

The Ethical Lapses of 2018-2019: What We Can Learn

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The Scary Slides

The Data

College Cheating (2017) (McCabe)

Type of cheating	Graduate Students	Undergraduate students
Test cheating	17%	39%
Written assignment	40%	62%
Both types of cheating	43%	68%

Jennings Ethical Issues 2017

Details on college cheating

- 54% said cheating is okay (necessary to compete)
 - 97% of admitted cheaters say they have never been caught
 - 76% copied word-for-word another's assignment
 - 12% said they would never cheat because of ethics
 - 42% purchased papers, thesis etc.
 - 28% paid someone to take their online courses
 - 72% used phones, tablets, and/or computers to cheat
- Kessler International survey January 11, 2019

Jennings Ethical Issues 2017

Workplace: ECI 2019 Global Survey

- 39% of employees do not see a strong organizational commitment to ethics
- 58% of employees do not see a strong commitment to ethical leadership in their organizations
- 50% feel pressure to compromise standards

Jennings Ethical Issues 2017

ECI 2017: Ethics in the Workplace

- 47% of employees saw conduct in the past 12 months that broke the law or violated organizational rules
 - Lying to employees or external stakeholders
 - Misuse of confidential information
 - Bribes and kickbacks
 - Stealing
- 69% said they would report such events
- 23% increase in employees who feel pressure to compromise standards
- 63% see those who compromise standards rewarded
- 44% have experienced retaliation
- 40% feel that they have a weak ethical culture

The Scary Slides: The Companies

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Ethical Lapses Since 2001

Adelphia	ADM	AIG (three times)	Allergan
Alstom	Amgen	American Apparel	American Express
Apple (twice)			
Apollo Global	Apollo Group	Arthur Andersen	AstraZeneca
AT&T	Autonomy	Avon	Bally Total Fitness
Bank of America	Barclays	Bayer	BCBS
BCCI	BDO Seidman	Bear Stearns	Biovail
Bitcoin	Blue Bell	BNY	
BNP Paribus	Body Shop	Boeing	BP (3)
Bristol-Myers Squibb	CalPERS	Cardinal Health	Caterpillar
CBS	Cendant	Charter Communications	Chase
Chesapeake	Chipotle	Chiquita	Chrysler (2)
Cintas	Citigroup (?)	Columbia HCA	Comcast
Computer Associates	Countrywide	CSFB	CXS

Ethical Lapses Since 2001

CVS	Cypriot		
Davis-Besse (FENOC)	DaVita Health	Deloitte Touche	Delphi
Deutsche Bank	Dewey LeBeouf	Diamond Nuts	Downey S & L
Duke Energy (2)	DuPont	Edward Jones	Eli Lilly
Enron	Entergy	Equifax	
Ernst & Young	ExxonMobil	Facebook (2)	
Fannie Mae (2)	Fidelity Invest.	FIFA	Fireman's Fund
Fox News	Freedom Industries	Galleon Hedge	
General Electric (3)	General RE	GlaxoSmithKline (4)	Global Crossing
Global Research	GM	Goldman Sachs (2)	GoDaddy
Google	GroupOn	Hallmark Westland	HealthSouth
Helig-Myers	Herbalife	HP	HR Block
HSCB	Hyundai		

Ethical Lapses Since 2001

Ikea	ImClone	IndyMac	Insys
Intel	Johnson & Johnson	Kay Jewelers	Kia
Kindred Healthcare	Kmart	Kobe Steel	KPMG (3)
Kraft-Heinz	Krispy Kreme	Lehman Brothers	Lending Club
Lennar	Lifelock	Long Term Capital	Lucent
LuLuLemon, Inc.	Lyft	Madoff Investments	
Marriott Int'l	Marsh & McLennan	Massey Energy	Medtronic
McKinsey & Co.			
Merck	Merrill Lynch	Microsoft	MF Global
Microstrategy	Milberg Weiss	Mitsubishi	Moody's
Morgan Stanley	Mylan	Navient	Navistar Int'l
NBC ("Nitely")(Lauer)	New Century	New Eng. Patriots	New Orleans Saints
New Republic	New York Times	Nike	Nortel
Novartis	Och-Ziff	Options (200)	Oracle

