

Current Issues in Business Ethics – 2022

Boz Bostrom, CPA
Professor of Accounting and Finance
College of St. Benedict / St. John's University
bbostrom@csbsju.edu (612) 414-9629
<https://www.linkedin.com/in/bozbostrom/>

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Learning Objectives

- Trends in ethical pressures, misconduct, reporting, and retaliation
- Ethical challenges raised by COVID - balancing productivity and personal life
- Ethics of questioning leaders
- Avoiding the slippery slope
- Avoiding conflicts of interest
- Avoiding opportunities to commit unethical actions
- Ethical treatment of employees

2020 Global Business Ethics Survey

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Methodology / 2019 survey review

- Survey is conducted by the Ethics Research Center, a non-profit
- Has been conducted surveys since 1994 regarding workplace misconduct
- Key takeaways from 2019 survey
 - Organizational changes are correlated to misconduct
 - Top management commitment to ethics is correlated to pressures faced by employees
 - Top management faces the most pressures
- 14,000 employees in 10 countries were surveyed in August/September 2020

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What do you think: How did misconduct change in 2020 vs. 2019?

- A. It decreased
- B. It increased
- C. It stayed the same

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2019 vs. 2020

- 20% of employees reported pressure to compromise standards in 2019. What was that figure in 2020?
 - 29%
- 25% of employees observed misconduct in 2019. What was that figure in 2020?
 - 33%
- 63% of employees who observed misconduct reported it in 2019. What was that figure in 2020?
 - 81%
- 33% of employees who reported misconduct reported retaliation in 2019. What was that figure in 2020?
 - 61%

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Ethical challenges raised by COVID - balancing productivity and personal life

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In your opinion, what is the biggest ethical challenge presented by working from home?

- A. Communication / Teamwork
- B. Confidentiality / Privacy
- C. Productivity
- D. Separating work/home lives

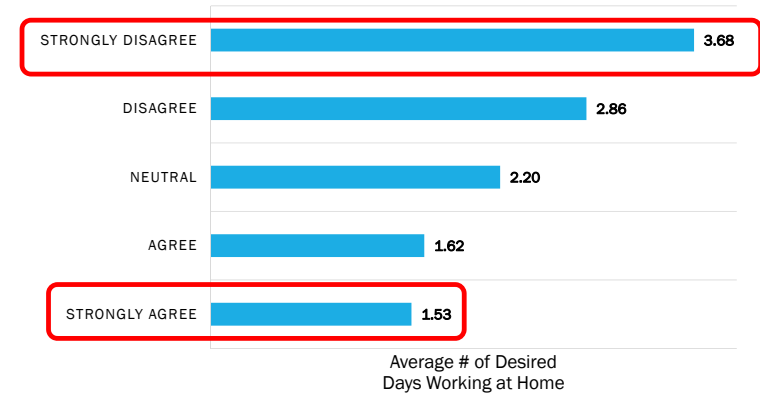
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Work-from-home considerations - Productivity

- Boz's capstone class research surveys – Feb/March 2021
 - Nearly 1,300 total responses (mainly those with an accounting/finance background)
- People want to work at home almost half of the time
 - More so with females and younger employees
- About ¼ of people report they are less productive when working at home, but...
- About the same ratio report they are more productive working at home, but...
- Nearly 1/3 of people feel that those who report to them are less productive
 - Only 14% feel that those who report to them are more productive
 - But there is good news...

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It Takes Me Longer To Complete A Task At Home



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Work-from-home considerations - Teamwork

- Nearly 1/3 of people feel that working from home has negatively impacted their relationships with coworkers
- About 18% find it difficult to receive guidance from team members
- 62% are communicating with coworkers less (10% are communicating more)

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In addition to compensation, what do you feel most increases loyalty of employees to their employers?

- A. Advancement opportunities
- B. Believing in the company's mission
- C. Feeling challenged and engaged
- D. Good bosses, mentors, colleagues
- E. Location of office compared to home

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Work-from-home considerations - Loyalty

- When asked what increases loyalty to their current job/employer
- Compensation was #1 – 58%
- Good bosses/mentors and good colleagues were both just under 51%
- Well above: challenge, engagement, belief in the company’s mission, location, and advancement opportunities

- “Working from home has completely killed our company culture. Everything fun and exciting about my job has been taken away.”

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Managing work-life separation

- Communicate your expectations to others
- Have a separate space for work
- Work set hours without interruption
- Have firm work time boundaries with spouse, partner, roommate, kids
- Be careful with off-hours communications

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Ethics of questioning leaders

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Discussion

- You are early in your career and sense that a senior leader at your organization may be doing something unethical.
- What options do you have for handling your concerns?

