A Theory of Human Motivation*, 50 *Psych. Rev.* 370-96 (1943), available at <http://psychclassics.yorku.ca/Maslow/motivation.htm>.

n75 See *infra* notes 135-47 and accompanying text (discussing Stanley Milgram's work on the power of authority at Yale and Zimbardo's discovery of the tremendous power of role expectation in his Stanford Prison experiment).

n76 Richard T. DeGeorge, *Business Ethics* 12 (3d ed. 1990).

n77 *Id.* at 10.

n78 *Id.* at 12-13.

n79 See, e.g., Frank W. Tuttle & Joseph M. Perry, *An Economic History of the United States* 533-42 (1970). This section generally discusses the advances in levels of living for working people as a result of the Industrial Revolution in the U.S. between 1890 and 1920. *Id.*

n80 The first of the laws resembling modern workers' compensation laws was passed in Wisconsin in 1911; and by 1921, such laws existed in a majority of states. It was not until 1948, however, that every state had its own workers' compensation law. See James Ledvinka & Vida G. Scarpello, *Federal Regulation of Personnel and Human Resource Law* 192-95 (2d ed.1992).

n81 On July 5, 1935, Congress passed into law the Wagner Act (NLRA) requiring collective bargaining for businesses in Interstate Commerce. Gerald Gunther & Noel Dowling, *Cases and Materials on Constitutional Law* 278 (8th ed. 1970). This followed an earlier attempt by the Congress to include a similar collective bargaining law in the National Industrial Recovery Act of 1933. *Id.*

n82 The Sherman Antitrust Act was passed in 1890, but was not applied by the courts to antitrust business practices until decades later. Kubaset et al., *supra* note 47, at 986. Business abuses continued despite the Sherman Act, and the debate

about antitrust policies became a major issue in the 1912 Presidential election. As a result of the election, Congress passed the Clayton Act and the Federal Trade Commission Act of 1914. *Id.*

n83 Fair trade acts were passed by Congress in 1914. Other various laws to protect consumers from unfair business practices included the Federal Food, Drug, and Cosmetic Act of 1938; the Federal Hazard Substances Act of 1960, the Odometer Act of 1973; the 1984 Used Motor Vehicle Registration Rule; and the Fair Credit Reporting Act of 1970, among others. See generally *id.* at 932-56.

n84 The following books are significant in stirring the environmental movement: Rachel Carson, *Silent Spring* (1962), Aldo Leopold, *Sand County Almanac* (1966), and Edward Abbey, *Desert Solitaire* (1968). Congress passed the National Environmental Policy Act in 1970. See Kubaset et al., *supra* note 47, at 961-64.

n85 The Consumer Product Safety Commission was established in 1972 and directed the Consumer Product Safety Commission (CPSC) to "protect the public against unreasonable risks of injuries and deaths associated with consumer products." Kubaset et al., *supra* note 47, at 952 (citing 15 U.S.C. § 2051 (1972)).

n86 For instance, The Worker Adjustment and Retraining Notification Act (WARN) was enacted on August 4, 1988, and became effective February 4, 1989. Pub. L. 100-379, 29 U.S.C. § 2101 (2001). The Department of Labor published final regulations on Apr. 20, 1989, in 54 Fed. Reg. 75 (1989). These regulations appear at 20 C.F.R. pt. 639 (2003). For a helpful summary of the law, see U.S. Department of Labor Employment and Training Administration *Fact Sheet*, at <http://www.doleta.gov/programs/factsht/warn.htm> (last visited June 27, 2003). By 1988, a majority of states had passed their own laws dealing with plant closings; and several of those laws were much more stringent than the WARN Act. Angelo Kinicki et al., *Socially Responsible Plant Closings*, *Personnel Administrator*, June 1987, at 116-28.

n87 Aaron Bernstein, *Business Week/ Harris Poll: How Business Rates: By the Numbers*, *Bus. Wk.* (Sept. 11, 2000), at <http://www.businessweek.com/2000/0037/b3698004.htm?scriptFramed>.

n88 *Id.*

n89 *Id.*

n90 William H. Shaw, *Business Ethics* 360 (1990).

n91 See Stone, *supra* note 41.

n92 There has been a history of public demands for the American Institute of Certified Public Accountants (A.I.C.P.A.) to "clean up" the profession so as to be a

better watchdog for the public interest. See, e.g., Caroline E. Mayer, ACCOUNTANTS-Cleaning Up America's Mystery Profession, U.S. News & World Rep., Dec. 19, 1977, at 39-41.

n93 Arthur Andersen lost its license to practice in the State of Texas but was fined only \$ 1,000-the maximum permitted. Natalie Gott (AP), Accountant for Enron Loses Texas License, Cincinnati Enquirer, Aug. 17, 2002, at B14.