Ethical Lapses Since 2001

Olympus	Parmalat	Peanut Corp.	Penn State
Pfizer	Pilot Flying J	Pixar	
PriceWaterhouseCoopers	Prudential	Putnam (2)	Purdue
Qualcomm	Qwest	RadioShack	Razorfish
RBS	Reebok	Refco	
	Royal Ahold	Royal Shell	SAC Capital
St. Louis Cardinals	Saks Fifth Avenue	Sallie Mae (17)	Samsung
Satyam (India)	Shaw Group	Siemens	Sloan Kettering
Société General	Social Finance (SoFi)	Sony	Sotheby's
Standard & Poors	Stanford Investments	Stanford University	Starbucks
Stitch Fix	Student loan lenders	Sutter Health	Swedish Academy
Taco Bell	Taylor Beane	Takata	Tenet

Ethical Lapses Since 2001

Tesco	Tesla	Theranos	TierOne Bank
Time Warner	Titan		
Toshiba	Toyota	Trinity Highway	Turing Pharma
Tyco Int'l	Uber	UBS	United
United Health	Universities & Sports	Universities	Valeant
Volkswagen	Wachovia	Walmart	WaMu
We (WeWork)	Wells Fargo (4)	Weinstein Group	Westar
World Bank	WorldCom	WPP	Wynn Co.
Xerox	Zenefits	Zynga	

Issues in Crop Insurance

State	Date	Allegations
Kentucky	03/2020	Tobacco warehouseman agreed to help farmers conceal sales of their crops and then have them submit false claims to the United States; warehouseman charged with money laundering in funneling the money for the concealed crop sales to the farmers
Kansas	02/2020	Farmer under-reported 2015 corn crop by 23,524 bushels and sorghum/milo crop by 31,208 bushels; also charged with bankruptcy fraud for not declaring the sales in his asset disclosures
Kentucky	12/2019	Submitted fake grade sheets and tobacco sales receipts (no-grade and low-grade tobacco) in order to submit claims to his crop insurer; failed to report actual sales income on his taxes for 2012, 2013, 2015
Kentucky	07/2019	Farmer, insurance agent, and adjuster work together to understate crop value to defraud the federal government and his private insurers; agent and adjuster received portions of the payments for their efforts

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Issues in Crop Insurance

State	Date	Allegations
Michigan	12/2018	Farmer obtained crop insurance for 1,000 acres of farmland that he rented to another farmer; claimed losses; farmer tenant declared bankruptcy and the story unraveled
Iowa	11/2018	Farmer shifted production across fields in order to reach the percentages of loss required to be indemnified
Kentucky	11/2018	Submitted crop pictures of same fields and crops used to make duplicate claims across insurers
Kentucky	09/2018	Farmer paid adjuster to reduce grade of his tobacco crop in exchange for a portion of the insurance payment
North Carolina	05/2018	Farmer created a fictitious entity to submit federal crop disaster claims and another fictitious entity to actually sell the crops—must repay \$5,669,891, serve 25 months in prison, and is banished from crop insurance programs for 5 years
Iowa	02/2018	Lied to bank about crops in storage to get bank loans; submitted false claims for crop insurance; defaulted on the bank loans; sentenced to 18 months and restitution of \$1,190,696.12

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What happens?

