

Board of Directors Ethics Training... Who Needs It?

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The CFO's AA asked you to provide clerical back-up during a meeting between the CFO and two members of the Audit Committee of the Board. This is your first visit to the C-Suite and you are impressed with the rich wood paneling, deep pile carpets and the quiet air of power and authority. While you are doing some routine filing at the AA's desk the two Board members walk by, deep in conversation. Without meaning to listen in, you overheard them discussing a decision not to report a financial problem to the whole Board. What you heard was, "...and since the auditors didn't find it, no sense us reporting it. It would just stir things up. If it comes back to haunt us we can always blame them. The way I see it, as of today, no harm, no foul". They didn't even notice you. Later, you described what you heard to the AA and asked what you should do. Her reply: "Whatever they said was not meant for our ears. We are there to provide them with admin support – not monitor their discussions. They are the Board. We have to trust that they know what they are doing."

The behavior of the Board members and the AA in this example relies on two preconditions: the ability of people to rationalize and a weak ethics culture.

Rationalization

Rationalizations are one of the most powerful mechanisms used by "good" people to justify doing "bad" things. Over the years I have come to define a rationalization as, "A lie we tell ourselves to give us permission to do what we know is wrong?"

Consider the lies in this case:

1. *No harm, no foul*
 - a. There was harm
 - i. The suggestion that a problem that the auditors overlooked is therefore not a problem is simply not true. Whatever short-term advantage hiding that information might appear to yield is outweighed by the potential harm that hiding the problem could yield if it surfaces later.
 - ii. The AA's "head in the sand" approach lacks integrity and that likely damages her self-respect, and in this case, the respect of a subordinate employee.
2. *Whatever they said was not meant for your ears*
 - a. The implication is that if you hear something that was not intended for your ears you have no responsibility to act. That is not true.
3. *We have to trust that they know what they are doing*

- a. There is no such obligation to trust. Trust must be earned. It cannot simply be conferred by virtue of title or position, and in this instance it is not deserved.
 - i. The organization was harmed when potentially important data was suppressed. Without that data the Board cannot make informed decisions.
 - ii. The reputation of the Board and the company was put at risk.
- b. There is a “foul”
 - i. Implicit in the overheard conversation is a problem the auditors missed and that suggests some violation of law, regulation or accepted accounting practice that is going uncorrected. “If it comes back to haunt us, we can always blame them” suggests it is serious enough that a plan to deflect responsibility is warranted.

These rationalizations were necessary for the decision to “do nothing” to be justified. In this instance rationalizing both legitimized and forgave the ethical breach. By extension, it also created a precedent for tolerating future misconduct, thus helping create a culture based on lowered ethical standards.

Ethical Culture

Culture, in this context, can be understood as the commonly held beliefs about “how things really work around here,” - what we often call the unwritten rules. These are rules we need to know about how things work around here that we won’t find written down anywhere. Please note, “culture” is different from compliance since it is based on unpublished standards – rules that cannot be researched, printed, distributed and read.

Ethical culture is that aspect of culture that defines what is “right” and what is “wrong” in an organization. It sets boundaries and defines limits.

In this case the Board expects full and accurate information from its Audit Committee. To withhold what could be critical information breaches that trust. This one breach may be a unique circumstance or symptomatic of a pattern. Either way, these two Board members have chosen to act unethically. An ethical culture that encourages and/or tolerates this kind of breach is a “weak” ethical culture. A strong ethical culture neither encourages nor tolerates ethical misconduct.

What has this to do with Ethics Training for my Board?

How is this hypothetical case related to the argument that ethics training for Boards is necessary? According to *The Board Book*¹, one of the duties of a Board is “Ensuring legal and ethical conduct.” I would characterize that duty as including the need to create and sustain a strong ethical culture.

Given that duty, is it reasonable to expect a Board to sustain the ethical standards of a strong ethical culture when those standards have not been articulated? Some have argued that the answer is “yes” because ethical standards, the definitions of what is right and wrong in the

¹ Susan Schultz, *The Board Book*, p6

Boardroom, are nothing more than “common sense”. But, can we be confident that is the case? If not, then ethics training for Boards becomes necessary.

I have been making the case for Ethics Training for Boards for several years based on a belief that Board ethics is not common sense. That position “crystallized” for me early on, after working with the Boards of Directors and Trustees of a state professional association. I was invited to facilitate a one-day session on how best to go about revising their Code of Professional Ethics. I was also advised that I was the third consultant so engaged. The other two had been fired, mid-session.

Forewarned, I used a “pre-session” questionnaire regarding the current Code and discovered that there were two separate “camps” within the Board. Most supported the decision to revise the Code. About a third of the Board thought that revising the Code was “hoey” - that ethics is little more than common sense.