n94 Stone, *supra* note 41, at 94-96. See, e.g., Vikki Kratz, Yucca Mountain: Did Money Influence the Senate Vote? 6 Money in Politics Alert (July 10, 2002), at <http://www.opensecrets.org/alerts/v6/alertv657.asp>. "[I]t appears money did play a role" in the Senate vote to authorize shipment of up to 77,000 metric tons of nuclear waste to Yucca Mountain in Nevada. *Id.* "Since 1997, the nuclear power industry has contributed more than \$ 30 million in individual, PAC and soft money donations to federal candidates and parties, 68 percent to Republicans." *Id.* The fifteen Democratic Senators who voted "yes" averaged twice as many dollars in donations from the nuclear industry as the Democrats who voted "no" (\$ 36,000 to \$ 18,000); whereas, the Republican Senators who voted "yes" averaged \$ 50,000 in donations a piece. *Id.*; Marc J. Ambinder, Too Many Hands in Enron's Coffers, ABCNEWS.com (Jan. 14, 2003) (pointing out that fourteen top Bush administration officials held stock in Enron before the prices plummeted, Gov. Rick Perry of Texas and the next five highest ranking elected officials in that state received campaign donations from Enron, seven of the nine justices on Texas's highest court received money from Enron, and that Enron gave President George W. Bush more money than any other candidate when he ran for governor of Texas), at <http://www.abcnews.go.com/sections/politics/DailyNews/enroncfr020114.html>; National Resources Defense Council, The Bush-Cheney Energy Plan: Players, Profits and Paybacks, (June 2001), at <http://www.nrdc.org/air/energy/aplayers.asp>. "At best, the energy industry has undue influence on major governmental decisions that will affect all Americans. At worst, the energy industry, which is enjoying record profits, has hijacked our government." *Id.*

n95 DeGeorge, *supra* note 76, at 169.

n96 *Id.* at 171-73. See also Kubaset et al., *supra* note 47, at 13 (declaring that "law and business ethics serve as an interactive system-informing and implicitly assessing each").

n97 Edmond Cahn, *The Moral Decision: Right and Wrong in the Light of American Law* (Midland Ed. 1981) (implicitly proposing the concept that law and morality (ethics) not only complete each other but have a symbiotic relationship). See also Lon Fuller, *The Morality of Law* 3-30 (rev. ed. 1969) (stating that we need to distinguish between a morality of duty and a morality of aspiration since both are important to the design and operation of social institutions, such as law or business). The first establishes necessary preconditions for any purposive social endeavor; and the second provides a vision of the directions that such endeavors

should take. Id. Fuller's debate with the positivists, such as H.L.A. Hart and Ronald Dworkin, is that the positivists are motivated by an attachment to utilitarianism that suffers, in Fuller's words, from "the intellectually lazy notion that means are a mere matter of expediency and that nothing of general significance can be said about them." Id. at 197.

n98 Fuller, *supra* note 97.

n99 See, e.g., William H. Shaw, *Business Ethics* 171-76 (1991). Shaw declares, "We do not want a system in which business people believe that their only obligation is to obey the law and that it is morally permissible for them to do anything not (yet) illegal. With that attitude, disaster is just around the corner." Id. at 173.

n100 See generally *infra* notes 125, 128.

n101 Freeport McMoran, a Louisiana corporation, dumps approximately 120,000 tons of mine tailings into the rivers of the island each day. See e.g., Kirk M. Soodhalter, *Freeport McMoran-Exporting Environmental Racism* (discussing the mining by Freeport and logging by other corporations that have helped destabilize West Papua), at <http://www.tulane.edu/bfleury/envirobio/enviroweb/Freeport.htm> (last updated Jan. 7, 2000); Denise Leith, *The Fatal Road from Tembagapura: Will we ever Learn the Truth?*, *Pacific Magazine and Islands Business* (Oct. 2002), at <http://www.pacificislands.cc/pm102002/pmdefault.php?urlarticleid=0006>; *Hidden Wars Fast Facts: West Papua, Nonviolent Activist* (July - Aug. 1996), available at <http://www.warresisters.org/nva796-5.htm> (stating that human rights abuses such as murder and forcible removal of indigenous people are detailed and estimates put the number of West Papuans killed by Indonesian operations between 100,000 and 200,000).

n102 See *infra* note 120. See also J. Brooke Hamilton III & Eric J. Berken, *Exxon at Grand Bois, Louisiana: A Three-Level Analysis of Management Decision Making & Corporate Conduct* (2000) (unpublished manuscript presented to the Association for Practical and Professional Ethics annual meeting in Cincinnati, Ohio) (on file with authors).

n103 Id.

n104 See *supra* note 94.

n105 See Robert Prentice, *Lessons Learned in Business School*, *N.Y. Times*, Aug. 20, 2002, at A19. Professor Prentice may be correct in his observations of the need for a renewed respect ("fear") of the law. His attempt to characterize the evolving ethics courses, which are offered in a minority of business schools, seems to be at best misguided. One study indicated that, out of a sample of sixty-eight courses on business ethics, fifty-six courses were offered by philosophy departments; and

seventy-two percent of those courses were offered at freshman or sophomore level courses. George L. Pamental, *Ethics in the Business Curriculum: A Preliminary Survey of Undergraduate Business Programs* 100 (1988). This type of course offered at entry levels effectively defeats the goal of coupling managerial competence with moral competence. *Id.* at 99- 101.

n106 See, e.g., Ralph Nader & Wesley J. Smith, *No Contest: Corporate Lawyers and the Perversion of Justice in America* 158-231 (1996).

n107 Norman Bowie, *Business Ethics* 154 (1982).

