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John Yeargain, Co-Editor
Southeastern Louisiana University

Evelyn Hume, Co-Editor
Longwood University

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Evelyn Hume, Co-Editor
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LETTER FROM THE EDITORS

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Readers should note that our mission goes beyond studies involving business law or the effect of legislation on businesses and organizations. We are also interested in articles involving ethics. In addition, we invite articles exploring the regulatory environment in which we all exist. These include manuscripts exploring accounting regulations, governmental regulations, international trade regulations, etc., and their effect on businesses and organizations. Of course, we continue to be interested in articles exploring issues in business law.

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AN EXAMINATION OF ETHICAL VALUES AMONG BLACK AND WHITE SUBJECTS AND AMONG MALES AND FEMALES

Sandra J. Hartman, University of New Orleans
Lillian Y. Fok, University of New Orleans
Susan M. L. Zee, Southeastern Louisiana University

ABSTRACT

In this study, we extend the vein of management and business ethics literature that uses vignettes to present various kinds of real life of ethical dilemmas (Fritzsche and Becker, 1984; Becker and Fritzsche, 1987; Premeaux and Mondy, 1993) to different groups of managers and to those from different national cultures. In this research, however, our focus is not upon cultural differences across national groups, but rather upon the situation and the diverse national culture in the United States. Specifically, we consider whether differences may occur among two racial and the two gender groups found in the U.S. We do not find significant differences in level of reported ethical behavior for Black versus White subjects, but we do find some evidence that the two gender groups may approach the decision making process differently in some instances. When we examine results for males versus females, we find significant differences between males and females in both reported levels of ethical behavior and in approach to ethical decision making. Males reported more willingness to engage in unethical behaviors and to approach ethical decision making somewhat differently than females.

INTRODUCTION

A renewed focus on business ethics, especially following the Enron scandal, has brought a resurgence of interest ethics and ethical differences. In this study, we extend the business ethics literature that uses vignettes to present various kinds of real life of ethical dilemmas (Fritzsche and Becker, 1984; Becker and Fritzsche, 1987; Premeaux and Mondy, 1993) to a consideration of whether differences may exist among Blacks and Whites, and males and females.

LITERATURE REVIEW

Historically, between the mid 1990’s and 2002, most of the comparative empirical research dealing with normative behavior and the development ethical values in firms was published under

the rubric of comparative management rather than business ethics. Early emphasis was upon differences among managers and upon national-cultural differences, and conceptual frameworks for the examination of business ethics in a cross-cultural context began appearing in the early 1990's (Kohls and Buhler, 1994; Robertson, 1993; Vitell et al., 1993; Vogel, 1992; Wines and Napier, 1992). Vignettes were generally not used and, as noted by Whitcomb et al. (1998), the choice of variables used in these studies appears to be heavily influenced by psychology and traits theory.

In this study, we incorporate the method and design used in a number of previous studies, extending the vein of management and business ethics literature that uses vignettes to present various kinds of real life of ethical dilemmas (Fritzsche and Becker, 1984; Becker and Fritzsche, 1987; Premeaux and Mondy, 1993). In this research, however, our focus is not upon cultural differences across national groups, but rather upon the diverse national culture in the United States. Specifically, we consider whether differences may occur among two racial and the two gender groups found in the U.S.

Surprisingly, we found relatively little recent research dealing with these topics. In the area of gender, the early Kohlberg-Gilligan debate, in which Kohlberg held that women were at lower levels of values maturity, while Gilligan argued for *differences* in values rather than male value superiority, was generally lively (see especially Gilligan, 1982; Gilligan and Attanucci, 1988; Kohlberg, 1969, 1976, 1984).

Racial differences have received almost no direct study, apart from examination of differences in reaction to specific issues (see, for example, Kravitz & Klineberg, 2000, on affirmative action). While there has been debate about the possibility of cognitive/IQ differences between blacks and whites (see Bobko, Roth & Potosky, 1999; Nisbett, 2005; Rushton & Jensen, 2005), we could find no consideration of whether differences, if they exist, could impact values/ethics.

These scanty findings, and especially those suggesting "no differences," are somewhat surprising, especially given the recognition that national culture differences may impact values/ethics, and that men and women may have received somewhat different early socialization (Whitcomb et al, 1998). As noted, in this study, we extend the business ethics literature that uses vignettes to present various kinds real life of ethical dilemmas (Fritzsche and Becker, 1984; Becker and Fritzsche, 1987; Premeaux and Mondy, 1993) to examine whether differences may exist among Blacks and Whites, and males and females.

METHODOLOGY

Method and Design

The current study replicates the method and design used in previous studies in this series, continuing the vein of management and business ethics literature that uses vignettes to present

various kinds of real life of ethical dilemmas (Fritzsche and Becker, 1984; Becker and Fritzsche, 1987; Premeaux and Mondy, 1993). In an effort to facilitate wider generalization and comparison with previous studies, the vignette set developed by Becker and Fritzsche (1984; 1987) was used. Thus the instrument and hypotheses replicate those used in those earlier studies.

Instrument

The instrument was derived from the Becker and Fritzsche instrument (1984; 1987) and presents five vignettes. For each vignette, two responses were solicited. First, subjects were asked to indicate on a 0- to 10-point Likert Scale what their own decision would be to the scenario issue; i.e. their perceived likelihood of taking a certain action. Second, they were asked to indicate the reasoning behind their decision. To do this, options were presented in multiple-choice format, including an open-ended option.

Hypotheses

Four hypotheses (stated in the null) were tested for each vignette.

Hypothesis 1: *Black and White subjects will select the same behavioral choice when faced with the same ethical dilemma.*

Hypothesis 2: *Black and White subjects will select the same rationales to justify their behavioral choices.*

Hypothesis 3: *Male and Female subjects will select the same behavioral choice when faced with the same ethical dilemma.*

Hypothesis 4: *Male and Female subjects will select the same rationales to justify their behavioral choices.*

Subjects of the Current Study

Subjects in the sample were approximately 93 managers from a wide variety of industries. There are 53 Black/African Americans and 40 White/Caucasians in the sample. The Black subjects were roughly 26.4 % male and 73.6% female with an average age of 28.58. These managers had an average of 10 years working experience with 2.4 years in management positions. The White subjects in the sample were approximately 57.5% male and 42.5% female with an average age of 38.4. They had an average of 16 years working experience with 7.4 years in management positions. Both sample groups were managers attending management training at two universities in a large Southern city. One is predominantly White/Caucasian and the other is a HBCU (Historically Black College and University).

Among the 93 managers, 37 were male and 56 were female. The male managers had an average age of 34.8 and an average working experience of 13 years with 5.8 years in managing position while the females had an average age of 31.5 and 12 years of working experience with 3.7 years in management.

RESULTS

The findings from the White/Caucasian and Black/African American samples are summarized in Tables 1 through 7. The average score and standard deviation of the likelihood of taking the action in each vignette are summarized by race in Table 1. A "0" means "definitely would not" take the action and a "10" means "definitely would." MANOVA (Multivariate Analysis of Variance) was used to see if the average scores from the Black/African American sample were significantly different from that of the White/Caucasian sample in the five vignettes. The MANOVA results are summarized in Table 2.

