Encouraging Candor—A Critical Element of “Effectiveness” (Part 1)

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A “no” uttered from deepest conviction is better and greater than a “yes” merely uttered to please, or what is worse, to avoid trouble.
– Mahatma Gandhi

In last week’s article, we discussed the importance of effective leadership in our role in identifying and mitigating or managing compliance risks and ethical issues that can undermine our company’s long-term viability.

Now, we will focus on the two faces of candor. From the perspective of the compliance and ethics function, candid communication facilitates effectiveness in two significant ways:

1. Addressing potential misconduct quickly
2. Leading high-performing teams

We will cover these two essential elements of candor in two parts—Part 1 in this article and Part 2 in the next article.

At the beginning of their book, *Transparency: How Leaders Create a Culture of Candor*, Warren Bennis, Daniel Goleman, James O’Toole and Patricia Ward Biederman describe the importance of candor and information-sharing:

> *For any institution, the flow of information is akin to a central nervous system: the organization’s effectiveness depends on it. An organization’s ability to compete, solve problems, innovate, meet challenges and achieve goals—its intelligence, if you will–varies to the degree that information flow remains healthy… That is particularly true when the information in question consists of crucial but hard-to-take facts, the information that leaders may bristle at hearing… We are not talking about some mysterious process. It simply means that the right information gets to the right person at the right time and for the right reason.[1]*

Key Highlights

- A “culture of candor,” fostering unencumbered information flow, is essential to having an early-warning system for addressing issues.
- Research has given us some important insights:
  - encouraging employees to “speak up” about issues, questions or concerns is a critical factor in heading off misconduct;
  - the most significant obstacle to this kind of candor is fear of retaliation; and
  - breaking down barriers to honest feedback can also enhance long-term shareholder value.
- Educating managers about their special responsibilities for addressing and escalating issues is a key element of this unencumbered information flow.
- Employee surveys and other feedback mechanisms can reveal employee perceptions about

speaking up, including their reasons for not doing so.

- Learning from the “candor” results of your organization’s employee engagement survey will likely provide clues about the potential obstacles to “speaking up” about ethical and compliance issues.
- The US Federal Sentencing Guidelines, the US Sarbanes-Oxley Act (if applicable) and other relevant laws require a prohibition against retaliation for raising issues.
- The whistleblower provisions of the US Dodd-Frank Act of 2010 have provided a renewed focus on addressing barriers to candid internal communications; if employees do not feel comfortable (or responsible for) raising issues internally, they might turn to this competing, potentially lucrative, external route for report problems.

In the compliance and ethics field, we have been discussing for several years the importance of encouraging employees to speak up about actual or potential compliance risks and ethical issues. We know that this kind of candor is essential to developing an organizational culture that rejects noncompliance and unethical behavior.

Cultivating this “culture of candor” is especially important to the effectiveness of the compliance and ethics program, since unencumbered information flow is essential to having an early-warning system for heading off or addressing issues. Unfortunately, while escalating issues is critical to preventing or correcting misconduct, it remains a difficult kind of communication to foster.

Why do employees hesitate to question behaviors that trouble them or share information they feel might be problematic?

As O’Toole reminds us, the ethical issues and physical perils of “speaking truth to power” are embodied in Sophocles’ now familiar phrases, “nobody likes the bringer of bad news” and the unfortunate tendency to “kill the messenger.”[2] Here we are, about 2500 years after Sophocles illustrated these challenges, still grappling with how to break down the barriers to this critical information flow.

Thanks to the research and insights from the Ethics Resource Center (ERC), the Compliance and Ethics Leadership Council of the Corporate Executive Board (CELC/CEB) and our other professional organizations, we know that getting employees comfortable with raising questions and concerns is an important tool in identifying and preventing misconduct. We have been implementing hotlines, ombudsmen programs and helplines for years and trying to increase their visibility and use.

So how can we better understand the “on-the-ground reality” of information flow in our own organizations and the effectiveness of the programs we are implementing? We can use various mechanisms for collecting this kind of feedback—focus groups, interviews, feedback “mailboxes,” informal “pulse” survey questions posted on an internal employee website, and more formal surveys issued electronically to subsets of employees or enterprise-wide.

Many of us have been using employee survey questions—either as part of annual employee engagement surveys or as stand-alone compliance and ethics surveys—to gain specific insight into employee perceptions about the effectiveness of our programs and about our organizational culture. Once our first survey results are in, then that establishes a baseline against which we can compare later surveys to measure our progress year-over-year with the programs and action plans we implement.

