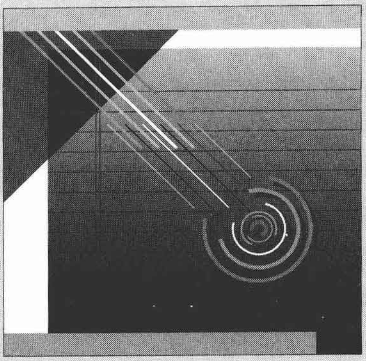
CASE STUDIES IN BUSINESS ETHICS

MARIANNE MOODY JENNINGS



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PREFACE

In 1986, before Ivan Boesky was a household word and Michael Douglas was Gordon Gekko in *Wall Street,* I began teaching a business ethics course in the MBA program in the College of Business at Arizona State University. The course was an elective. I had trouble making the minimum enrollments. However, two things happened to change my enrollments and my fate. The American Association of Collegiate Schools of Business (AACSB) made its changes in the business curriculum for graduate and undergraduate programs. Those changes mandated the coverage of ethics in business degree programs. The other happening was actually a series of happenings. Indictments, convictions and guilty pleas by major companies and their officers from E.F. Hutton to Union Carbide to Beech-Nut brought national attention to the need for the incorporation of values in American businesses and business leaders.

Whether by fear, curiosity or the need for reaccreditation, business schools and students seized the concept of studying business ethics. My course went from a little-known elective to the final required course in the MBA program.

Application of ethical principles in a business setting is a critical skill. Real life examples are necessary. Over the past six years, I have collected examples of ethical dilemmas, poor ethical choices and wise ethical decisions from the newspapers, the business journals and my experiences as a board member. Knowing that other instructors and students were in need of examples, I have taken my experiences and readings and turned them into the cases in this book.

The cases come not only from six years of teaching business ethics, but also from my conviction that a strong sense of values is an essential management skill that can be taught. The cases apply theory to reality and hopefully nurture or reinforce that needed sense of values for future business leaders.

The book is organized according to the six areas listed by businesses as those of primary concern to them in resolving ethical dilemmas: individual values; individual rights; operations; competition; products; and stakeholders. A case can be located using the table of contents, the topical index, or the product index which lists both products and companies by name. An index for business disciplines is also provided to group the cases by accounting, management and the other disciplines in colleges of business.

This book is not mine. It is the result of the efforts and sacrifices of many. I am grateful to the reviewers for this project who took me from a proposal to a finished product with their detailed suggestions and helpful changes. Their patience, expertise, and service are remarkable. My thanks to Greg McCann, Stetson University; Robert Crowner, Eastern Michigan University; Kermit

Springstead, Jr., Florida Institute of Technology; Bob Waldo, University of Puget Sound; Jill Austin, Middle Tennessee State University; Lena Prewit, University of Alabama; Steve Payne, Eastern Illinois University; Steven Brenner, Portland State University; William Rhey, University of Tampa; J.P. Callahan, Florida Institute of Technology.

I love editors. They call you almost every day and make you feel needed. My thanks to Rick Leyh for recognizing not only the need for the book, but its potential. I am grateful to Jessica Evans for her daily efforts in dealing with everything from lost phone messages to the color orange in the original cover proposal. Barb Pavicic managed the production and ensured the book's high quality appearance.

I also love my family. They also love editors — they know them by name and by phone calls. I am grateful for their understanding, support and trips to Kinko's. I am most grateful for their values and the reminder their very presence gives me of what is truly important.

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INTRODUCTION

"There is no pillow as soft as a clear conscience."

—Kenneth Blanchard and Norman Vincent Peale
The Power of Ethical Management

A recent cover story from Fortune magazine was entitled, "The Payoff from a Good Reputation" (Fortune, February 10, 1992). A vice chairman of an advertising agency is quoted in the article as saying, "The only sustainable competitive advantage any business has is its reputation." The same statement could be made with respect to individual business persons. Reputation cannot be found in the required Securities Exchange Commission's annual 10K filing and won't be reflected in the net worth of the firm's balance sheet. But its loss can be so devastating that if it were quantifiable, the failure of a firm to disclose that its ethical values were waning would constitute fraud under the federal securities laws. A business lacking an ethical commitment will, eventually, bring about its own demise.

An examination of the fates of companies such as Union Carbide, Beech-Nut, E.F. Hutton, Salomon Brothers, Johns-Manville and others who experienced public exposure for ethical mishaps supports the notion that a lack of commitment to ethical behavior is a lack of commitment to a firm's success.