Hypothesis 1 suggested that there would be no difference in the selection of behavioral choice when faced with an ethical dilemma between Black and White subjects. As shown in Table 2, the MANOVA result is not significant which implies that there is insufficient evidence to support differences in behavioral choices for the two races.

Table 1: Descriptive Statistics of Likelihood to Take Action-Race

		N	Mean	Std. Deviation
Vignette 1	Black/African American	53	3.60	3.38
	White/Caucasian	40	4.52	2.98
Vignette 2	Black/African American	53	2.64	3.12
	White/Caucasian	40	2.98	3.15
Vignette 3	Black/African American	53	2.70	3.04
	White/Caucasian	40	1.78	2.06
Vignette 4	Black/African American	53	2.85	3.27
	White/Caucasian	40	2.15	2.48
Vignette 5	Black/African American	53	8.45	2.50
	White/Caucasian	40	8.42	2.29

Table 2: Summary of MANOVA Results-Race					
Multivariate Tests	Value	F	Hypothesis df	Error df	Sig.
Pillai's trace	.064	1.190(a)	5.000	87.000	.321
Wilks' lambda	.936	1.190(a)	5.000	87.000	.321
Hotelling's trace	.068	1.190(a)	5.000	87.000	.321
Roy's largest root	.068	1.190(a)	5.000	87.000	.321
Each F tests the multivariate effect of RACE. These tests are based on the linearly independent pairwise comparisons among the estimated marginal means. a Exact statistic					

Hypothesis 2 suggested that Black and White respondents would select the same rationales to justify their behavioral choices in each case. A chi-square test of independence was used to test this hypothesis. The results are summarized in Tables 3 to 7. Among the five vignettes, only Vignettes 1 and 3 reported p-values less than 0.05. This implies that some of the rationales used to justify their behavioral choices are different in the two races.

Table 3: Vignette #1			
Reasons for decisions (frequency distributions)			
Choice	Reason	Black	White
A	Against company policy	0%	10.0%
B	Illegal	11.3	7.5
C	Bribe; unethical	35.8	22.5
D	No one is hurt	5.7	2.5
E	Is an acceptable practice in other countries	5.7	27.5
F	Is not unethical, just the price paid to do business	22.6	12.5
G	Other	18.0	17.5
Chi-Square Tests			
	Value	df	Significance Level
Chi-Square	16.051	6	.013

Table 4: Vignette #2			
Choice	Reason	Black	White
A	Unethical for Smith to provide and unethical for employer to ask	52.8%	40.0%
B	Unethical for employer to mislead Smith when he was hired	13.2	10.0
C	Protect Smith's reputation	3.8	0
D	Provide some but not all information	5.7	5.0
E	Decision based on whether security agreement is in force.	7.5	32.5
F	To keep job; loyalty to new employer	5.7	5.0
G	Other	11.3	7.5
Chi-Square Tests			
	Value	df	Significance Level
Chi-Square	10.646	6	.100

Table 5: Vignette #3			
Choice	Reason	Black	White
A	It would be illegal	15.1%	45.0%
B	Concern for the environment/life	47.2	22.5
C	Risk of getting caught with resulting negative consequences too great	20.8	22.5
D	Not their fault; equipment would be installed, if available	0	2.5
E	The pollution would not really hurt the environment	1.9	0
F	Large potential with low risk	9.4	5.0
G	Other	5.7	2.5
Chi-Square Tests			
	Value	df	Significance Level
Chi-Square	14.324	6	.026

Table 6: Vignette #4			
Choice	Reason	Black	White
A	Too dangerous to world safety	56.6%	65.0%
B	May create image detrimental for company	5.7	7.5
C	Concerned with legal ramifications	13.2	5.0
D	Don't see responsibility as theirs to make choice	3.8	10.0
E	Those who want the information can get it now from other sources	13.2	10.0
F	Other	7.5	2.5
Chi-Square Tests			
	Value	df	Significance Level
Chi-Square	4.621	5	.464

Table 7: Vignette #5			
Choice	Reason	Black	White
A	Ward has no additional responsibility; loyalty will keep him quiet	56.6%	65.0%
B	Risk of injury or death too low to halt sale	5.7	7.5
C	The company has a responsibility to the public; criminal and dishonest to remain silent	13.2	5.0
D	Risk to firm's image, profitability, and long run potential too great to remain silent 3.8	10.0	
E	Chances of causing injury or death too great to remain silent	13.2	10.0
F	Other	7.5	2.5
Chi-Square Tests			
	Value	df	Significance Level
Chi-Square	4.621	5	.464

The first of the two significant vignettes concerns a bicycle company. They must make a payment to a foreign country businessman if they want to gain access to his country's market. The payment will result in $5 million in annual profit for the company. From Table 3, the biggest discrepancy between the two countries is Rationales C, E, and F. 35.8% of the Black respondents believed that bribe is unethical (Rationale C) while only 22.5% of the White respondents shared the

same belief. 5.7% of the Black respondents versus 27.5% of the White respondents justified their decision by claiming that it is an acceptable practice in other countries (Rationale E). However, 22.6% of the Black respondents rationalized their decision by stating it is not unethical and is just the price paid to do business (Rationale F) while only 12.5% of the White respondents agreed.

The second significant vignette, Vignette 3, describes a situation where adoption of a new technology can give the company a competitive edge but will produce excess air pollutants. From Table 5, the major difference in the choices of supporting the rationale is in Rationales A and B. The White respondents (45%) chose Rationale A: It would be illegal, while only 15.1% of the Black respondents shared this belief. On the other hand, 47.2% of the Black respondents versus 22.5% of the White respondents reported Rationale B: Concern for the environment/life.

The findings from the samples of gender are summarized in Tables 8 through 14. The average scores and standard deviation of the likelihood of taking the action in each vignette are summarized by gender in Table 8. MANOVA was used to see if the average scores from the male sample were significantly different from those of the female sample in the five vignettes. The MANOVA results are summarized in Table 9.

Hypothesis 3 suggested that there would be no difference between male and female subjects in the selection of behavioral choice when faced with an ethical dilemma. The MANOVA results are significant with p-value of .000 as shown in Table 9, which implies that there is difference in the selection of behavioral choice between the male and female respondents in one or more vignettes. The univariate results (bottom of Table 9) indicate that Vignettes 1 and 2 are the only two that have significant ANOVA results among the five vignettes.