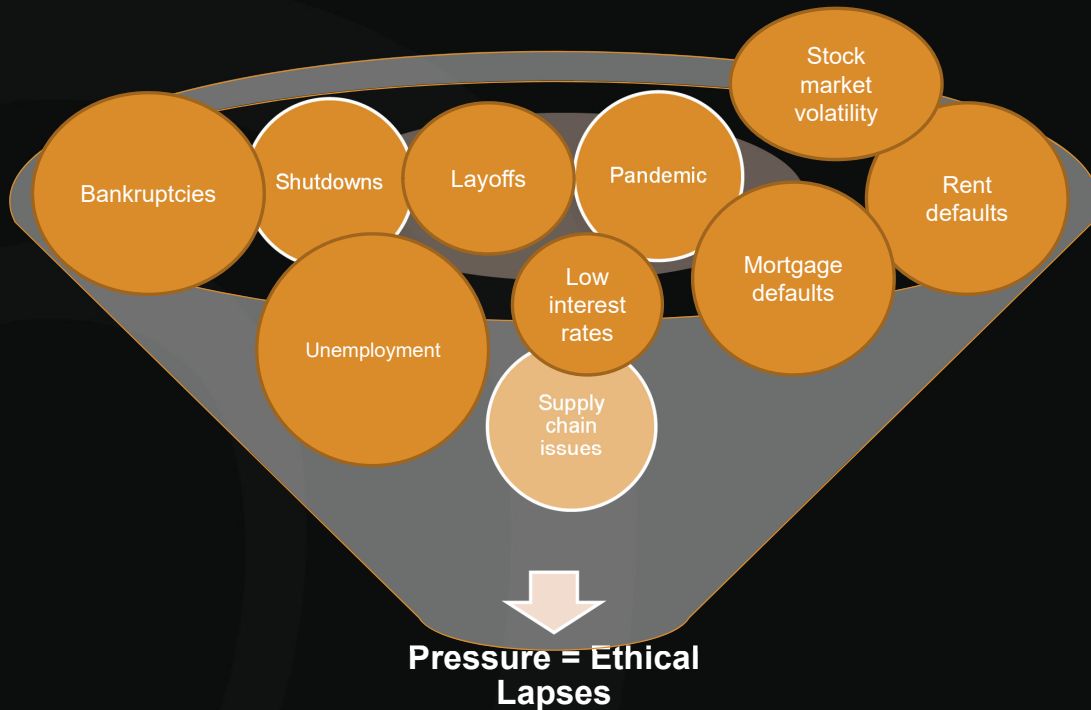
- How do farmers lapse into money laundering, fraud, tax evasion, and conspiracies?
- How do those conversations go with adjusters and warehousemen?

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1. Pressure is a stunning force

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The Incredible Vortex



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The Ripple Effects and Increasing Pressures

- Dry cleaners
- Airlines
- Jet manufacturers
- Restaurants down and groceries up
- Toilet paper and flour
- Gasoline stations
- COVID weight gain (4 weeks to the gallon of gas and no gyms)
– Tailors' business boom
- Clothing stores down– sweatpants up
- Migration to working from home, office space rentals, city flight
- Estate planning

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The Pressures of Time

- The shortcuts on training
- The shortcuts on paperwork
- The shortcuts on approvals
- The shortcuts on consent
- The shortcuts because of personal lives and demands

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Countermanding the Pressure

- The “Why” Behind the Rule: The Stories
- That first step
- Diagnosis Bias and inability to see future costs
- People do jaywalk!

“Given enough pressure, we are not the same people. We will do things and make decisions we never thought possible.”

M.M. Jennings

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The Boeing Example

- Pressures of time and money on the 737MAX
- Redesign instead of new design
- One sensor instead of two or multiple sensors
- No additional training for pilots (expense of time and money)
- Candor with FAA
- Close relationships with FAA (see conflicts)

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Some Boeing E-mails

- *“So, I basically lied to the regulators (unknowingly).”*
- *“Mark (chief technical pilot for the 737 MAX project) was under an enormous amount of pressure . . . He was clearly stressed.”*
- *“This airplane is designed by clowns, who are in turn supervised by monkeys.”*
- *“I still haven’t been forgiven by God for the covering up I did last year,” in reference to his responses to FAA questions.*
- *“Would you put your family on a Max simulator trained aircraft? I wouldn’t.”*

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The “Why” Behind the FAA Rules