n108 Gary Young, *Internal Memo Contested: Exxon Mobil Claims Privilege for Document that Led to \$ 3.5 Billion Verdict*, *Legal Times*, Nov. 19, 2001, at 36, available at <http://www.web.lexis-nexis.com/universe/document?m=9a58d6d55a00c6f97d7caef7c2040932...> In December 2000, a jury, in a trial presided over by 15th Judicial Circuit Judge Tracy McCooey, concluded that "Exxon had fraudulently underpaid oil and gas royalties to the State of Alabama." *Id.* Exxon Mobil has appealed the jury award for \$ 3.42 billion in punitive damages, by far the largest amount in state history. *Id.*

n109 See Gregory C. Weis & Patricia E. Weeks, *Exxon Radiation Case Leads to \$ 1 Billion Verdict*, 24 *Nat'l L.J.*, Feb. 4, 2002, at C4, available at <http://www.lexis-nexis.com/universe/document?m=13cebc03f2790caae2c70a32366916f5...> On May 22, 2001, in a 9-3 vote, a New Orleans jury awarded private plaintiffs \$ 56 million for restoration of property, \$ 125,000 in general compensatory damages, and \$ 1 billion in punitive damages after a trial against Exxon in which the plaintiffs alleged Exxon had contaminated their land with radioactivity. *Id.*

n110 See Editorial: *The Corporate Crime Wave: The Response*, 23 *Multinational Monitor* (Dec. 2002), available at <http://multinationalmonitor.org/mm2002/02december/dec02editorial.html>. Sarbanes-Oxley "only included modest reforms" and was a response to both the Enron/Andersen scandals and the WorldCom scandal that forced recognition of a wider problem than merely individual transgressions by both business and the GOP. *Id.*

n111 See Keith Regan, *Merrill Lynch Settles Analyst Charges for \$ 100M*, *E-Commerce Times* (May 22, 2002), at <http://www.ecommercetimes.com/perl/printer/17877.html>. Regan reported that the settlement came about a month after New York State Attorney General Spitzer presented 100,000 pages of documents, which he said demonstrated that Merrill Lynch analysts were encouraged to tout stocks to help the company "win investment banking and underwriting business" even while the analysts privately referred to the stocks as "dogs." *Id.* Merrill Lynch apologized for "inappropriate communications" but did not admit any wrongdoing. *Id.*

n112 Robert C. Solomon & Kristine R. Hanson, *Above the Bottom Line: An Introduction to Business Ethics* 144 (1983).

n113 James A. Waters, *Catch 20.5: Corporate Morality as an Organizational Phenomenon*, *Organizational Dynamics*, Spring 1978, at 3-19. "Rather than ask, 'What was going on with those people to make them act that way?' we ask 'What was going on in that organization that made people act that way?'" *Id.* at 5. See, e.g., Manuel G. Valasquez, *Business Ethics: Concepts and Cases* 238-45 (1998) (discussing the pressure to meet corporate goals that led managers of major electrical equipment manufacturers to adopt price-fixing schemes).

n114 Waters, *supra* note 113, at 5-12.

n115 *Id.* at 8.

n116 *Id.* "[H]ard, measurable performance criteria (for example, profitability, sales volume, costs) tend to drive out softer, less measurable criteria (for example, social responsiveness, ethical practices). Because the former are easier to discuss, agree on, and control for, they attract more executive time and energy than the latter." *Id.*

n117 See Amanda Bennett, *Ethics Codes Spread Despite Skepticism*, *Wall St. J.*, July 15, 1988, at 1; Rick Wartzman, *Nature or Nurture? Study Blames Ethical Lapses on Corporate Goals*, *Wall St. J.*, Oct. 9, 1987, at 27 (discussing a Washington State University survey of ethical codes at 202 of the Fortune 500 companies which found that the codes really address infractions against the corporations rather than illegalities committed to benefit the corporations).

n118 See *infra* note 122.

n119 Mike France & Andrew Osterland, *State Farm: What's Happening to the Good Neighbor?*, *Bus. Wk. Online* (Nov. 8, 1999), at <http://www.businessweek.com:/1999/99 45/ b3654189.htm?scriptFramed>. In August 1998, a Utah state appeals court upheld the imposition of \$ 25 million in punitive damages against State Farm Insurance, where "four former State Farm employees testified that claims agents faced relentless pressure to cut costs, and that their pay raises were largely determined by their ability to meet pre-set payout targets." *Id.*

n120 Maremont & DeGeorge, *supra* note 70, at 81 (quoting Daniel E. Gill).

n121 On December 6, 2002, U.S. District Judge H. Russell Holland (Dist. of Alaska) reinstated a near record \$ 4 billion punitive damages award against Exxon Mobil for the March 24, 1989 oil spill in Prince William Sound where the then Exxon Valdez went aground on Bligh Reef. Jason Hoppin, *Exxon Valdez Award Reduced-But Only to \$ 4B*, *Recorder* (Dec. 10, 2002), at <http://www.law.com/jsp/printerfriendly.jsp?c=LawArticle&t=Printr>

FriendlyArticle&cid=... Lawyers for Exxon Mobil immediately pledged to once again appeal this decision to the Ninth Circuit Court in San Francisco, a process that could take years. *Id.* In terms of damage to the environment, the Exxon Valdez spill is widely considered the number one oil spill in the world; approximately 1300 miles of shoreline were impacted. Exxon Valdez Oil Spill Trustee Council, Oil Spill Facts: Questions and Answers, at <http://www.oilspill.state.ak.us/facts/qanda.html> (last visited July 21, 2003). Exxon cites the \$ 1 billion it paid the Federal and Alaska governments in 1991 to settle their civil and criminal claims. Exxon also says it spent about \$ 2 billion on environmental clean-up and land restoration. But here's what Exxon doesn't say, and what has never been reported in the press: . . . One of Exxon's insurance companies has covered hundreds of millions of Exxon's expenses. And Exxon has been eligible for as much as \$ 2 Billion in Valdez spill-related tax deductions. . . . Just as astounding is the amount of interest Exxon has made on the \$ 5 Billion punitive damages award it refuses to pay: over \$ 3 Billion so far. Survivors of the Exxon Valdez Oil Spill: The Official Website of t h e E x x o n V a l d e z V i c t i m s , a t <http://www.jomiller.com/exxonvaldez/investigative.html> (last visited July 21, 2003).

