ETHICS: THE ROOT OF COMPLIANCE
What it is.
Why it matters.
How to get more of it.

by Michael Josephson  Josephson Institute of Ethics
How excited are you about spending an hour listening to an L.A. lawyer talk about ethics?
YOU DON’T HAVE TO BE SICK TO GET BETTER
If you change your perspective you change the way you experience the world.

Three stoncutters were asked what they were doing.

• The first man replied: “I am making bricks from this stone.”

• The second said: “I am making the foundation for a building.”

• The third answered: “I’m building a cathedral.”

So what? What difference does it make how a person looks at his work?

If you change your perspective you change the way you experience the world.
Thousands of hospitals all over the country spent huge sums preparing for the possibility of receiving an Ebola patient. If they never had a patient did they waste their money?
What do you think of when you see this picture?
How long will it take for this hospital to regain its reputation?
The objective of a compliance program is to detect and prevent unlawful conduct within the university.

To achieve this an institution must develop mechanisms to assure that employees know the law and increase the likelihood that they will obey it by establishing detection and reporting processes that create a credible likelihood that lawbreakers will be caught and disciplined.
Promote Ethical Culture

Prevent Ethically questionable conduct

Prevent Unethical (lawful but awful) conduct

Prevent Civil liability

Prevent Regulatory violations

Prevent Criminal conduct
"We just got an update to the user manual for our Electronic Medical Record system. Where do you want it?"
EMPLOYEES MUST WASH HANDS

...then take a polygraph test to prove that you actually washed them.

Yes, we are really serious about this.

No kidding.
“Compliance is more than looking to the letter of the law. Indeed, many organizations that have compliance programs already describe them as ethics and compliance programs and also employ ‘ethics officers’. In fact, it is questionable whether a compliance program can be truly effective if it does not have an ethics component.”

- Judge Diana E. Murphy, Chair of the U.S. Sentencing Commission (2002)
“Experience suggests that good ethics programs and good compliance programs are interdependent; each is incomplete without the other.

“A good compliance program must emphasize values and moral responsibility, because this increases the program’s effectiveness among employees.”

- Dawn-Marie Driscoll (cited by Judge Diana E. Murphy, Chair of the U.S. Sentencing Commission in 2002)
“A parade of major scandals culminating in the most damaging and costly demonstration of wholesale corporate irresponsibility in history—the worldwide economic crisis created by the mortgage brokers and other financial institutions—should convince the folks in the C-suites and the boardrooms that no matter how good they look or expensive they are, internal control programs that focus almost entirely on compliance haven’t and won’t protect their organizations from reputation-damaging, resource-draining scandals. They also will not meet the new standards of federal prosecutors and regulatory agencies.”

- Michael Josephson, “It’s time to get serious about the ethics dimension of your compliance program” Compliance & Ethical Professional April 2014
In 2004 the Guidelines were amended with the explicit warning that “check the box” compliance programs would be insufficient to justify a sentencing reduction.

Under the revised guideline the judge must find that the program “promote[s] an organizational culture that encourages ethical conduct and a commitment to compliance with the law.”
Perceptions and Mindsets
What is a Mindset

A habitual or characteristic mental attitude or an inclination or disposition that influences or determines a person's responses to and interpretations of situations.
Do you see the arrow?
Do you see the arrow?
Do you see the arrow?

Character & Ethics
Once you realize that messages and images are often embodied in negative space (the white space) you will look for such messages and often find them. This is an example of a strategy that can open up your mind. Look for messages in the white space.
What does your arrow say about you?

What values are critical to you personally?

What values are critical to your firm?

How do you assure that everyone in your firm upholds your values?

What is your responsibility to your clients to assure that they conduct business ethically as well as legally?
How many arrows are there?
What do you see?
If you want to grow you have to know you do not always see all there is and others will see things you don’t.

Remember, you don’t have to be sick to get better.
How much larger is the car in back compared to the car in front?
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What it is.

Why it matters.

How to get more of it.
What grade would you give:

1. The ethics of society as a whole
2. The ethics of the college-age generation.
3. The ethics of your student population.
4. The ethics of your institution as a whole
5. The ethics of faculty at your institution.
Which is the bigger problem: Compliance or Ethics

Compliance

Ethics
Good ethics is good sense
If we solved all compliance problems would we also solve all or most of our ethical problems?

If we solved all ethical problems would we also solve all or most of our compliance problems?
Ethics Is Bigger Than Compliance

Compliance is about doing what you are required to do by laws or rules.

Ethics is about doing what you should do because it is right.
Big E ethics

• core principles about moral right and wrong; what it is to be a good and worthy person/institution

Little E ethics

• laws and rules (compliance ethics); gifts, conflicts of interest, etc. The Professional Code of Conduct
So what is ethics?
‘Perhaps “unethical” was the wrong word; I meant sort of complex — legally complex . . . ’
Ethics is not just a factor to consider – it’s a ground rule

"THIS MIGHT NOT BE ETHICAL. IS THAT A PROBLEM FOR ANYBODY?"

Drawing by Victor; (c) 1987 The New Yorker Magazine, Inc.
You can’t avoid ethical responsibilities by ignoring them

"MISS JOHNSON WILL NOW PASS OUT THE MORAL BLINDERS."
Ethics is about right and wrong and how an honorable person should behave.

Values refers to all important beliefs. Ethics refers only to beliefs about moral right and wrong.

Values Are Different Than Ethics
There’s a big difference between what you have a right to do and what is right to do.

Justice Potter Stewart, U.S. Supreme Court
• Ethics requires us to give up the idea that an act is proper simply because it is permissible or that an act is ethical so long as it is legal.