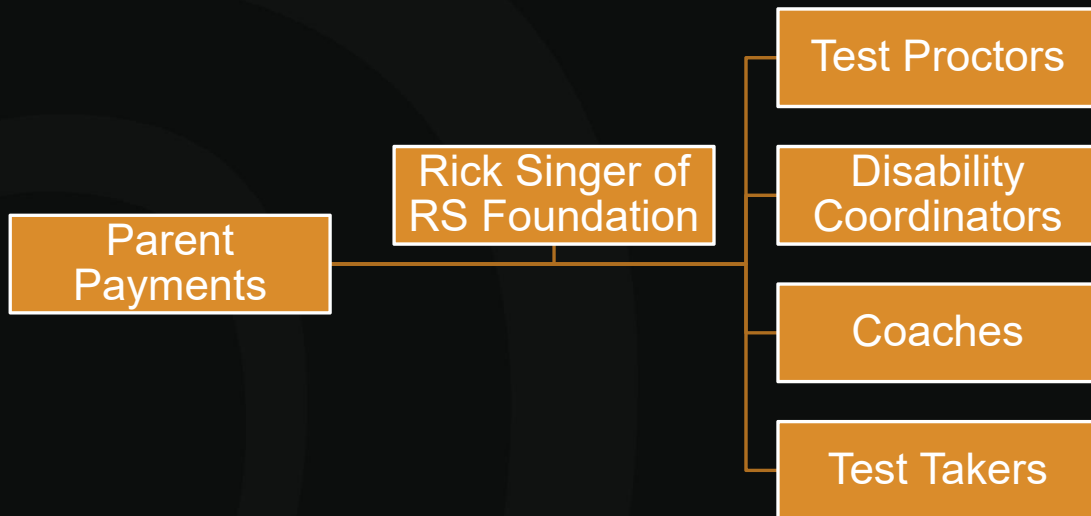
- October 29, 2018 – Lion Air 737MAX crashes on takeoff in Indonesia and 189 people died
- March 10, 2019 – Ethiopian Airlines 737MAX crashes on take off and 157 people died
- March 13, 2019 – All 737MAX planes are grounded
- August 2020 – FAA releases 43-page plan for Boeing fixes (hardware, software, training, design)
- July 2019 – Boeing sold 4 airplanes (down from 61 per month in March 2019)
- July 2019 – Customers canceled 48 orders

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College Admissions Scandal: The Pressure for Success

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The Singer Network



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College Admissions Scandal

- *"We just met with (our older daughter's) college counselor this am. I'd like to maybe sit with you after your session with the girls as I have some concerns and want to fully understand the game plan and make sure we have a roadmap for success as it relates to (our daughter) and getting her into a school other than ASU!"*
 - Mossimo Giannulli whose daughter was admitted to USC as a crew rower despite no experience in rowing crew after her parents paid \$500,000 to a charity they created. The charity paid of the crew coach, the Giannullis (Lori Laughlin and Mossimo) then deducted the \$500,000.

College Admissions Scandal

- *"To be honest, I'm not worried about the moral issue here. I'm worried about the, if she's caught doing that, you know, she's finished."*
 - Gordon Caplan, private equity lawyer and co-chairman at the law firm, Wilkie Farr & Gallagher LLP, named "Dealmaker of the Year," by American Lawyer, who was arrested in the Varsity Blue admissions scandal
- Caplan's daughter's ACT score went from 22 to 32 after Caplan paid \$75,000 to Rick Singer to pay a proctor to alter her test. Kaplan felt a score of 33 was too much of a stretch.

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College Admissions Scandal

Mossimo Gianulli note to accountant to pay a \$200,000 invoice from the Rick Singer charity:

"Good news my daughter . . . is in [USC]. . . Bad news is I had to work the system."

Kate Taylor, "Frustrated Over Sentencing, Prosecutors Bring New Charges in Admissions Scandal, *New York Times*, October 23, 2019, p. A12.

We look at those parents in disgust, but . . .

- Organizations create cultures that make illegal and unethical behavior acceptable.
- Warnings of those who object are ignored.
- What do we know of industry practices?
Our colleagues?
 - American Express business account sales and the \$4 million in revenue requirement
- Sometimes we ignore the warnings

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The Long and Evolving Run-Up

- Slow degradation of admission standards
- Financial pressures at colleges and universities
- Lack of supervision, controls, and checks and balances over admissions

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The 1989 UNC-CH Report of the Ad Hoc Committee on Athletics and the University

