Rogue Corporations, Corporate Rogues & Ethics Compliance: The Sarbanes-Oxley Act, 2002

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Abstract

Managed-mendacity arising from a culture of corporate greed gave birth to the Sarbanes-Oxley Act of 2002. Organizational malfeasance arises from deep within the culture of mega corporations, and consists of the **collective** *issues of complexity and strategy; and,* **individual** *forms of managerial mischief. The impact of unethical corporate behavior has had wide-spread national and global ramifications for the economy and prestige of the United States. This paper looks at survey results that shows that stiffer penalties for wrongdoing embedded into the legislation are beginning to have an impact on corporate social responsibility.*

I. DETERRENCE POLICY AIMED AT CORPORATE SOCIOPATHOLOGY:

The Sarbanes-Oxley Act[1] was one year old on July 30, 2002. Promulgated by Congress as statute and signed into law by President Bush after the corporate scandals of 2002, "*this law says to every American: there will not be a different ethical standard for corporate America than the standard that applies to everyone else. The honesty you expect in your small businesses, or in your workplaces, in your community or in your home, will be expected and enforced in every corporate suite in this country*." (President Bush, White House Press Secretary Release, 7/30/02). Its aim is deterrence--"[to] *adopt tough new provisions to deter and punish corporate and accounting fraud and corruption*".[2] Sarbanes Oxley is the most sweeping attempt to regulate and make ethical public markets since the Securities and Exchange Act of 1934. The Sarbanes-Oxley Act has two broad categories:

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accounting oversight, and corporate governance. Within these domains is regulatory guidance on CEO/CFO accountability, audit committees, external auditor independence, corporate governance and increased financial disclosure transparency. In setting these standards, this Act adopts a new standard for corporate financial reporting accuracy. Titles VIII, IX, and XI, which cover white-collar crimes are the criminal enforcement tools that attach liability to senior leadership for violating reporting requirements[3]. While this is a necessary condition for corporate responsibility, it is insufficient. Public policy, merely addresses the manifestations of corporate social pathology. The cause itself lies in the stickier region of institutional visions, values and beliefs, as modeled by the top executives in corporations. Addressing these issues will be a longer-term effort to change cultures, shared meanings about profit and loss, and social responsibility that must be spearheaded by the highest levels of corporate governance.

How well has Sarbanes Oxley performed to date to mitigate or outright prevent corporate fraud and create a climate for corporate ethics? A look at the issue a year later in this paper reveals complexities and unintended consequences of trying to regulate morality in business.

At the same time, it must be stated that it would be naïve to think that that the issue of corporate roguery can be looked at through the simple frame of pure *theoretical* ethics—where it is easy to distinguish between right and wrong. Rather, to talk about corporate ethics is to encompass it in its *applied* state—namely, a multi-dimensional field replete with many voices, value quandaries, moral mazes, complexities and rapid change. The companies such as Enron and WorldCom, whose actions catapulted the Sarbanes Oxley Act, 2002 into life, had fundamental cultural problems viz., corporate cultures that operated on the basis of one set of values to which they gave lip service, while in actual organizational practice, the structures and processes reflected a different set of values (Leskela, 2003).

II. CORPORATE SOCIAL RESPONSIBILITY:

2.1. The Problem of Leadership:

Leaders set the tone for the organization and the culture of the organization develops primarily via the executive's vision, values, and morality (Leskela, 2003). Sociologist Robert Jackall (1988) argues that characteristics of CEO personality and behavior filter down all the way to the shop floor[4],[5]. Legal writing in this area is in agreement, "Top Management, and in particular the chief

executive officer … set the corporate ethical tone".[6] Also, in this context, Peter Drucker (1973) has suggested that managers being professionals, must be guided by the "*do no harm*" principle as their first responsibility. Drucker sees the executive as wearing a "*badge*" of distinction and privilege. As such, he or she can be held to a higher standard, and should expect a heftier punishment for wrongdoing.[7]

Ralph Nader has labeled the latest corporate criminal behavior as "*greed on steroids*" (*Donahue Show*, July 2002). How can such colossal greed be punished? Stiff financial penalties and long jail terms have been recommended. In addition, there are arguments in the legal literature for "*reintegrative shaming*"–a process by which the criminal himself/herself acknowledges wrongdoing and pledges corrective action (Braithwaite, 1993). Theatrical-style shaming, in the presence of the national media, with enough drama and pageantry could be very useful as effective deterrence for white-collar rogues. The very anticipation of shaming, and of one's family being embarrassed in the community might by itself, be a restraining instrument for greed. Barnard argues that public shaming, in courts, directed at individual corporate CEOs who commit wrongs is particularly effective[8]. Edward Rock has noted that public disgrace shows such individuals up to their small, close-knit, rarefied community-of-interest, where "*the role of reputation is significant*" (Rock, 1997).

