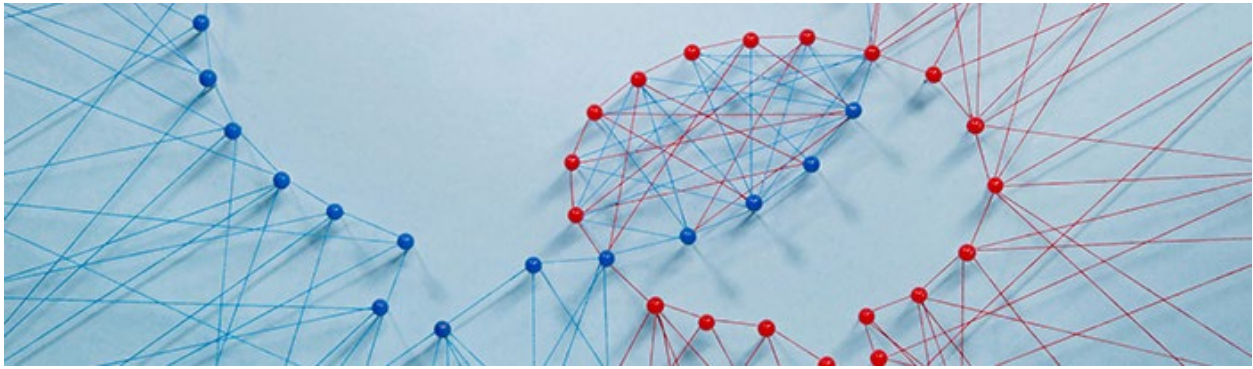


Preventing Misconduct: The Missing Link in Ethics and Compliance Programs

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Lessons Learned from the Science of Human Behavior

In an ongoing drive to reduce instances of individual and corporate wrongdoing at organizations, many experts in the field of organizational integrity have begun to look for the answers outside of the traditional approaches of more laws and regulations, tougher enforcement, and more rigorous compliance. They hope to gain a better understanding of the importance of culture and the valuable lessons that can be learned from the science of human behavior.

There is growing recognition among policymakers in the area of organizational integrity that the role of human behavior is often overlooked. The premise of this evolving recognition is that individual ethical choices underpin and characterize integrity.

The search for answers begins with a simple and humbling observation that none of us are as ethical as we think we are, or when faced with a challenging ethical dilemma, we cannot be certain that we would unhesitatingly have the

courage to speak up. The science of human behavior supports this self-reflection. The bad news is that we are all inflicted with an inherent set of limitations. The good news is that they can be overcome.

Limitations of Human Behavior

Much has been written about how we all suffer from blind spots that result from limitations on our awareness (bounded awareness) and our ethicality (bounded ethicality). Put simply, humans tend to omit key information while making decisions to resolve problems, including ethical problems. The tendency to arbitrarily “bound” definitions of what’s at stake and to fail to consider ethical gaps has implications not only on an individual level, but ultimately on organizations and society in general.

Max Bazerman and Ann Tenbrunsel, in their extensive research on the subject, discuss three behavioral factors that create the dynamic of not acting as ethically as one might think they would. These factors are prediction errors, conflicts between the “want” and the “should” self, and post-decision “recollection bias.”

We may firmly believe and predict that we will act ethically in a given situation; however, when we are confronted with an ethical challenge, there is a good chance that we may act differently. The second impediment involves internal conflicts between the so-called “want self” and the “should self.” The “want self” is the side of a person that is more emotional and impulsive, and the “should self” contrasts as more rational and thoughtful.

Yet, the “should self” drives those behaviors that are consistent with ethical values and principles. In contrast, the “want self” drives behavior that is characterized more by self-interest and lack of consideration for ethical implications. And still, the third impediment, “recollection bias,” occurs when one is faced with the contradiction between one’s beliefs of being an ethical person and some unethical action. Bazerman and Tenbrunsel describe this phenomenon as “psychological cleansing” when individuals try to restore their self-image when they have not acted consistent with their core values.