One of the key priorities among these surveys is measuring whether and how employees report actual or potential noncompliance. Typically, the statements the employee addresses in the survey sound something like this: “I know how to raise concerns in my company about compliance issues or ethical dilemmas,” or “I feel comfortable reaching out to someone at my company to seek advice about compliance concerns,” or “I am confident that if I raise a compliance concern or ethical dilemma to my manager, he/she will help me or will find someone who can.”

The employee ranks their agreement or disagreement with the statement (typically, from “strongly agree” down to “strongly disagree”). Additional questions explore the reasons for any discomfort with raising concerns, including driving down to more granular perceptions about the company’s management and culture. We then can use the ERC’s or other organizations’ findings as benchmarks when we analyze our results and develop action plans.

We have learned a great deal from the survey research over the last decade about the importance of understanding and improving all of the channels through which employees can and will be comfortable “speaking up.” In fact, the ERC’s research shows that **“most employees would rather report wrongdoing directly to somebody they know than to a hotline.”**[3]

While we will continue to improve the visibility and confidence in our helpline processes, these insights also have focused us on heightening the awareness of managers about their special responsibilities for addressing and escalating questions and issues.

If employees are likely to go to their managers (or to another manager), then we must educate managers about:

- recognizing and being open to concerns and questions from employees;
- having the skills to interact with the employee appropriately, even if they are delivering “bad news” about the manager’s department;
- ensuring that there is no retribution—directly or subtly—for the employee having raised a concern or issue (in good faith);
- being familiar with the appropriate channels for seeking advice or escalating the issue; and
- understanding that they are not to do their own investigation of the issues that are raised.

For years, we have been trying to understand what gets reported and what does not, what dissuades or prevents employees from raising concerns or asking questions, and whether employees trust management at various levels to address compliance and ethical issues. We can use this data to develop action plans and to set our priorities on changing the behaviors and messages (spoken or unspoken) that are creating the most significant obstacles to speaking up.

One of the most staggering statistics from the ERC’s National Business Ethics Survey (NBES) over the last decade has shown us that a large percentage of employees are not reporting actual misconduct:

> **“… four in ten employees who witnessed workplace misconduct did not typically report it.”[4]**

Why is that?

The ERC’s research and analysis points to some key factors, including:

- **Cynicism or lack of confidence about whether the organization will actually take seriously what is reported.** According to the ERC research, “… those who report misconduct are motivated by the belief that their tips will be properly investigated. Perhaps surprisingly, most employees are less concerned with the particular outcome than in knowing that their report was seriously considered."[5]

- **Fear of retaliation for reporting an issue.** "Past research in the field of ethics and compliance has identified fear of retaliation as the leading indicator of misconduct in the workplace. And… perceptions of retaliation drive reporting rates. In essence, employees' beliefs about retaliation—that it will happen or that it already has—drive both how much misconduct is taking place and whether it gets reported so management is given an opportunity to address it."[6]

What kinds of retaliatory behaviors are reporters experiencing?

The range of scenarios can be broad—from overt actions, such as termination or demotion, to more subtle actions, such as being overlooked for projects or being excluded from lunch plans by co-workers.

The table below illustrates the findings on this point from the Ethics Resource Center's 2009 National Business Ethics Survey, as analyzed in detail in the ERC's Supplemental Research Brief, "Retaliation: The Cost to Your Company and Its Employees."[7]

Form of retaliation	**Percentage of reporters who experienced retaliation**
Supervisor or management excluded employee from decisions and work activity	62%
Other employees gave a cold shoulder	60%
Verbally abused by supervisor or someone else in management	55%
Almost lost job	48%
Not given promotions or raises	43%
Verbally abused by other employees	42%
Relocated or reassigned	27%
Other form of retaliation	20%
Demoted	18%
Experienced physical harm to person or property	4%

Source: "Retaliation: The Cost to Your Company and Its Employees" © 2010 The Ethics Resource Center

The report notes that specific "Other" forms of retaliation included: termination, reduction in work hours for hourly employees, threats to family members, and several responses similar to being given the cold shoulder by coworkers. *[Note: Because the survey focuses on one's current workplace, it does not collect data on retaliatory experiences resulting in termination.]* [8]

Additional research in the field is consistent with these findings and takes the analysis a step further—connecting this kind of candor to business value.