Carlos Ghosn – The Good

- At the age of 47, became CEO of Nissan in 2001
- The company's future was in doubt due to losses and huge debt
- Immediately turned the company around and won many prestigious awards including Fortune (Asia) Magazine's Man of the Year
- In 2009, also became CEO of Renault, which owned about 37% of Nissan
- Only CEO on the Global Fortune 500 list twice
- Became Chairman of Mitsubishi in 2016

Carlos Ghosn – The Bad

- November/December 2018. Arrested in Japan and dismissed from Nissan's board (previously had stepped down as CEO). Claims:
 - Underreported \$80 million of deferred compensation
 - Personal use of company assets (big one was \$18 million worth of homes)
 - Assigned to Nissan a loss on a personal swap contract of \$16 million.
 - Paid himself an extra \$8 million
- March 2019. Finally bailed out (\$9 million) after 3 ½ months in jail. Subject to 24-hour surveillance and facing a 99% conviction rate
- June 2019. Renault investigation indicates 11 million Euros of questionable expenses
- September 2019. Settles with SEC - he did not report \$140 million of deferred compensation

Carlos Ghosn – The Escape in late December of 2019

- Left his home in Japan and boarded a train to Osaka with two Americans
- Went to a hotel near Osaka train station
- The other two men left the hotel carrying two large boxes
- Caught a flight to Turkey, then to Lebanon
- Japan has asked for his return – but Lebanon and Japan do not have an extradition treaty
- Father had a business helping clients escape “complex situations overseas” and charged between \$20,000 to \$2 million per job
- https://www.youtube.com/watch?v=8GzGfNOs_pA

Carlos Ghosn – current events

- Ghosn remains in Lebanon
- Two Americans arrested, extradited to Japan
 - Found guilty, 20-24 months in prison
- Nissan executive Greg Kelly accused of conspiring to hide Ghosn's true compensation.
 - Due to executive compensation limits in Japan, Kelly was afraid Ghosn would leave Nissan
 - Kelly was examining how to pay Ghosn in retirement as a consultant
 - Trial done...sentencing may not come until March...cannot leave Japan
 - Prosecutors asked for a sentence of two years

Avoiding the Slippery Slope

Discussion

- Why should you avoid taking (professional) shortcuts and doing small, unethical things?

Avoid the Slippery Slope

- Rita Crundwell's theft from the city of Dixon, Illinois
 - Started at \$182,000, eventually totaled nearly \$54M
- Under Armour's financial statement issues (advanced revenues)
 - First advanced \$45M, eventually grew to become \$172M
- Wal-Mart Mexico's bribery scandal
 - First bribe was \$52,000, eventually totaled \$24M
 - Eventually cost Wal-Mart nearly \$1 billion in fines, penalties, and time spent investigating
- The Scott London / Brian Shaw insider trading scandal
 - First trade was 25 call options, final trade was 120 call options and over 12,000 shares

COVID Fraud - Mark Schena

Mark Schena, the CEO of @arrayit will make us all very wealthy #Superman 🦹‍♂️ \$ARIC 🇺🇸 @RajPavinder1 @BZStocks @DDStocksResearch @5150pacman @TracComer @thosamazingdog @4E Justice @effortsp400004 @Clavinder_1999 @khandak @fgattain

Mark Schena · InI
President at Arrayit Corporation (ARIC)
Los Altos, California, United States · Contact info
500+ connections
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Arrayit Corporation (ARIC)
Stanford University

Mark Schena is charged with an alleged scheme to mislead investors and commit health care fraud by filing more than \$59 million in false and fraudulent claims for COVID-19 testing he developed at his laboratory, Arrayit Corporation in Sunnyvale.

Mark Schena

- BioChem major from UC-Berkeley in 1984
- PhD in BioChem from UC – San Francisco in 1990
- Post doctoral fellow at Stanford 1990 – 1999
- Became President of Arrayit in 2008
 - Arrayit provides “food intolerance testing services”

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Arrayit – financial warning signs

- Registered with the SEC in 2001
- Last filed with the SEC...a 10-Q in 2015
- In 2018, Schena was being asked more questions about status of financial statements (10-K's from 2015 forward still hadn't been filed)



Arrayit provides an update to shareholders. We are currently in a quiet period regarding our financials. Our next financial announcement will be the filing of our 10-K and 10-Q forms through 2018. Thanks everyone for your continued support and patience!
arrayit.com/index.html



Date of Post	Investor Inquiry	Mark Schena Response
2/26/2019	“Mark,...I was wanting to know if you are guaranteeing the financials will be released this year?”	“We are reiterating Q1-2019 for the financials per the recent CEO Letter to Shareholders....Because of the excellent progress, we are releasing FY2014-FY2015 in a single filing.”
3/14/2019	“Mark,...is there anything that you can provide to us shareholders that can relieve us of the doubt of Arrayit not releasing FY2014-2018 financial report this time again?”	“We are reiterating Q1-2019 for filing per the CEO Letter to Shareholders....All fiscal years will be released at once, which explains the current timeline.”