n122 Waters, *supra* note 113, at 9 (using the term "separation of decision").

n123 See Miner, *supra* note 32, at 6.

n124 " In 1984, the State of Louisiana provided permission for a corporation to dispose of oilfield waste in open pits at a site adjacent to the community of Grand Bois, in the Mississippi delta." The Story of Grand Bois, at <http://senate.legis.state.la.us/senators/Archives/1999/Robichaux/topics/grandbois.htm> (last visited July 21, 2003). The material delivered to this site is composed of almost everything found in oilfields. Although the materials were considered hazardous in Alabama, they were not considered hazardous in Louisiana; and consequently, the cost for Exxon of disposal in Louisiana was much less than elsewhere. *Id.* The truck drivers were given a forty-hour OSHA workshop on the transportation of hazardous materials and were issued hazardous materials suits, boots, and respirators with which to perform their duties, while the residents of Grand Bois were not even warned about the shipments or discouraged from watching the unloading into pits, which were as close as 300 feet from residences in violation of state law. *Id.* See also The Associated Press, Controversy Erupts over Grand Bois Oil Field Waste Pit Cleanup (Feb. 21, 2000), at <http://web.lexus-nexus.com/universe/printdoc>.

n125 On February 4, 2002, Arthur Andersen's CEO sidestepped blame for audit gaffs at Enron in testimony before a House subcommittee. Although Enron, not Andersen, created partnerships with names such as "LJM" that may have concealed losses, Joseph Berardino said auditors eventually approved them. Chris Woodyard, Berardino Concedes Auditors OK'd Partnerships, U S A T o d a y ( F e b . 5 , 2 0 0 2 ) , a t <http://www.usatoday.com/money/energy/2002-02-05-andersen-testimony.htm>. A scathing report by an Enron outside director was released a week

before Berardino's testimony and it disclosed that Andersen took \$ 5.7 million to set up some of the questionable partnerships. Id.

n126 Sheila McNulty, Texas Jurors Decide Fate of Andersen, Fin. Times (London, May 23, 2002), at 29.

n127 Waters, supra note 113, at 6. After noting the speed and efficiency of the "one-over-one" chain of command at General Electric, Waters discusses the downside in these terms: Even if he gets past the on-going socialization by his boss (Block 1) he is still in a bind. If he defies orders, he is subject to manipulation by his boss. If he exposes the practice [an illegal or unethical one], he is defying the organizational chain of command ethos and is likely to be stigmatized as disloyal. Also, since there is a logical presumption that his boss is simply passing along orders, to whom does he report the illegal goings-on? Id. at 6-7.

n128 Enron Whistleblower Accuses Top Execs Before House Panel, FOX News channel (Feb. 14, 2002) (quoting Sherron Watkins), at [http://www.foxnews.com/printer\\_friendly\\_story/0,3566,45539,00.html](http://www.foxnews.com/printer_friendly_story/0,3566,45539,00.html). An Enron executive, Sherron Watkins, testifying under oath before a House subcommittee said that CEO Jeffrey Skilling and CFO Andrew Fastow "did dupe Ken Lay and the board. . . Mr. Skilling and Mr. Fastow are highly intimidating. . . I think they intimidated a number of people into accepting" the phony partnerships. Id.

n129 Waters, supra note 113, at 6.

n130 Valasquez, supra note 113, at 240.

n131 Waters, supra note 113, at 10 .

n132 Id. at 10-11.

n133 Id. at 7-8.

n134 See Frederick D. Sturdivant, *The Corporate Social Challenge: Cases and Commentaries* 101-15 (rev. ed. 1981). In 1970, Equity Funding Corporation of America began to "invent" insurance policyholders to keep from generating red ink and lowering its stock price. Id. at 108. Equity then reinsured these bogus policies with Ranger National Life Insurance Company and other reinsurers and by 1972, virtually all the policies reinsured were phony, over \$ 7 million worth. Id. at 109-10. Presumably, over 100 people who worked at Equity Funding were knowledgeable about the scam; but not one came forward. Id. at 113. Two Peat, Marwick, Mitchell & Co. auditors doing special examinations of Equity Funding for Anderson, Clayton & Co., a diversified Houston company with insurance interests, almost brought down the scandal in 1971, sixteen months before it finally broke. G. Christian Hill, *Accountants Brought Equity Funding Fraud Almost to Surface in '71: Long Before the Case Broke, Peat Marwick Was Hot On Firm's Trail, Until . . .*, Wall St. J., Feb. 20,

1976, at 1. The auditors, however, who had become suspicious there might be phony policies, were called off the job, and the firm never even issued an informal report. Id.

n135 See Special Report: Space Exploration: "I knew what was about to happen," The Guardian (Jan. 23, 2001), at <http://www.guardian.co.uk/Print/0,3858,4121844,00.html>. On the night before the Challenger disaster, two senior spacecraft engineers from Morton-Thiokol in Utah spent six hours pleading with N.A.S.A. to delay the launch of Challenger because of forecast overnight lows that would compromise the effectiveness of the O-rings made by their company. Id. Just as they seemed to be on the verge of getting a delay, a company vice-president told them to go "off-line" for five minutes and said that they had to make a "management decision." It took thirty minutes, not five, before the two engineers were disenfranchised; and four senior managers voted to give N.A.S.A. the decision it wanted- approval to launch. Id.

n136 Waters, supra note 113, at 11.