Many people have referred to the term business ethics as an oxymoron. Nonetheless, as with Fortune's observation, there are some compelling reasons for choosing ethical behavior. In courses in finance and accounting, we are taught that the primary purpose and obligation of a business is to earn a profit. The pursuit of the bottom line in the immediate time frame can occasionally distort the perspective of even the most conscientious of us. The fear of losing business and consequently losing profits can cause individuals and companies to make decisions, that while not illegal, raise concerns about fairness, equity, justice and honesty.

However, the pursuit of the positive figure for the bottom line must be made with a long-term perspective in mind. Running a successful and ethical business is not like a sprint, it is a marathon. Firms that perform better financially over time are those firms with a commitment to ethical behavior. For example, the Ethics Resource Center examined twenty-one companies with written codes of ethics. The center study found that if $30,000 had been invested in a Dow Jones composite thirty years ago, the investment would be worth $134,000 today. If that same $30,000 had been invested in the twenty-one companies, the investment would be worth $1,021,861 today. A study by the Lincoln Center for Ethics at Arizona State University demonstrated that a list of the U.S. corporations that have paid dividends for the past one hundred years coincides with the Center's list of companies that make ethics a high priority.

A 1988 Touche Ross (now Deloitte Touche) survey of companies with annual sales of $500 million or more found that 63 percent of the respondents indicated that ethical standards strengthen a business's competitive edge. Yet, 94 percent of the respondents felt that they were troubled by ethical issues.

There is a recognition of the value of ethics and a realization that the companies and their employees may not perceive or properly resolve ethical dilemmas that confront them. Many firms simply adopt a standard of complying with positive law. Positive law is any law enacted at any level of government that carries some sanction or punishment for noncompliance. While positive law promotes many ethical values and moral principles, there are many actions that comply with positive law but raise ethical issues. For example, several former border guards who once stood guard at the East German border have been tried for manslaughter for killing East Germans as they attempted to escape into West Germany. In their defense, the former guards raised the issue that they had been ordered to "shoot to kill." However, the judge, in sentencing the men noted that not all activity that is legal is right. Yet we have the former guards faced with the dilemma of obeying orders under similar threats or following their moral standards with respect to the value of human life.

The study of business ethics is thus not the study of what is legal, but the study of the application of moral standards to business decisions. Moral standards are canons of personal behavior that are neither legislated nor changed by legislation. For example, regardless of legislative and regulatory requirements, we all are committed to the safety of workers in the workplace. But what happens when several moral standards are at issue? A company that manufactures batteries is concerned that its female workers who are working at the production line near the battery acid may expose their unborn children to a debilitating or deforming hazard. The safety moral standard is the company's focus. However, these line positions offer a higher wage and the exclusion of women would violate another moral standard we hold about fair and just treatment in the workplace regardless of sex, age, race or national origin.

Employees hold moral standards of following instructions, doing an honest day's work for a day's pay and being loyal to their employers. But what happens when their employers are producing a product that, because of inadequate testing, will be harmful to its users? Other moral standards of not intentionally harming others and adequately testing products cause the employee to face a dilemma and decide the appropriate course of action.

There was a time when businesses, consumers and employees subscribed to the "what's good for GM is good for the country" theory of business ethics. Businesses have now begun to realize that, contrary to Sir Alfred Coke's allegation that a corporation has no conscience, the corporation must develop a conscience. That conscience is developed as individuals and firms develop guidelines for their respective conduct.

The remaining pages of this book illustrate ethical dilemmas faced by businesses and business people. The cases require critical examination of one's moral standards and the impact poor ethical decisions can have on individuals and companies. The cases are divided into categories developed from The Conference Board's groupings of ethical dilemmas in business. (The Conference Board is a private research and information group that focuses on corporate and business issues.) Each of these areas represents a grouping of the types of ethical dilemmas that were ranked most important by CEOs in a 1991 survey conducted by the Ethics Resource Center. The topics in each of the categories are listed below.