Comments on financial statements

Investor Email Date	Investor Email Inquiry	Mark Schena Email Response Date	Mark Schena Response
3/25/2019	“Also, will we see a tweet this week regarding the release date of the financials?”	3/25/2019	“We are reiterating Q1-2019 for the financials. The filing will be announced in a formal press release and via Twitter.”
3/27/2019	“I'm sure this question had been asked many times, but a lot of us are increasingly getting nervous about the financials still not yet filed and there are only 2 more business days left in this quarter. Per the last letter to shareholders it was stated financials will be filed in Q1. Are we still on time with filing?”	3/27/2019	“We are reiterating our Q1-2019 guidance for financials per the CEO Letter to Shareholders.”

- Share price increased over 300% due to hope of financials being filed
- Fell over 70% when they were not

Arrayit - Allergy Fraud

- Beginning in 2018, Schena and others paid kickbacks and bribes to recruiters and doctors to run an allergy screening test for 120 allergens
- Made numerous misrepresentations to potential investors about Arrayit's allergy test sales, financial condition, and its future prospects
- Schena issued press releases and tweeted about partnerships with Fortune 500 companies, government agencies and public institutions,
 - Didn't disclose that such partnerships either did not exist or were of de minimis value

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Arrayit - COVID-19 Fraud

- Schena claimed that Arrayit is the “only laboratory in the world that offers” revolutionary “microarray technology” that allows Arrayit to test for allergy and COVID-19 based on a drop of blood that is 250,000 times smaller than the technology touted by **Theranos**.

Investor Email Date	Investor Inquiry	Mark Schena Response date	Mark Schena Response
3/9/2020	“Is your company working on anything to help the nation with this crisis?”	3/9/2020	“Dear XXX, Confirming that we have a test for COVID-19. Thanks, Mark”
3/13/2020	“Can you corroborate that Arrayit has developed the SARS-COV-2 (COVID-19) test and that it is being considered for emergency approval?”	3/13/2020	“Dear XXX, Confirming that we have a SARS-Cov-2 test and that the test has been submitted for emergency approval. Thanks, Mark”

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Arrayit - COVID-19 claims

- In June of 2020, Schena arrested for submitting \$69M in fraudulent claims related to allergies and COVID
 - It was the first criminal securities fraud prosecution related to COVID
- One count each of securities fraud and conspiracy to commit health care fraud
- “This defendant allegedly defrauded Medicare through illegal kickbacks and bribes, and then turned to exploiting the pandemic by fraudulently promoting an unproven COVID-19 test to the market.”

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Schena - COVID-19 Fraud – DOJ charges

- Schena and others made false claims concerning Arrayit’s ability to provide accurate, fast, reliable and cheap COVID-19 tests in compliance with regulations
- Made numerous misrepresentations to potential investors about the COVID-19 tests and Arrayit’s future prospects for COVID-19 testing.
- Schena, “The switch from testing for allergies to testing for COVID-19 was ‘like a pastry chef’ who switches from selling ‘strawberry pies’ to selling ‘rhubarb and strawberry pies.’”



Avoiding conflicts of interest

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Case Study

- You are seeking a building (or other) permit from a city
- An employee of the city who approves permits also owns a side business venture
- You are considering doing some purchasing from this side business venture
- Would this violate any laws or standards?

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When facing a conflict of interest, the goal is to:

- A. Ensure the affected parties are unaware of the conflict
- B. Reduce the threat to an acceptable level
- C. Withdraw from the relationship

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When facing a conflict of interest

- Identify a conflict of interest
- Evaluate a conflict of interest
 - Significance of threat/ safeguards already in place
 - If not at acceptable level, must apply more safeguards
 - Restructuring or segregating certain responsibilities and duties
 - Obtaining appropriate oversight
 - Withdrawing from the decision making process related to the matter giving rise to the conflict of interest
 - Consulting with third parties, such as a professional body, legal counsel, or another professional accountant
 - If can't get to acceptable level, decline services or withdraw from the relationship
- Disclose a document a conflict of interest (if at acceptable level)
 - To relevant parties – threat and safeguards