There is also argument in the legal literature in favor of shaming members of a corporation's Board of Directors, and sentencing them along with the executive management. This is because these board members implicitly accept the obligation to ensure that their companies conduct their businesses ethically and comply with legal standards.[9] Thus, their culpability should be acknowledged as well. Others present the counter claim that unless something really egregious is occurring that is clearly visible, these board members may not be able to *detect* wrongdoing[10]. To this one might point out that via the evaluations they make of executive personnel, the standards they set for the institution, and the policies they instigate, they can do much to improve the corporate culture and to reduce organizational wrongdoing[11]. Another suggestion for board-level governance is to have it set up an ethics and policy subcommittee to alert itself to, as well as to inoculate against, wrongdoing. This committee can be similar to others that already exist on many Boards of Directors—subcommittees on the environment, on personnel, health and safety issues, for example come to mind. (See Section III.A. of this paper for the results of a survey on employee perceptions of managerial ethics.)

2.2. The Problem of Structure:

Corporations set up systems in which certain practices are encouraged, and people are pressured to do things they might not ordinarily do. For Manuel Velasquez, the issue of corporate ethics is a *systemic* matter and not a matter of *individual* character flaws. "*Unethical practices arise when corporations fail to pay explicit attention to the ethical risks that are created by their own systems and practices.*" In such systems the culture is so structured that management finds it easy to provide rationalizations for deviant demands. Lower functionaries feel pressured into doing things (in the name of the business) that they would not otherwise do. The problem is not a new one, nor is it limited to Enron, WorldCom, Quest, Adelphia, etc. Because of the breadth and scope of these recent scandals, one might easily forget that the last century was beset with indictments of big business for ethical violations. [12] Most of these arose, like Enron, from a "*culture of corruption.*" The culture of corruption begins as a small act of stretching a fact or two about products or revenues. "*Little lies grow into bigger ones* (Elliott and Schroth, 2000) and such stretches of truth eventually get out of hand and turn into big problems. "*Corporate cultures condition people to think that it's alright to lie. One little lie, deemed to be innocent, grows—and then one day an Enron happens.*" (*ibid.*) (See Section III.A. of this paper for the results of a survey on corporate structures that have formal ethics programs embedded in them.)

2.3. The Game of Managed Mendacities:

Business has long been likened to a game. This game played out in the competitive arena uses sports analogies and other gaming activities, with rules of its own, say analysts. In his 1968 *Harvard Business Review* classic, Albert Carr suggests some businessmen believe that since all players know the game, and if bluffing is part of the game, then bluffing is ethical in this context. Like bluffing in a game of poker, such deception does not *"[seem to] reflect on the morality of the bluffer*." British statesman, Henry Taylor suggested "falsehood ceases to be falsehood when it is understood on all sides that the truth is not expected to be spoken" (*ibid*). However, "all players" in this context really means all the *major* players, and not necessarily the rank-and-file employees who are the ones truly hurt by the deceptions. Robert Jackall suggests that rules-in-use are contextual and situational guidelines and are "the ropes to skip and ropes to know" (Ritti and Funkhauser, 1989) in a modern corporation. These become the social morality, or the business ethic that guides the organization through its quandaries and vicissitudes. In a multinational global environment, most of these quandaries involve competition, success, and marketshare. Bluffing, and other deception in

this environment become everyday rules-to-know. Nevertheless, misleading statements about financial losses twist reality and damage the public trust. The sour mood of the investment market can only be reversed when the public get concrete examples from CEOs that they are moving from hoaxing to honesty, "*along with real changes in corporations that address compensation and accounting*" (Cripps, Legg Mason, 7/22/2002)[13]. Looking at this dynamic through a Johari Window[14] the cell showing Public Information (openly disclosed information) would be miniscule in Enron's case. In contrast the same Johari Window would show the Private Information Window (Known to Self and Unknown to Others) as a vast domain, wherein managed mendacity typical nestles down. Carr's argument concludes by arguing that bluffing is another way of saying that someone is lying, and such deception is to be avoided in business at any cost[15],[16].