Another important aspect of ethical decision making is revealed by understanding how people make decisions. In “System 1” thinking, we are using our intuitive processing of information, which is automatic and effortless.

By contrast, “System 2” thinking takes more time as it is more conscious and logical. This understanding of how people think and ultimately make decisions has enormous implications for how well people make ethical decisions.

According to Dolly Chugh, emotional, “System 1” responses to ethical problems are quite common, particularly as people are under the pressure of modern life. However, decisions made when System 1 thinking prevails are more likely to result in unethical behavior than when decisions are made with more deliberate or System 2 thinking.

These limitations afflict all of us, including those in executive leadership positions. Robert Gandossy and Jeffrey Sonnefeld write that while no one factor can explain why misconduct is permitted to continue, a combination of factors taken as a whole offers insight and “we can begin to understand how segmented responsibilities, pressure to perform, social norms that suggest we should not rock the boat, ambiguous norms about appropriate and inappropriate behavior, and limited options for those in the know make it very easy ... to look away.”

While building a culture of integrity within an organization and effective compliance programs can go a long way toward reducing misconduct in an organization, unless and until we have a better understanding of individual human behaviors and decision making, and how they need to be addressed within an organization, we will not advance further in understanding and reducing misconduct.

Filling the Gap in Ethics and Compliance Programs

In his book, “Why They Do It,” Eugene Soltes correctly points out that moral decision making is actually more challenging and complicated than we might believe. In order to make moral decisions and behave ethically, there are several steps individuals must successfully carry out—from awareness of a problem to forming a judgment, establishing an intent, and ultimately engaging in moral behavior. Failing in any one of these steps, according to Soltes, leads to failed outcomes. Yet too often, we seek to take these steps alone and without proper guidance or support.

What then are the missing ingredients individuals and organizations need to understand to fill the gap in current efforts to prevent misconduct?

Self-Awareness

Any effort to fill the gap in compliance efforts begins with an awareness about ourselves and others that the natural human tendencies that we all possess can lead us to engage in wrongful conduct or to remain silent in the face of it. This includes the natural tendency, often unnoticed in ourselves, to do what we want, rather than what we should, and the ability to rationalize our decisions to justify our behavior. This may seem self-evident, but is too often overlooked and assumed.

Recognition

In his book, “How Good People Make Tough Choices,” Rushworth Kidder notes that recognizing that there is a moral issue is “vitally important” because it not only draws attention to issues that require addressing, but also requires us to distinguish those issues that are true ethical challenges from ones that are simply social conventions. For many, this recognition can itself be a challenge.

Kidder highlights additional steps that are critical in resolving ethical dilemmas once an issue is identified. These include recognizing who owns the issue and ensuring that one has all relevant facts. It involves understanding what type of ethical issue is involved—is it an issue that involves a violation of a law or regulation or, if not, will it involve a risk of damaging an organization’s reputation? As one unravels the ethical issue and begins to embark on making a decision, it is important to develop options to help resolve the dilemma. All of this requires clear and deliberate thinking that will benefit from support and guidance.

Limitations of Training Programs

Compliance professionals and regulators look to training as the way to help individuals to recognize and address ethical problems. However, as Soltes notes, there is a huge difference in theoretical discussion and in making practical decisions. While individuals may successfully navigate ethical dilemmas in practice sessions such as tutorials, their outcome in real situations may be quite different. Indeed, a false confidence may result when individuals easily resolve ethical issues on paper, but then must resolve dilemmas in real life.

Building Independent Processes for Constructive Argumentation

It is easiest to engage in unethical behavior or to ignore it in others when acting alone or as part of a group with a singular mindset, or when one believes there is no other recourse or place to turn. Soltes observed from his extensive study of wrongdoing that “morally questionable decisions are often made in relative isolation with few outsiders expressing opposing viewpoints or judgments.”

Organizations have attempted to address this by creating hot lines (sometimes referred to as help lines). However, this approach is based on the assumption that people are largely capable of recognizing issues that require more discussion and further contemplation, according to Soltes.

