

TOP TEN LIST OF LESSONS LEARNED FROM WHITE COLLAR CRIMINALS

(Editor's note: These are revised remarks made by UST Law and Holloran Center Fellow Hank Shea at the 2007 Minnesota Business Ethics Awards Luncheon on May, 10, 2007.)

Today I am wearing two hats: I am still in my old role as a federal prosecutor, now serving as a Special Assistant U.S. Attorney. In that capacity, I am expressing my own views and not the position of the U.S. Department of Justice. I am also appearing in my new role, as a Fellow at University of St. Thomas School of Law and its Thomas E. Holloran Center for Ethical Leadership in the Professions. The title of my remarks, *TOP TEN LIST OF LESSONS LEARNED FROM WHITE COLLAR CRIMINALS*, is drawn from both of these roles.

As an Assistant U.S. Attorney, I prosecuted hundreds of white collar offenders, including bankers, lawyers, business owners, and executives--from companies large and small. About seven years ago, however, I began to realize that, while prosecuting and punishing these people was necessary, it was not an adequate solution to the problems posed by their unlawful conduct. I started to look for answers to addressing white collar crime beyond just sending such criminals to jail. Instead, I began to pursue innovative ways to seek justice, including novel deterrence approaches and extraordinary restitution remedies, all to prevent future crimes and help crime victims.

While these were important steps forward, they were not enough. Therefore, in 2003, I took a new approach by asking convicted felons to make public appearances to describe the causes and consequences of their crimes and share the key lessons learned from them. The first event, scheduled to be held at UST's downtown Minneapolis campus, had to be moved to the nearby First Baptist Church to accommodate the large audience. The feedback from participants and coverage by the media were overwhelmingly positive. As a result, I started down a new avenue to crime prevention through education.

Now, as a Fellow at St. Thomas, I am working with more than a dozen white collar defendants for educational purposes. I have made more than 40 joint appearances with these felons, former lawyers, government officials, bankers, brokers, and business executives – each willing to share their powerful, yet painful stories of temptation, deceit, concealment, apprehension, ruin, and recovery.

The format of these joint presentations is unique and engaging. I begin by having each person provide his or her background and history, which often parallels that of many of those in the audience. I then draw out the various motives and reasons for their misconduct and prompt them to describe the many legal, professional, and personal consequences of their offenses, including the impact of their crimes on their victims. We jointly explore what they could have done differently and how other persons and organizations can best avoid such breakdowns and disasters. Finally, we usually take questions from the audience. I have never had a felon refuse to answer someone's question, no matter how personal or probing.

These dozen individuals, and a growing number of others with whom I am working, typically have served their sentences and are under no obligation to make presentations. They participate in these events voluntarily and without compensation (except for occasional reimbursement of travel expenses). While each has personal reasons for participating, most are seeking to make amends for the harms they have caused by steering others toward a different path. These presentations are not simple descriptive litanies of describing transgressions and

punishments, but rather, genuine explorations of the often unspoken causes of misconduct and the often misunderstood realities of criminal punishment. For some presentations, the role of apology, forgiveness, and redemption is raised in the context of faith and justice.

Based on my many years of prosecutions and all of these presentations, I have identified ten of the most important lessons to be learned from the misconduct and wrongdoing of others. For those interested in learning more about our work at the Holloran Center, visit our website at (www.stthomas.edu/ethicalleadership).

So, here is my TOP TEN LIST:

LESSON No. 10:

When faced with a right versus a wrong decision, guard against that first intentional misstep.

This first misstep often involves a small matter or amount. However, none are more important because this small compromise or minimal transgression will almost always lead to worse conduct. Once you step over the line, it is difficult to go back to the right course. In fact, felons typically say that whether it be embezzlements, tax frauds, or corporate offenses, after that first wrongful act, it always gets easier to commit the next wrong and to live with it. By way of example, in one of my recent corporate prosecutions, former company executives started by abusing their expense accounts over small matters involving gas and meal reimbursements; it graduated to taking family vacations on their expense accounts in lieu of bonuses; and it ended with large scale corporate fraud leading to prison terms for the former CEO and CFO.