Another issue concerns prevarications, ambiguities, exaggeration and concealment that are common forms of business behavior when it comes to product/service promotion and advertising. Here reality, not to mention, morality and ethics, seem again to be discarded with impunity. Much advertisement today is based on illusion, or tongue-in-cheek, inevitably employed to mislead. We, the public, accept these "falsehoods" and have become almost immune to their (so called) *ironies* and we are consequently misled with impunity. In the case of Enron's purposeful mendacity, to create the illusion of financial stability, the deception was planned via stages. Double-speak was employed--but not in one fell swoop. Rather, "*they concocted their stories carefully, neither stretching too much at a time.*" Thus, "*their reports seemed reasonable, directionally right. Falsehoods concealed among accurate facts."* (Elliott and Schroth, 2002). Enron did not see this as conspiring. It was merely "managing its earnings". This was done of course by communication that "*fostered the illusion of exploding cash flow," and, as noted by Mitchell, it "...is the new American corporate creed: maximize stock price. This is a norm of behavior that is not legally mandated, [and] is only the product of the last several decades, and, as we have seen and may continue to see, is very bad for business*." (Mitchell, *Jurist Forum*, 2002).

Has the policy intervention helped make corporations accountable by promoting new ethical standards, and correlated corporate structures to meet compliance? We turn now to results of 3 surveys that give a barometer for how the Sarbox is influencing corporate social responsibility in terms of: 1) New ethical standards; 2) Corporate structures to meet the new standards; and, 3) Costs of compliance.

III.THE IMPACTS OF SARBANES OXLEY:

A. SURVEY DATA ON CURRENT CORPORATE ETHICAL CLIMATE:

This legislation is only a year old, hence, definitive studies do not exist that directly show the impact of Sarbanes-Oxley on ethics in corporate life. However, good indirect measures can be utilized from the general business climate vis-à-vis ethical standards. For the purposes of this paper, the periodic National Business Ethics Survey (NBES) data is being used. NBES does periodic surveys on the larger business environment, and its 2000 survey, which was pre-Sarbanes-Oxley, can be compared to its survey in 2003 after the law was promulgated.

The NBES survey asked employees in the 48 contiguous states to share their views on ethics within their corporations, using specific questions. These have been combined to show how organizations distinguish between ethical and non-ethical behavior, management actions and influence, decisionmaking, and values like honesty and respect. The survey of 1,500 participants specifically focused upon the following categories:

2.A. 1. Perceptions of Ethics in the Organization:

Table 2.A.1:
Employee Perceptions of Managerial Ethics

Year	Mgt. Kept Promises	Observed Mgt. Misconduct	Mgt. Pressure/ For Compromise
2003	82%	22%	10%
2000[17]	77%	31%	13%

Interpretation of Findings:

Management appears to have become more ethical in 2003 as compared to 2000. The difference could be imputed to the Sarbox policy intervention. Employees also noted that "actions count", i.e., when management actually models ethical behavior, versus just simply talking about ethics. Here observed misconduct was shown at 15% when management is proactive, versus 56% when management merely paid lip service to ethical standards.

Table 2.A.2:
Impacts of Formal Organizational Ethics Programs, 2003

Four Categories		Reporting of Misconduct[18]
Written Standards Ethics Training Ethics Advice/Counseling Anonymous Report Channels	--------→	78%

Interpretation of Findings*:*

The availability of formal ethical programs in an organization has the effect of higher reporting of misconduct. Conversely when there are written standards + one other category in place reporting goes down to 67%. When there are written standards only it was 52%, and when there were no programs reporting was low at 39%.

Table 2.A.3:
Impact of Organizational Size on Ethics Programs, 2003

Categories	Large Orgs. (500+)	Small Orgs.(-500)
Training	67%	41%
Anonymous Reporting Mechanisms	77%	47%

Interpretation of Findings*:*

Size apparently matters in terms of the breadth and scope of organizational ethics programs that can be provided and larger companies show higher reporting rates than smaller companies with fewer ethics programs.

Table 2.A.4:
Types of Organizational Intimidating Tactics, 2003

Abusive/Intimidating Behavior	21%
Misreporting of Hours Worked	20%
Lying[19]	19%
Withholding Needed Information	18%

Interpretation of Findings:

Overall 3 additional useful findings arise from this survey. 1) Nearly 1/3 of respondents say that tacit agreements with questionable practices still exist. They impute this by organizational respect bestowed upon those who achieve success by using such tactics. However, this is likely to be reduced as more companies fall under the penalties of Sarbox. 2) Another useful finding was that younger managers (under age 30) with less than 3 years tenure in the organization are twice as likely to feel pressure to compromise ethics standards. 3) Finally less than 3 in 5 employees (58%) who report misconduct are satisfied with the response of their organizations.