n137 See, e.g., Gregory J. Millman, Ethics: New Scandals, Old Lessons: Financial Ethics After Enron, Fin. Executive, July/Aug. 2002, at 16, available at [http://www.fei.org/mag/articles/7-2002\\_ethics.cfm](http://www.fei.org/mag/articles/7-2002_ethics.cfm). "Until recently, a lot of people believed quite sincerely that what Enron was doing was of real value. . . . They really believed they were on a crusade, innovating, getting traditional practices out of the energy business, and liberating a lot of capital . . . ." Id. at 17 (quoting Joseph Badaracco, the John Shad Professor of Business Ethics, Harvard Business School).

n138 See, e.g., Robert S. Thompson, Relative Validity of Peer and Self-Evaluations in Self-Directed Interdependent Work Teams, Proceedings of 31st ASEE/IEEE Frontiers in Education Conference, Oct. 10-13, 2001, in Reno, NV at T4A-9 to T4A-14; but cf. Deborah B. Kaufman et al., Peer Ratings in Cooperative Learning Teams, Proceedings of the 1999 Annual ASEE Meeting (June 1999), at Session 1430 (reporting on a study of chemical engineering students working in teams in two classes at North Carolina State University in which "[s]elf-ratings of male, female, minority, and non-minority students were also not statistically different from ratings received from teammates" using a rating system developed at the Royal Melbourne Institute of Technology).

n139 See, e.g., John J. Sirica, To Set the Record Straight: The Break-in, the Tapes, the Conspirators, the Pardon (1979); Carl Bernstein & Bob Woodward, All the President's Men (1974). When told by Bernstein that the Washington Post was going to run a story the next morning exposing the facts that he controlled secret funds at the Committee to Re-elect the President while he was still Nixon's Attorney General, John Mitchell replied, "All that crap, you're putting it in the paper? It's all been denied. Katie Graham's gonna get her tit caught in a big fat wringer if that's published." Id. at 105.

n140 In one case, a statistical analysis showed faculty salaries at a College of Business did not correlate to either teaching or research. John Bigelow, *An Analysis of College of Business Salaries* (1989) (unpublished manuscript, on file with authors).

n141 See Jonathan Baron & Joshua Greene, *Determinants of Insensitivity to Quantity in Valuation of Public Goods: Moral Satisfaction, Budget Constraints, Availability, and Prominence*, at <http://www.sas.upenn.edu/baron/cv1.htm> (last visited July 18, 2003). Theoretical research in social psychology confirms the presence of bias in estimating the value of public goods. *Id.* Insensitivity to quantity, for instance, in valuation of public goods arises "in three ways: the embedding effect (in which willingness to pay [WTP] for a good is smaller if assessed after a superordinate good), the quantity effect (relative insensitivity to numerical quantity), and the adding-up effect (WTP for two goods less than inferred from WTP for each good alone)." *Id.* at 1. Professor Baron, Psychology Department, University of Pennsylvania, also argues that the "solution [to valuation biases for public decisions] should be a high priority for research." Jonathan Baron, *Biases in the Quantitative Measurements of Values for Public Decisions*, at <http://www.sas.upenn.edu/baron/cvrev.htm> (last visited July 26, 2003). "Traditionally, business has considered the environment to be a free, virtually limitless good. In other words, air, water, land, and other natural resources from coal to beavers were seen as available for business to use as it saw fit." William H. Shaw & Vincent Barry, *Moral Issues in Business* 443 (4th ed. 1989). See also Frederick D. Sturdivant, *Business and Society: A Managerial Approach* 313-36 (3d ed. 1985) (providing a lay discussion of the difficulties involved in valuing and determining who pays for environmental public goods, both maintaining them and cleaning them up).

n142 See Garrett Hardin, *The Tragedy of the Commons*, 162 *Science* 1243-48 (1968) (stating that "[r]uin is the destination toward which all men rush, each pursuing his own best interest in a society that believes in the freedom of the commons.").

n143 Jimmy Langman, *Boise Cascade's Big Plans for Chile*, *Boise Wkly.*, Mar. 11-17, 1999, at 12. Boise Cascade Corporation, "Boise," had plans and permits in 1999 to dredge a deep-water channel next to major commercial salmon farms in Chile to allow shipment of oriented-strand boards from a proposed plant that would get its wood from one of the last unprotected hard-wood forests in Chile. *Id.* A spokesman for Boise implied in a public statement that it could not be held responsible if poor landowners chose to deforest their own lands to sell wood to the timber giant. *Id.*

n144 See Sam Dillon, *All Across Mexico, a Chainsaw Massacre of Trees*, *N.Y. Times*, Apr. 28, 1999, at 4; James Langman, *Eco-Activists Fight Projects Doubling Chile Forest Exports*, *Christian Science Monitor*, Mar. 4, 1999, at 7.

n145 Robert Speer, *Into the Lions' Den: Activists Take Their Case to Boise Cascade's Shareholders' Meeting*, *Boise Wkly.*, Apr. 27-May 3, 1999, at 16-17. Over 100

protestors representing six different groups protested outside the meeting at the Boise Headquarters. *Id.* at 16. At the meeting, George Harad, the chairman and CEO of BCC, declared, "Boise Cascade is appalled and outraged that our reputation, nationally and internationally, is being impugned by a steady stream of false allegations perpetrated by certain environmental groups, particularly the American Lands Alliance." *Id.* at 17 (quoting George Harad). The project in Chile had been controversial since its proposal. *Id.*

n146 Robert Jackall, *Moral Mazes: The World of Corporate Managers* (1988).

n147 *Id.* at 75-100.

n148 *Id.* at 80

n149 *Id.* at 3, 72.

n150 Jackall, *supra* note 146, at 17-40.

n151 *Id.* at 19.