LESSON No. 9:

Never knowingly sign a false document.

No matter what type of document is at issue—expense account, stock option, tax return—it is almost always a crime and it is always wrong to intentionally sign an official document that is untrue or inaccurate. Your word and your signature are your bond; consequently, you should never put them at risk by stretching the truth or endorsing something that you know is not right. Your signature is also permanent: It often outlives your memory, and may even outlive you. Therefore, always sign your name with care.

LESSON No. 8:

Never compound or try to bury your mistakes.

Everybody makes mistakes, errors in judgment, and bad decisions. When you do, face up to them, try to make things right, and learn from your mistakes. Do not make matters worse by concealing what you did or covering up what you messed up. Many false statements are worse than the underlying misconduct. Consider the example of Martha Stewart. At the same time, it is never too late to admit your mistakes, or even wrongdoing. Felons with whom I work are great examples of truly accepting responsibility, not just by pleading guilty to their crimes, but by trying to make amends for their misconduct by teaching others how and where they went wrong.

LESSON No. 7:

Do not follow directions from others you believe to be improper or unethical.

It is not the right thing to do, and it is not a defense to a criminal act unless you are being forced to take the wrongful action. If a CEO says to employees “We’re going to take advantage of....” someone (in other words, cheat) then you cannot simply go along without exposing yourself (as well as your corporation) to prosecution. It is also not a defense that others are doing it, or even that everybody else is doing it. Instead, that claim may invite the prosecutor to make you the example for others.

LESSON No. 6:

No matter what your position in your organization, lead by example.

Leading by example is crucial because others are always watching, especially your subordinates. Those in positions under you talk about how you act and what your actions reflect about your expectations for their behavior. For example, if you cut corners or fudge on your expense account, others will do the same and get down in the mud with you. In contrast, if you take the high road or demand the highest ethical standards from yourself, others will follow in your footsteps. This type of leadership is what creates a company’s culture—not written rules or a code of conduct, but the everyday actions of senior leadership that reflect values and priorities.

LESSON No. 5:

Avoid the perils of “Willful Blindness”.

In the post Sarbanes-Oxley world, do not ever deliberately ignore wrongdoing by others, especially if you are a “gatekeeper.” In other words, if you are a senior executive or general counsel, you can commit a crime if you close your eyes to wrongful conduct by your subordinates. For example, federal juries are often instructed that a defendant cannot escape responsibility by deliberately ignoring the obvious. This so-called “ostrich” jury instruction was used to convict Jeff Skilling, the former CEO of Enron. Closer to home—the general counsel for a local Twin Cities company plead guilty to aiding and abetting computer fraud that was being committed by others—because after learning about it, the general counsel did not do enough to stop it and did not report it. In short, if you learn of misconduct by others, address it or report to your superior or board of directors. Do not ignore it! Do something about it and then keep a record of your action.

LESSON No. 4:

When faced with an ethical dilemma, seek advice and counsel from others.

Put aside your pride and ego and ask others for help. By doing this, you receive a fresh point of view and also a different perspective on the situation. Insular, isolated decision-making often leads to bad results. Consider the many possibilities of persons whom you can turn to—your supervisor, a colleague or associate, a company lawyer or compliance officer, your best friend, your parents, or your spouse. The best advice to give to young professionals or new employees is that they seek and find mentors. These mentors should not only be someone you can emulate, but also someone you trust will give you sound advice and wise counsel based on experience and seasoned judgment.

Several younger executives whom I have prosecuted say that this was a key reason for their downfall—the lack of a mentor or someone they could go to for help. My experiences show that mentors can make a difference. At the University of St. Thomas School of Law, every student has a mentor during law school, and many continue the relationship with that mentor during their legal careers. Mentors are the wave of the future of professional education. Smart organizations are taking a similar path by promoting mentor relationships to train and retain key employees and future leaders.

There is, however, one caveat: *Choose Your Mentor Wisely*—

For example, one local former executive whom I prosecuted followed his mentor from corporation to corporation—but also followed his mentor’s example of cheating on expense accounts and using corporate funds for personal purposes—now both are felons!

