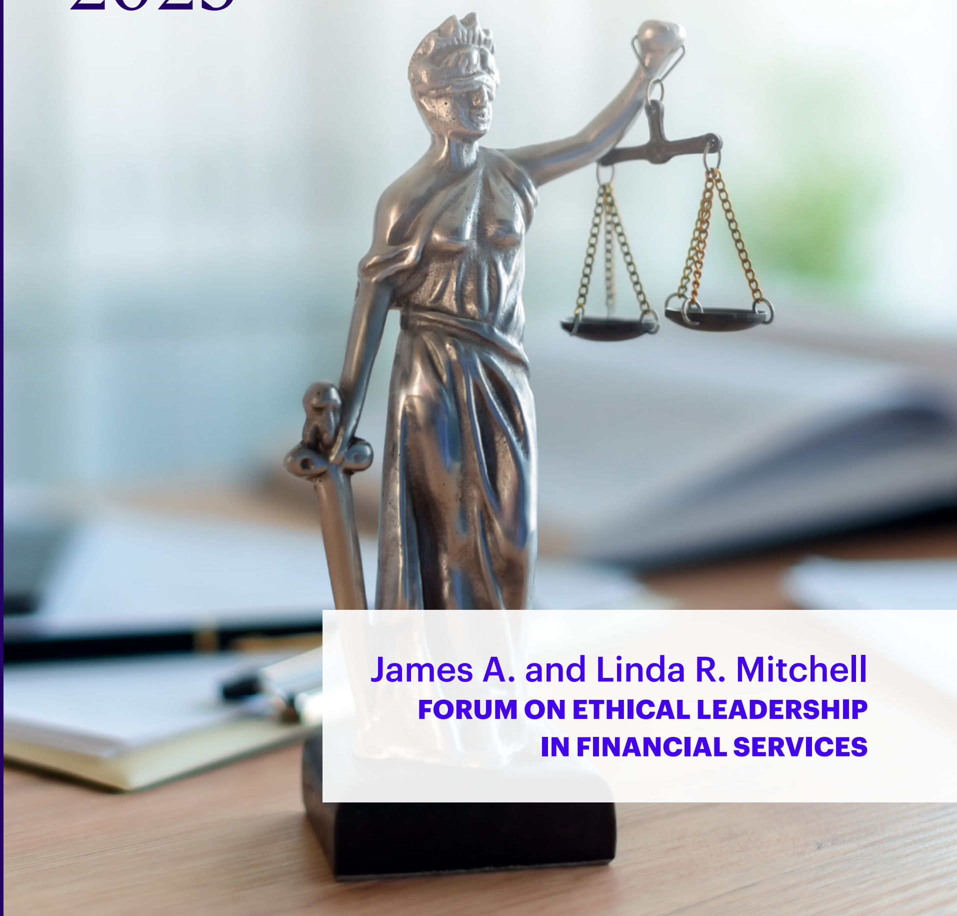
THE AMERICAN COLLEGE
CARY M. MAGUIRE
CENTER FOR ETHICS
IN FINANCIAL SERVICES

# Perspectives on Ethical Leadership

2023

Twenty Second ANNUAL



James A. and Linda R. Mitchell
**FORUM ON ETHICAL LEADERSHIP IN FINANCIAL SERVICES**

# Foreword



The American College Cary M. Maguire Center for Ethics in Financial Services is dedicated to raising the level of ethical behavior in the financial services industry. As its Executive Director, I'm steering new initiatives to deliver novel research insights and high-quality education to support the financial services industry in thinking more critically about solutions for the benefit of society. You can learn about my background **here**.

Today's consumer distrust of societal institutions demands that businesses lead in understanding the perspectives of diverse stakeholders, and do so with a commitment to integrity. As the only ethics center within an academic institution focusing exclusively on the financial services industry, we aim to assist leaders in positioning their companies to advance business and stakeholder outcomes.

We recognize that trust is essential to enabling our industry to serve clients. In 2021, we used surveys, focus groups, and interviews to learn more about the mindsets of consumers of financial services, and provided our Alliance for Ethics with first access to our initial learnings from this extensive dataset about trust before we **released the findings to the public**. We also established a measurement that is consistent and comparable across all types of financial companies. Our *Demographics of Trust Index*™ is a metric that allows us to track trust year-over-year, and to apply it to individual companies compared to ongoing benchmarks. Over the course of the last year, we also created and successfully piloted an executive education program; engaged distinguished scholars as our 2023 Maguire Fellows in Applied Ethics; and earned influential media attention on our insights and commentaries, including **recognition for a "can't miss" industry podcast**.

Our vision for impact remains steadfast: to be the go-to Center advocating for ethics in financial services. We are in the vanguard of engaging with our community to conduct original research on contemporary topics in financial services and translate this knowledge into best practices for practitioners to apply today.

We invite you to join us on our journey by reviewing and sharing the 2023 Perspectives report with your colleagues and associates, **joining our Alliance for Ethics in Financial Services**, signing up to receive Ethic*Ally*, our monthly **newsletter**, or exploring the resources on our **website**.

Sincerely,

Azish Filabi

Azish Filabi, J.D., M.A.

Executive Director, Cary M. Maguire Center for Ethics in Financial Services

Associate Professor and Charles Lamont Post Chair of Business Ethics

# *Highlights of the Center's Activities*



## Industry-Leading Research

The researchers and thought leaders making up the American College Cary M. Maguire Center for Ethics in Financial Services are the best and brightest in the field, providing research on key trends and relevant topics in the financial services industry today.

### Stakeholder Culture and Finance

**Toward a Perspective of Stakeholder Culture in the Financial System**
(August 2022)

## AI and Life Insurance

**AI-Enabled Underwriting Brings New Challenges for Life Insurance: Policy and Regulatory Considerations** (January 2022)

## Trust in Financial Services

**Trust in Financial Services: A Consumer View** (June 2022)

Read the research at
**Ethics.TheAmericanCollege.edu/Research**

# News & Knowledge

Our faculty, staff, fellows, and scholars are consistently making news in the financial services industry with their work in diverse fields of study, connecting the latest in ethical theory and practice with the changing business environment. Insights from the Center for Ethics are regularly featured in major media publications.

**ThinkAdvisor** | Trust in Financial Services*, **Episode 33** of The American College of Financial Services Wealth, Managed podcast with Michael Finke and David Blanchett, featuring Azish Filabi, JD, MA

*Earned the top spot of Think Advisor's 2022 top **10 "standout" retirement planning podcasts**

**The FCPA Blog** | **EY and KPMG Cheating Scandals Expose Ethical Challenges for Audit Industry***
*By Azish Filabi, JD, MA and Caterina Bulgarella, PhD*

*Earned the #5 spot of **The FCPA Blog's 2022 top stories**

**InsuranceNewsNet** | **Consumers Seek Trust and Results in Advisor Relationships**
*By Domarina Oshana, PhD*

**Revue Trimestrielle De Droit Financier**
| **ESG: U.S. and European Rules Reveal Differing Perspectives on the topic of "Materiality" in Business**

*By Azish Filabi, JD, MA*

Stay in the know on the latest news at
**TheAmericanCollege.edu/Insights**

# *Community of EthicAllies*

Ethic*Ally* is the monthly newsletter of the Center for Ethics and aims to inform readers about the latest on ethics in financial services, as well as to help industry leaders get ahead of stakeholder management challenges. We strive to be your trusted resource for expert knowledge on ethics. Sign up by visiting our **website**.

*Jill Brown captures the group's attention.*

# *Forum on Ethical Leadership*



**THE TWENTY-SECOND ANNUAL JAMES A. AND LINDA R. MITCHELL/ THE AMERICAN COLLEGE FORUM ON ETHICAL LEADERSHIP IN FINANCIAL SERVICES** took place on January 14, 2023, in Boca Raton, Florida. The event featured a discussion on the anatomy of an ethics cheating scandal and examined practical ethical dilemmas encountered by executives during their careers. The ethics scandal that served as a case study was the recent SEC enforcement actions against EY and KPMG with respect to persistent cheating at those companies on continuing education, including ethics education. This raised a number of both individual and systems-level ethics considerations and challenges.