Table 8: Descriptive Statistics of Likelihood to Take Action-Gender

		N	Mean	Std. Deviation
Vignette 1	Male	37	5.41	3.13
	Female	56	3.07	2.97
Vignette 2	Male	37	4.43	3.43
	Female	56	1.70	2.36
Vignette 3	Male	37	2.62	2.80
	Female	56	2.09	2.62
Vignette 4	Male	37	2.62	3.11
	Female	56	2.50	2.88
Vignette 5	Male	37	8.41	2.47
	Female	56	8.46	2.37

Table 9: Summary of MANOVA Results-Gender

Multivariate Tests	Value	F	Hypothesis df	Error df	Sig.
Pillai's trace	.257	6.030(a)	5.000	87.000	.000
Wilks' lambda	.743	6.030(a)	5.000	87.000	.000
Hotelling's trace	.347	6.030(a)	5.000	87.000	.000
Roy's largest root	.347	6.030(a)	5.000	87.000	.000

Each F tests the multivariate effect of GENDER. These tests are based on the linearly independent pairwise comparisons among the estimated marginal means.
a Exact statistic

Univariate Tests

Dependent Variable		Sum of Squares	df	Mean Square	F	Sig.
Likelihood to bribe	Contrast	121.367	1	121.367	13.201	.000
	Error	836.633	91	9.194		
Likelihood to provide info	Contrast	166.779	1	166.779	20.821	.000
	Error	728.920	91	8.010		
Likelihood to use new process	Contrast	6.314	1	6.314	.871	.353
	Error	659.256	91	7.245		
Likelihood to publish	Contrast	.330	1	.330	.037	.847
	Error	804.703	91	8.843		
Likelihood to notify manufacturer	Contrast	7.724E-02	1	7.724E-02	.013	.908
	Error	528.847	91	5.812		

The F tests the effect of GENDER. This test is based on the linearly independent pairwise comparisons among the estimated marginal means.

The significant ANOVA implies that the average scores between male and female subjects are statistically different in Vignette 1: Likelihood to bribe. As shown in Table 8, in Vignette 1, the average score for male respondents is 5.41 and that of female respondents is 3.07 out of an 11-point scale with 5 as the mid-point. This finding implies that male respondents are more likely to be willing to bribe than the female respondents. In Vignette 2, the difference between the average scores is even larger. The average score for male respondents is 4.43 versus 1.70 of female respondents. Vignette 2 describes the likelihood that an employee from a microcomputer software company would provide his or her new employer with software information from his or her former employer. This finding implies that the likelihood for the male respondents to give information to their new employer, even though it is on the low side, suggesting that most subjects were unwilling to take this action, but it is significantly higher than that for the female respondents. With the

significance level of .000 in Vignettes 1 and 2, the data supports significant difference between the male respondents and female respondents, with males more likely to accept unethical actions.

Hypothesis 4 suggested that male and female respondents would select the same rationales to justify their behavioral choices in each case. A chi-square test of independence was used to test this hypothesis. The results were summarized in Tables 10 to 14. Among the five vignettes, Vignettes 1 and 2 reported p-values of less than 0.05. This implies that some of the rationales used to justify their behavioral choices are different in the two genders.

Table 10: Vignette #1			
Reasons for decisions (frequency distributions)			
Choice	Reason	Male	Female
A	Against company policy	8.1%	1.8%
B	Illegal	8.1	10.7
C	Bribe; unethical	16.2	39.3
D	No one is hurt	8.1	1.8
E	Is an acceptable practice in other countries	27.0	7.1
F	Is not unethical, just the price paid to do business	16.2	19.6
G	Other	16.2	19.6
Chi-Square Tests			
	Value	df	Significance Level
Chi-Square	14.374	6	.026

Table 11: Vignette #2			
Choice	Reason	Male	Female
A	Unethical for Smith to provide and unethical for employer to ask	24.3%	62.5%
B	Unethical for employer to mislead Smith when he was hired	10.8	12.5
C	Protect Smith's reputation	5.4	0
D	Provide some but not all information	5.4	5.4
E	Decision based on whether security agreement is in force	35.1	7.1
F	To keep job; loyalty to new employer	8.1	3.6
G	Other	10.8	8.9
Chi-Square Tests			
	Value	df	Significance Level
Chi-Square	20.429	6	.002

Table 12: Vignette #3			
Choice	Reason	Male	Female
A	It would be illegal	40.5%	19.6%
B	Concern for the environment/life	24.3	44.6
C	Risk of getting caught with resulting negative consequences too great	21.6	21.4
D	Not their fault; equipment would be installed if available	0	1.8
E	The pollution would not really hurt the environment	0	1.8
F	Large potential with low risk	10.8	5.4
G	Other	2.7	5.4
Chi-Square Tests			
	Value	df	Significance Level
Chi-Square	8.563	6	.200

Table 13: Vignette #4			
Choice	Reason	Male	Female
A	Too dangerous to world safety	62.2%	58.9%
B	May create image detrimental for company	5.4	7.1
C	Concerned with legal ramifications	8.1	10.7
D	Don't see responsibility as theirs to make choice	5.4	7.1
E	Those who want the information can get it now from other sources	13.5	10.7
F	Other	5.4	5.4
Chi-Square Tests			
	Value	df	Significance Level
Chi-Square	0.551	5	.990

Table 14: Vignette #5			
Choice	Reason	Male	Female
A	Ward has no additional responsibility; loyalty will keep him quiet	0%	1.8%
B	Risk of injury or death too low to halt sale	2.7	10.7
C	The company has a responsibility to the public; criminal and dishonest to remain silent	13.2	28.6
D	Risk to firm's image, profitability, and long run potential too great to remain silent 3.8	12.5	
E	Chances of causing injury or death too great to remain silent	13.2	44.6
F	Other	7.5	1.8
Chi-Square Tests			
	Value	df	Significance Level
Chi-Square	5.382	5	.371

Vignette 1 describes the likelihood to bribe. From Table 10, the biggest discrepancy between the two genders is Rationales C and E. 39.3% of the female respondents believed that bribe is unethical (Rationale C) while only 16.2% of the male respondents shared the same belief. However, 7.1% of the female respondents versus 27% of the male respondents justified their decision by claiming that it is an acceptable practice in other countries (Rationale E).

In Vignette 2, the largest discrepancy between male and female respondents is in Rationales A and E. The female respondents predominantly (62.5%) chose Rationale A: Unethical for Smith to provide and unethical for employer to ask, while only 24.3% of the male respondents shared this belief. On the other hand, 35.1% of the male respondents versus 7.1% of the female respondents reported Rationale E: Decision based on whether security agreement is in force.

CONCLUSIONS AND DISCUSSION

In this study, we have extended the vein of management and business ethics literature that uses vignettes to present various kinds of real life of ethical dilemmas (Fritzsche and Becker, 1984; Becker and Fritzsche, 1987; Premeaux and Mondy, 1993) to different groups of managers and to those from different national cultures. In this research, however, our focus was not upon cultural differences across national groups, but rather upon groups in the United States. Specifically, we examined whether differences would occur among two racial and the two gender groups found in the U.S. We did not find significant differences in level of reported ethical behavioral choices for Black versus White subjects, but we did find some evidence that the two gender groups may

approach the decision making process differently in some instances. We may be seeing some evidence that White subjects are more concerned with legality, in a technical sense, of some practices, while Black subjects appear to be more influenced by environmental and similar concerns.

When we examine findings for males versus females, we find significant differences between males and females in both reported levels of ethical behavioral choices and in approach to ethical decision making. Males reported more willingness to engage in unethical behaviors. They also appeared to approach ethical decision making somewhat differently than females. Females were more prone to label an action as *unethical* and reject it on that basis, while males appeared to be more influenced by pragmatic concerns.

These findings suggest that differences in socialization may impact ethical behavior and the approach to ethical decision making, especially for males versus females. It will be interesting to see whether these findings, with a relatively small sample and with subjects from only two universities in a limited geographical area, can be replicated in differing settings and with other cultural groups, such as Hispanics. It will also be interesting to see if results differ for different age groups and in differing samples, including non-students.