B. SURVEY DATA ON COMPLIANCE STRATEGIES:

A was survey undertaken in June 2003 by PeopleSoft and Business Finance Magazine which involved more than 880 Chief Financial Officers and senior Information Technology executives about their corporate strategies designed to comply with Sarbox. Responses were elicited in the following categories:

b.l. Organizational implementation or evaluation of a compliance project:

Results reveal that 86% of respondents were engaged in either evaluating or implementing a compliance project. Out of these 56 % were planning to implement a project in the next 6 months.

b.2. Importance Placed Upon x404:

Section 404 requires business process audits and documentation to support internal controls certification. In response, 71% of respondents believed that this is the most important part of the Sarbanes-Oxley Act.

b.3. Need for Process Improvements:

Respondents believed by an overwhelming margin of 65% that process improvements in how financial data is managed as mandated by Sarbanes Oxley will increase business efficiencies and competitive advantage.

b.4. Organizational Perceived Need for Upgrade of Compliance Systems:

In order to achieve compliance 40% of survey respondents believed that they need to upgrade current systems for: 1) business performance management solutions; 2) internal compliance portals; 3) enabling workflow systems; and 4) replacement or upgrading of financial systems.

Interpretation of Findings:

Corporations appear to be seriously concerned about their organizations' internal controls matching the requirements of reporting placed on them by Sarbanes Oxley. Most companies (86%) are already engaged in evaluating or implementing an internal controls project, while the data shows that 40% intend to upgrade current processes and systems in their compliance efforts (Van Decker, METAGroup, July 15, 2003).

C. SURVEY DATA ON COSTS OF COMPLIANCE:

Compliance with any policy instrument comes with costs, and Sarbox is no exception. A survey executed by Price Waterhouse Coopers in July 2003, shows corporate impressions of cost of compliance with Sarbanes-Oxley:

Table 2.C.1:
MNC Senior Executive Survey

Not Costly	12%
Not Particularly Costly	44%

Somewhat Costly	39%
Very Costly	5%

Source: Price Waterhouse Coopers, "Senior Executives Divided on Cost of Complying with Sarbanes Oxley Act," 7/2/2003

Table 2.C.2.
Report on Cost by Company Size

Company Size	More Costly	Less Costly
Smaller Companies (Revenues Under $1 billion)	58%	--
Larger Companies (Revenues over $1 billion)	--	38%

Source: Price Waterhouse Coopers, "Senior Executives Divided on Cost of Complying with Sarbanes Oxley Act," 7/2/2003

Table 2.C.3.:
Cost Breakdown By Functional Area

Type of Corporate Activity	Somewhat Costly/ by Executive Report
Internal Resources	76%
External Assistance	24%
Documentation	74%
Legal Compliance	72%
Policy Development	65%
Self-Assessment	62%
Certifications	52%
New Tools and Technology	41%

Source: Price Waterhouse Coopers, "Senior Executives Divided on Cost of Complying with Sarbanes Oxley Act," 7/2/2003

Interpretation of Findings*:*

Sarbanes Oxley has been costly for companies, but executives surveyed expect future annual costs for the Act to stay about the same or decline. Overall, executives reported that total costs for control and compliance were expected to average 10.4% of their management controls budget over the next two years (ibid).

IV. COMPLEXITIES OF CORPORATE CULTURES:

4.1.The Complex Universe of Corporate Ethics:

Talking about a "corporate ethics" today might well be met with skepticism given the scandals of 2001-2002[20]. Nevertheless, corporate ethics--or lack of such--is of vital interest to the public these days. Lack of basic ethics and fair play has been major factors in leading vital organizations to rapid entropy within the span of just a year. The issue of corporate ethics is not as simple to achieve as one might be led to believe given the twin realities of modernity inherent in mega corporations of the 21st century. These issues of modernity are organizational complexity and rapid change.

It must be acknowledged at the outset that complex organizations face issues that are ill-structured in nature (Mitroff and Sagasti, 1973)[21] with choices that are intransitive (Dunn, 105, 1988). Here we find simultaneously in existence multiple competing issues whose outcomes are uncertain. Any given choice could lead to immediate disaster. Taken in combination, this puts any organization, in tenuous equilibrium, teetering like a see-saw. Into this volatile mix also, throw in unethical, self-serving leadership, and dangerous invalid, not to mention immoral, organizational practices. One is then confronted with an Enron, a Worldcom, an Arthur Andersen, and the like.

In this paper for the purposes of simplification, the issue of corporate ethics is being broken down into two very distinct realms. On the one side, we have management ethics—or *individual values*, standards, and beliefs of corporate executives. This raises issues of rights and responsibilities of executive personnel as well as their propensities for malfeasance and mischief. On the other side, we have the notion of corporate values and standards. These are the *collective values* of the juristic, yet living, entity—the mega corporation. These are the standards that have accrued to it via time, tradition, and day-to-day decisionmaking. The nature of economic means-ends chains relating to competitiveness and productivity are also important as a springboard for

discussion, as are organizational structural imperatives.

Together these individual and collective behaviors and policies form what we recognize as the "*culture*" of the organization. All of the issues stemming from individual and the collective wrongdoing--involve ontological, epistemological and methodological choices that were made. In the case of the rogue corporations, the methodology of producing the information was deliberately flawed. Complexity and rapid change then led to entropy.