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Dwaine Caraway

- Former Mayor / City Council member of Dallas
- Accepted \$450,000 worth of bribes in exchange for supporting products produced by a vendor
- In addition to cash, custom-made suits, fully funded trips, casino chips, fake loans, and funeral expenses
- Did not pay taxes on (most) of the bribes
- Sentenced to 4 ½ years in prison

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18 U.S. Code § 201 - Bribery of public officials and witnesses (selected language)

- Whoever directly or indirectly, corruptly gives, offers or promises anything of value to any public official with intent to influence any official act...
- Whoever being a public official directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for being influenced in the performance of any official act...
- Shall be fined under this title or not more than three times the monetary equivalent of the thing of value, whichever is greater, or imprisoned for not more than fifteen years, or both

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Jeffrey Blackwell

- Former City of Philadelphia employee in the Investigations Division of the Office of the City Controller. Received bribes from five people:
 1. Store owner paid Blackwell for permits to park a storage container on the street.
 2. Homeowner paid Blackwell for permits to allow that renovation.
 3. Owner of a construction business paid Blackwell to obtain a plumbing permit.
 4. Owner of an auto body shop paid Blackwell in the hope of getting a license to buy and sell cars, as well as a City contract to install decals on police vehicles.
 5. Permits to renovate a house (person was cooperating with FBI)
- Routed payments through a side contracting business and those making payments that they could get anything then needed “at a price.”

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Jeffrey Blackwell

- Investigated by US attorney (DOJ), FBI, IRS, Philadelphia Office of Inspector General
- Charged with honest services wire fraud, filing a false tax return, and two counts of failure to file a tax return.
- 22 months in prison, three years of supervised release, and ordered to pay \$25,612 in restitution
- FBI: “Public corruption does so much damage to people’s trust in the system, at every level. That’s why the FBI is committed to holding crooked public employees like Blackwell accountable.”

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The Fraud Triangle: Avoid “Opportunities”

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Case Study

- Your spouse serves as the President for a small non-profit organization in your local community
- The Treasurer abruptly resigned and community members have encouraged you to take on that role given your business savvy
- The non-profit does not have an active board of directors
- You indicated you would not be comfortable taking on the role and they asked you what would need to change so that you could do so?

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Embezzlement – The Sharpers

- Anthony Sharper and his wife Deana Sharper were involved with a Charlotte area high school booster club
 - Anthony was interim President and Treasurer
 - Deana ran the concession stand and school store
- Embezzled over \$200,000 from a Charlotte high school booster club – from 2017-2020
 - Writing checks to themselves
 - Wiring funds to themselves
 - Using club debit/credit cards to pay for personal expenses

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Embezzlement is more common at

- A. Large companies
- B. Small companies

- HISCOX, a specialty insurance company, found in a 2016 study that 80 percent of embezzlement occurred at small businesses (defined as those with less than 150 employees).

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Embezzlement – The Sharpers

- Did not pay tax on embezzled income = two counts of tax fraud!
- How did they cover the theft?
- A fake PPP loan of \$230,000
- Some reimbursed the booster club, some was used personally

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Charges

- Wire fraud
 - Maximum penalty of 20 years in prison and a \$250,000 fine.
- Two counts of making false statements to a financial institution
 - Maximum prison term of 30 years and a \$1 million fine per count
- Making a false statement to SBA
 - Maximum statutory penalty is 30 years in prison and a \$1 million fine
- Two counts of engaging in monetary transactions in criminally derived property
 - Maximum prison term of 10 years and a \$500,000 fine per count
- Two counts of filing a false tax return
 - Maximum penalty of three years in prison and a \$250,000 fine per count.
- Their attorney, “They are very nice people and as the legal process runs its course, everybody will find out more.”

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Ethical treatment of employees

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Discussion - Ethical Treatment of Employees

- What are ethical and unethical ways you have seen company leadership treat its employees?
- Watch the attached Simon Sinek video, and make note of some of the most powerful things you hear:
- <https://www.youtube.com/watch?v=ENlwAZZw8JO>

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Takeaways

- “The people who are doing the caring aren’t cared for.”
- “Why aren’t the people who are managing use caring for us?”
- “How many people are coming home fulfilled by the work they do?”
- “We would put ourselves at risk for our companies if we knew that our companies would put themselves at risk for us. But they don’t. So we don’t.”
- Question to consider...How could you better lead those who report to you?

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Key Reminders

- We are living in an environment to increased pressures and misconduct
- Avoid the slippery slope
- Be cautious and open when facing conflicts of interest
- Avoid pressures and opportunities to commit unethical actions
- Focus on the long-term
- Discuss your decision with others who don’t have a stake in the outcome
- “It takes 20 years to build a reputation and five minutes to ruin it. If you think about that, you’ll do things differently.” – Warren Buffet

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