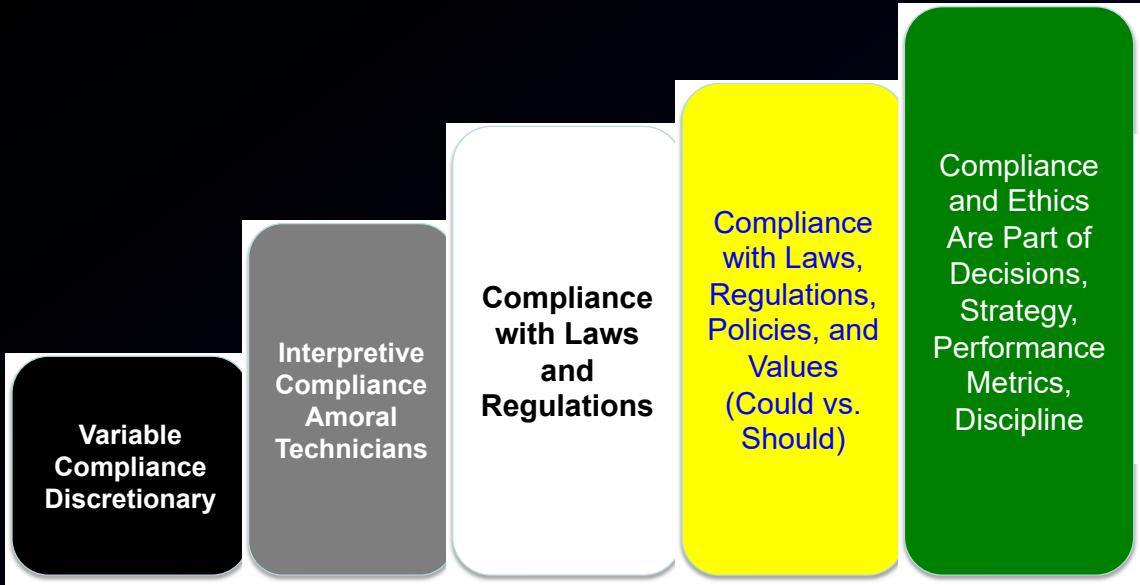
- Corruption of the academic process
- Abundance of money
- Role of boosters (cars, money, rent-free apartments)
- Playing and practice seasons and schedules
- Transparency and the Educational Foundation
- Conflicts and the Educational Foundation
- Development Office should have some role with the Educational Foundation
- Tying grants-in-aid to graduation rates
- Special admits issues

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2. Ethical Slippage and Gaming

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Shades of Compliance and Ethics



Incentives and Pressure: What Is Measured: The Human Gaming Response



Examples of Gaming: Rules and Reward Systems

Tennis players and restroom breaks	Prosecutor decisions and rate-of-completion compensation	Auto service surveys of customers
Health care: Coding	The cobras in Delhi	Fitness programs and employee creativity
Paid online reviews and deletions of negative reviews	College admissions	Line queues
Crime stats (lower charges and reclassifying crimes)	Employee engagement and ethics surveys	Staffing levels – nursing homes
EBITDA vs. GAAP	Miss Universe pageants and residency requirements (pageant-hopping)	Sprint and federal subsidies of \$9.25 per month for low-income Americans who use their phones for Lifeline overcounting because of spam texts that continue to dormant accounts

Examples of Gaming the System

Disney and “Frozen 2” . Hiring actors to play critics and offer opinions as if spontaneous	Internet providers sway bandwidth tests – they know which areas will be tested and they juice the area temporarily; asked FCC to remove certain areas or homes (faulty equipment); exclude heavy traffic days (NFL playoffs and Apple app releases);	Pageant hopping beauty contestants --changing state residencies
Not reporting mining deaths when miners are subcontractors 120 deaths reported in India – more like 120,000 Following deaths – higher pay required and greater regulatory oversight – do not bring bodies out		

Focusing on Our Behaviors

- Compliance with procedures and filling out those forms
- Thinking about ethical dilemmas
- What is in the news about ethics?

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Some Examples

- How about those Astros?
- Kodak, the options, and the charitable donations by the board chair
- Grandma and the confidences of her 15-year-old son
- Wilford Brimley
- Mohawk Industries: channel-stuffing with defective products; send goods to customers no longer in business
- Justin Trudeau's family's speaking gigs for a nonprofit that Trudeau awarded grants

- Mariannejennings.com

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How do we slip?