# Participants

## Academics

**Jill A. Brown, PhD**, Hieken Professor of Business Ethics and Professor of Management, Director of Part-time Executive PhD Program, Bentley University

**Azish Filabi, JD, MA**, Executive Director, Cary M. Maguire Center for Ethics in Financial Services, Associate Professor of Business Ethics, Charles Lamont Post Chair of Business Ethics, The American College of Financial Services

**Kenneth Goodpaster, PhD**, Professor Emeritus, Opus College of Business, University of St. Thomas

**Jared D. Harris, PhD**, Samuel L. Slover Research Chair and Associate Professor of Business Administration, Darden School of Business, University of Virginia

**Todd Haugh, JD**, Associate Professor of Business Law and Ethics, Arthur M. Weimer Faculty Fellow in Business Law, Kelley School of Business, Indiana University

**Linda K. Treviño, PhD**, Distinguished Professor of Organizational Behavior and Ethics, Department of Management and Organization, Smeal College of Business, The Pennsylvania State University

## Executives

**Chris Blunt**, President and CEO, F&G

**Kristyn Cook**, Senior Vice President and Chief Agency, Sales and Marketing Officer, State Farm Insurance Companies

**Mark J. Madgett**, Executive Vice President and Head of Agency, New York Life

**Kristi Martin Rodriguez,** Senior Vice President, Nationwide Retirement Institute, Nationwide

**James A. Mitchell, CLU®, ChFC®**, Chairman of the Advisory Council, Cary M. Maguire Center for Ethics in Financial Services; Chairman and CEO (Retired), IDS Life Insurance Company

**George Nichols III, CAP®**, President and CEO, The American College of Financial Services

# *Executive Summary*



**ON JANUARY 14, 2023, A GROUP OF SIX ACADEMICS AND SIX EXECUTIVES CONVENED IN BOCA RATON, FLORIDA TO PARTICIPATE IN THE TWENTY-SECOND ANNUAL JAMES A. AND LINDA R. MITCHELL FORUM ON ETHICAL LEADERSHIP IN FINANCIAL SERVICES.**

The Forum's purpose is to engage practitioners from the financial industry and business ethicists from academia in meaningful dialogue about ethics in the industry.

The Forum opened with each participant briefly sharing the meaning of ethics to themselves and their organizations. They also shared what they hoped to learn from their participation in the Forum. An analysis of the case study followed. Discussion then turned to ethical dilemmas experienced by the executives. Afterward, the academics queried the executives and shared their experiences, including insights from research on ethically challenging cases.

*The group poses for a photo, surrounded by grand architecture.*

This year's case study featured a discussion on the anatomy of an ethics cheating scandal and was followed by analysis of practical ethical dilemmas encountered by executives during their careers. The ethics scandal that served as a case study was the recent SEC enforcement actions against EY and KPMG with respect to persistent cheating at those companies on continuing education, including ethics education. This raised both individual and systems-level ethics considerations and challenges.

The group wrestled with a series of discussion prompts carefully crafted to support critical thinking about the system-level failures that led to the ethics scandal. For instance, the group considered ways that companies are investing in ethics education and what companies might do differently to shift ethics education and training from boring "check-the-box" exercises to emphasizing habits of mind that encourage people to act unselfishly and ethically when making decisions.

Given that investors rely on audit firms to be gatekeepers in reviewing and analyzing corporate financial information, the group was united in its view that the audit firms involved should have known about the cheating and taken steps to fix the culture rather than rationalize and take a compliance posture. Based on the facts presented in the case study, the group assessed EY's culture to be one of following rules rather than taking ethics seriously. In the group's view, had EY taken ethics seriously, its people would have been sensitive to the actions of a corporate conscience that recognizes cheating as wrongdoing and unacceptable.

Ethical dilemmas in executive leadership were next on the agenda. Topics included the decision-making of the hypocritical leader; dealing with leaders who undermine authority; diversity, equity, and inclusion (DEI) as a leadership imperative and core component of an organization's ethical framework; and workplace surveillance and consumer expectations of data privacy. Following are key takeaways:

- Leaders are fallible human beings — they make mistakes sometimes. What makes a powerful impression on employees is when leaders openly take ownership for their mistakes, express regret, acknowledge that they are not living up to who they want to be, and take action to do better.
- Ethics can be complicated. There are instances where leaders make poor choices, seek atonement, and can be forgiven by their employees and colleagues. Yet, there are also instances where leaders behave egregiously and

the solution, while not easy, is to uphold the values of the corporate culture and thereby, terminate the employment of the leaders who behaved egregiously.

- One approach to enable the persistence of diversity, equity, and inclusion initiatives within corporate cultures is to reframe the semantics in a way that helps people to seek common ground and illuminate shared values.
- Workplace surveillance is a future challenge for the industry, especially as it relates to client privacy. Companies will need a framework to manage the additional data received.

The discussion then turned to the academics' questions for the executives. In the context of ethical considerations surrounding the use of artificial intelligence, one academic asked, "What does the advancement of technology mean for beauty, art, and creativity?" Another inquired about the politicization of the corporation and what it means for the development of a moral compass within organizations.

One academic raised two questions: first, soliciting experiences on how executives incentivize ethics without making the process too instrumental, and thereby, losing the value of ethics and possibly pushing it into compliance; and secondly, querying executives on obstacles to ethics initiatives that they would like to do and have thought about, but have not been able to implement.

A fourth asked about the evolving value of consumer privacy in business. The final question posed to executives was about recognizing unethical leadership in terms of bad interpersonal behaviors and bad use of influence, and why such leaders have staying power.

Overall, participants enjoyed their experience in the Forum and shared positive thoughts, including appreciation for the Forum founders and the blend of perspectives from academics and executives.

*The group is delightfully engaged as Jared Harris shares his thoughts.*

# Opening

The session began with Jim Mitchell asking each of the participants to answer two questions: What has ethics meant to you and your organization? What do you want to get out of today?

Leading by example, Mitchell shared insight from his own 40-year career, noting that he came away concluding "good ethics was good business; that it was not just the right thing to do, but it was more profitable in the long run." In this spirit, the Forum encourages embracing ethical behavior as a cornerstone of good management.

Mitchell conveyed that the Forum is an opportunity for "organized reflection" whereby executives can step back from their busy schedules to reflect on issues within their companies and figure out how to do what is right. Empathizing with a reality of life, Mitchell added, "It's hard to do the right thing if you don't reflect on what the right thing is." Turning his attention to the academics, Mitchell noted that they can listen to real stories of ethical challenges, which they can take back to their classrooms to help students understand that most executives are genuinely trying to do the right thing in business.

> "It's hard to do the right thing if you don't reflect on what the right thing is."
>
> Jim Mitchell

> "Like many of us coming from the practitioner's side, our business is built on trust. And you can't have trust without an ethical environment."
>
> Kristi Rodriguez

> "The most valuable asset you have is your word and reputation."
>
> Chris Blunt

Executives at the Forum represented a range of demographics, perspectives, and institutions they currently lead. Each shared their enthusiasm for the opportunity to convene with academics in a day of organized reflection. For instance, surveying the blend of practitioners and academics convened, while reflecting on making a measurable difference in business, Kristi Rodriguez related, "Like many of us coming from the practitioner's side, our business is built on trust. And you can't have trust without an ethical environment."

Building on Rodriguez's comments, Mark Madgett remarked on his realization that leading 14,000 people surfaces ethical challenges daily. Reflecting on people's tendency to quickly author emails and make phone calls, rather than widening the lens to examine issues across multiple scenarios, he suggested, "I think it's important that organizations take a step back and create their own academic experience." For Madgett, "ethics forms the star chart" upon which he navigates personally. A similar sentiment was shared by Chris Blunt who remarked, "The most valuable asset you have is your word and reputation."

*Todd Haugh makes a point as Jill Brown, Chris Blunt, Linda Treviño, and Mark Madgett listen attentively.*

Todd Haugh shared that his interest in ethics stemmed from a fascination with understanding why good people make bad decisions. He has learned that it's not only a question to be studied and understood at the individual level, but also at the organizational level. Haugh's experience resonated with Jill Brown who remarked that, at the time she chose to pursue a PhD, *The Wall Street Journal* was laden with stories of business scandals. For Brown, those developments inspired her to pursue education geared toward finding solutions.

Linda Treviño shared that she chose a management program, not a philosophy program for her doctoral studies because of the focus on application. Expounding on her interests and zeal for the Forum, she shared that what drives her research is practice, including questions such as, "How do you know what's really going on? How do you know what to research? How do you know what people care about unless you are talking to executives and managers?"

*Kenneth Goodpaster, George Nichols, Todd Haugh, and Jill Brown absorb remarks from Chris Blunt.*

# *Case Discussion*



Azish Filabi began the case discussion by summarizing the facts of the case (see Appendix). In 2022, EY's cheating scandal made headlines. Notably, it wasn't the first time a cheating scandal has been revealed at an auditing firm. KPMG had a similar violation, a few years prior. However, the SEC enforcement action against EY — a $100 million fine — is the largest against an auditing firm in the commission's history. By comparison, EY's fine is double what KPMG received. Remarkably, the SEC enforcement action emphasized not only the violation among the auditors, but also the firm leadership, shining a bright light on the systems-related failure that was involved.

Filabi noted that audit professionals, as part of their CPA license, are required to complete ethics continuing education. Since 2012 at EY, there had been software vulnerabilities that were discovered that the professionals were exploiting to cheat on the exam. Consequently, they were able to pass exams while answering a lower number of correct questions. This gave the appearance that they had a higher grade than they truly did.

Filabi reached out informally to EY to inquire if they were willing to share their own experience, but that didn't yield any interviews. The SEC reports indicate that EY's leadership response involved both emails to employees warning them about the inappropriateness of the behavior, as well as some disciplinary actions against certain employees. The details about those actions are not publicly known. The SEC report did include some of the emails, which indicated the cheating behavior was not consistent with EY's values, that EY stands for integrity, and that auditors should refer to EY's code of conduct.