I started my presentation with a simple exercise²:

“Raise your hand if you consider yourself to be an ethical person.”

Naturally, every hand went up.³

“Take one minute and, in no more than 50 words, define what that means: What is an ethical person? What does an ethical person do?”

One minute later I randomly selected five people in the room and asked that they read what they wrote. I recorded their replies on a flipchart. As expected, the five replies were each different from the others.

- *Ethical people don't lie, cheat or steal.*
- *They do the right thing, even when no one is looking.*
- *They treat others according to set of principles such as respect, fairness and integrity.*
- *They follow policies and procedures.*
- *They tell the truth even when it is difficult.*

Without commenting on the responses, I addressed the group...

“My assumption is that we are all ethical. Unethical people typically do not seek nor rise to the positions represented in this room. But, as you can see from the posted responses, we are all “ethical” differently. We embrace common values and principles but interpret and apply them uniquely. A Code of Ethics is not a tool to teach bad people how to be good. Rather, it fulfills the obligation of the organization to clearly define for its members that, in this group, this is what it means to be ethical.”

² I include the details of the activity for any readers who would like to use this design in their own practice. Acknowledging its origin would be appreciated.

³ Having done this countless times since, I can report that in every instance, nearly every hand always goes up (the exceptions being those reluctant to participate and those just curious to see what I might say/do if they do not raise their hand).

Substitute “Ethics Training” for “Codes of Ethics” and this same activity effectively overcomes the reluctance of many Boards to engage in ethics training.

Your Board may not need “compliance” training to teach them the rules. But, they would benefit from a process that helps them reach consensus regarding the principles used to guide their discourse, decisions, oversight and governance activities. They would benefit from a process that explicitly defines their ethical culture, describing, “how things work on our Board” so that a true common sense – a common understanding about the ethical underpinnings of how things work on our Board – can be developed and sustained.

Boards that take the time to deliberate and reach consensus on the values upon which their operational culture rests have an advantage. Once the values are agreed upon the Board can then go on to explore:

- How those values will manifest regarding how decisions get made,
- Operational guidelines, such as what constitutes a “conflict of interest” and how such conflicts ought be resolved, and,
- How the Board will balance the requirements of law, regulation, shared values, individual values and societal expectations in their collective decision-making.

That is the ethics training for Boards that I am proposing. Provide your Board the opportunity to develop and then articulate a consensus-based set of principles - an “ethic” for their unique set of obligations.

Two additional questions for your consideration:

1. At a practical level, how do I, as an Ethics/Compliance professional, make the case to my Board that ethics training is prudent, and,
2. If my argument is successful, just what kind of ethics training do my Board members need?

The argument in support of ethics training could begin with the “ethical person” exercise, described above. It can help in making the case that ethics is not simply a matter of applying one’s “common sense”. It can surface the advantages of your Board agreeing on the governing values and ethical standards that will define their dialog and decision-making. Finally, it can facilitate them agreeing on (and defining in concrete, behavioral language) the values/principles that ought to define their individual and collective actions as a Board.

The training could then explore how, individually and collectively, they might integrate that common sense into those actions and how that common ethic will affect their choices. Simple cases could illustrate how a values-based Board addresses disagreements, potential conflicts of interest, and pressures for the Board and those they govern to perform to expectations – such as those imposed by the media, shareholders and financial markets.

The training can conclude with an action planning session where the facilitator takes them through the process of applying their agreed-upon principles to real-life decisions.

The outcome of this kind of training is that the Board has a common vocabulary for discussing the ethics of their decisions and actions. They also will have a framework for assessing the ethics of their decisions – the degree to which their decisions conform to their stated values and principles. Finally, they will have a context for assessing the ethics of the organization they are responsible for overseeing and agreed-to standards for what constitutes a strong ethical culture against which to measure those actions.

There is always a “But...”

But, among my favorite colleagues are some who have gone on record as suggesting that Board ethics training is not needed. I contend that their remarks apply to “compliance-oriented” training and not training aimed at strengthening the ethical culture of the Board itself.

In the above I argue that ethics training, aimed at helping Boards facilitate and sustain a strong, values-based culture, makes a significant contribution to the Board, its members and the organization as a whole. I also suggest a process for making that activity both palatable to and effective for your Board. To be certain, there are those who seem to disagree.

My own experience as the Chair of a small NGO and advisor to numerous Boards, including large, multinational, corporate entities, strongly supports the contention that creating a strong ethical culture in a Board ought not be trusted to chance. It requires a deliberate and conscientious effort of leadership to communicate and establish the values-basis for actions and decisions in the Boardroom. In all but the rarest cases that outcome is more likely when the process is deliberate and facilitated. We call that “Board Ethics Training.”