- We are working with people we know
- We have relationships; there is trust
- The same goal of economic survival
- “Surely they would not do anything wrong!”
- How Waste Management roped in the auditors

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Wells Fargo History

- 2000 – 63 employee reports of “gaming the system” on new accounts
- 2002 – all employees in a Colorado branch issued debit cards to customers who didn’t ask for them
- 2004 -- 680 employee reports of “gaming the system”
- 2007 – 288 allegations of employee sales misconduct in second quarter
- 2007 – branch manager
 - Teen daughter had 24 accounts
 - Adult daughter had 18 accounts
 - Husband had 21 accounts
 - Brother had 14 accounts
 - Father had 4 accounts
- 2008 --Customers with new accounts had employee e-mails of “noname@wellsfargo.com

Wells: Percolating Issues

- 2013 – Employees talked a homeless woman into opening six checking and savings accounts costing \$39 per month (Los Angeles City Attorney investigates)
- 2013 -- 1,469 allegations of employee sales misconduct in fourth quarter
- 2013 – Firing 1% of its employees annually for ethics violations related to gaming the system (CEO called it “immaterial” and cited it as good news)
- 2014 – “Strong” ethical culture rating
- 2014 – “Strong” for risk culture detection rating
- 2014 – Audit tools labeled “squishy”
- 2015 – “Satisfactory” Ethical Culture
 - Based on a survey and “observations of Tone at the Top, incentive compensation, performance management, and stature.”

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Wells Fargo: Events After Discovery

- 2016 – 2 million fake accounts discovered
- 2017 – another 1.5 million fake accounts discovered
- 2018 -- \$1 billion fine; one-half of the board removed by the Fed
- 2018 – Issues with employees falsifying meal reimbursement; investment-side problems with municipal bonds and meal vouchers among staff
- 2019 New CEO resigns
- 2019 Feds supervise CEO selection process and demand new board members
- 2020 Business levels and earnings still down

3. Weak Responses to Ethical Lapses

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Just “Get this out of the headlines” or “Let’s keep this quiet”

- Quick investigations
 - McDonald’s and former CEO Steve Easterbrook
 - Inappropriate e-mails to an employee
 - Assured the board there was no physical relationship
 - Law firm doing the investigation did not check company server for e-mails
 - Employees reported a sexual relationship
 - Lawsuits for severance pay return (about \$40 million with options)

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Quick investigations (cont.)

- CalPERS and its CIO
 - “We’ve known about this all along.”
 - “It has been taken care of.”
- Not clear how big the problem is
- Not clear who is involved
- Not clear if the harm is continuing
- Systems do not get fixed

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A Tale of Three Universities

	Penn State	Michigan State	Ohio State
Type of conduct	Child molestation by assistant coach Sandusky	Physician Nassar) molestation of female gymnasts	Physician(Strauss) molestation of male student athletes
Public disclosure	2011	2016	2019
Initial report	1998	1997	1978
Number of reports	11	32	177
First date for action	2001 (talk with Sandusky) 2011 Paterno fired	2014 – Title IX Complaint– no external expert	1996 – physician permitted to leave
Est. # of people who knew	31	205 + <i>Indianapolis Star</i>	>1,000
Criminal actions	4	3; 4 loss of licenses	Statute of limitations
Litigation	Victims (11) and grad student	55 lawsuits; 500 victims	17
Costs	\$67.3 million	\$500 million	????

Lessons from USA Gymnastics at Michigan State

- Fundraising pressures
- As scandal grew, millions were transferred to other organizations (foundations owned by them) to shield assets from claims of the young gymnasts
 - Louise Radnofsky, "USA Gymnastics Funds Scrutinized," *Wall Street Journal*, October 8, 2019, p. A6.
- The microscope descends when there is an issue

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Lessons from Ohio State

- The Kitty Genovese syndrome
 - Weinstein
 - Epstein
 - The need to speak up
- The failure to fully analyze the harm
- The factual issues that were not pulled together: Why is he here? Where are the research results? Why the reduction in use of facilities by student-athletes?
- The sports-academic-financial connections

The Rogue Approach to Enforcement

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The Rogue Approach: Blaming and Isolating