- Individual Values and the Business Organization
  - Employee Conflicts of Interest
  - Inappropriate Gifts
  - Security of Company Records
  - Personal Honesty
  - Government Contract Issues
- Individual Rights and the Business Organization
  - Corporate Due Process
  - Employee Screening
  - Employee Privacy
  - Sexual Harassment
  - Affirmative Action/Equal Employment Opportunity
  - Employment at Will
  - Whistle-Blowing
  - Employee Rights
  - Comparable Worth
- Business Operations
  - Financial and Cash Management Procedures
  - Conflicts Between the Corporation's Ethical Code and Accepted Business Practices in Foreign Countries
  - Unauthorized Payments to Foreign Officials
  - Workplace Safety
  - Plant Closures and Downsizing
  - Environmental Issues
- Business and Its Competition
  - Advertising Content
  - Appropriation of Others' Ideas
  - Product Pricing
- Business and Its Product
  - Contract Relations
  - Product Safety
  - Product Quality
  - Customer Privacy
- Business and Its Stakeholders
  - Shareholders' Interests
  - Executive Salaries
  - Corporate Contributions
  - Social Issues

Resolution of ethical dilemmas is difficult. As I teach my MBA students the value of good ethics, I encourage them to speak out and challenge ideas. There are, however, four things they are never permitted to say in my class: "Someone else will just do it anyway," "Everybody else does it," "We've always done it that way," and "I'll wait until the lawyers tell me it's illegal."

There are questions that managers should use in evaluating an ethical dilemma. The Blanchard and Peale model consists of three questions: "Is it legal?" "Is it balanced?" "How does it make me feel?"

As I say jokingly to my students, if the answer to the first question is "no," i.e., the activity is illegal, you need not proceed with your analysis. There are several cases in the book where you are asked to determine whether the activity is in fact legal or whether slight variations in the conduct would have made the actions illegal. Many ethical dilemmas involve no illegality. For example, the sale of tobacco is a legal activity. But, given the documented health damage to individuals, is it an ethical activity?

The second question of balance requires you to put yourself in the position of other parties affected by your decision. For example, as an executive, you might not favor a buy-out of your company because it means you will probably not have a job. However, a shareholder may stand to benefit substantially from the price paid for his or her shares in a buy-out. But, the employees of the business and their community may experience economic consequences if the purchaser decides to close the business or focus its efforts in a different product area.

The final question asks you to examine your comfort level with a particular decision. Many people find that after reaching a decision on an issue they still experience feelings of discomfort that may lead to loss of sleep or lack of appetite. Those feelings of conscience can serve as a guide in resolving ethical dilemmas.

Business ethicist and professor Laura Nash has a series of questions she has developed for resolving ethical dilemmas:

1. Have you defined the problem accurately?

Many students approach business ethics from an either/or perspective instead of seeking a balanced resolution of the problem. For example, many U.S. firms have international operations, and their safety standards, wage standards and environmental standards may be different from the required U.S. standards. They are not violating any laws in those countries, but they are operating with different standards in those countries. The problem is not a choice between operating competitively (by taking advantage of those countries) and not operating competitively. The problem is one of moving the company toward fair, responsible behavior in all the firm's operations.

2. How would you define the problem if you stood on the other side of the fence?

This question simply asks you to view the problem from others' perspectives and brings in the balancing approach of Blanchard/Peale. For example, you might rationalize the use of company time for personal items or your consulting business. However, your employer, who incurs costs when you are not 100% attentive to work needs, would have a different perspective on issues such as leaving early, making long distance calls at employer expense or taking home the company's laptop for consulting work.

3. How did this situation occur in the first place?

Many ethical dilemmas arise because there are no clear positions in a business about what is right and what is wrong. One of the cases in the text involves Sears, Roebuck Company and allegations by the California attorney general that Sears' auto repair centers were overcharging and "overrepairing" customers' vehicles. CEO Edward Brennan conceded that "mistakes" had been made in their auto repair operations because their sales incentive and compensation system imposed quotas on employees and pressured them into making decisions and recommendations to customers they would not have made under a different compensation system.

4. To whom and to what do you give your loyalty as a person and a member of the corporation?

In the cases on whistle-blowing and conflicts of interests, you will find employees who are torn between their personal values and their moral standard of loyalty to their companies and employers. For example, a Dow Corning scientist expresses concern about the safety of breast implants and no immediate action is taken. A Beech-Nut chemist talks with his plant manager and eventually the CEO to explain that the company's baby apple juice has no apple juice in it, but no changes are made. These individuals are faced with a choice between personal values and company loyalty, and, in effect, their jobs. Their struggles with their decisions provide insight into character and strength of conviction.