LESSON No. 3:

Learn to be satisfied with what you have legitimately earned—Greed is a vicious vice that can destroy you.

While this may sound trite, it is important. If you judge success in life by what you can accumulate, you will never be fully content—someone will always have more, your children or others will always want more from you, and therefore, you will never have enough.

Among the many former lawyers whom I prosecuted, two examples stand out: one was legitimately earning more than \$1 million a year as a personal injury attorney and the other was serving as an elected official and making a decent living as lawyer. However this wasn’t enough for either of them; instead, they stole from vulnerable clients. Now they have lost everything--their freedom, their livelihood, their marriages, and their self-respect and reputations.

LESSON No. 2:

NO ONE is above the law.

This is a core principle in our system of justice: no matter how powerful, wealthy, or famous one becomes, everyone is still subject to the same laws that govern us all and enable us to live in a civilized society.

Three examples should suffice:

- A former Chairman of the State’s second largest savings and loan was a community leader with great influence when he was found guilty of conspiracy, insider trading, and other fraud offenses following the failure of that institution;
- A former Chairman and CEO of a successful company was among the wealthiest of Minnesotans when he pled guilty to tax fraud and corporate fraud; and
- A university transplant surgeon was probably the most famous person whom I prosecuted. Although that prosecution was not successful, it proves my point better than all of my many convictions. No matter how well-known the person, no matter how many lives one has saved as a surgeon—if you sell an unlicensed experimental drug that causes harm to others or if you double bill your travel expenses to the tune of more than \$100,000, you should be held accountable for your conduct.

And finally, above all, the number 1 lesson learned from white collar criminals...

LESSON No. 1:

This top lesson consists of what I call first principles:

***ABOVE ALL ELSE, AT ALL TIMES, WHEREVER YOU LIVE OR WORK,
DO THREE THINGS:***

- A) ACT WITH INTEGRITY***
- B) EXHIBIT COURAGE***
- C) HONOR YOUR REPUTATION***

A) Act with and foster integrity.

When I told one of my colleagues at the U.S. Attorney's Office about my intention to give you a top ten list of lessons learned, he said it all boils down to one rule: "Don't Lie." While it is not quite that simple, you need to always stand behind the truth and punish dishonesty in all its forms.

Recent surveys show the disturbing number of students, from high school to graduate school, who cheat:

In a 2006 survey of business schools, 56% of the more than 5,000 MBA students surveyed admitted cheating at least once.¹

In surveys conducted by the Josephson Institute, 60% of more than 30,000 high school students admitted cheating on a test.²

These are frightening statistics and they need to be addressed immediately by people like you and me—this is where the Holloran Center will strive to make a difference, but this is a dilemma for our entire society.

For the Rotarians present today, they know that the best course is to follow the Rotary four way test: be truthful, be fair, build good will, and make it beneficial to all concerned.

B) Exhibit and reward courage.

DO THE RIGHT THING REGARDLESS OF THE CONSEQUENCES.

To combat cheating and dishonesty, you will need to reward courage when people stand up for what is right. Honor codes and compliance programs only work when people feel obligated and safe to report wrongdoing by others. Thus, consider how your organization treats change agents or whistleblowers—are they ignored, shunned, or muzzled or are they protected, fostered and recognized, and where appropriate, rewarded?

C) Honor and protect your reputation and your organization's reputation.

¹ McCabe, Butterfield & Trevino, September 2006.

² 2006 Josephson Institute Report Card on the Ethics of American Youth: Part One - Integrity.

IT IS YOUR MOST VALUABLE ASSET.

It has been said that reputations are earned over a lifetime, but can be lost in a single day. So when faced with that tough ethical decision, ask yourself how your decision would look on the front page of the next morning's newspaper- then do the right thing, do something of which you can be proud. That is what your reputation is all about. Your acts not only define who you are but establish your reputation—they shape your life and define your legacy, so safeguard that reputation at all times.

Today you honor organizations which embrace ethical cultures and serve as models for others. I join you in congratulating them for their efforts and accomplishments. Thank you for including me in this worthwhile event.

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