Another striking aspect of this case is EY's interactions with the regulators. When the SEC asked about whether EY had internal reports about the cheating, they denied having any. They had received reports in the past and coincidentally, one happened to be the day that EY was asked this question, yet EY still did not revert and revise their disclosure to the regulators so that the regulators would have their full disclosures. The SEC noted this behavior, raising questions about the integrity of the leadership decision-making processes. To comply with the enforcement measures, EY must take steps to remediate, including external review of the sufficiency and quality of EY's internal policies, procedures, and controls as well as evaluation by a third party around the sufficiency of EY's training and guidance on ethics, retaliation, and whistleblowing.

Filabi asked the Forum participants for their thoughts on the effectiveness of EY's response, probing the group to share insights on any additional actions or alternate approaches EY might have taken.

## When Silence Speaks of Systemic Failure

Some of the Forum participants inferred that EY's silence is an admission of guilt. Filabi affirmed that EY agreed to all the facts but said nothing else publicly. Analyzing the case from a moral outrage lens, Mark Madgett questioned how EY rationalized its organizational acceptance. Chris Blunt added that EY's internal compass was compounded by the fact that EY's function is to serve as an investor's watchdog who the public trusts to uncover bad behaviors.

Building on Blunt's comment, Jared Harris shared a subtle nuance about EY's role. In his experience as a former CPA, the main value auditors provide in society is as an intermediary — an access function whose raison d'être is to be trustworthy. Jill Brown turned the conversation by questioning whether anyone tried to counter the narrative about organizational culture being to blame by pointing to a possible fault in the training or the software. There was consensus among the participants that it was a systems-level failure.

Azish Filabi probed the group by asking, "How do you see the failure points in that system? Where would you identify them specifically?" She added, "What are your thoughts about the sufficiency of the SEC action? What else could the SEC have done in this situation?"

Linda Treviño remarked that she didn't see any evidence of EY attempting to understand the root cause. Treviño reiterated Brown's earlier query about ethics training.

*Jim Mitchell, Jared Harris, and Kristi Rodriguez take delight in the discussion of ideas.*

## Understanding Organizational Behavior Through Root Cause Analysis

In dissecting root causes, George Nichols separated the issue of ethics training from the issue of the leadership response. In Nichols's view, even the highest quality ethics training and education cannot vouch for an individual's ethical behavior — ethical leadership is always necessary. Kristi Rodriguez shared a potential alternate root cause — tone at the top. She explained that in addition to giving employees the highest quality training, it's also about conveying that the time spent on the training is just as important as time spent on advancing business profitability. Rodriguez also wondered about the linking of training to an incentive base. Kristyn Cook agreed it's beyond the training, that it's the tone of the culture at the top.

Jared Harris shared his viewpoint that "ethics is local." He explained that while there could be a systemic problem at the top, it's not always the root cause, nor is a focus on top leadership always informative about what's actually happening "on the ground" in the organization. He believes what's happening at the ground-level is what matters. How many employees in an organization as big as EY have even met the senior leadership? Rodriguez agreed but explained that the path to ethics becoming local cascades from the top. Harris agreed that can certainly be true, but sometimes it's not true, and in any event, it might not matter for the cheating employee's decision making. He suggested that what looms larger is "the way things are done around here", regardless of senior leadership's role in creating those norms.

Azish Filabi transitioned the discussion to specifics: EY had incorporated nudges into the ethics training software after completing an investigation into an internal tip about cheating. According to behavioral science, nudging people at the right time about behavior is supposed to work. Yet, even after implementing the nudges, the managing director in EY's Denver office learned that there was still cheating going on in Denver. Filabi probed the group for their thoughts on the managing director's behavior, and what he should have done differently. She invited Jill Brown to share her perspective on nudges to remind students not to cheat. Brown suggested that the organizational response, not just that manager's, should have been much "bigger, better, and more impactful" to demonstrate that there's a tone at the top that considers the cheating unacceptable. To be clear, Brown emphatically endorsed serious actions such as fines and termination of employment for those who cheated, beyond nudges.

Linda Treviño argued that firing the bad apples is not the panacea for EY's cheating scandal. She theorized that EY needs to look at root causes of the cheating. Management may bear some of the blame. Therefore, just firing bad apples would not be addressing the root cause, whatever it is. Todd Haugh suggested that EY's "theory of wrongdoing" was incorrect and helped explain the firm's failure as a company. He added that there were related failures in the assessment of the culture as well as in the implementation of the process to get to an ethical culture. He posited that some underlying issues contributing to EY's culture may have included auditors limited bandwidth to do the trainings and auditors lacking skills needed to pass the training. Given the considerable number of auditors EY employs, he suggested that these underlying issues may have led EY to believe that the cheating was an isolated problem, which it clearly was not.

Jim Mitchell commented that the wrongdoing is not the scale of cheating — 200 auditors out of 300,000 — but the intrinsic nature of EY's problematic culture. Mitchell elaborated, "The only thing we've got as a firm is our integrity. These are people that demonstrated a total lack of integrity. It's the nature of the offense that we're dealing with here." Even so, Haugh offered that EY's thought process may have considered the wrongdoing as an isolated problem that could be fixed by an email or communication, which clearly was not the case. Mitchell remarked that it's interesting to see it that way. He added, "An ethical company is one that when something goes wrong, which it will because they're human beings, considers how to fix it. Do you make the customer whole?" He went on to state that ethical companies change their systems to make new and better mistakes, but not the same one repeatedly. The group emphatically agreed.

## Ethics by Edict

Linda Treviño pointed out that the cheating problem at EY is much bigger than the auditors who were cheating. She encouraged the group to consider that there were also people at EY who did not cheat but knew about the cheating and did nothing. Blunt hypothesized, “If they’re cheating on exams, are they cheating on audits? Where else are they cutting corners?” He explained that EY created a culture where people don’t have time for critical thinking.

Kenneth Goodpaster encapsulated the psychology of EY’s culture: that EY didn’t take ethics seriously because it approached the cheating not as a cultural problem, but as a rules problem. Therefore, the message to auditors in EY’s emails was to “follow the rules.” It was “ethics by edict,” he noted. Goodpaster posited that this focus on compliance influenced auditors to think in terms of “Can I get reprimanded for this?”

Citing the famous Swiss psychologist, Jean Piaget, who in the 1930s authored a book called, “The Moral Judgment of The Child,” Goodpaster elucidated three stages of moral development. The first stage of moral development is ethics as self-interest. The second stage is ethics as rule following. The third stage is when one has what Piaget called “autonomy,” indicated by an internal conscience. As the group reflected on how these stages work together, Goodpaster

> *“How do you create a culture in a company that’s sensitive to honesty, to character, to not cheating instinctively? A culture that understands it’s not a matter of rules: it’s a matter of we don’t do that around here.”*
>
> Kenneth Goodpaster

added that ethics is not compliance. He clarified that compliance is about rule following whereas ethics is about a higher standard. He then questioned whether EY's leadership approached the cheating problem any higher than rule following. In Goodpaster's assessment, EY has not, and therefore, the problem is not going to get solved no matter how punitive the SEC's actions.

*Jared Harris, Kristi Rodriguez, and Kenneth Goodpaster reflect deeply on George Nichols's remarks.*

## Hypocrisy Exercises: A Different Kind of Approach to Ethics

Kenneth Goodpaster asked the group a thought-provoking question. He queried, "How do you create a culture in a company that's sensitive to honesty, to character, to not cheating instinctively? A culture that understands it's not a matter of rules. It's a matter of *we don't do that around here*." He emphasized that the human interaction created in this kind of culture is not the kind that comes from a check-the-box training.

*"Ethics and trust are one and the same in many ways. Trust but verify when you're running a system with people who are imperfect."*

**Mark Madgett**

*"Are you striving for perfection or are you a learning organization where you're constantly learning and being transparent?"*

**Kristyn Cook**

Goodpaster recounted his experience educating on ethics at a medical device company. He shared how he worked with senior management to conduct week-long ethics seminars that he called "hypocrisy exercises." Hypocrisy exists in every human being and in every organization, and it's something that can be minimized, Goodpaster noted. He added that the exercises were confidential, non-retaliatory conversations intended to surface instances where stated values did not align with actual behaviors under pressure. Notably, these discussions occurred with senior leaders who were listening in the room and who had the ability to do something about the issues identified. It's a different kind of approach to ethics, Goodpaster remarked. It's what he calls "ethics formation" rather than ethics training because it changes the outlook at both the individual and organizational levels. For further detail, see Goodpaster, Chapter 5 of *Times of Insight: Conscience, Corporations, and the Common Good*, Springer 2022, Open Access: **https://link.springer.com/book/10.1007/978-3-031-09712-6**.

Resonating with this approach, Mark Madgett commented on the importance of having strong systems in place to assist leaders with decision-making. Highlighting the essential ingredient of trust, Madgett remarked, "Ethics and trust are one and the same in many ways. Trust but verify when you're running a system with people who are

*The group contemplate remarks from Chris Blunt.*

He stated that strong systems are the foundation of a culture, enabling the systemic expression of the beliefs at the top of the organization, concluding that that's perhaps where EY's communications broke down.

Azish Filabi posed a hypothetical to the group. "What if, in its response to learning of the cheating, EY's management had considered auditors' heavy workloads?" Filabi questioned what senior leadership should do in response to that issue. Jared Harris suggested that the auditors who cheated likely knew they were doing something wrong, given the inherent hypocrisy in human nature. To Filabi's question, he responded that senior management should have released some pressure in the system or signal that it's serious about cheating by firing violators, for example.

