

The Board's Duties Concerning Wrongdoing and Protection and Response Under Policy Governance®. A Workshop for IPGA, Richard M. Biery, 2018

What could these boards have done about:

- Enron
- WorldCom
- BP
- Penn State
- Coal mining disaster
- Volkswagen
- Mining disasters
- Wells Fargo
- Church meltdowns
- Alcoa's recovery
- Dr. Larry Nasar and the Olympic Association, (and the trainer organization), (and Michigan State University, and elsewhere, e.g., USC) (and predatory sexual molestation)
- Equifax
- MeToo and sexual harassment (from Hollywood to Congress)
- Facebook
- Nike
- School districts systematically cheating on exams, e.g., Atlanta
- Etc.

Note: There are just a few human root causes:

All wrongdoing violates principles of ethics (integrity) and related values (e.g., honesty, excellence, truth-seeking, etc.), and/or principles of love and related values, (care, protection, respect, thoughtfulness, etc.).

- Pride and arrogance, (For example, the failure to seek counsel or advice concerning an action or not), the root cause is the attitude that "I can figure this out on my own," or "I am right and others are wrong."
 - The danger of power is that it silently and blindingly leads to arrogance (pride), entitlement, and eventually abuse of that power. Abuse will manifest itself in one or more of abuse of assets (e.g., fraud, or giving oneself an inordinate salary or perquisites) and/or to the abuse of people, sexually or actually.
- Desire to be accepted – The "Inner Circle" influence, (Binding, blinding, inner circle" – Allen Jacobs & C.S. Lewis)
- Greed & Lust, (Intense desire to obtain pleasure – addictions take hold in this area)
- Laziness,
- Fear,
- Conflicting commitments e.g., over-leveraged, which compels breaking commitments,
- Jealousy or envy.

- Ignorance, being clueless – not knowing something violates ethics or interpersonal caring (love).

Other factors that can play a role:

- Arrogance and pride
- The role of anger, resentment, or hatred, and self-justification, (- e.g., a board's role in the detection of the growth hatred and the loss of love in the culture. This is a very subtle and slippery slope and needs to be attended to.)
- What contributes to distrust (a good indicator – sniff test),
- The importance of relationship and communication.
- The slippery slope problem – we rationalize our behavior (and attitudes) & become numb to this.

Some issues a board must understand to prevent and react well:

- Whistleblower access (and protection),
- Range of wrongdoing (not just illegal actions or obviously immoral). Think of wrongdoing as on a continuum from gross and illegal to questionable, which, at that end, requires keen discernment and understanding of the consequences,
- Taking it with sufficient seriousness, - The instinctive reaction is to downplay, deny or excuse. AND to cover.
- The iceberg reality – wrongdoing always has more to it than meets the eye, - the cockroach metaphor,
- Wrongdoing is much more poisonous (it spreads, grows, and poisons) than we realize and has ramifications beyond our initial perception, often with a significant latency. (Think the “Me Too” Movement.)
- The human immense capacity to rationalize our own actions, (understanding the power of cognitive dissonance).
- Leadership's strong temptation to hide it and cover after discovery. (In the name of “protecting” the organization)
- Importance of the strength and clarity of the GP policies dealing with behavior (and threats to reputation, etc.),
- What are the strengths and clarity of ELs that would prevent wrongdoing, are they preventive or reactive?

Conditions that are conducive to the development of wrongdoing (but not responsible for):

(However, humans, apart from a psychiatric condition, are always morally and generally legally responsible for their decisions and actions. The perps AND the company can be held responsible for their respective failures.)

- Unrealistic demands and disproportionate or poorly aligned rewards and punishments (Wells Fargo),

- No stated ethical and values organizational standards (with constant repetition and ready availability),
- Arrogance
- The danger of secrecy: “Everything secret degenerates, even the administration of justice; nothing is safe that does not show how it can bear discussion and publicity.” John Emerich Edward Dalberg Acton
- No behavioral monitoring nor correction or consequences,
- Weak culture of behavior (behavioral examples that are poor. People copy behaviors around them, which become normative in their minds.). (The culture must be regularly monitored and hence, the Board needs a clear policy concerning prevention of damaging or risky cultures.)
- Parsimony (stinginess)

Board response principles (under Policy Governance):

- Smelling smoke, spotting the cockroach – how and where from?
- Act sooner rather than later,
- Answering the question, “How much must a board (or investigator) know to draw a reasonable picture and conclusion?”
- Arranging a credible investigation under Policy Governance principles (and anticipating possible public spotlight),
 - What value(s) seem to be at stake? Therefore, ask, “What policies address those values and should be monitored? – perhaps even uniquely monitored”
 - Monitoring – choices
 - Ask for a monitoring report concerning the possible wrongdoing.
 - What has been the quality of prior monitoring reports? (was this failure despite a satisfactory, generally accepted management compliance action, or was it not? – A failure to have reasonably interpreted compliance?)
 - Does the organization have an internal auditor?
 - Do an outside third-party investigation.
 - Deciding how much control to take – decision junctions:
 - Is the CEO possibly involved?
 - What is the CEO response?
 - Immediately takes initiative to investigate and deal with it,
 - No response or passive aggressive,
 - Sees no issue,
 - Resists.
 - When to ask for third party investigation and recommendation.
- What about a board member suspected of wrongdoing? (Often more awkward and tends to be procrastinated, unless blatant such as an indictment or jail.)
 - Board’s reputation can be damaged,
 - Board must have a behavioral policy of unacceptable behavior,
 - Board must have a process for itself to use.

- How can a board protect the organization's culture (and operation) to assure a culture that is counter-conducive to wrongdoing? (For example, using research from the behavioral economics literature.)

Some notes:

- Lying is an important indicator/pointer when detected. Ask, "Why is the lie necessary?" What is it covering?
- Humans are very good at detecting mendacity. Hence, trust must be protected diligently. Trustworthiness is perhaps your most vital commodity. – Your good name.
- Importance of transparency – Transparency is protective against wrongdoing.
- Importance of humility. Humility protects against arrogance and blindness and enables transparency, learning, repentance and correction, curiosity, caring for others, caring for the truth, saying, "We might be wrong.", etc.
- The impact of ethnic culture on ethics – e.g., running a hospital in central Africa – the impact of tribalism or clan culture on ethics.

Resources:

Behavioral economics

Dan Ariely, e.g., The Honest Truth About Dishonesty, et al.,

Daniel Kahneman e.g., Thinking Fast and Slow

Plantinga - Not the Way It Is Supposed to be: A Breviary of Sin