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DONOR'S REMORSE AND BROKEN PROMISES: THE ENFORCEABILITY OF CHARITABLE PLEDGES

Patricia Quinn Robertson, Arkansas State University
James Mark Lewis, Arkansas State University

"You make a living by what you get; you make a life by what you give"
(Attributed to Winston Churchill).

"Better a broken promise than none at all"
(Mark Twain).

ABSTRACT

Philanthropies are the beneficiaries of billions of dollars given by Americans each year. A variety of different types of organizations, including but not limited to charitable, religious and educational organizations, compete for these dollars. Planned giving through periodic or lump sum future gifts often generate an anticipated and critical cash flow for the charitable organization. This paper outlines the legal issues that are involved regarding pledges made to these organizations. Donors sometimes attach conditions to these pledges. Donees have a tendency to rely on this continual cash flow in their budgeting process or development of programs. The central theme of this paper is the identification of the types of donations that go beyond a moral obligation to a legally binding contract supported by consideration or an agreement enforceable by virtue of other legal doctrines such as promissory estoppel. Generally, donor and donee are pleased when the pledge is committed. However, when one of the parties chooses not to fulfill their previous commitment, the courts must determine whether there is a legally unenforceable gift or a legally binding commitment. Therefore, this paper accentuates the need of both donor and donee to examine and analyze their position in light of the existing law in their jurisdiction.

Note: This article is designed to service as a general discussion of the subject and not as the sole authority. The authors are not qualified to practice law in all jurisdictions and do not state or imply that this article addresses all situations that could arise. This article contains views and opinions of the authors. The reader acknowledges that any reliance upon such views, opinions and/or statements shall be solely at his/her own risk. This article shall not serve as a substitute for legal counsel and readers should consult counsel to address their specific situation.

INTRODUCTION

Americans contribute billions of dollars each year to philanthropies and causes. These contributions are made for a variety of reasons and are given throughout the calendar year with an emphasis towards the end of the year. "On average, people make 24 percent of their annual donations from Thanksgiving to New Year's. This time period accounts for about twice what one would expect if giving were equally distributed throughout the year" (American Express Charitable Gift Survey). Charitable giving rises about one-third as fast as the stock market with 2006 meeting this expectation (Giving USA 2007). Statistical data indicates that charitable giving constituted approximately 2.1% of the gross domestic product and reached the level of approximately $295 billion in 2006 (Giving USA 2007; The Chronicle of Philanthropy).

As of 2006 there were 1,064,191 religious, charitable and similar organizations in the United States, which is an increase from 964,418 religious, charitable and similar organizations in the United States in 2003 (Internal Revenue Service 2006). In 2006, individuals made 83% of total contributions, including bequests (Giving USA 2007). 86% of "wealthy donors" give to satisfy "critical needs" and 83% make these gifts as a way of "giving back to society" (National Philanthropic Trust citing The Center for Philanthropy at Indiana University).

Donations are given in a variety of ways. Some donors give contemporaneously with their decision to give, while others make pledges to donate in the future in a more planned or structured manner. Others give subsequent to their death through bequests made in their will.

Some make donations or pledges over a period of years for a particular project, such as the building of a new or additional facility for the philanthropy. Many give based upon the conduct or some action by the donee such as the naming of a hospital wing after their family or perhaps the donee allowing the donor to participate in some of the key decisions of the particular charity.

Many donors and donees do not recognize legal issues that may arise from these donations. However, legal issues are present when there is a failure by the donor to give as pledged or a failure of the donee to fulfill its stated purpose for the gift as proposed. A complicating factor is the change of circumstances for either the donor or the donee. What are the legal rights and obligations of the donor and donee and under what theory of the law are they enforceable? These cases can present a plethora of questions and issues affecting individuals who are trying to benefit society.

This article reviews recent court decisions about donors that have refused to pay a pledge or have requested a refund of a charitable donation based upon a failure of the charity to meet the donor's post-pledge expectations or based upon a change in anticipated activities or circumstances of the charity. Recent case law indicates that some charitable donors who revoke their pledges may be liable for breach of contract, but in other circumstances charitable donees may be required to cancel pledge obligations and refund charitable contributions.

Courts often analyze pledges in terms of traditional contract law principles. The general rule is that an enforceable contract must contain the elements of offer, acceptance, and consideration

(Virginia School v. Eichelbaum 1997). When courts do not find that the common law element of consideration is present in a charitable pledge case, the courts will often rely upon the theory of detrimental reliance or promissory estoppel to uphold and enforce a charitable pledge (Temple Beth AM v. Tanenbaum 2004).

Arguments on behalf of donors who desire to revoke their pledges or gifts include arguments that the pledge was not a contract because it was not supported by consideration. In addition, some donors argue that charitable donees are not above the law, i.e., even charitable donees must fulfill their contractual obligations to donors under traditional contract law. Therefore, pledges or gifts that are expressly conditional are not enforceable if the donee does not satisfy the condition.

However, donees may argue that they have detrimentally relied upon these pledges or gifts in planning or conducting their activities, and therefore, the pledges should be irrevocable. For example, if a donor pledges a sum to a charity, the charity may undertake projects that it would not have undertaken absent the pledge, and other donors may have matched the pledge or otherwise relied upon the donor's promise. A donee may also argue that it gave up additional opportunities for fundraising in reliance upon the donor's pledge. Furthermore, charities may argue that public policy supports charitable work, and therefore, the law should discourage broken promises to a charity.

CONSIDERATION FOR A CHARITABLE DONATION

Many donors think that when they make a pledge to a non-profit organization they have incurred a moral obligation, but not a legal obligation, to make the charitable donation. In analyzing a charitable gift within the parameters of contract law the element that is most often absent is consideration. Consideration includes a bargain and exchange of value. A donor may claim that the donee did not give the donor any value or consideration in exchange for the donor's pledge to the donee. Traditional contract law provides that a binding agreement that is enforceable in a court of law or court of equity must have consideration (Hamer v. Sidway).

Donors who desire to revoke their pledges or gifts may argue that the pledge was not a valid contract because the transaction lacked consideration. Although it appears that a pure gift may not be supported by consideration, in 2006, a Massachusetts District Court held that consideration may exist if a recipient of a pledge promises to "use the gift for an express purpose" (Massachusetts Eye & Ear v. Casey 2006). The Eugene B. Casey Foundation ("Foundation") agreed to donate $2,000,000 in seven installments to the Massachusetts Eye & Ear Infirmary ("Infirmary") in 2002 for the Infirmary's Voice Restoration Research Program ("Program"). Dr. Zeitels, a leading laryngologist, was the director of the Program. However, in May 2004 Dr. Zeitels tendered his resignation from the Program to be effective June 30, 2004. In June 2004, the Foundation allegedly requested return of the unused part of the $1,000,000 that the Foundation had already paid to the Infirmary. In addition, the Foundation stated that it would not pay the remaining $1,000,000 under

the pledge. The court held that consideration existed for the agreement by the Foundation to donate money because the Infirmary agreed to use the funds for the "Voice Restoration Program." Additional consideration included the Infirmary's agreement to send the Foundation written accounts of the work every six months and a final report at completion of the Project. For these reasons the court held that consideration for the agreement did exist (Massachusetts Eye & Ear v. Casey 2006).