Jill Brown offered that the SEC's action didn't help. It only reinforced that companies will try to work around it, she explained. In Brown's view, EY hindered their investigation because they didn't want to be subject to the reputational effects of being under investigation with the SEC. Brown strongly recommended severe punishment at the top of EY's organization because that's where the reputational effects can be the most impactful and help EY do better as an organization. Kristyn Cook reflected that every organization needs a north star. "Are you striving for perfection or are you a learning organization where you're constantly learning and being transparent?"

# Ethics and Compliance: Reflections on Organizational Management of Human Behavior

Jill Brown shared that there has been a swell of interest in discussing moral courage. She added that the interest is not only in how to become more courageous at work, but also understanding the implications for the whistleblower. She wondered what happened to the whistleblower at EY and suggested that perhaps this person may have needed more communication on available resources such as an ethics hotline.

Building on Brown's thoughts, Linda Treviño was curious about the involvement of EY's ethics and compliance function in the cheating scandal. Connecting the dots to Kenneth Goodpaster's earlier point about rule following within EY, she commented that ethics and compliance professionals are typically rule followers, as many are lawyers with interest in codified rules. She questioned how to transition their thinking from following rules to a higher level of thinking as Goodpaster had suggested.

George Nichols commented that often the misconception in today's American corporations is that if they are compliant with regulations, then they are ethical. He argued that the logic is that if the corporations are that way, then so too are the regulators. To offer a distinct perspective, Nichols shared an anecdote about Eliot Spitzer, the former governor and attorney general of New York. At the time Spitzer was in government, his response to bad things happening within financial relationships was to take out the top and put someone in that was more ethical to set the tone at the top, assuming they would put in more systems and controls. In essence, Spitzer was talking about ethics and trust — he was making the decisions on whether behaviors were ethical or not. At the time, nobody was comfortable with regulators or government officials operating in this way.

Azish Filabi questioned whether there is sufficient opportunity and space to manage intricacies of human behavior. Filabi asserted, good management is good ethics. Yet, many in the financial industry assume that the rules are replacing ethics. She asked the group to consider, "Where is the room for human judgments within organizations and how do we think about the decentralization of organizations? Should leaders allow some decentralized control in management when it comes to human behavior?"

Linda Treviño shared her belief that ethics needs to come from the top. Jim Mitchell added that conducting a confidential employee survey helps surface behaviors inconsistent with an organization's values. The inconsistencies can then be examined at a deeper level to verify the trouble spots. Such surveys reveal that the company culture is strongly influenced by an individual's immediate supervisor, Mitchell added. To trust and verify resonated with Kristi Rodriguez who sees it as an indicator of accountability.

Todd Haugh challenged the group to consider the "why" behind ethics exams. He suggested that it's important to internalize the content and apply it to daily decision-making. Azish Filabi thought this was a great segue to considering what the CPA Institute should do about cheating. Linda Treviño and Jill Brown suggested that the CPA Institute work with EY on a root cause analysis. Brown added that there needs to be a shift from digitizing ethics training (i.e., checking a box to indicate if something is right or wrong) to educating on ethical dilemmas where there's not a clear right or wrong answer. The challenge, however, is how to take that approach to scale, Brown acknowledged.

Mark Madgett suggested that the group consider the shared risk of the CPA Institute. He questioned whether academic institutions such as the CPA Institute have a responsibility to ensure an end-to-end quality of experience and quality product. He also questioned whether the conversation would be different if the subject matter of the exam weren't ethics, but diversity, equity, and inclusion, or, if it is cheating in general that's at issue. Goodpaster responded that it's important to understand why the cheating is happening, and that the only way to do that is to talk to the people who cheated. He suggested interviews as a method to explore the why.

Making the case for using an interview methodology to help explain problem behaviors, Goodpaster shared insight from a case study he had written about Piper Jaffray, a leading investment bank. Piper Jaffray was fined $31 million by Eliot Spitzer for mishandling investor funds. The CEO of the investment bank conducted interviews of his employees to get at the root cause of the problem.

He learned that incentives were causing tilted judgment. He documented this in a report, which he shared with regulators. Notably, this was against the backdrop of a Board of Directors who had mixed views about sharing the report. It was a gutsy decision because the CEO was risking further punishment. Instead, Piper Jaffray was used as a model for regulators to regulate more intelligently in the future. Because of this inside view, the SEC became a better regulator of this type of company.

Brown and Nichols contemplated what the SEC's response might have been had EY fully disclosed its cheating problem to the SEC, suggesting that incentivizing processes to report out to regulators is an ongoing regulatory challenge.

*Kristyn Cook uses her hand to make a point as Azish Filabi muses.*

# *Executive Dilemmas*

Jim Mitchell invited discussion of ethically challenging situations faced by the executives in their roles as leaders. Mitchell shared that the definition of an "ethical dilemma" is a situation where there are good reasons to do one thing and other good reasons to do something that is quite different.

## Managed Hypocrisy

One participant shared their dilemma relating to how an employee can best respond to a situation when they witness a superior demonstrating egregious behavior such as berating employees. Should the employee quit or threaten to quit? What are the implications of such an action? Who gets hurt by such an action? Will it change the problem behavior? Alternatively, what happens when the poorly behaving superior takes ownership for the egregious behavior and atones for it?

*"Some of the companies that I have respected the most are the ones that talk about past failures the most publicly."*

Todd Haugh

# Discussion

The group began the discussion by pointing to the power of analyzing case studies such as the EY cheating scandal. Chris Blunt appreciated that the process of analyzing a case study serves as a reminder that ethical dilemmas are complex. Given their complexity, ethical dilemmas require thinking through scenarios and weighing choices. The level of thinking requires more than a value judgment of whether a choice is good or bad, right or wrong. It requires thinking about the effects of choices and the implications for those affected by the choices.

Jim Mitchell commented on the scenario of a superior taking ownership for their egregious behavior. He shared, "I think one of the most under respected qualities of a good leader should be recognizing that you're a fallible human being, too." Linda Treviño affirmed Mitchell by indicating that there is research to support that aphorism. From an organizational perspective, Todd Haugh commented, "Some of the companies that I have respected the most are the ones that talk about past failures the most publicly." He elaborated that it spurs the conversation about how the wrongdoing occurred and the real-life implications for the people involved. Moreover, admitting to mistakes demonstrates humility, which indicates a willingness to be reflective and even change one's mind about something.

*Jared Harris expressively communicates as Jim Mitchell, Kristi Rodriguez, Kenneth Goodpaster and George Nichols listen.*

To underscore Haugh's point on the educational power of owning mistakes publicly, Jared Harris shared the story of "The Cave," an allegory from Plato's Republic. Plato describes a set of prisoners in a cave who are shackled and can't move. Their experience of life is what they see as shadows on the wall. The implication is that somewhere behind them is a campfire and someone is making the shapes that they are seeing, so that's their reality. One of the prisoners escapes into the sunlight and discovers that things like dogs and trees are in fact three-dimensional. Essentially, this former prisoner's eyes were opened. The former prisoner selflessly returns to the cave to share this discovery and help the prisoners escape. But they don't budge. They are reluctant because they like it in the cave; they're comfortable. The prisoner who escaped from the cave is like a leader who aims to see and understand higher levels of reality but can often struggle to help others open themselves up to new insights or ways of approaching their work or their lives.

Harris explained that the allegory offers a leadership challenge for helping people see higher shared purpose. He remarked that corporate life is a lot like that allegory in that it's uncommon for leaders who mess up to call an all staff meeting to apologize for their behavior, and to express that they can do better. Yet, it's powerful because it signals to employees that sometimes it's okay for them to also mess up and to take responsibility for messing up.

Jill Brown noted that the allegory is also about moral courage — the ability to stand up and practice what one believes to be ethical behavior when faced with a dilemma, even if it means going against pressure to do otherwise. She added that the concept of moral courage is particularly relevant on diversity, equity, and inclusion issues that those in the upper echelons of management may not witness in their workforce because they are not in the trenches. One example is bullying behaviors because that's an area where it becomes an ethics versus compliance issue, thus an area for leaders to demonstrate moral courage in effectively managing team dynamics. She offered a scenario where a female employee is bullied by a male, which resulted in the woman leaving her job because she did not feel heard. The incident did not rise to sexual harassment, and thus it wasn't considered a legal or compliance issue.

*Chris Blunt, Linda Treviño, and Mark Madgett enjoy the discussion.*

# Operating At A High Ethical Standpoint As A New Leader

A loved and revered leader with 40 years of service in an organization, including 20 years building their team, comes to the attention of their supervisor who is new to the organization. The supervisor is informed that the leader, who is close to retirement, was intoxicated at an event and said some things that were “off color” to another leader. The supervisor notifies Human Resources to record the incident and learns that there was no prior record of grievances against the leader.