Organizational policies also create an affirmative duty to report misconduct. Yet policies are often ignored, not understood, or intentionally disregarded.

The challenge organizations face is to create mechanisms that will mitigate isolated decision making or “group think.” This requires building accessible support as well as creating a culture of open dissent (Gandossy and Sonnefeld) or uncomfortable dissonance (Soltes). Accessible support and uncomfortable dissonance would force a slowing down of decision making – System 2 thinking – allowing for a healthy consideration of alternative perspectives and permitting a consideration of options that would allow a change in course if the situation merits it.

Soltes calls for constructive argumentation to engage and improve the reasoning process and challenge beliefs that might otherwise go unquestioned by like-minded individuals. He observes that at all levels of decision making of an organization, there is a need for those who can, with a degree of independence, examine business judgments whether to make an acquisition or proceed with a new product that will cause the organization to proceed with caution when ethical questions or issues are identified.

Moving Forward

What then can organizations do? A number of actions can be taken, not one of which is a complete answer in itself.

Empower the Gatekeepers

Most organizations appoint the right job titles as gatekeepers—e.g., chief compliance and ethics officers, general counsels, heads of internal audit, independent directors, and audit committees. However, these gatekeepers are often not empowered, lack critical information, or are brought in after a problem has started. For example, CCOEs often lack a seat at the table when critical decisions are made. If this executive is present when major management decisions are made, there would be a greater chance that he/she can ensure ethical issues are identified, options are explored, and dilemmas are resolved.

Embed Compliance Ambassadors or Liaisons

This approach will help drive the right culture at all levels of the organizations. Like the CCOE, these compliance liaisons also need to be at the table when business decisions are made at the mid-management and line levels, and in a position to raise ethical issues and help resolve and escalate ethical challenges.

Build a Culture of Openness

This in many ways is the hardest step. Most organizations and those in a position of power are not sufficiently open to dissenting points of view. Employees and managers often see the path to success within an organization as “go along to get along.” Those who disagree are often labeled as malcontents, righteous moralists, or worse yet, disloyal. Active and constructive dissent should be made an imperative within the organization.

Rethink Hiring and Promotion Processes

In addition to ensuring that prospective hires have the right skills and qualifications, those responsible for making recruiting decisions also need to understand those hires’ approach to decision making, particularly around situations that present ethical dilemmas. For those being considered for promotion, job performance and earnings potential criteria should be balanced with 360-degree performance evaluations. These can provide insight into a candidate’s ability to be self-aware, to collaborate, to consistently live the company’s core values, and to have the courage to speak out and raise issues, especially when it might result in resisting pressures for earnings.

Rethink Compliance and Ethics Training Programs

It is not enough to take a course and pass a test resolving ethical dilemmas. Ethics and compliance training must also help build self-awareness through a better understanding of the behavioral science that limits one's ability to make ethical decisions and to speak out in the face of misconduct. Training programs need to help build the soft skills necessary to raise issues and voice dissent in a constructive manner.

They should also help supervisors and those in leadership positions learn how to encourage constructive argumentation and be sensitive to the rationalizations and pressures that can lead to wrongdoing.

Use Executive Coaches, Mentors, and Coaching

It has become increasingly commonplace for many in management and leadership to have executive coaches to help improve performance. The coaching processes and methodologies can provide a safe space and also help those being coached to identify ethical dilemmas and engage in a deliberate process to resolve these dilemmas.

Conclusion

The journey to reduce misconduct is ongoing, and there is no simple solution. Laws and regulations are necessary to help us understand what behaviors society will not tolerate. And, consequences must be exacted on those who fail to comply. Organizations must take many different actions to make compliance programs more effective, rather than follow a simple checklist. However, these efforts will always fall short if we fail to understand the lessons of behavioral science. Simply put, we are all subject to limitations to our ethical decision making. This understanding has been the missing link in our compliance efforts.