- Boeing CEO called the e-mails among the 737MAX team “appalling.”
- Boeing official in response to e-mails:
 - *“The language and the sentiments expressed in these communications are totally unacceptable. But they do not mean that Boeing acted inappropriately.”*
- When it happens on your watch . . .
- The necessary introspection
- Systems do not get fixed

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The Dangers of the Rogue Label

- Ethical and legal lapses do not make the headlines unless there are organizational issues
- Boeing history of repeating ethical lapses
 - Darlene Druyon (Department of Defense contracting officer) awarded Boeing tanker contracts as she was negotiating at \$250,000 job
 - Two CEOs in a row with affairs issues
 - Boeing hiring Lockheed employee who brought along bid information that Boeing used
 - Current investigation into NASA official feeding Boeing executive bid information

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The Importance of Enforcement

- *“Enforcement is to organizations what integrity is to individuals.”*

M.M. Jennings

- *“The clearest and most powerful mode of organizational communication is whom we hire, whom we fire, whom we discipline, and how we treat those who raise ethical issues, questions, and concerns.”*

M.M. Jennings

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Rationalizations We Use After a Problem: Not a Big Deal

- *“What happened does not reflect who we are.”*
- *“There are misunderstandings about what happened.”*
- *“You have to understand our industry.”*
- *“We have a really good reason for doing what we did.”*
- *“There was significant confusion in our billing.”*
- *“It’s a very common method by which most of California hospitals deliver and bill anesthesia.”*

Cynthia H. Craft, “Sutter Health Agrees to \$46 Million Settlement for Billing Practices,” *Sacramento Bee*, Nov. 5, 2013, <http://www.sacbee.com/2013/11/05/5881145/sutter-health-agrees-to-46-million.html>.

4. Fear and Silence

Waiting, Hesitating, and Hoping

- 2017 Word of the Year: Complicit
- The Bystander Effect and the Kitty Genovese Syndrome
- *"Snitches get stitches and end up in ditches."*
- *"Don't be a tattletale."*
- *"He's a narc." "Fink," or "Rat"*
- The mistake of boxing ourselves into do-or-die situations

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Calvin Coolidge—On Feedback

- Did not run for a second term despite wild popularity
- *"Eventually, surrounded by all 'yes' people you start to believe you are grander than you are; humility is gone."*

The Steps for Speaking Up

1. How sure am I?
2. What are the consequences of saying nothing?
3. What are the consequences of speaking up?
4. Can I work with the individual?
5. Who will listen?
6. Am I skipping a layer?
7. Do I need to skip a layer?

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Deterrents to Raising Issues

- Physical (phones, eyes, and distractions)
- Explanations, questions
- What is emphasized in your language?
- What can be done to increase employee willingness to raise concerns?
 - Facebook: “Only good news”
 - Or “All news is good news.”

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5. No clear vision of who we are and what we will and will not do.

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The Quality of Humility

“You limit the amount of time you go out into the world, because it’s a little distortive. And you have people around you, like Warren Buffett or my wife, Melinda, who, you know, if I come back and I look like I’m all puffed up, they cut me down to size a little bit. And I do the dishes . . .

I drive the kids to school. I have kids that think I don’t see the world in a modern-enough way, including even some technology things that they use and that they find amazing. I’m not as phone-centric as they are.”

Bill Gates, “Keeping Gates in Perspective,” *New York Times*, November 12, 2019, p. F2.

The Credo

Simple guidelines:

- What you would always do
- What you would never do
- Occidental College
- Rory McIlroy



6. Use the non-possessive truth

- "My truth"
- "His truth," "Your truth," and "Her truth"
- The capacity to know truth may be limited, but there is THE truth
- *Colombo* and the tennis shoes

Truth and Its Percolating Quality

The laws of probability do not apply when it comes to the surfacing of unethical or illegal conduct

Three people can keep a secret if two are dead.

- Hell's Angels' motto (courtesy B. Franklin)

Lying is good. It's the only way we ever get at the truth.

- Dostoevsky

Circumstances beyond your control will cause bad acts to be discovered.

- Anonymous

- Don't underestimate probability of truth coming out.
- Don't overestimate your ability to manage the truth.