Later, after the pandemic disruptions, the supervisor started noticing discrepancies in the leader’s expense reporting. The organization’s rule is that the highest-ranking individual in a group picks up the bill for an event. Yet, this leader had their subordinates pick up the bill and submit it for reimbursement, likely a way to avoid the supervisor being part of the approval process. Moreover, the leader had conducted an event offsite amid the COVID pandemic, when there were protocols about not convening to avoid spreading the virus. Now, the new supervisor has examples of expense reports that were funneled down the organization in violation of the rule.

The new supervisor is striving to operate at a high ethical standpoint by demonstrating that she trusts her people, but also complies with the rules. So, she immediately contacts her compliance lead who then contacts her ethics lead, and an investigation is conducted. According to the investigation, it appeared that the leader was intentionally trying to conceal things from the new supervisor, and there was documentation of this pattern with past supervisors. The investigation results in the separation of the leader from the organization. The new supervisor also puts the junior level individuals on warning, given their participation in this expense reimbursement arrangement. The expectation of the new supervisor is that part of being a good steward is to speak up if something doesn't feel right, and that this is applicable to all levels of the organization.

In the context of seeing this beloved leader immediately leave the organization, and seeing two junior level employees on performance management with their compensation impacted, how do other employees view this new supervisor?

*Mark Madgett charmingly amuses the group.*

# Discussion

A discussion developed around the influence of race, gender, and age of both the leader and the new supervisor. These demographics came into question as potential factors that may have contributed to the complexity of the ethical dilemma. Jared Harris suggested that because the leader was beloved it makes the ethical dilemma interpersonally challenging, but it doesn't change the facts about wrongdoing.

The group considered several questions. First, they wondered whether the leader's expense reporting behavior was an artifact of shifting expectations and business practices due to the COVID pandemic. Secondly, they considered that a consequence of leadership is that while you can control your own actions, you don't get to shape the narrative in these types of issues. The group considered whether that shapes the quality of resolving such dilemmas.

With respect to the junior employees, the group discussed whether they were aware that they were gaming the system and how such knowledge should factor into their disciplinary processes.

Linda Treviño suggested positively framing the coaching of junior level employees. She elaborated, "I think there's a way to try to affect the narrative and make it a real learning experience, and an opportunity to realize how strong the ethical standards are in the company." She added that it's freeing for employees at this level to hear that they no longer must work for someone who would ask them to do something unethical where the power dynamic may have compelled them to do it.

*"The word ethics is supercharged. It's a trigger. When you challenge somebody's ethics, they take it very personally".*

Linda Treviño

# Cognitive Framing of Diversity, Equity, and Inclusion (DEI)

A DEI consultant who works with business CEOs is often asked, "My organization has not yet done enough in DEI, what can I do?"

The consultant responds with the question, “What have you done?” The consultant explains that an organization’s history is a starting point for discussion because consumers already have an established perception of the company based on that history. The consultant adds that the discussion is not only about DEI, but also about ethics.

Introduction of the term “ethics” creates tension between CEOs and the consultant because CEOs, in the consultant’s experience, often respond from a personal standpoint, “I’m an ethical person.” The consultant responds, “If you’re ethical, then why do you need external support for your organization?” Seventy-five percent of the CEOs with whom the consultant has spoken do not see DEI as an ethics issue. How can the consultant help the CEOs to understand DEI as an ethical issue?

# Discussion

Among the ethical dilemmas presented during the Forum, this one was the most emotionally responsive. Jared Harris began the discussion by probing what problem the CEOs are trying to solve. He asked this question to get at whether labeling DEI as an ethics issue matters to resolving the problem. Harris posited the label does matter in framing people’s emotional response to an issue.

The group considered that the consultant is talking about changing culture, which requires the consultant to get the CEOs to think more broadly about how to move their organization forward in the long-term. Chris Blunt perceived that ethics has become a litmus test for standards of good and bad, which explains why the CEOs react the way in which they do in this dilemma. Linda Treviño amplified Blunt’s point by sharing insight from her research on the ethics officer’s role in an organization. Treviño remarked, “The word ethics is supercharged. It’s a trigger. When you challenge somebody’s ethics, they take it very personally.” She questioned what words are important for DEI. She suggested words such as “respect,” “fair treatment,” “equitable treatment,” and others that are less charged.

> *“Executives will say they want a more diverse workforce, and it could be people of color or women. But the job description says it requires 20 years of experience. Well, how many women and minorities were in this profession 20 years ago that you’re going to be able to recruit?”*
>
> **George Nichols**

George Nichols remarked that the use of less triggering words may surface a leadership challenge — the disconnect between what a CEO perceives to be true about the culture and what the culture’s reality is when the CEO examines their employee demographics, for example. To highlight the unexamined structural barriers to diversifying the workplace, Nichols shared an example from his experience in recruiting. He stated, “Executives will say they want a more diverse workforce, and it could be people of color or women. But the job description says it requires 20 years of experience. Well, how many women and minorities were in this profession 20 years ago that you’re going to be able to recruit?”

Chris Blunt questioned whether DEI must be framed as an ethics issue. He raised this question because the topic itself is so sensitive that it’s important to avoid positioning CEOs as good or bad. He suggested reframing the language to find more common ground, for example, “How can we help you do something different to turn your good intentions into better results?”

Todd Haugh offered another element to consider — harm. He questioned whether CEOs have stepped back to consider the harm their organizations may have perpetuated if their values suggest otherwise. Haugh suggested reframing in the positive so that the question to CEOs becomes, “Would you want to improve on the value of your business, even if you were successful?”

Expanding on the thoughts of the group about cognitive framing, Kenneth Goodpaster shared an anecdote about Braver Angels, a grassroots organization dedicated to the political depolarization of the United States. The organization has applied family therapy techniques to their workshops. Sometimes DEI is treated as code for a certain liberal viewpoint, he suggested. In those circumstances, a person who is conservative might react negatively when given language they can’t process. Goodpaster clarified that diversity, equity, and inclusion might have meanings that people can identify with, but sometimes the way they are interpreted in the larger culture doesn’t enable behavior change. Goodpaster noted the model works because despite different political views people may hold, “It’s treating the other person as a human being rather than as an ideologue.”

Goodpaster wondered about the possibility of the DEI consultant in this ethical dilemma appealing to a higher set of values of which diversity, equity and inclusion could happen because those are ethical values. For example, they might ask questions of the CEO such as, “How do you want to implement equity? How do you want to understand inclusion? How do you want to account for diversity?”

Jill Brown resonated with Goodpaster’s anecdote, adding that it’s important for DEI to be authentic, not a checklist. Brown drew a parallel to the evolution companies have taken along social responsibility fronts. At first it was about the business case and then it transitioned to moral obligation. Perhaps the consultant could retain the business case for DEI while also elevating the moral component, which brings authenticity.

Jared Harris summed up the group’s discussion by suggesting that one way to enable the persistence of DEI initiatives within corporate cultures is to reframe the semantics. He explained that doing so would help people to seek common ground and avoid putting people on the defense.

# Workplace Surveillance and Consumer Expectations of Data Privacy



Financial regulators require that employee communications are monitored for nefarious activity, such as fraud and other business risk. Yet, the surveillance can also reveal unethical communications that don't violate regulations but contravene the company's values. The CEO's ethical dilemma is whether to take action against unethical communications among the company's employees.

At one company, there was an email chain among the company's employees, some of whom used their personal email while others used company email, which included egregious comments perpetuating stereotypes about race and women. Some of these employees were considered among the most productive in the company, while others had been with the company for nearly 40 years and were approaching retirement.

Based on the egregious communications, the company CEO terminated the entire group of employees. While comfortable with the decision to terminate, the CEO wonders if it set a precedent and if it affected the narrative in the organization about the company invading privacy of its employees, particularly since some of them were using personal email. How should companies respond when the results of surveillance reveal politically polarizing sentiments among employees?

*Jared Harris, Jim Mitchell, Azish Filabi, and Kristyn Cook listen thoughtfully to the discussion.*

## Discussion

The group discussed the broader context for this dilemma, which includes the 2020 death of George Floyd and the renewed commitment to equity and inclusion by the company. In addition, there's been increased regulatory scrutiny of corporations properly monitoring communications on their platforms. For instance, the SEC recently acted against big wire houses for improperly supervising electronic client communications such as texting on instant messaging platforms. There is a gray area in the policy and regulations because there is no explicit guidance on whether this includes both communications that originate from the company and those received by the company from personal emails. Therefore, the ethical dilemma goes beyond the specific legal guidance provided by regulators.

The group contemplated the ethical considerations in monitoring employees' electronic communications, including communications from personal email. The group discussed the balance between safeguarding employee privacy, and the need to manage corporate values. Consideration was given to business risk at both the institutional and individual level. Given the role of social media and the speed of communications today, participants considered that there is also reputational risk to the company from employee emails that violate corporate values.

There was also recognition that the CEO's action to terminate these employees set a precedent and a high bar, and the news cascaded throughout the organization. Managing the narrative of an action is as equally challenging as determining how to resolve the dilemma itself. In this case, senior leaders went on a listening tour, hearing perspectives both from their communities of color, and those concerned that the company may be monitoring employees' personal email accounts (which was not the case). The group concluded that surveillance is going to be a real problem for the industry in the future, and companies will need a framework to manage the additional data received.