Furthermore, it must be stated that "law is but a 'moral *minimum*'" (Madsen and Shafritz, 1990). Law cannot legislate corporate morality completely. It can and does, however, as the title of this paper suggests, restrain or inhibit the propensity to immorality. Sooner or later under the hands of clever accountants and lawyers the intent of the law will be thwarted by the greedy and self-serving that have economic access to millions of dollars. Even the most carefully prepared legislation is less than comprehensive and optimum and simply satisfices[22]—or is merely *sufferable*[23].

4.2. Impacts on Human Resource (Intervening[24] Variables):

Wholesale destruction of a corporation's major capital resource—its personnel—has been a disturbing trend of mega corporations in the last decade. Hersey and Blanchard, 2002, describe this as the destruction of organizational "intervening" variables. *Intervening* variables are the human resources of the organization—its very nuts-and-bolts, so to speak.[25] In the drive to show short-term profits that form the end-result, or *output* variables of a company, leaders manipulate the *input* variables (the causal or stimuli variables—in this case false reporting of profit and loss. In the process, the intervening variables, the people and the plant, which take a long time to develop and to build up are unprotected, and often are destroyed. In the cases under discussion, short-term self-interest over long-term corporate interest was the *modus operandi*. At Enron, this form of selfish manipulation was done by "moneymakers" on a "'*five year' mission. Their goal was to manage an initial public offering, take over a solid publicly-traded company, push the stock to the sky, and cash out.*" (Elliott and Schroth, 2000). Thousands of intervening variables—i.e., employees, communities and lives were thus destroyed.

4.3. The Reagan Legacy of Corporate Covetousness: Corporate selfishness, evident in the mantra perpetuated in the Reagan years of the 1980s, is captured in the refrain in the film Wall Street –"*greed is good*". Even the lip service given by the former generation of the 1950s, 60s and 70s, to

ethical values and standards became muted during the 1980s. It is not surprising, therefore, to see big lapses in business ethics, such as the insider trading scandals in the Reagan years. Professor Lawrence E. Mitchell has likened the Reagan credo to be the "*rough equivalent of telling an alcoholic that The New England Journal of Medicine had reported the health benefits of excessive consumption of liquor* "(Forum, *Jurist*, 2002). We go back to the days of "honest graft" practiced by politicians of the Boss Tweed era.[26]

4.4. Reform the Via New Policy Instrument:

The Sarbanes-Oxley Act calls for improved financial reporting, independent audits and accounting services for public companies. In addition it also attempts to short-circuit individual and collective wrongdoing in the following ways:

- Creates a Public Company Accounting Oversight Board to enforce professional codes, standards, and ethics for the accounting profession and its professionals.
- Strengthens the independence of firms that audit public companies.
- Increases corporate responsibility and the usefulness of corporate financial disclosure.
- Increases penalties for corporate wrongdoing.
- Protects the objectivity and independence of securities analysts.
- Increases Securities and Exchange Commission resources.[27]

Already critics claim that like the Patriot Act of 2001[28], this bill too was passed in haste. This, they say, creates many uncertainties that will have to be sorted out over the years. All this comes about because the Sarbanes-Oxley Act is only partially *self*-executing and it contemplates *other* executions via SEC or stock exchanges. (Krantz and Strauss, *Dodge Palmer Report*, 8/2/2002). Thus the full impetus of this legislation cannot be considered either by itself, or immediately, as it is part of a broader effort that includes SEC rulemaking. The latter part is not effective immediately but will be soon, as SEC adopts the

relevant rules within a given time frame of 30 days to 12 months (Perkins Coie, 8/2/2002). Also required are DOJ input, stock exchange listing standards proposals and private group actions.

The addition of Section 906 of the Act, regarding certification of books by CEOs of large corporations was introduced as an amendment by Senator Joseph Biden of Delaware. This is now catching some companies by surprise, because it sweeps into the mix those corporations that were not included in the SEC's previous targeted list of 947 corporations that were required to certify their books. CEOs scrambled around to certify their books in compliance with the Act, because the effectiveness of the Section 906 of H.R. 3763 was immediate. Some CEOs had just hours to certify their books.[29] To make things worse even companies among the 947 targeted by the SEC perceive the section as requiring them to re-certify books to satisfy the Sarbanes-Oxley Act, 2002. Additionally, critics question whether validity and reliability of the documents will be compromised by the broad statement that precedes the CEO's signature: "*to the best of my knowledge*."

To complicate the issue further, Section 906 is to be enforced by the Department of Justice, not the Securities and Exchange Commission. The net immediate result of the passage of this statutory law is to have regulators stepping over one another.