> "A recent survey by the Corporate Executive Board of more than 400,000 employees across various industries reveals that companies that break down two key barriers to honest feedback not only reduce fraud and misconduct, but also deliver peer-beating shareholder returns by a substantial margin…. a significant advantage accrues to companies that know where and how to break down barriers to honest feedback. Such companies appear to outperform their peers in terms of long-term total shareholder return (TSR) by a significant margin."[9]

What are those two key barriers? According to this CEB/CELC research, they are:

- **failure of management to encourage openness of communication**
- **fear of retaliation**

> *Among the 12 key indicators [CEB/CELC] track[s] in our cultural diagnostic, the one that is most strongly correlated with 10-year TSR is employee comfort speaking up. The most important driver of this comfort is a lack of fear of retaliation. As with openness of communication, we found that companies that excel on this factor also had materially lower levels of observed fraud and misconduct….[10]*

The bottom line: the case for encouraging employees to speak up includes at least two powerful benefits—

1. Heading off misconduct
2. Contributing to shareholder value

In order to deliver on them, though, we must address the key obstacles to this kind of candor by encouraging open communication, addressing employees' fear of retaliation for raising issues and then taking seriously the information that they share.

There are also some significant legal reasons to prevent retaliation. The US Federal Sentencing Guidelines' standards for an "effective" compliance and ethics program include a reporting mechanism that allows employees to report concerns or seek guidance regarding legal or ethical issues (often a "helpline") without fear of retaliation.[11] In addition, publicly-traded companies subject to the US Sarbanes-Oxley Act,[12] can be held liable for retaliation against employees who raise issues that could point to securities violations or other potential fraud.[13]

While these prohibitions against retaliation typically are included in a code of conduct, companies should make sure that it is more than a "paper" policy. Communicating and enforcing this policy will make it credible and reliable. Educating managers and investigators about retaliation—in both overt and subtle forms—is critical to the follow-through.

[In future articles, we will explore some of the approaches being used by organizations to address retaliation concerns.]

So why does management fail to encourage open communication?

In making the case for internal transparency as the conduit to a culture of candor, Bennis, Goleman and Biederman explain some of the obstacles, sharing stories about real-life "whistleblowers," most of whom were disregarded or could not otherwise find a receptive channel for escalating serious ethical or compliance issues within their organizations. Many resorted to going public to raise their concerns. In most cases, they suffered serious personal consequences.[14]

Incidentally, their whistleblower examples took place before the US Dodd-Frank Act was enacted in 2010.[15] If companies did not feel the incentives to encourage and value candid communications previously, this law's whistleblower provisions have sharpened that focus. If employees do not feel responsible for or comfortable with raising issues internally, they might turn to this competing, potentially lucrative route for raising their concerns.

There are on-going conversations in our professional associations (compliance and ethics, legal, finance, risk management) about how to deal with the whistleblower provisions of Dodd-Frank. While legal whistleblower protections are not new, Dodd-Frank seems to make it easier and potentially more secure—or even lucrative—for employees to raise issues with the government rather than raising them internally. The best way to compete with that path is to encourage employees to feel vested in addressing problems through internal channels and that they can count on being taken seriously—and protected—when they do so in good faith.

Following their whistleblower examples, Bennis and his colleagues go on to discuss three key impediments to this kind of candid information flow:

- **the mishandling or hoarding of information** (often as a power play) by a leader, "setting a bad example for the entire group, and preventing the necessary information from getting to those who need it to make solid decisions;"
- **structural impediments** to information flow (such as the inability or unwillingness to share information between silos or the failure to have processes for sharing lessons learned); and
- **the "shimmer effect,"** as they call it, "…one of the privileges of rank is a tendency to get automatic approval of behavior that would be questioned in the less exalted."[16]

Further on, O'Toole gives several examples of how the perils of "speaking truth to power" can also dissuade the free flow of information, noting that a culture of candor requires both a candid speaker of fact and a receptive listener.[17] He also observes that there can be an arrogance that accompanies power; and he reminds us of President Richard Nixon's now infamous Watergate defense, "When the President does it, that means it is not illegal."[18]

How can we identify and address these kinds of impediments to open communication and raising concerns?

This has been and continues to be a major focus of many compliance and ethics professionals. Coincidentally, our human resources colleagues have been focusing on "candor" with employee engagement surveys as well, though they are measuring candor in a context broader than purely about reporting wrong-doing. These surveys are often based on a diagnostic framework that measures employee engagement (in order to enhance performance), such as the "Gallup Q12" management elements.[19] The candor diagnostic statements might sound something like this: "I feel comfortable raising ideas in department [or team or project] meetings;" or "I feel like my input [or opinion or feedback] matters to my manager;" or "I feel comfortable raising contradictory ideas with my manager about strategy [or decisions or objectives]."

While the diagnostics are slightly different, we might take the opportunity to cross-check our compliance and ethics survey results regarding "speaking up" with these candor-related questions in the employee engagement survey. Is it possible that some of the same underlying obstacles to "speaking up" about ethical or compliance issues are the same obstacles to candor measured by the employee engagement metrics? Perhaps managers who score poorly on this section of the engagement survey also could be the managers in whose departments we find the more significant obstacles to speaking up on the compliance and ethics survey…? If so, targeting those behaviors would be like "killing two birds with one stone," right? We cannot be certain without comparing notes with our human resources colleagues, but the potential for efficiency seems significant.