# *Academics' Questions*

## Chatbots, The Soul of Business, and What it Means to Be Human

*"What does the advancement of technology and the ethics of technology mean for beauty, art, and creativity?"*

Jared Harris

Jared Harris asked the executives, "What does the advancement of technology and the ethics of technology mean for beauty, art, and creativity?"

By way of background, Harris shared that he teaches a class on business ethics through literature. His students are executive MBAs to whom he assigns reading of short stories and poems as well as listening to songs, to put them in touch with the things that matter most to us as people, which should give us insight into the 'soul' of business. The rationale for his teaching is his belief that business is not inherently a spreadsheet activity, it's also a human activity. Harris expressed, "I've come to believe that the arts and humanities literature most powerfully touch upon those things of the soul that help us identify what it means to be a human being." Nevertheless, he pointed out that technology is starting to challenge what it means to be human.

Harris encouraged the group to think about the last time they were inspired. He asked them to reflect on what it was that inspired them and surmised that it was likely something created by a human. With that inspiration in mind, Harris shared that ChatGPT is capable of recreating music that sounds a lot like a human being. He argued that if ChatGPT can recreate music, then it goes to reason that it can also imitate the financial advice of financial advisors. Harris followed with a series of deeply contemplative questions, "What would it mean if generative artificial intelligence can create financial advice that is indistinguishable from the financial advice of a human being? Are those things less valuable because they didn't start with a sentient human being? Or does it even matter, if the result of the financial advice is just as good?"

*Azish Filabi, shown in profile, pleasantly observes the discussion alongside Jim Mitchell, Jared Harris, and Kristi Rodriguez.*

Todd Haugh responded that it’s less valuable because the technology is dependent on the past. He explained, there is no true creativity, instead, it’s a derivative. He added that humans have an unlimited capacity to create which technology cannot match. Harris responded that we can certainly comfort ourselves into thinking we are irreplaceable, and we’d all like to think so. But what if that guitar solo really does sound remarkably like Jeff Beck or B.B. King? If the work ‘product’ — either something artistic or something in professional services like financial advice — is objectively valuable, how much should it matter whether it was created by a human being or by artificial intelligence?



Azish Filabi called into question that the point of creativity could be, for example, to engage in an art form because it helps you meditate. She concluded that it’s intrinsically an act of being human. In business, she suggested that one way to determine whether technology is better is through a risk management lens. In terms of the future of financial technology, she asked about the role of accountability with respect to the outcomes: “Should we allow the technology to do some of what we would hold humans accountable for? Can we continue to hold humans accountable for creating this technology?”

The group contemplated that technology hasn’t reached a point where it can stimulate emotional connection. Yet, they acknowledged that it doesn't mean that it won't. They also gave thought to training financial advisors to adapt in the changing landscape so that their skills remain relevant. Additionally, they wondered whether people would trust AI more than a human being, and what that would mean.

Kenneth Goodpaster explained that artificial intelligence, by definition, means there's always going to be a human doing the programming, which means that human judgment is always going to be in the background. It's only that the human part will be pressed further into the background the more exquisitely humans get at making the programs.

# The Politicization of the Corporation

Kenneth Goodpaster shared his observation that there has been increasing engagement of the corporation as a political player with financial and rhetorical resources, respectively. He noted a phenomenon he read about in a recent *New York Times* article — a future in which we will see red corporations and blue corporations. As a business ethics professor, Goodpaster is alarmed because he has spent his career trying to get an internal compass to work effectively inside organizations by individuals. It's what Goodpaster calls "corporate conscience."

Goodpaster's concern is that the increasing politicization of the corporation works against the concept of corporate conscience because it tends to externalize the behavior of the corporation when it comes to values rather than keeping it an internal discussion. One problem that Goodpaster sees is that the corporation is taking political positions without engaging its stakeholders. If the stakeholders have a different political view, they're being hastily abandoned.

A second problem Goodpaster sees is that the politicization is increasingly blurring the difference between the public sector and the private sector. This problem risks losing the structure of American capitalism. Goodpaster reflected that maybe losing the structure of

> *"Authenticity is a challenge for corporations. There's a soul-searching process that is needed to make sure that the corporate values are the values that they can actually stand by."*
>
> **Azish Filabi**

capitalism is what people want, but he cautioned that it should be done with full awareness rather than in an indirect or dishonest way.

Goodpaster asked the group about his ethical dilemma, "If it's reasonable to be alarmed about it, then what would one do about it? Does one head it off or change it? How would one even change it?" George Nichols remarked that the public sector is trying to absorb the private sector, and wondered if Goodpaster also sees it that way. In Goodpaster's perspective, the public sector is inviting corporations to become Republicans or Democrats and the corporations are increasingly happy to join. Consequently, the ethics of the corporation and the ethics of the political party begin to unify. From the corporation's point of view, they're outsourcing their ethics. That's concerning to business ethicists because it undermines the progress made to get corporations to articulate their values and institutionalize them with their stakeholders.

Linda Treviño commented that companies are stuck in a tricky situation today when it comes to living their values. For instance, she cited the case of Disney speaking out about Florida's "Don't Say Gay" bill. She pointed out it was Disney's employees exclaiming that the company was not living up to its values and therefore needed to defend them. But, then the company experienced backlash from the Florida state government.

Jim Mitchell noted that this dilemma had emerged in two past Forums with no clear consensus on it. Mitchell shared with the group his own view. He remarked, "Companies should only take positions on issues that are relevant to their business." Azish Filabi pointed out that the challenge of this dilemma is in the line drawing on the political issues. She added, "Authenticity is a challenge for corporations. There's a soul-searching process that is needed to make sure that the corporate values are the values that they can actually stand by."

*Azish Filabi cheerfully impresses a point that Kristyn Cook and Linda Treviño take in.*

Filabi shared her concern that the corporation is not designed to be democratic. She explained that representation of all employee voices will never happen because it's a hierarchy. She added that if companies start to be responsive, then there needs to be a consistent and clear rationale within the corporate organization. Chris Blunt remarked that it's even more complicated for insurance companies because of the multiple regulators.

Mark Madgett asked Goodpaster to share his thoughts on why he thinks the public sector is coopting the private sector. Goodpaster shared that the election of Donald Trump is a contributing factor since he was such a polarizing figure. Campaign finance is another factor. Nichols added taxes as a political driver to the advantage of democrats advancing their agenda. Jill Brown added that what gives her hope is that the Zicklin Institute, which tracks donations to political campaigns, has found that it's even between the two political parties. As she sees it, it's not so much that the public and private sectors are merging into each other, rather, it's an age-old quandary of power and control.

Adding a nuance to Brown's thoughts, Jared Harris shared that one thing that he has noticed as an educator is that today's student population cares much more about values in business than they did two decades ago. He's observed that students want to take jobs with companies where it's consistent with their values -- and that the political machinery has figured out a way to politicize that tendency. Harris remarked, "Businesses are expected to create value, to take stands, to provide meaning and identity to stakeholders in a way that a generation ago it was just a paycheck and an annuity when you retire." The group nodded in agreement.

# Incentivizing Ethics & Obstacles to Ethics Initiatives

Todd Haugh asked the executives two practical questions. First, "How do you incentivize ethical behavior without making it too instrumental and then losing the value of ethics, and maybe pushing it more into a compliance realm?" Secondly, "Is there an ethics initiative that you would really like to do, but that you haven't been able to do? And what's the biggest obstacle to that?"

*Kristyn Cook affably ruminates on remarks from Linda Treviño as Mark Madgett and Kaylee Ranck also ponder.*

## Autonomy Matters in Ethical Leadership

Among the group there were similar experiences of providing employees with a financial incentive (e.g., a bonus) for ethical behavior. Typically, this was operationalized by attaching behavioral statements into employee performance evaluations, thereby incenting employees to help their organizations behave consistently with their organizations' values. There was agreement that instrumentalizing ethical behavior is important because it signals that ethics is a part of the leadership agenda and gives leaders a roadmap for how to meet expectations. It's also part of an organization's risk management, which evolves into its value proposition. In one participant's experience, the one caveat was that if an employee did have a significant ethical issue during the year, then that employee would not get incentive compensation.

Jared Harris was curious to understand why it matters what the motivation of an organization is to instrumentalize ethical behavior. Haugh shared that it's because there is a debate that ethics would lose intrinsic value if it's too closely linked to compensation. He added that it's reminiscent of the ethics versus compliance discussion because it's an exercise that ties compliant behavior to compensation.

Reflecting on the earlier DEI discussion, Azish Filabi shared that the motivation to incentivize ethical behavior matters for the same reason we might want people to think about diversity as an ethics challenge — it helps them internalize, which means it is more sustainable. Remarking on this desired psychology of change, Filabi emphasized that "Ideally, leaders can tap into an employee's internal motivation to do better as a human versus to do better for profitability."

Chris Blunt suggested, "If you would have asked me before coming in here, 'Do you explicitly measure ethics and rewards?', I would have said, 'no.' Now, I would answer, 'yes', because we do have values." Jim Mitchell affirmed Blunt's choice of words. Mitchell added, "We never talked about ethics. We talked about values all the time."