4.5. Influence of the Intellectuals:

One issue that needs to be addressed more directly concerns the blind faith of neoclassical economists, clustered around our universities and think-tanks, in the efficacy of markets--despite lack of evidence. Here our neoclassical legal brethren have also joined in, maintaining that the workings of capitalist markets have built-in safety systems that would effectively punish corporate pathogenetic-types who put their own self-interest over that of their shareholders. This view naturally suggests that government intervention is not needed. Such thinking, again arising from the Reagan era, influences much of the relevant scholarly literature of the last decade. It has proven itself wrong.

V. RECOMMENDATIONS:

The hard-bitten French skeptic, Montaigne, once argued: "Man is an amoral creature inevitably committed to the moral enterprise." Montaigne was actually declaring that predatory and degenerate as man might be he cannot live

without certain ideals. These ideals could not have been developed had there not been a germ of this idealism in the very make-up humanity itself. The capacity to feel shame and guilt when men fail to live up to their moral codes demonstrates that men are creatures of conscience. It is this sense of shame and guilt that one can appeal to, not only via public laws, such as the Sarbanes-Oxley Act, 2002, but also through the urgings of our fellow citizens.

Earlier it was noted that the law can only provide for *moral minimums* as far as rightdoing is concerned. Laws are but a caricature, or small approximation of what is needed to correct social wrongs. Thus, in addition to statutory disincentives to wrongdoing such as H.R. 3073, 2002, and other regulations, some additional preventative inoculations that individuals and groups can take are given below. They require that the sovereign people take a proactive stand: 1) via their elected representatives, 2) via their corporate votes as investors, 3) via their professional and employee associations, and 4) their voiced dissent via the various forms of the media. Some of the recent recommendations that have arisen from town meetings throughout the country in late summer of 2002 are provided below:

1. The public must resist further de-regulations, which keeps the governmental watchdogs out of corporate crime investigation because of the self-interestedness of corporate leaders.
2. In a regulated industry "watch the watchdogs" so their independence is not compromised and captured by corporate leaders.
3. Shareholders must exercise their power more forcefully by demanding more disclosure and information-sharing, so as to prevent mega corporations from running amok.
4. Employees must take proactive stands through their professional and employee-based associations to demand corporate responsibility.
5. Hold elected representatives to standards of independence and accountability.
6. Employees and investors alike must be vigilant in managing their financial affairs—one aspect of which is to keep their financial eggs in different baskets. Never again overload retirement investments into a company's stock[30] or any other single stock source[31].
7. Protection must be ensured for those employees who have been laid off without pension and are ill, and thus have no means of support.
8. The practice of using board members who serve on other corporate boards must be so as to prevent "*dispersion of interests*" as well as conflicts-of–interest.

9. CEOs need to be reminded that when they decide to go public and sell the company's stock that the company now belongs to the public and no longer to them alone.
10. Periodic business ethics courses must be given to all managerial staff of corporations.
11. Business ethics courses must be included in the curricula for students in colleges and universities, especially for those business-related disciplines.[32]
12. Academics and other intellectuals need to mobilize themselves and demand more government funding to offset corporate-funded research with its potential for conflicts-of-interest.

While lawyers and accountants try to deal with unknowns in the aftermath of Sarbox, corporate executives try to change to best practices to implement it, the audit committees must in the end rely on the information provided by these groups—they cannot manufacture these data. Ultimately it will depend on how willing key individuals are to set aside self-interest for collective good. Congress can create laws for us, but "until individuals are willing to increase their ethical behavior, the public may not obtain the level of protection that they desire….what is needed is a change of heart" (Satava, http://www.sbaer.uca.edu) to change individual behavior and ultimately to change organizational culture. Changing this, however, is a slow process.

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[1] The Sarbanes-Oxley Act is Public Law 107-204, promulgated in the 107th Congress, 2002. This Act has over the course of the year that it has been in effect come to be known by the shortened form of "Sarbox."
[2] Critics of this bill were quick to note that the legislation "was passed in haste and with regulatory zeal …. Because of these factors, the Act creates many issues and areas of uncertainty that we will be sorting out for years." *Dodge Palmer Report*, on the Sarbanes-Oxley Act of 2002, 8/2/2002. Others have called Sarbanes-Oxley 2002, the "shot-gun wedding offspring of Enron/WorldCom scandals…." (*Bank Director Magazine*, 2nd Quarter, 2003)
[3] While such provisions were in place before Sarbanes Oxley, the enforcement mechanisms have been strengthened, and penalties for executives—such as a fine up to $5 ,million and/or imprisonment up to 20 years—have been set into place.
[4]"In the early stages of my fieldwork at Covenant Corporation, for example, I was puzzled by the inordinately widespread usage of nautical terminology, especially in a corporation located in a landlocked site. As it happens, the CEO is devoted to sailboats and prefers that his aides call him 'Skipper'." (Jackall, R., in *Moral Mazes: The World of Corporate Managers*, 1988).
[5]When a CEO endorses the Ku Klux Klan and tells his employees—"I don't like niggers and I do not want to see them in my stores," there is little wonder that a pattern of race discrimination develops from the top to the bottom of the firm. See Barnard, J., "Reintegrative Shaming in Corporate Sentencing," in *Southern*