In addition, in a 2005 case the New York Supreme Court considered a donor's pledge that provided as follows: "In consideration of my interest in education, and intending to be legally bound, I, RAYMOND P. WIRTH, irrevocably pledge and promise to pay DREXEL UNIVERSITY the sum of ONE HUNDRED FIFTY THOUSAND and 00/100 Dollars ($150,000.00)" (Wirth 2005). The court held that there was consideration for this promise under Pennsylvania's Uniform Written Obligations Act. This Act provides as follows: "A written . . . promise, hereafter made and signed by the person . . . promising, shall not be invalid or unenforceable for lack of consideration, if the writing also contains an additional express statement, in any form of language, that the signer intends to be legally bound." The court further held that Drexel University did not fail to perform its obligations, and therefore there was no "failure of consideration" (Wirth 2005).

Similarly, in 1995, the Massachusetts Supreme Court affirmed a lower court holding that Dr. Martin Luther King, Jr. made a charitable pledge of certain papers to Boston University (BU) (King v. Boston University 1995). Coretta Scott King filed the action claiming that the papers which had been in the possession of BU since 1964 belonged to the estate of the late Dr. King. The trial court found in favor of BU and on appeal the court held "that the evidence was sufficient to raise a question of fact for the jury as to whether there was a promise by Dr. King to transfer title to his papers to BU and whether any whether any alleged promise was supported by consideration or reliance by BU" (King v. Boston University 1995 at 1197). The court stated that "to enforce a charitable subscription or a charitable pledge in Massachusetts, a party must establish that there was a promise to give some property to a charitable institution and that promise was supported by consideration or reliance" (King v. Boston University 1995 at 1199 citing Congregation Kadimah v. DeLeo 1989). BU had taken care of the documents during the time the documents were in BU's possession, and the court found that the care of the documents by BU was consideration or reliance sufficient to support BU's position that Dr. King had donated the papers to BU. The court also commented that the bailment of the property could be construed as intent to donate or provide an irrevocable deposit of Dr. King's papers (King v. Boston University 1995).

PROMISSORY ESTOPPEL

The doctrine of promissory estoppel has been used in numerous jurisdictions to enforce donative pledges that would otherwise fail if addressed from the existence of consideration. Although the precise language of the elements of promissory estoppel may vary somewhat between

the states there are some basic requirements for promissory estoppel. "The elements of promissory estoppel are: (1) a clear and unambiguous promise (2) upon which it would be reasonable and foreseeable to rely, and (3) actual reliance on the promise (4) to the detriment of the one who relied" (Hoffman v. David 2007 citing Interstate Gas v. Calex 2006; Zelina v. Hillyar 2005). In evaluating the enforceability of a pledge under this doctrine the courts will focus on the detrimental reliance that may have occurred. If there is no detrimental reliance and no consideration the pledge will usually be unenforceable (Massachusetts Eye & Ear v. Casey 2006; Congregation Kadimah v. DeLeo, 1989).

"Promissory estoppel aids the enforcement of promises by supplying the element of consideration when necessary to prevent injustice" (Hoffman v. David). For example, an Ohio court classified promissory estoppel as quasi-contract in order to prevent injustice. Quasi-contracts have been developed over the years to address contract-like situations that would otherwise result in an unfair result yet when present applies the remedies available under contracts (Telxon v. Smart Media. 2005 at 58).

"Promissory estoppel is an equitable doctrine designed to create binding agreements in the interest of fairness to one detrimentally relying on the promise of another" (People's National Bank v. Lineburger 1951; Shoemaker v. Mountain State 1976). Promissory estoppel may be available even in cases of oral agreements when a written agreement would normally be required for enforceability (Chidester v. Eastern Gas 1976 at 224-5). "All American jurisdictions have adopted some form of promissory estoppel grounded in Section 90 of the Restatement (Second) of Contracts" and promissory estoppel was codified in the statutes of two states by 1996 (Holmes 1996).

Donees may argue that a pledge is an enforceable contract under theories of promissory estoppel and detrimental reliance. For example, the Massachusetts District Court agreed with the donee's position in the Massachusetts Eye & Ear Infirmary case that the donee exercised reliance upon the pledge by the donor for the purpose of the donee's Program. The donee entered into "Collaborative Research Agreements" with other institutions, provided resources to the Program, and asked others for donations in reliance upon the donor's $2,000,000 pledge of support for the Program. The court also refused to "presume" that the donee had "abandoned the Program" after the director's resignation. For these reasons the court held that the donee had "stated a claim for contract damages" (Massachusetts Eye & Ear v. Casey 2006).

The New York District Court also espoused principles of promissory estoppel in a 2004 case (Temple Beth AM v. Tanenbaum 2004). A congregation's members pledged membership dues as of July 1, 2001, but the members resigned in August 2001 after paying only $250 of the dues. The members desired to stop paying the dues, but the court held that promissory estoppel would require these members to continue paying their dues. Since the congregation had relied upon these pledges in preparing its budget for the fiscal year, the court denied the former members' motion for summary judgment. However, since the parties alleged that the rabbi's secretary told one of the former members that he could stop paying his dues, the congregation's motion for summary judgment was

also denied. The court noted the “paucity of law on the issue of a church or congregation’s liability for dues” (Temple Beth AM v. Tanenbaum 2004 at 659). The court further explained that courts often enforce charitable pledges based in part upon a “subconscious” desire to promote charitable causes. The court cited historic holdings that defenses against enforcement of charitable pledges based upon lack of consideration were “breaches of faith toward the public, and especially toward those engaged in the same enterprise, and an unwarrantable disappointment of the reasonable expectations of those interested” (Temple Beth AM v. Tanenbaum 2004 at 660 quoting Lipsky 1965; Allegheny College v. National Chautauqua County Bank 1927; Barnes v. Perine 1854).

In a 1989 opinion the Superior Court of New Jersey enforced a charitable pledge even though the donee “did not undertake any projects based on the defendant, Barondess's, pledge of $ 2,000” (Jewish Federation v. Barondess 1989). The court held that public policy is the real basis for enforcing a charitable subscription. The court went even further to state that the Statute of Frauds requirement that many contracts must be in writing would not defeat such a charitable contribution. The court set forth a “practical reason for enforcing charitable subscriptions” as follows: “Lightly to withhold judicial sanction from such obligations would be to destroy millions of assets of the most beneficent institutions in our land, and to render such institutions helpless to carry out the purposes of their organization” (More Game Birds in America, Inc. v. Boettger 1940 quoted by Jewish Federation v. Barondess 1989 at 1354).

However, in 1989, the Massachusetts Supreme Court did not enforce an oral promise to donate $25,000 (Congregation Kadimah v. DeLeo 1989). The donee planned to use the donation to turn a closet at the synagogue into a library. The gift was to be made at the death of the donor, and the congregation planned to name the library after the donor. The court found that there was no consideration present and stated that “moral obligation is not legal obligation” (Congregation Kadimah v. DeLeo 1989 citing Marine Contractors v. Hurley 1974; Gishen v. Nova 1972). Although the congregation planned to name the library after the donor, there was no evidence that this factor induced the donor to make the pledge. The court also found that the $25,000 allocation in the budget is not sufficient to find reliance and that there would be no injustice to the donee if the court did not enforce this oral promise to make a gift (Congregation Kadimah v. DeLeo 1989).