Linda Treviño added insight from the literature on intrinsic and extrinsic motivation for the executives to observe attentively within their organizations. She shared that if employees believe that the only reason they're behaving ethically is because they'll get a bonus, then that's to an organization's detriment in the long-term. However, if employees believe that behaving ethically is expected of them as leaders, then they have some control over how they meet behavioral expectations.

Treviño's key message was that the more employees think they are being controlled versus that they are autonomous in making choices about how they behave consistent with the organization's values, then that's what determines whether employees are extrinsically motivated by the bonus (not a good thing) versus being intrinsically motivated to be and become a good, ethical leader.

*Chris Blunt shares his thoughts as Todd Haugh, Jill Brown, Linda Treviño, and Mark Madgett tune in.*

Harris shared that as a strategy professor, he teaches his students that their ethics are not sullied if they believe that doing the right thing doesn't have to come at the expense of making money. For instance, he described a case discussion he uses in his classroom where this is the lesson. The case discussion illustrates a product that creates access for the underbanked and makes profits for the firm. Blunt related to Harris and shared an example from his own experience. He recalled how he and his wife started a successful for-profit firm to encourage philanthropic giving. At the time, there were some people who were aghast because they believed no one should make money on philanthropy. Now it's come of age, and it's called "impact investing." Moreover, it's considered a mainstay in the investing landscape.

*"Is privacy still seen as a valued human right in business, or should we just forget about it?"*

**Jill Brown**

## Quiet Acts of Ethical Heroism

Mark Madgett responded to Todd Haugh's second question about obstacles to launching ethics initiatives. Inspired by the sacrifice of two agents in his organization — one who donated her kidney to save the life of another — he would like to launch a regular podcast for his organization. The purpose of the podcast would be to share quiet acts of ethical heroism. Madgett believes storytelling is a powerful way to reinforce and incentivize behavior.

"People want the emotional capital that comes with aligning with an ideal situation they may see themselves in. It's an equity deposit that's intangible." The obstacle, however, is the time needed to organize the resources and the stories to make a lasting impression.

# Privacy & Technology: A Changing Landscape

"Is privacy still seen as a valued human right in business, or should we just forget about it?" That was the question Jill Brown posed to the group based on her frame of reference as a business ethics educator. When Brown has discussed issues with her students around employee surveillance and capturing customer data, she mentions privacy, and she has been surprised to learn that her students are not concerned.

In her teaching, Brown uses a case that involves a 13-year-old pregnant girl who went to Target to buy diapers, and then mailers came to her home. The mailers were discovered by the girl's father who learned in this way that his daughter was pregnant. The father ended up suing Target. When Brown has asked her students for their thoughts on this case, they seem unconcerned about privacy. They express that they like the personalized coupons and prefer more information rather than less. Their view of privacy is different because they grew up with technology and see it as a positive that brings value to their lives. Yet, there are limits. For instance, when interviewing for jobs, they don't want their personal life — as it appears on their social media accounts — to be a factor in hiring decisions.

The group speculated that Brown's observation may be limited to this generation. The group also discussed the role of government in protecting privacy. This may be a reason Brown's students are not as concerned about privacy as generations before them. It may be that they believe the government would step in if there is a violation of privacy law.

From a consumer standpoint, Kristi Rodriguez offered that consumers are willing to pay more for a product that has privacy linked to it and they prefer this product feature over others. Brown queried, “What about the employee side as it relates to their use of company email and surveillance of their use?” The group agreed that it’s mainly a matter of situational compliance — it depends on the level of the employee within the organization. For instance, at the CEO level, there seemed to be consensus that they represent the company at all times. Therefore, the CEO cannot separate personal life from company life in the mind of the public. Yet, for employees at junior levels, the perception of the employees is that companies don’t own their private lives.

Mark Madgett shared that he is concerned about the privacy dilemma because it is leading to challenges not only around what the future workforce looks like and what they appreciate and value, but also to a narrowing of thought. He remarked, “People are channeling themselves based on how they’re representing themselves publicly in a narrower fashion. It’s a self-limiting behavior when they give up their privacy because it doesn’t encourage them to think across other dimensions that they may not have expertise in or may not be comfortable with.”

# Unethical Leadership

Linda Treviño shared that she's done extensive research on ethical leadership, yet recently, she shifted her focus to unethical leadership. Taking a bottom-up approach, Treviño asked midlevel employees to talk about their experience working with either an unethical leader or an ethical leader. Her research sample was MBA and executive education program participants, representing diverse industries. Treviño did not provide the participants with a definition of "unethical." Instead, she wanted to learn from the participants what they viewed as unethical leadership.

Sadly, two-thirds of Treviño's research participants had stories to share of unethical leaders, uncovering two types of unethical behavior. One is interpersonal, for instance, abusive behavior, unfair actions, and sexual harassment. The second is using egregious influence tactics such as performance pressure and unrealistic goal setting to push people to do things they know are wrong but feel compelled to do.

In establishing the foundation for her question to the group, Treviño shared an additional data point. In her years of speaking with ethics and compliance officers, she's learned that they have had abusive leaders in their organizations. When she's asked them why is it that abusive leaders stick around as long as they do, the insight she gleaned, which is consistent with the insight from data she collected from their subordinates, is that the abusive leaders are skilled at managing up. The superiors of the abusive leaders don't necessarily know that they're treating people so abusively, or that they too are putting the same kind of pressure on them as they are to their subordinates. From her research, Treviño has learned the higher you go in the organization, the rosier the view of organizational culture.

Treviño queried the group, "How do you see it? How do you find the unethical leaders in your organization?" The group discussed both quantitative and qualitative methods to gain insight into what is taking place at the organization from the perspective of employees. The group agreed that it's the consistency in the organization around ethical behaviors and role modeling that elevates the employee experiences.

On the quantitative side, the group discussed conducting employee surveys, for instance, quarterly pulse surveys and 360-degree employee feedback surveys, as a method to ferret out the unethical leaders, and take action to terminate their employment. Qualitative methods offered included walking the office floor to observe nonverbal communication around the copy machine and skip level meetings. The former method is to visually gauge employee attitudes — e.g., do they consistently seem tired, stressed, and angry? The latter method is a conversation between an employee's direct supervisor's manager and the employee, without the direct supervisor present. The group acknowledged that size of the organization matters in the type of methods used to surface unethical leaders.

Four additional qualitative methods the group discussed as powerful tools to gain insight into the perspective of employees included the use of small advisory groups (no more than four employees); speaking with informal leaders throughout the organization; open office hours with the CEO (no agenda, very informal); and establishing a culture committee. A brief description on the mechanics of these methods was discussed.

Advisory groups include representatives at various levels across departments to provide the CEO with insight into how strategy is coming down to execution. A culture committee is employees only — no managers — and is facilitated by an outside consultant. This means, if there is an employee concern, it comes to the CEO anonymously through the consultant. An important outcome of the culture committee is that it creates communication between executive leadership and the rest of the organization. This is because whatever issue the culture committee surfaces, that issue is brought to the attention of the executive leadership, and regardless of whether that team agrees with it or not, if the response to an issue is "no", there is a rationale provided to explain why the decision was "no". An approach to speaking with informal leaders involves the CEO randomly selecting a few employees from the company directory with whom to speak in each week. At the start of these confidential conversations, the CEO establishes that they will take no action to expose employees unless there's a violation of something that's going on at the company.

*The group turns their attention to Kristi Rodriguez.*

Mark Madgett addressed Treviño's question about why unethical leaders persist. In his experience, it's because they're often the top producers. They are also emulated, socialized, and become iconic. Chris Blunt added that performance can sometimes cause leaders to ignore the lack of alignment with cultural values. Treviño theorized that these unethical leaders make their superiors look good and their superiors become blind to their unethical behaviors. Madgett affirmed that there is a shared culpability. He underscored that as compensation structures and recognition programs play out, there is a tendency to sometimes bring out the best or worst in people. As he put it, “There’s a symbiosis between function and dysfunction that meets in the middle.”

Closing out the group discussion, one executive shared their concern about the interpretation of “harassment” and “bullying,” and what to do with a manager accused of creating a “hostile work environment.” The group’s consensus was that such behavior cannot be dismissed or diminished. In the group’s view, to create equity and consistency across the organization, the onus is on leaders to execute with integrity when navigating any incident of unethical behavior.

# Concluding Remarks



After the Forum had concluded, participants were asked for feedback on their experience. Overall, participants enjoyed the Forum and shared positive thoughts, including appreciation for the Forum founders and the unique blend of academics and executives.

Summing up the experience, one participant commented, “The authenticity and candor from both academics and practitioners were very informative and inspirational.”

*James A. and Linda R. Mitchell, Forum Founders*

The American College Cary M. Maguire Center for Ethics in Financial Services is the only academic ethics center focused exclusively on the financial services industry. The Center bridges the gap between sound theory and effective practice in a way that most ethics centers do not. The Center's mission is to raise the level of ethical behavior in the financial services industry. We promote ethical behavior by offering research and programs that go beyond the rules of market conduct to help individuals and companies be more sensitive to ethical issues and think more critically about solutions for the benefit of society.

The Forum is a groundbreaking, one-of-a-kind event that underscores the Center's emphasis on collaboration and conversation among academics and executives. The Forum is a cornerstone of the Center's activities, bringing together industry leaders, accomplished producers, and prominent business ethicists to reinforce the need to connect values and good business practices.