California Law Review, 72:4, May 1999.
[6] Barnard, J.,(ibid).
[7] "In England, a magistrate still tends to hand down a harsher punishment in a drunken-driving case if the accused has gone to one of the well-known public schools, or to Oxford or Cambridge. … No one expects an Eton education to produce temperance leaders. But it is still a badge of distinction, if not privilege. And not to treat a wearer of such a badge more harshly than an ordinary workingman who has had one too many would offend the community's sense of justice." Drucker, Peter F., *Management*, *Tasks, Responsibilities*, 1974, Harper and Row Publishers, Inc.
[8] Barnard notes that "successful executives typically conduct themselves so as to enhance the perception that they are wise and all-knowing, that their judgment is valued by others and that they move in influential public circles. They serve on charitable boards, for example, and participate as distinguished speakers at university functions. … Challenges to these men's women's reputations consequently are not taken lightly—and events that cast them or their business skills in an unflattering light may have a particularly dramatic impact upon them."
[9] See *Corporate Director's Guidebook*, 33 Bus. Law. 1591, 1610 (1978). "The Corporate Director should be concerned that the corporation has programs looking toward compliance with applicable laws and regulations, both foreign and domestic, that it circulates (as appropriate) policy statements to this effect to its employees, and that it maintains procedures for monitoring such compliance. Corporate Directors' Guidebook 1994 Edition, 49 Bus. Law. 1247, 1249 (1994). "Directors' responsibilities include, 'adopting policies of corporate conduct, including compliance with applicable laws and regulations…." Both the American Law Institute Principles of Corporate Governance and the Model Business Corporation Act suggest that directors should be concerned about the existence and adequacy of compliance programs. See Edward Brodsky, *Directors' Liability—The Importance of Compliance Procedures, DEL. CORP. LITIG. REP*., Mar. 17, 1997, nn. 22-27 and accompanying text. The National Association of Corporate Directors recommends that boards of directors "ensure ethical behavior and compliance with laws and regulations…." NATIONAL ASS'N OF CORP. DIRS., REPORT OF NACD BLUE RIBBON COMMISSION ON DIRECTOR PROFESSIONALISM (1996).
[10] *Graham v. Allison-Chalmers Mfg. Co*., 188 A.2d 125, 130 (Del. 1963).
[11] *Joy v. North*, 492, F.2d,880, 896 (2d Cir. 1982)., *Wilshire Oil Co. v. Riffe*, 409 F.2d 1277, 1285-86 (10th Cir. 1969); *Resolution Trust Corp. v. Dern*, 854 F. Supp. 626, 636 (D. Ariz. 1994); *Resolution Trust Corp. v. Norris*, 830

F. Supp. 351, 357 (S.D. Tex. 1993); and *Massey v. Disc Mfg., Inc*., 601 So2d 449, 456 (Ala, 1992).

[12] Velasquez cites the situation of 11% of American business corporations between 1970-80 that were convicted for ethical violations, including bribery, criminal fraud, illegal campaign contributions, tax evasion, or price-fixing. Among those with multiple violations were Braniff International, Gulf Oil, Ashland Oil, Allied, American Airlines, Bethlehem Steel, Diamond International, Firestone, Goodyear, International Paper, National Distillers, Northrop, Occidental Petroleum, Pepsico, Phillips Petroleum, R. J. Reynolds, Schlitz, Seagram, Tenneco, Union Carbide, etc. Valesquez, M. , "*Corporate Ethics: Losing it, Having it, Getting it*." unpublished paper, in Madsen, P., and J. M. Shafritz, 1990.

[13] Richard E. Cripps is chief equity strategist in Legg Mason. His views are quoted in *Newsweek*, 7/22/2002

[14] See J. Luft and H. Ingham, "The Johari Window: A Graphic Model of Interpersonal Awareness," *Proceedings of the Western Training Laboratory in Group Development*, UCLA, 1955.

[15] "Is Business Bluffing Ethical?" *Harvard Business Review*, 48: 1968.

[16] See also Sissela Bok's treatment of lying in government, where she says that sometimes lying is necessary, but it always comes at a cost to the liar (Bok, 1978).