5. What is your intention in making this decision?

6. How does this intention compare with the likely results?

When Exxon corporation cut back its staffing on oil tankers, its intention was to cut costs, increase profits and maximize shareholder wealth. However, there was additional balancing that needed to be brought into the decision-making process on cutting costs: the issues of safety and environmental protection. The intention was a good one, but resulted in tired crews who made mistakes leading to the accident involving the oil tanker Valdez and the subsequent oil spill and damage to the Alaskan coast line, its wildlife and the economic base of the fishermen in the area.

7. Who could your decision or action injure?

With this question, you are examining possibilities and anticipating problems or injuries. For example, the Super Soaker squirt gun is a wonderful toy for children and adults as well. But, what if the gun is filled with chemicals and used on the streets? Your heavy milling equipment is an innocent product but, if sold to an aggressive nation it could be used for the development of military equipment. Such was the case of Toshiba's sales of heavy equipment to the Soviet Union at a time before the government had changed and its attitude on global war were different.

8. Can you engage the affected parties in a discussion of the problem before you make the decision?

Many managers force themselves into difficult ethical decisions without first discussing the problem with the affected parties. Often the affected parties can offer their own resolution. For example, rather than downsizing, some firms have approached employees with early retirement, bonus departure packages and consulting proposals that have enabled them to cut the payroll without damaging the economic well-being and security of their employees.

9. Are you as confident that your position will be as valid over a long period of time as it is now?

E. F. Hutton made its decision to maximize interest earnings by capitalizing on bank float available because some smaller banks were not computer linked and unable to tell whether or not checks were actually covered. The decision was one that was financially sound and earned extra funds. But as investigators checked into the float and the practice became public, E. F. Hutton experienced a setback in its earnings and significant damage to its reputation. The decision to build the Ford Pinto as economically and as quickly as possible without protective changes to the fuel tank, brought a small, fuel-efficient car to U.S. customers and sales for Ford. The litigation that resulted from the exploding gas tanks and the recall costs for repairing the fuel tanks cost Ford earnings, its reputation and brought a certain skepticism about its commitment to safety.

10. Could you disclose without qualm your decision or action to your boss, your CEO, the board of directors, your family, or society as a whole?

Many people feel comfortable with a decision they do not have to disclose. But once they discuss the decision with others, they are able to see a different perspective. For example, in a recent bidding process for a day care center at Arizona State University, the wife of a member of the University's Board of Regents was awarded the day care center contract. She may have had the best proposal. The bidding may have been open, objective and fair. But, others examining the decision would have doubts about the process given the results. Going back to the question of how the problem arose in the first place, the parties involved, by acknowledging the presence of a family relationship, could have arranged for an outside determination of the contract award to avoid even the appearance of impropriety. To those closely involved with the process, they knew they were being fair. To those outside the process, there would always be a question of fairness. Outside feedback helps make ethical dilemmas more obvious and often serves as a starting point for eliminating or resolving the dilemma.

11. What is the symbolic potential of your action if understood? If misunderstood?

Every action by a business is symbolic to employees, shareholders and communities. A company that switches, as Herman Miller did, from styrofoam coffee cups to mugs symbolically makes a statement about its commitment to the environment to employees, government agencies and communities. A company that has no diversity in its workforce also makes a symbolic statement about its commitment to equal opportunity in the workplace.

Of course, there are much simpler models for making ethical business decisions. One stems from Immanuel Kant's categorical imperative which is: "Do unto others as you would have them do unto you." There is the less-known, but certainly simple Jennings model which asks the question: "How bad could the newspapers make my actions look?" You should take the perspective here of an objective and critical reporter who would examine all sides of the issue. For example, William Aramony, the former head of the United Way, was paid as a CEO of a national firm and enjoyed the perks a CEO of a national firm would enjoy such as first-class flights and homes throughout the country. From the perspective of a successful CEO, his benefits were average. But, from the perspective of a wage earner who has pledged 5 percent of his or her wages to the United Way, the expenses were extravagant, and the newspapers reported that perspective as well as Aramony's.

Each case in this book requires you to examine different perspectives and analyze the impact of a resolution on the parties involved in the dilemma. Return frequently to these models to question the propriety of the actions taken in each case. Examine the origins of the ethical dilemma and explore possible solutions. As you work through the cases, you will find yourself developing a new awareness of values and their importance in making business decisions.

CONTENTS

INDIVIDUAL RIGHTS AND THE BUSINESS ORGANIZATION *39*