In addition, in a 1994 case the Supreme Court of New York held that “wining and dining” a donor was not sufficient to constitute “detrimental reliance” (Versailles Foundation 1994). The court stated “It is well settled that charitable pledges ‘are enforceable on the ground that they constitute an offer of a unilateral contract which, when accepted by the charity by incurring liability in reliance thereon, becomes a binding obligation’ ” (Versailles Foundation 1994 quoting Cohoes Memorial Hospital v. Mossey 1966). However, the court found that a mere letter expressing thanks to a not-for-profit organization for luncheons and entertainment did not meet the “clear and convincing” test of a contract between the two parties to make a bequest to the organization (Versailles Foundation 1994).

CONDITIONAL AND UNCONDITIONAL GIFTS AND PLEDGES

Although some courts apply promissory estoppel to support enforceability of charitable pledges, the Virginia Supreme Court held that a "charitable subscription is governed by the law of contracts and must be supported by an offer, an acceptance and consideration" (Virginia School v. Eichelbaum 1997 at 512). The Supreme Court of New York has stated that "where the intent of the parties may be discerned from within the four corners of the agreement, it is that intent which must be given effect" (Staten Island University Hospital v. Sarkis 2006 citing Slatt v. Slatt 1985).

The Virginia Supreme Court examined a pledge to Virginia School of the Arts, Inc. in 1997 and refused to adhere to the theory of promissory estoppel (Virginia School v. Eichelbaum 1997). Instead, the court examined the pledge contract and the words and actions of the donee after the pledge was made. The Virginia School of the Arts, Inc. (the "School") gave Ms. Eichelbaum a letter dated October 1993, stating that "A gift of $100,000 as a challenge grant to the 1993-94 Annual Fund would ensure the School's place in this community. . . . With your permission we would like to promote your gift to encourage renewing and new donors to invest . . . We must raise $200,000 during this year's Annual Fund period; we believe a matching grant would make it possible for us to achieve this goal" (Virginia School v. Eichelbaum 1997 at 511). Ms. Eichelbaum signed at the bottom of the letter agreeing "to commit the sum of $100,000" to the School. The parties did not discuss details about the time of payment. In December 1993 the School issued a press release announcing the "challenge gift" and saying that the School "must match this challenge gift by the end of the fiscal year." Ms. Eichelbaum died in January 1994, and she had not made any payments on her pledge. Unfortunately, the School only raised $67,592.71 during the fiscal year. The court determined that the pledge constituted a binding contract supported by consideration. However, the School did not raise enough funds to satisfy the condition of the contract. Therefore, the court held that the pledge was unenforceable (Virginia School v. Eichelbaum 1997).

In addition, in 2002 a Minnesota Court of Appeals considered the case of Elroy Stock, an alumnus of Augsburg College, who gave $500,000 to the college for construction of a communications wing in a new college building (Stock v. Augsburg College 2002). The college sent the donor a letter agreeing that the wing would be named the "Elroy Stock Communications Wing," and the college board of regents approved the name. Later the college discovered that for years Elroy Stock had been mailing anonymous letters criticizing "mixed marriages" and promoting "racial purity." Mr. Stock sent these letters to persons married to spouses of different races or religion, and some of these persons became fearful as a result of the letters. When this information about Mr. Stock's letters became public, the college decided not to name the wing after Mr. Stock. However, the college refused to return Mr. Stock's donation. The college did have a recognition dinner in connection with Mr. Stock's donation, and the college listed Mr. Stock as a major donor on a plaque in the building and in the annual report. However, Mr. Stock argued that the college did

not live up to its end of the bargain, because the college did not name the wing after Mr. Stock (Stock v. Augsburg College 2002).

In the Stock case the court granted summary judgment to the donee because the donor did not file suit in a timely manner and the statute of limitations had run. However, the court noted that this donor had made a conditional gift to the college, and the college should refund the donor's money because the college did not satisfy the condition of the gift. The court explained that the determining factor, absent the statute of limitations problem in this case, should be the intent of the donor. The donor did not give the $500,000 to the general building fund, but he designated it to the "Elroy Stock Communications Wing." The college had specifically told the donor that the wing would be named after him in exchange for the $500,000 gift. Although the college did obtain summary judgment based upon the statute of limitations, the court made the following negative comments about the college's behavior in this case:

> *Nonprofit corporations, for-profit corporations, and individuals, are expected to honor their commitments. Courts of law and equity enforce legal contracts. Had [Mr. Stock] timely sued, no harm would come to Augsburg, specifically, or society in general, if just debts were paid. The keeping of one's promise honors us all.*
>
> *We suggest it would be startling news to Augsburg's alumni that their college's "charitable and educational mission" includes specifically soliciting contributions for a particular purpose, formalizing that solicitation by a specific vote of the board of regents, and then claiming the power to say "Oops, we changed our mind. We are not going to give your money back, instead we are going to keep it."*

(Stock v. Augsburg College 2002 at 17).

In 2005 the Tennessee Court of Appeals was also unsympathetic to a donee that desired to "change its mind" about a building's name, even though the change occurred decades after the original donation (United Daughters of the Confederacy v. Vanderbilt 2005). In 1979 Vanderbilt University ("Vanderbilt") merged with Peabody College ("Peabody"), the owner of a dormitory named Confederate Memorial Hall. The donor Tennessee Division of the United Daughters of the Confederacy had raised $50,000 between 1913 and 1933 for the purpose of paying a portion of the cost of building Confederate Memorial Hall. This donation was governed by 1913, 1927 and 1933 contracts between the donor and Peabody. The contracts included the condition that the building be inscribed with the name "Confederate Memorial." Construction of the dormitory building was completed in 1935, the words "Confederate Memorial" were inscribed on the building, and Peabody and Vanderbilt used this name for many years in accordance with the contracts. Beginning in the

late 1980's, the name "Confederate" became controversial because some individuals associated the name with slavery (United Daughters of the Confederacy v. Vanderbilt 2005).

In 2002 Vanderbilt announced a dormitory name change to omit the word "Confederate" without consulting the donor. The donor filed suit against Vanderbilt for breach of contract. Although the lower court stated that it is "impractical and unduly burdensome" to require Vanderbilt to continue using the name Confederate Memorial Hall in the face of changing society and Vanderbilt's goal of a "academic freedom" and attracting a "racially diverse faculty and student body," the Tennessee Court of Appeals reversed the lower court's grant of summary judgment to Vanderbilt. The court stated:

> *[W]e fail to see how the adoption of a rule allowing universities to avoid their contractual and other voluntarily assumed legal obligations whenever, in the university's opinion, those obligations have begun to impede their academic mission would advance principles of academic freedom. To the contrary, allowing Vanderbilt and other academic institutions to jettison their contractual and other legal obligations so casually would seriously impair their ability to raise money in the future by entering into gift agreements such as the one at issue here.*

(United Daughters of the Confederacy v. Vanderbilt 2005 at 118-119)

Therefore, the court carefully reviewed and enforced the language of the contracts between Peabody and the donor. The 1927 contract gave the donor the right to take the donation back if Peabody stopped satisfying the conditions of the donation. One of the conditions was the presence of the inscription "Confederate Memorial Hall" on the building. The donor did not express any intent to create a revocable charitable trust, but instead the court held that contracts between the donor and donee created a "charitable gift subject to conditions" (United Daughters of the Confederacy v. Vanderbilt 2005 at 114). Vanderbilt had presented no legal reason for keeping the gift without satisfying the conditions of the gift. Therefore, the court required Vanderbilt to either return the donation at present value or continue to satisfy the conditions of the donation, including continued existence of the inscription "Confederate Memorial Hall" on the building (United Daughters of the Confederacy v. Vanderbilt 2005).