[17] Previous NBES Survey on managerial ethics used as a comparison.

[18] Reporting of Misconduct when all 4 categories of ethics programs are in place in a corporate yields high results.

[19] Any student of statistics can tell you that "good" results depend on truthfulness of inputs. One form of this truth is measured via validity and reliability principles. Validity asks the question, *are we measuring what we say we are measuring*? (Kerlinger, 1986). Content validity—a primary criterion of evaluation--was the basic and deliberate weakness in Enron's accountant-certified corporate reports as well as reports from many other organizational rogues of the recent past. The performance reports of Cendant, Waste Management, Global Crossing and Tyco International, to name a few of such corporate rogues--were certified as accurate by their auditors. Yet, Cendant allegedly booked $500 million in fake revenue over 3 years. Waste Management defended itself in 70 class-action security fraud suits and became the most sued company in 1998. Global Crossing was charged with accounting fraud and inflated profit reporting. Tyco International was investigated for hiding debt to make revenues look better. These revelations are just the tip of the iceberg. (*Dodge Palmer Report*, 8/2/2002). For

example, CEO Kenneth Lay's annual report of 2001 led investors and employees to believe that Enron was pursuing a range of activities that protected their interests; and he claimed that this was being done in the spirit of "*respect, integrity, communication and excellence*." In truth none of the executives adhered to these high-minded principles, whereas rank-and file-employees took them seriously and practiced them. This say, the authors of *How Companies Lie* (Elliott and Schroth, 2002) "is the ultimate power of deception, to cause good people to do the right things while those in power do the opposite."
[20]Within less than a year corporate wrongdoing by Enron, Arthur Andersen, WorldCom, Adelphia, Merck and many others, have caused broad and deep problems for the economy of the United States of America. These companies have breached their fiduciary duties by withholding or concealing material information from their employees, investors, 401(k) participants and beneficiaries, and the government.
For a discussion on intransitive choices see Arrow's Impossibility Theorem. This is a theorem argued by Kenneth Arrow that demonstrates in formal logical terms that it is impossible for policymakers to aggregate individual preferences without violating one or more of five "reasonable conditions" of democratic decisionmaking. See Arrow, K., *Social Choice and Individual Values*, John Wiley, N.Y., 1963.
[22] Simon, H., *Models of My Life*, 1991.
[23] For the "*Sufferance Principle*" see, Coates, Public Administration and Management: Interactive Journal, 2002
[24] Likert, R. (1961). *New Patterns of Management*, McGraw-Hill, N.Y., and Likert, R. (1967). *The Human Organization: Its Management & Values*, McGraw-Hill, N.Y.

[25] (*Ibid).*

[26]"Everybody is talkin' these days about Tammany men growin' rich on graft, but nobody thinks of drawn' the distinction between honest graft and dishonest graft. There's all the difference in the world between the two. Yes, many of our men have grown rich in politics. I have myself. I've made a big fortune out of the game, and I'm getting' richer every day, but I've not gone in for dishonest graft—blackmailn', gamblers, saloon-keepers, disorderly people, etc.---and neither has any of the men who have made big fortunes in politics.
There's honest graft, and I'm an example of how it works. I might sum up the whole thing by sayin': 'I seen my opportunities and I took 'em'." William Riordan (1905). *Plunkitt of Tammany Hall*, McClure, Phillips, New York

[27] "A New Ethic of Corporate Responsibility," *West Wing Connections*, The White House, 7/30/2002
[28] the Patriot Act, 2001, followed a scant month after September 11, 2001 terrorist attacks, and one that has been subject to mixed reaction--widely criticized in some liberal circles as well as applauded in others.
[29] Among the scramblers were Applebee's MITY Enterprises, and OraSure. About a dozen companies filed oaths with the SEC, adding to the 17 that already had, certifying their books. Among these were United Technologies, R.J. Reynolds, Newell Rubbermaid, BMC Software, Golden West Financial, Mony Group, Comcast, ExxonMobil and Clear Channel (*USA Today*, 8/1/2002).

[30] **Company Stock Overloads in Retirement Plans**

Corporation	**% of Assets in Company Stock**
Proctor & Gamble	94.65%
Sherwin Williams	91.56%
Abbott Labs	90.23%
Pfizer	85.50%
BB&T Corp.	81.69%
Anheuser Busch	81.59%
Coca-Cola	81.47%
General Electric	77.39%
Texas Instruments	75.65%
Wm.Wriggley, Jr., Co.	75.55%

Source: DC Investing, 2002

[31] *New York Times* columnist Eichenwald, *Donahue Show*, July 2002
[32] Senator Patrick Leahy has asserted that ethics is so missing in business today that it should be socialized into consciousness in higher education—especially in law and management schools (AMC 7/9/02).