n152 *Id.* at 65-67. The message to middle managers, according to Professor Jackall's research, was "get it done" and, at the very least, "don't fail." *Id.*

n153 See Sirica, *supra* note 139, for an excellent discussion of the "macho" ethic of being tough enough to surmount any legal obstacle as exemplified by the Watergate crisis.

n154 See Aristotle's *Nicomachean Ethics: Commentary and Analysis* 28-29 (Sir David Ross trans., Oxford University Press ed. 1966). Also, "We become largely the roles we play, whether or not we originally wanted to become this certain image. Aristotle said it long ago and the French existentialists said it recently: 'You are what you do.'" Solomon & Hanson, *supra* note 112, at 63.

n155 See, e.g., Solomon & Hanson, *supra* note 112, at 61-64. "[P]eople do not determine their jobs, but rather, jobs determine the persons that fulfill them. This is true in several senses. . . . The job helps make the person; what we 'do for a living' molds and shapes us . . . . We become largely the roles we play . . . ." *Id.* at 63 (quoting Rosabeth Moss Kantor, *Men and Women of the Corporation*). See also Barbara Ehrenreich, *Nickel and Dimed: On (not) Getting by in America* 178-79 (2001) (describing the power of the corporate culture to influence her as an employee, temporarily, of Wal-Mart and how hard it is "to think outside of the box").

n156 Deb Gascal, *Bemidji Classrooms will Reopen Today, Bemidji Pioneer*, Nov. 16, 1981, at 1. "The contract settlement ended a 12-day old strike, the first ever in Bemidji . . . . The contract still must be approved by the Bemidji School Board, which should ratify the contract in the next two or three days, said Ted Thorson, school

board chairman." Id. Ted Thorson was a professor of music education at Bemidji State University; and Margaret Thorson, his wife, was an elementary school teacher who was active in the BEA (Bemidji Education Association). See Bemidjii Pioneer (Jan. 9, 1981 - Dec. 15, 1981), for a complete history of the news coverage of the strike.

n157 Bemidjii Pioneer, supra note 156.

n158 Id.

n159 Other than anecdotal evidence, there is some statistical support for the notion of "bad blood," that is, personal animosity and institutional hard feelings between union and management, causing labor strife, strikes, and, occasionally, prolonged negotiating problems. See Robert D. Ley & William A. Wines, Teacher Bargaining in Minnesota in 1983-86: Some Additional Perspectives, 17 J. of Collective Negotiations in the Public Sector 161 (1988).

n160 F. Neil Brady & J.M. Logsdon, Zimbardo's "Stanford Prison Experiment" and the Relevance of Social Psychology for Teaching Business Ethics, 7 J. Bus. Ethics 703 (Sept. 1988).

n161 Id. at 705.

n162 Id.

n163 Id. at 706.

n164 Brady & Logsdon, supra note 160.

n165 Id. at 705.

n166 Id. (citing Haney et al., supra note 58, at 69).

n167 Phillip Zimbardo, Pathology of Imprisonment, in Readings in Social Psychology: Contemporary Perspectives 249-51 (Dennis Kresbs ed., 2d ed. 1982). For what can happen systemically in a real Army prison, see Seymour M. Hersh, Torture at Abu Ghraib: American Soldiers Brutalized Iraqis. How Far Up Does Responsibility Go" The New Yorker (May 11, 2004), available at <http://www.newyorker.com/fact/content/?040510fa> fact

n168 Supra note 125.

n169 See Michael Hoffman, The Ford Pinto, in Case Studies in Business Ethics (Thomas Donaldson & Al Gini eds., 1996).

n170 The Associated Press, Enron Accused of Shredding Papers, *Newsday.com* (Jan. 22, 2002), at [http://www.newsday.com/news/local/longisland/ny-biz-enron0122,0,5230445\\_story?coll=n...](http://www.newsday.com/news/local/longisland/ny-biz-enron0122,0,5230445_story?coll=n...) "FBI agents were inside Enron's 50 story headquarters building this morning looking into the latest allegations accusing Enron employees themselves, not just Andersen, of destroying documents." *Id.*

n171 See Susan Bartlett Foote, Corporate Responsibility in a Changing Legal Environment, in *Contemporary Moral Controversies in Business* 573, 576-79 (A. Pablo Iannone ed., 1989) (discussing the factors leading to the Rely Tampon disaster).

n172 See *supra* note 135. See also Engineering Ethics: The Space Shuttle Challenger Disaster, available at <http://ethics.tamu.edu/ethics/shuttle/shuttle1.htm> (last visited July 18, 2003); Kurt Hoover & Wallace T. Fowler, *Studies in Ethics, Safety, and Liability for Engineers: Space Shuttle Challenger*, at <http://www.tsgc.utexas.edu/archive/general/ethics/shuttle.html> (last visited July 18, 2003).

n173 This sub-heading was suggested by Patricia Werhane's concern that corporate executives use moral imagination to think outside the box. Patricia Werhane, *Moral Imagination and Management Decision Making* (1999). See Mark Pastin, *The Hard Problems of Management: Gaining the Ethics Edge* (1986).

n174 Federal minimum sentencing guidelines have influenced corporate training. Many U.S. companies developed or revised their business ethics programs as a result of the 1992 U.S. Federal Sentencing Guidelines. According to the Sentencing Guidelines, an effective business ethics or compliance program consists of seven elements, including: An individual in charge of the ethics function  
Written standards of conduct  
Employee training on the code document  
A hotline for whistleblowers  
Lori Tansey Martens & William Miller, *The Future of Global Business Ethics Programs*, 5 *IBER* (Oct. 1, 2002), at <http://www.business-ethics.org/newsdetail.asp?newsid=14>. See also Ann K. Moceyunas, *Business Ethics: Beyond the Golden Rule* (asserting that in a 1996 Delaware civil case brought by shareholders against the directors of Caremark Inc., "the Caremark directors were absolved from liability by the existence of an effective corporate ethics program"), at [http://www.moceyunas.com/ethics/html/beyond\\_the\\_golden\\_rule.html](http://www.moceyunas.com/ethics/html/beyond_the_golden_rule.html) (last updated Aug. 25, 2002).