James A. Mitchell was recognized in 2008 for his dedication to business ethics by being included in the "100 Most Influential People in Business Ethics" by Ethisphere, a global publication dedicated to examining the important correlation between ethics and profit. The list recognizes individuals for their inspiring contributions to business ethics.

# Appendix



## Case Study

In June 2022, the SEC fined the audit and consulting firm Ernst & Young (EY) $100M, the largest penalty ever imposed on an audit firm. The fine and accompanying SEC enforcement action were imposed because of widespread cheating among the audit professionals.

Audit professionals are required to carry a CPA (Certified Public Accountant) license, which requires ethics and other education for continuing education credit. The SEC investigation and enforcement action report (SEC Report) describes multiple periods of cheating at the firm, since 2012. Upon a tip from an internal whistleblower, the firm conducted an internal investigation that found from 2012-2015, over 200 EY audit professionals across the country exploited a software flaw in EY's testing platform to pass exams while answering only a low percentage of questions correctly. EY leadership took a variety of disciplinary actions.[1] In addition, they included nudges in the exam software to warn about the consequences of cheating, such as:

> *You must complete the assessment without assistance from others. Adherence to that requirement is part of your acceptance of and commitment to the EY Global Code of Conduct which includes acting with integrity in connection with professional education. Acting with integrity also means that you should not share or discuss the contents of the assessment, or your responses, with anyone who has yet to complete it. Failure to adhere to these requirements may result in disciplinary action.*

Still, the cheating continued. In 2016, EY learned that auditors in its Denver office improperly shared answer keys. The managing partner in Denver warned staff that these actions constituted a serious violation of the firm's Code of Conduct and emphasized the importance of ethical behavior. Later, in 2017, senior leadership of the firm learned of two other employees that were cheating on the ethics exams. The following email was sent to all U.S. employees:

> *"Cheating" on internal or external tests, assessments or evaluations can result in disciplinary action, including termination. You must complete them without assistance from others. Assessments will further your professional development. Not completing a test on your own or sharing or soliciting answers from others during an assessment, is CHEATING. This conduct is contrary to our Global Code of Conduct and our values. Take it seriously!"*

There does not appear to have been any other action taken at that time to address the cheating. The SEC Report identified that from 2017 to 2021, cheating continued on both the ethics exams, as well as other continuing education courses, such as the Summary of Audit Differences materials. This included 49 auditors in multiple offices who either sent and/or received answer keys to CPA ethics exams, and hundreds of other auditors who cheated on the general courses.

The SEC enforcement report describes patterns of widespread behavior that seem to have been an open secret: "…a significant number of EY professionals who did not cheat themselves, but knew their colleagues

1 The actions, which were taken against those involved in the cheating, are not specified in the SEC Report or other publicly available information.

were cheating and facilitating cheating, violated the firm's Code of Conduct by failing to report this misconduct..."

In 2019, the SEC announced a $50M enforcement action and fine against EY rival, KPMG. Seemingly in response to this news, the EY U.S. Chair and Managing Partner sent a message to all U.S. personnel regarding that matter, which warned that "[s]haring answers on internal or external tests or evaluations is highly unethical behavior, in violation of our Code of Conduct, and will not be tolerated at EY." The SEC's action against KPMG, she wrote, "serves as an important reminder of our responsibility to serve the public interest and the need to always act with integrity and honesty."

Subsequent to the KPMG order, the SEC sent an information request in June 2019 to EY asking them about any internal tips or reports received by leadership about the possibility of cheating at EY. By the fall of 2019, EY had in fact received additional internal tips. Despite their request for information, the SEC did not learn about the issue until March 2020 — almost nine months after their initial request — when the Public Company Accounting Oversight Board (PCAOB) notified them about the matter.[2] The SEC noted that EY hindered their investigation, and cited their withholding of information as further evidence of the damage and discredit that the firm and its leadership brought to the profession, and to the integrity of the capital markets that they are entrusted to oversee.

## SEC Mandated Remediation Measures

The $100M charge is the largest ever imposed on an audit firm and double the fine on KPMG. The language of the SEC press release and enforcement action emphasized their view that this is a violation of public trust not only by the legal entity, but also of the firm's leadership (though the leaders were not held personally liable).

2 According to the SEC Report: "In June 2019, the SEC's Division of Enforcement sent EY a formal request for information about complaints the firm had received regarding cheating on training exams. On the same day EY received this request, the firm received a tip that an audit professional had shared an answer key to a CPA ethics exam. EY did not disclose this information to the SEC. To the contrary, its submission indicated that the firm did not have any current issues with cheating. In light of the tip it had received, EY's June 20 submission was materially misleading. But EY never corrected its submission. Even after the firm began an internal investigation, confirmed there had been cheating, and the matter was discussed among senior lawyers at the firm and with members of the firm's senior management, EY still did not correct its misleading submission."

Both KPMG and EY admitted to all the facts in their respective cases. The mandated remediation measures were similar for each firm, including:

- Review (and report to the SEC the results of the review) the sufficiency and adequacy of its quality controls, policies, and procedures relevant to ethics and integrity to determine whether they are designed and implemented in a manner that provides reasonable assurance of compliance with all professional standards, including those relating to ethics and integrity applicable to accountants and attorneys, related to the subjects below.
- EY's evaluation shall include assessing *sufficiency of training/guidance on ethics, anti-retaliation, and whistleblowing*; whether its culture supports ethics and compliance culture; among other items.

# Case Questions

1. What occurred here could be described as a systems-level failure. Investors rely on audit firms to be their eyes and ears in reviewing and analyzing corporate financial information. Federal securities laws require that this be done with the highest standards of integrity because of the important role it plays in facilitating public trust. Their role as gatekeepers depends on the integrity of the independent audit firms' audit personnel, but also the others in the system, such as the managers, senior leaders, and attorneys.
    - o Do you agree that this was a systems-level failure? If so, what were the failure points in the system?
    - o Given the important role of gatekeepers, what are your thoughts about the sufficiency of the SEC actions?
2. Cultural norms and tone at the top are important factors in managing ethics. The 2017 EY email to all U.S. employees from senior leadership was an attempt to set the tone with respect to this widespread cheating. Why didn't it work? Could it have inadvertently created negative consequences?

- o What early interventions by the firm's executive leaders could have impacted the course of action?

3. If you were a leader in the Denver office, having discovered in 2016 that your auditors have cheated on the exams, what would you have done?

4. In a recent **essay for the FCPA Blog**, Caterina Bulgarella and I wrote: "Studies have found that (**click here**) compared to other library books, ethics books are less likely to be returned to the library from which they were borrowed, in violation of the rules. There are likely various reasons for this, including that the act of borrowing ethics books could prime a feeling of righteousness or that reading such books could make one overconfident about their understanding of ethical issues." How might this relate to audit professionals? Is it possible that their professional role has created a blind spot?

5. Business and its leaders are often focused on numbers and financial goals. Auditors are tasked with focusing on quantitative analysis and the sufficiency of financial methodologies. Behavioral science studies have shown that (click here) a "calculative" mindset can put people into a cost/benefit analysis frame, which impacts ethical behavior. Could this dynamic have created a blind spot for auditors? If so, how could you mitigate it?

6. Should the CPA Institute take any action against its students? Why or why not? What might that action look like?

7. The EY auditors at fault weren't serious about or committed to their ethics education and exams. Ethics education and training are at times viewed as boring, or "check the box" exercises that don't actually help address core ethics challenges. What are the ways that companies are investing in ethics education? What might companies do differently?

   - o Are colleges and certifying institutions (like the CFA) making the appropriate investments? What might they do differently with respect to ethics education?

8. EY and KPMG clients were likely very surprised to hear this news. We don't have any publicly available information about the client reactions — what would you anticipate would be your reaction if you were a client of one of these firms? How would you raise your concerns, if any?

9. What actions might have been taken by the EY professionals who did not cheat themselves, but who were aware of the cheating?

## Additional Reading

Caterina Bulgarella & Azish Filabi, EY and KPMG Cheating Scandals Expose Ethical Challenges for the Audit Industry. FCPA Blog (August 15, 2022), available at **https://fcpablog.com/2022/08/15/ey-and-kpmg-cheating-scandals-expose-ethical-challenges-for-audit-industry/**

Dave Michaels, Ernst & Young Fined $100 Million in Ethics Exam-Cheating Probe. WSJ (June 28, 2022), available at **https://www.wsj.com/articles/ey-paying-100-million-to-settle-probe-of-auditors-cheating-on-ethics-exams-11656410401**

In the Matter of Ernst & Young, LLP, Administrative Proceeding (File No. 3-20911), Securities Exchanges Act of 1934 (Release No. 95167, June 28, 2022), available at **https://www.sec.gov/litigation/admin/2022/34-95167.pdf** and accompanying SEC Press Release, available at **https://www.sec.gov/news/press-release/2022-114**

Matthew Goldstein, Ernst & Young to Pay $100M Fine After Auditors Cheated on Ethics Exams, New York Times (June 28, 2022), available at **https://www.nytimes.com/2022/06/28/business/ernst-young-sec-cheating.html?searchResultPosition=3**

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