One thing seems clear: getting this right—encouraging a culture of candor—is one of the most important investments we can make in setting a reliable foundation for identifying, addressing and preventing misconduct and unacceptable risk in the way our organizations operate.

Opportunities for Action

Candor Essential #1 – Encouraging Employees to Speak Up About Wrong-Doing

1. Make sure you have established and actively communicated the required prohibitions against retaliation for raising issues under the US Federal Sentencing Guidelines, the US Sarbanes-

Oxley Act and other relevant laws. Having this prohibition in your code of conduct is a great start. You might also include it in your investigations guidelines. And then communicate and enforce it.

2. Educate managers about their special responsibilities for addressing and escalating issues.
3. If you aren't already surveying (and using other feedback mechanisms) to understand employee perceptions about speaking up, get started. You might want to coordinate with or piggy-back on the launch of the employee engagement survey.
    - HR and Corporate Communications (or both) have been doing this for a long time and probably have the channels to launch it and the expertise to analyze the data; and
    - It will be less disruptive, annoying or confusing for employees.
4. Learn from the "candor" findings of your company's employee engagement survey. They will likely speak volumes about the potential obstacles to "speaking up" about ethical and compliance issues.
5. Contribute to and learn from the conversations taking place in our professional associations about how to deal with the whistleblower provisions of the US Dodd-Frank Act. While whistleblower protections are not new, Dodd-Frank seems to make it easier and potentially more inviting to report issues to the government rather than raising issues internally.

In addition to the compliance-related advantages of encouraging candor, we can benefit in other ways from encouraging candid communications as we lead our own teams. We can learn some best practices from our colleagues driving leadership of high-performing teams and culture change "in the business." Many of these concepts can help us drive effectiveness in our compliance and ethics programs.

Next Week: Part 2

In part 2 of this article, we will discuss this second essential part of candor– ***harnessing the power and creativity of the teams we lead.***

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[1] Bennis, W., Goleman, D., O'Toole, J. and Biederman, P.W., *Transparency: How Leaders Create a Culture of Candor* (Jossey-Bass, 2008), pp. 3-4.

[2] Ibid., p.47-48.

[3] *"Blowing the Whistle on Workplace Misconduct,"* Supplemental Research Brief, National Business Ethics Survey, (The Ethics Resource Center, 2010), p.5, http://www.ethics.org/resource/blowing-whistle-workplace-misconduct.

[4] *"Reporting: Who's Telling You What You Need to Know, Who Isn't, and What You Can Do About It*," Supplemental Research Brief , National Business Ethics Survey, (The Ethics Resource Center, 2009) pp. 1-2, http://www.ethics.org/files/u5/Reporting.pdf .

[5] *"Blowing the Whistle on Workplace Misconduct,"* p.10.

[6] "Retaliation: The Cost to Your Company and Its Employees," Supplemental Research Brief, (The Ethics Resource Center, 2010), p.1, http://www.ethics.org/files/u5/Retaliation.pdf .

[7] Ibid., p.6.

[8] Ibid.

[9] Griffin, M. and Davis Bradley, T., "Organizational Culture: The Overlooked Internal Risk," Bloomberg BusinessWeek, 10 Oct. 2010, http://www.businessweek.com/managing/content/oct2010/ca2010101_023768.htm .

[10] Ibid.

[11] U.S.S.G. §8B2.1

[12] Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified as amended in scattered sections of 11, 15, 18, 28, and 29 U.S.C.), *available at* http://uscode.house.gov/download/pls/15C98.txt.

[13] Ibid., § 806.

[14] Bennis, Goleman, O'Toole, and Biederman, pp. 9-19 and 45-47.

[15] Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Pub. L. No. 111-203, July 21, 2010, 124 Stat. 1376, *available at* http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/content-detail.html. [*See* §922 for whistleblower protections.]

[16] Bennis, Goleman, O'Toole and Biederman, pp. 20-25.

[17] Ibid., p. 50-55.

[18] Ibid., p. 48.

[19] Wagner, R. and Harter, J., *12: The Elements of Great Managing* (Gallup Press, 2006), pp. xi-xii.

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About the Author

Debra Sabatini Hennelly, president of Compliance & Ethics Solutions, is an experienced lawyer and compliance & ethics practitioner with more than 20 years of experience (including 10 years in-house) building and improving compliance & ethics programs with Fortune 500 companies. She counsels businesses on driving program effectiveness and advises general counsel and compliance & ethics officers on leading high-performing teams.

You can reach Ms. Sabatini Hennelly at dhennelly@callces.com and read her complete bio on her CCI author page.

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