n175 Enron's "RICE" Code of Ethics Stood for Respect, Integrity, Communication, and Excellence. Millman, *supra* note 137. See also Enron Code of Ethics, *The Smoking Gun* (July 2000), at <http://www.thesmokinggun.com/archive/enron.html>. The Code runs sixty-four pages and lists RICE as the central corporate values. *Id.* at 4.

n176 See, e.g., Thomas J. Peters & Robert H. Waterman, Jr., *In Search of Excellence: Lessons from America's Best-Run Companies* (1982).

n177 See, e.g., Attribution Theory: An Organizational Perspective (Mark J. Martinko ed., 1995); Arnold S. Judson, Changing Behavior in Organizations: Minimizing Resistance to Change (1991); Edgar H. Schein, The Corporate Culture Survival Guide: Sense and Nonsense about Culture Change (1999); Grahame Thompson, Between Hierarchies and Markets: The Logic and Limits of Network Forms of Organizations (2003).

n178 See, e.g., William D. Hitt, Ethics and Leadership: Putting Theory into Practice (1990); John P. Kotter, John P. Kotter on What Leaders Really Do (1999); Ed Oakley & Doug Krug, Enlightened Leadership: Getting to the Heart of Change (1991).

n179 See, e.g., Richard S. Gallagher, The Soul of an Organization: Understanding the Values that Drive Successful Corporate Cultures (2002); Jim Collins & Jerry I. Porras, Built to Last: Successful Habits of Visionary Companies (2002); John P. Kotter, Corporate Culture and Performance (1992).

n180 Malcolm Gladwell, The Talent Myth: Are Smart People Overrated?, The New Yorker, July 22, 2002, at 33.

n181 Supra note 4.

n182 Milgram, Behavioral Study, supra note 55; Milgram, Some Conditions, supra note 55.

n183 Haney et al., supra note 58; Zimbardo et al., supra note 58.

n184 Waters, supra note 113.

n185 Jackall, supra note 146.

n186 Supra note 36.

n187 See Stone, supra note 41. Stone states that "we need more straightforward 'intrusions' into the corporation's decision structure and processes than society has yet undertaken." Id. at 121. He examines: (1) the addition of officers at the top of the corporate structure responsible for environment and consumer affairs, to name two; (2) changing the board of directors to include outside public directors; (3) amending the information net to provide accurate and complete information to management and boards of directors; (4) a more thorough and fact-based decision process; and (5) attempting to amend pathological corporate cultures-an activity that Professor Stone suggested might be the most difficult of all. Id. at 229- 30.

n188 As of December 31, 2001, ExxonMobil reported revenues of \$ 209.4 billion, net income of \$ 15.3 billion, and total assets of \$ 60.7 billion. Exxon Financial Statements, at <http://>

216.239.51.104/search?q=cache:EHWNdvE1GrwJ:www.uic.edu/classes/actg/actg51... (last visited July 26, 2003). Note that on November 30, 1999, Mobil Corporation became a wholly-owned subsidiary of Exxon Corporation.

n189 Between November 8, 2001, when it restated its earnings retroactive to 1997, and December 2, 2001, when it filed for bankruptcy, Enron crashed from a company allegedly worth \$ 50 billion to nothingness. James R. Audet, An Octopus of Greed: The Enron Financial Web of Corruption, Quarterly-Report.com, political commentary, at <http://www.quarterly-report.com/energy/enron.html> (last visited July 26, 2003). Enron stock hit a high of over \$ 80 per share in December 2000 and January 2001; it was trading at 26 per share when Enron finally allowed its employees to sell their 401 (k) company stock. Kubaset et al., supra note 47, at E-7.

n190 Clifton Leaf, White-Collar Criminals: Enough is Enough, Fortune, Mar. 18, 2002, at 62, available at <http://www.doublestandards.org/leaf1.html>. For example, Credit Suisse First Boston participated in a pervasive scheme to siphon tens of millions of dollars of customers' trading profits in 1999 and 2000 by demanding excessive trading fees; the SEC ordered the company to pay \$ 100 million in fines and "disgorgements," but no one was charged with a crime. Id. At Sunbeam, the notorious Al "Chainsaw" Dunlap and his operatives were charged by the SEC with using every accounting fraud trick in the book to make financial statements not bleed red ink and had to pay \$ 15 million to settle a class-action shareholder suit. Id. at 63. Arthur Andersen, Sunbeam's auditor, paid \$ 110 million to settle a civil action. "But nobody is going to jail." Id. According to the Department of Justice, for the year 2000, only 8,766 defendants were charged with white-collar crimes; with a conviction rate of 78%, only about 4,000 defendants drew jail time. The average sentence was three years with most serving only sixteen months. Id. at 64. Even that number may be inflated because, as one expert notes, white-collar crime is broadly defined by the Feds to include such things as welfare fraud. Id. Of the approximately 4,000 defendants sentenced to jail time, only 226 cases involved securities or commodities fraud. Id. Of a total federal inmate population of 156,238, prison authorities say only 1,021 fit the description-which includes everyone from insurance schemers to bankruptcy fraudsters, counterfeiters to election-law tamperers to postal thieves. Out of those 1,000 or so, well more than half are held at minimum-security levels-often privately managed "Club Feds" that are about two steps down the comfort ladder from Motel 6. Id. at 68. See also Penelope Patsuris, "Hard" Time: Best Places to Go to Prison, ABCNEWS.com (Sept. 24, 2002) (naming the top five best places to serve time for white-collar convicts, such as Federal Prison Camp Nellis in North Las Vegas which features air conditioning, a pool, a sports and crafts program, and cardio-vascular monitoring on the equipment in the gym), at <http://printerfriendly.abcnews.com/printerfriendly/Print?fetchFromGLUE=true&GLUESer...>; Catherine Valenti, Crime and Punishment: As Former ImClone CEO Waksai is Indicted, Fate of Alleged Corporate Criminals Hang in Balance, ABCNEWS.com (Aug. 7, 2002), at <http://printerfriendly.abcnews.com/printerfriendly/Print?fetchFromGLUE=true&GLUESer...>; Howard Gleckman, Where White-Collar Criminals Belong: Jail, Bus.