Although some courts may require donees to return donations if the donee does not satisfy the donation's conditions, some plaintiff donors are not successful with this argument. Courts often review the donation or pledge documents to determine whether they contain a condition. If not, the donor may not be entitled to cancel a pledge or demand return of a donation. For example, in a case decided by the Tennessee Court of Appeals in 2008, a donor gave real estate to a donee school for purposes of a scholarship fund (Roberts v. Baylor School 2008). The donor later sued the school for breach of fiduciary duty and failure to satisfy a condition of the gift. The plaintiff in that case

had been a former student of the school, and he desired to create the "Roberts Family Endowed Scholarship" with the proceeds of the real estate sale. The plaintiff became a member of the school's board, but he was allegedly asked to resign from the board after complaining that "a substantial part of Baylor's endowment was invested in certain 'high risk hedge funds,' and that a member of the Endowment Committee had a conflict of interest" (Roberts v. Baylor School 2008 at 2). The plaintiff resigned from the board and then filed this lawsuit. Basically the court held that the "*inter vivos* gift document between Roberts and Baylor is a contract" (Roberts v. Baylor School 2008 at 24). A reading of the donation documents revealed that they neither prohibited the school from investing the donation in hedge funds nor did they otherwise restrict the manner of investment. In addition, these documents did not provide that the school must return the gift if the gift was not invested in a certain manner or that the donor could revoke the gift for any other reason. The court further held that the school did not have a fiduciary relationship or agency relationship with the donor, and therefore, the school did not have the duty to explain the school's "investment strategy" and "prevailing spending policy" to the donor. Therefore, the court affirmed the summary judgment in favor of the school (Roberts v. Baylor School 2008).

Similar principles may govern cases about donation of biological materials. The Eighth Circuit Court of Appeals also carefully reviewed the donation forms as contracts to determine ownership, control, transfer and revocability of the donation of biological materials for cancer research in a 2007 decision (Washington University v. Catalona 2007). The ownership of these materials was disputed when a member of the medical school's Biorepository left the medical school and accepted employment with a different employer. The member asked the donors to sign forms to transfer the biological material to him at his new employer. The university then filed suit alleging that the donations were made to the university instead of the member. The court reviewed the consent form signed by the donors, and these forms indicated that the gift was made to the university. In addition, the donors had not reserved the right to "physically repossess" or "transfer" the biological materials. Finally, the court noted that previous actions by the member supported the view that the university owned the biological materials. The member had signed documents indicating that the university owned the materials, and the member had destroyed and consumed some of the materials without the consent of the donors. The court determined that the materials belong to the university, not the donors or the member. Therefore, the Eight Circuit Court of Appeals affirmed summary judgment in favor of the university (Washington University v. Catalona 2007), and the United States Supreme Court subsequently denied certiorari (Catalona v. Washington University 2008).

CONCLUSION

Often donors and donees of charitable pledges are not clear about the enforceability of these pledges. Courts disagree about the theories that should be used to prove or disprove

enforceability. Some courts use the theory of promissory estoppel or public policy to enforce the pledge against the donor. Other courts may read the terms and conditions of the pledge documents or look for consideration to determine whether the pledge is an enforceable contract. The cases in this article highlight the need for education of charities and their donors about contract law and promissory estoppel. Ideally, pledges should be written in clear and complete terms so unfortunate disagreements like the ones described in this article do not occur.

Recent cases illustrate that careless communication of pledge terms may lead to misunderstandings between well-intentioned donors and donees. These misunderstandings are especially tragic given the nature of the moral obligations at stake. As one judge wrote,

> *The philanthropic work carried on by organized charities, made possible through voluntary subscriptions, is a distinguishing and distinguished feature of our free society. It is a demonstration of the human sympathy, mercy, consideration and good will borne by those more fortunately endowed toward their less fortunate fellowmen.*
>
> (Lipsky 1965 at 432)

Disagreements in the name of charity may be quite public and harmful to the good will involved in charitable giving and work.

When the pledge relationship begins, the donor and donee are on friendly terms, so they become careless about legal details. However, often large sums of money are involved in these disputes, so charities and donors should take a more business-like approach to charitable pledges. In addition, important long-term relationships may be severed by these disputes. Charities may receive bad publicity for suing their donors, and the charities may alienate both future donors and current long-term donors. In addition, donors may begin to distrust charities that do not use the donations in a way expected by the donors.

A clear pledge agreement describing in detail the rights and obligations of the parties would eliminate many of these problems. Ideally, the charity and the donor can avoid these misunderstandings and therefore apply more of their funds to good causes, and less of their funds to attorney's fees and court costs.

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CORPORATE GOVERNANCE & BUSINESS ETHICS: A DUBAI-BASED SURVEY

Lamia Abdelaziz Obay, University of Dubai

ABSTRACT

In this article, the ethical perception of seventeen high ranking executives from the UAE is analyzed. Specifically I assessed their perception of corporate governance and ethical practices within their respective companies and industries. Questionnaire responses revealed a high level of involvement with charitable organization, mostly the Red Crescent and Ramadan based charities. Responses also revealed that ethical systems varied widely in their structures and level of involvement. They went from very sophisticated to non existent. In some cases, there was neither a system to report misconduct nor actions taken against it.

All but two respondents indicated the presence of board of directors, with half of them comprising independent members. However, only four respondents indicated companies had a conflict of interest policy. There was a high degree of consistency when it comes to Worker Health and Safety standards adopted by firms, which is mostly due to the strict regulation of labor issues. All interviewees reported being aware of at least one type of misconduct within respective industries, which is probably a reflection of the quality of the ethics system in place. Cited the most were lies to customers and discriminatory practices -racial, gender, and age related. They were followed by payment or receipt of bribes, theft of confidential information, and sale of defective products. The implications of these findings are discussed and suggestions for future research are presented.

Key words: governance, corporate governance, business ethics, corruption, development, Foreign Direct Investment, Middle East and North Africa, Dubai, UAE.

INTRODUCTION

The UAE is an emerging market that is going through deep changes socially, economically, and to a lesser degree politically. Economically, it has moved from a relatively undiversified, closed and inward-oriented economy to an outward oriented, open, and diversified one. Due to its phenomenal economic growth over a record period of time, the country has become a key focus for international corporations and more recently for personal and institutional investors.