• An ethical person often chooses to do more than the law requires and less than the law allows.
Beyond Legalism

In today’s environment, a narrow legalistic mentality will not only be inadequate, it can substantially increase risks.

Fueled by new laws and intense public cynicism, journalists, regulators, and prosecutors have become more creative and aggressive in bringing charges that can result in huge costs irrespective of technical legalities.
Ethics is not about the way things really are . . .
It’s about the way they ought to be
If you could interview the people who would date and might marry your children, what qualities are essential to you?
Six Pillars of Character

- Trustworthiness
- Respect
- Responsibility
- Fairness
- Caring
- Citizenship

TRRFCC
In an ethical culture, ethical principles are embedded in the DNA of the organization.
Enemies of Integrity

Self-Delusions & Rationalizations
Self-Delusion

Everyone is ethical in his or her own eyes.
Doctrine of Relative Filth

I’m not so bad as long as others are worse.
We judge ourselves by our best intentions, our most noble acts, and our most virtuous habits.

We are judged by our last worst act.
Is it ethical to lie to a liar?

Can you cheat a cheater and not be a cheater?
How many times do you get to lie before you are a liar?

How many times does someone get to lie to you before distrust sets in?
Necessity is not a fact.

It is an interpretation.
Most of us overestimate the cost of doing the right thing...

and underestimate the cost of failing to do so.
When you decide to fight fire with fire all you get is the ashes of your own integrity.
The problem with the rat race is that even if you win, you’re still a rat.
When confronted by an approaching bear

I don’t have to out run the bear . . .

I just have to out run you!
Exemplary Decision-Making

- Effective
- Lawful
- Ethical
- Best Possible Result
Aspects of a Good Decision

Based on sufficient reliable information

Effectively accomplishes the decision-maker’s objectives
- Efficient
- Avoids unintended consequences (collateral damage)
- Results in the most good and the least harm to each stakeholder.

Is and appears to be ethical
- Generates trust
- Treats all stakeholders respectfully
- Acknowledges and fulfills the decision-maker’s responsibilities
- Is fair to all concerned
- Demonstrates caring and concern for all stakeholders
- Abides by laws and rules
Actions are the result of choices
Attitudes are the result of choices
Choices create consequences
Each change in attitude or actions creates different consequences
Good choices create good consequences
Good choices produce good results.

Better choices create better results.

The best choices produce the best possible result.
The difference between a rational decision and a rationalization is based on when the reasoning process takes place.

In a rational decision one reasons first in order to reach a conclusion.

In a rationalization the reasoning process is used to justify a conclusion or decision.
But what does this have to do with the ethics in your organization?

What does management want from employees?

What do employees want from their managers?

What does the public want and expect from your company?
Tests for Making Ethical & Effective Decisions
Rule of Universality

Do only those acts which you are willing to allow to become universal standards of behavior applicable to all people in similar situations.

If everyone did it, would it be a good thing?
The Publicity Test

What would you do if you knew that your decision and the true reasons behind it would be reported on the front page of the newspaper or on the ten o’clock news?
The Role Model Test

- What would Mother Teresa do?
- What would Superman do?
- What would Forest Gump do?
- What would your mother do?
- What would ____________ do?
Kid Over Your Shoulder Test

Would you do it if you knew your kid was looking over your shoulder?
Other Parenting Tests

What would you advise your child to do?

What would you hope your child would do?

What would the kind of person you want your child to date or marry do?
The Golden Rule

Do unto others as you would have them do unto you.
Golden Rule Mutants

AS A RULE OF REVENGE
Do unto others as they have done unto you.

AS A RULE OF SELF-DEFENSE
Do unto others before they do unto you.

AS A RULE OF INVESTMENT
Do unto others so they will do unto you.
Listen for the bells warning you of an ethical issue.

Check to see if there are any laws, regulations or rules which restrict your choices.

How will your decision look in the light? Could a reasonable, fair-minded person conclude you acted improperly?
If you want to know how to live your life, think about what you’d like people to say about you after you die – and live backwards.
“Our souls are not hungry for fame, comfort, wealth or power. Our souls are hungry for meaning, for the sense that we have figured out how to live so that our lives matter, so that the world will be at least a little bit different from our having passed through it.” - Harold Kushner
What you’re doing won’t make a difference

It does to this starfish
WHAT WILL MATTER
By Michael Josephson © 2003

Ready or not, some day it will all come to an end.
There will be no more sunrises, no minutes, hours or days.
All the things you collected, whether treasured or forgotten will pass to someone else.
Your wealth, fame and temporal power will shrivel to irrelevance.
It will not matter what you owned or what you were owed.

Your grudges, resentments, frustrations and jealousies will finally disappear.
So too, your hopes, ambitions, plans and to-do lists will expire.
The wins and losses that once seemed so important will fade away.
It won't matter where you came from or what side of the tracks you lived on at the end.
It won't matter whether you were beautiful or brilliant.
Even your gender and skin color will be irrelevant.

So what will matter? How will the value of your days be measured?

What will matter is not what you bought but what you built, not what you got but what you gave.
What will matter is not your success but your significance.
What will matter is not what you learned but what you taught.
What will matter is every act of integrity, compassion, courage, or sacrifice that enriched,
empowered or encouraged others to emulate your example.
What will matter is not your competence but your character.
What will matter is not how many people you knew,
but how many will feel a lasting loss when your gone.
What will matter is not your memories but the memories that live in those who loved you.
What will matter is how long you will be remembered, by whom and for what.

Living a life that matters doesn't happen by accident.
It's not a matter of circumstance but of choice.
Choose to live a life that matters.