Wk. Online (Jan. 2, 2002), at [http://www.businessweek.com:/print/bwdaily/dnflash/jan2002/nf2002\\_0125188.htm?db](http://www.businessweek.com:/print/bwdaily/dnflash/jan2002/nf2002_0125188.htm?db).

n191 Sheryl McCarthy, Bishops, Drug Felons Show Fickleness of Justice, *Newsday* (June 5, 2003), at <http://www.newsday.com/templates/misc/printstory.jsp?slug=ny-vmcc053317451jun05&...> McCarthy laments that Roman Catholic Bishop Thomas J. O'Brien, head of the Phoenix diocese, was able to cut a deal involving no jail time for his role in covering up allegations of sexual abuses by priests for decades while others in New York State were doing hard time for small amounts of drugs. For example, John Martino is doing fifteen to thirty years for his first offense, selling a \$ 10 bag of crack cocaine; Denise Smith is serving a ten to twenty year sentence for facilitating the sale of a \$ 5 bag of crack; and Darius King got eleven to twenty-two years for selling a \$ 5 bag. *Id.*; see also Media Awareness Project: US Al.: Small-Time U.S. Pot Dealer Sees Dreams Go Up in Smoke, *London Free Press* (Apr. 23, 2003) (recounting the story of Webster Alexander, a high school student, being sentenced to twenty-six years in prison in Lawrence County, Alabama for selling twenty-eight grams of marijuana on four occasions to an undercover cop), at <http://www.mapinc.org/drugnews/v03/n614/a614/a03.html?2262>; American Gulag: Petty Criminals Doing Hard Time (posted Feb. 24, 2002) (stating that one-fifth of the prisoners in the world are housed in the U.S. and that one-million are non-violent offenders, the majority of which are serving time for either drug use or low-level drug dealing), at <http://www.prisonactivist.org/pipermail/prisonact-list/2002-February/004747.html>; Molly Ivins, Hey, All of You Petty Criminals, Now You're Going Straight to Jail, *Chicago Tribune* (May 10, 2001) (stating that Ivins reports on a U.S. Supreme Court decision that held Constitutional the 1997 seat-belt violation arrest, booking, and holding for bond of Gail Atwater in Lago Vista, Texas, for forty-eight hours while her two children, ages two and five, were left in the car; Atwater was driving the children home from soccer; Bond was set at six times the maximum fine for the violation), at <http://www.commondreams.org/views01/0510-05.htm>; Russel Mokhiber & Robert Weissman, Sixteen Years for a Snickers Bar (posted on Apr. 11, 2000) (recounting the sentencing of Kenneth Payne, age twenty-nine, to sixteen years in prison for stealing a one-dollar Snickers candy bar from a Tyler, Texas, grocery store on December 17, 1999), at <http://www.commondreams.org/views/041100-106.htm>. The authors invite comparison of Payne's sentence to the sentences meted out to Hoffman-LaRoche Ltd. Executives who pled guilty to their roles in the largest criminal anti-trust conspiracy in history: in addition to fines ranging from \$ 75,000 to \$ 350,000, the four executives received jail time of three months (two each), three and one-half months, and four months. *Id.*

n192 See Patsuris, *supra* note 190. Former Wall Street Journal reporter R. Foster Winans spent seven months for insider trading in 1988 at the Federal Correctional Institution in Danbury, Connecticut, part of the minimum-security "'prison camps,' nicknamed 'Club Fed.'" *Prison Life: Advice for Martha*, *Newsweek*, June 30, 2003, at

13. Winans spoke about the conditions he encountered at Danbury, the place where Martha Stewart would most likely do time if she were convicted and sentenced to time for the SEC charges she will stand trial on. *Id.* Winans essentially complained about having to wait in line to make telephone calls, about having his calls limited to fifteen minutes, and about a lack of sun tan lotion for three-day weekends. *Id.* On the upside, Mr. Winans, now a writer and lecturer, remembered that Danbury had a "good salad bar," that the "kosher food was the best," and that he could pay other inmates to make his bed and do his laundry. *Id.*

n193 See Editorial, *The Corporate Crime Wave: The Response*, 23 *Multinational Monitor* (Dec. 2002) ("Looking back on 2002, it is hard to avoid the conclusion that the big corporations won."); see also Editorial, *Addressing the Crisis in Corporate Consciousness*, *Columbus Dispatch* (Sept. 21, 2002) (arguing that legal solutions alone will not solve the problem, we "must get at the underlying ethical causes" and change corporate cultures), available at <http://www.ohiodominican.edu/president/BusinessEthics.shtml>.