This paper posits that this fast paced transformation and modernization of markets, infrastructures, and institutions was not followed by an equally diligent adoption of proper

governance practices and business ethic standards. The UAE economy is characterized by a high concentration of ownership in the hands of government and/or families. The financial system is in most part bank-intermediated with very little reliance on capital markets to raise funds. Neither firms nor banks within this relationship-based system, as opposed to a market-based system, feel the need to develop corporate governance mechanisms, since the former are able to rely on banks for continued financing and the latter feel relatively comfortable under explicit or implicit government guarantees. This has led to a marginal role of institutional investors, and less incentives for disclosure and accountability. While this is true of most emerging markets, the UAE has the added feature of being a tax-haven. Under the Commercial Companies Law and the Commercial Transactions Code, all businesses must keep financial records but the legislation does not specify the exact nature of such records. Listed companies, which represent less than 0.1% of all companies operating in the country, are required to report on a quarterly basis but the extent of reporting is rather limited and in most part at the discretion of the reporting companies.

It is against this background that a questionnaire was designed targeting top executives within leading business organization in the country in order to get a first hand appreciation of their perception of corporate governance and ethical practices within their respective companies and industries. To the authors' knowledge, this is the first attempt to look at business practices within corporate UAE. No similar effort had been undertaken in the GCC region either. While the UAE has been often in the media for its phenomenal economic growth, no attempt has been made to date to look at corporate governance and business ethics within UAE organizations. The second section of the paper looks at the business environment in the UAE, followed by a review of the literature about business ethics in the Middle-East. Survey design, data collection and findings are presented in the fourth section, followed by recommendations and area of future research.

THE UAE BUSINESS ENVIRONMENT

The United Arab Emirates (UAE), a federation of seven emirates established in 1971, is situated in the Arabian Peninsula. Although each emirate in the Federation maintains a large degree of independence, the UAE is governed by a Supreme Council of Rulers made up of the seven emirs, who appoint the prime minister and the cabinet. The country held its first national elections - for an advisory body - in December 2006.

The UAE is similar in size to Austria with a land mass of 82,880 square kilometers. It is the second largest populated country in the Gulf Cooperation Council (GCC) after Saudi Arabia. It is the second largest in terms of per capita nominal GDP after Qatar. The nominal GDP of the UAE grew by 27.8% in 2005 to reach a level of US$ 132.3 billion. Real GDP grew by 8.2% in 2005 reaching a level of US$ 97.4.

A member of OPEC, the UAE has the 6th largest oil reserves in the world. The late Sheikh Zayed, ruler of Abu Dhabi and first president of the federation, was quick to recognize the potential

of the oil industry and direct oil revenues towards the development of the country's infrastructure, healthcare and education. . This was in an attempt to diversify the economy and lessen the dependence on oil. By the end of 2005, oil generated 36% of its GDP, up from 32% in 2004, mainly due to the increase in oil prices (www.centralbank.ae.)

Oil riches have attracted a large influx of foreign workers, both skilled and unskilled, who, together with expatriates, make up more than three quarters of the population, estimated at 4.7million by the end of 2005. The diversity of the labor force has led to strict regulation of the employer/employee relationships.

Like in most emerging markets, the state owns or has majority shares in major sectors, such as public utilities, banks, telecommunication, oil, and other important trades. Firms are largely financed by bank loans influenced by relationship to prominent business figures in the country. The absence of a debt market and the limited role financial markets play in fund raising makes the role of banks even more pronounced in this close kinship between banks and businesses. It is believed that this relationship-based system is one of the main reasons for the lack of development and implementation of corporate governance mechanisms.

The country adopts a laissez-faire policy and has minimum regulation for business, both local and foreign, operating in the country. UAE Commercial Law governs labor relations, business transactions, intellectual property rights, and accountancy.

Employer/employee relations in the UAE are regulated by Federal Law No. 8 of 1980 as well as several ministerial orders and Cabinet decisions. The Law is applicable to all employees working in the UAE with the exception of government and security employees. One of the most regulated aspects of labor relation is health and safety at work (Articles 91 to 101 (inclusive) of the Law). There is no minimum wage requirement and salaries are generally divided into basic salary and allowances. The latter usually include subsidies for accommodation, car, travel and education. The Commercial Transactions Code which came into force in late 1993 codified a number of commercial legal issues, among them bankruptcy and insolvency.

The UAE is also a member of the World Intellectual Property Organization. Trademark protection is accorded by Federal Law No. 37 of 1992 (Trademark Law). The Ministry of Economy and Commerce is responsible for registration of trademarks. Civil and criminal and administrative sanctions are in place for infringement of the law. Federal Law No.44 of 1992 (Patent Law) protects inventions, industrial design and models (except for pharmaceutical products). Patents are awarded by the Ministry of Finance and Industry - Department of Industrial Property. Federal Law No. 40 of 1992 (Copyright Law) affords protection to the original author of a variety of works automatically on creation. Registration needs to be done with the Ministry of Information and Culture but failure to register does not negate copyright. The protection granted is generally the period of the author's life plus 25 years.

Federal Law No. 22 of 1995 regulates the accounting profession. Accountants and auditors need to register with the UAE Ministry of Economy & Commerce, but there is no local professional

body of accountants or bankers. Under the Commercial Companies Law and the Commercial Transactions Code, all businesses must keep financial records but current legislation does not specify the exact nature of such records.

The UAE, according to the World Bank MENA governance report (2003, p.59), has a "very satisfactory protection and enforcement of private property rights, contracts are efficiently enforced by the court system, and expropriations are very unlikely." On a scale of 1 to 7, the UAE scored less than three when evaluating Favoritism in contract awarding; a lower score is desirable in this case. Oman scored the lowest; Saudi Arabia ranked the highest (p.98). However, it takes 559 days in the UAE to resolve a contract dispute through the formal judicial system, the two extremes being 7 days in Tunisia and 721 days in Lebanon (Ibid, p.93).

CORPORATE GOVERNANCE AND BUSINESS ETHICS IN THE MIDDLE EAST

Most of the emerging markets research has centered on Asian and Latin American countries. Little has been written about Middle Eastern organizations, and even less about values and practices within the area. Robertson et al (2002) queried 365 employees from Saudi Arabia, Kuwait, and Oman about their cultural values and beliefs about work. Tayeb (1997) focused on explaining the implications of the recent revival of Islamic values in certain Asian countries for workplace behavior. Weir (1993) advanced that there is a distinguishable Arab managerial paradigm that emphasizes kinship and networked market orientation. Others looked at general business practices within the Middle East and North Africa (MENA) (Cunningham and Sarayrah, 1993; Etzioni, 1994; Khuri, 1968), the relation of ethics to Islamic values and Islamic law (Saeed et al; 2001; and Abbassi et al, 1989) or government corruption (Al-Alfy, 1995). A few attempted to directly address the issue of business ethics in the region (Marta et al., 2004; Attia et al., 1999; Izraeli, 1997). Multilateral agencies and international organizations have made quite a contribution in looking at governance and business ethics but focused on their macroeconomic aspects. All reports issued by these agencies point to the fact that weak governance and corruption environments are hindering the development of MENA countries.

Factors believed to be at the root of weak governance and poor performance are not unique to the region, it is their intensity and their cumulative effect that is widening the governance gap with the rest of the world. "Riches from hydrocarbons, instabilities caused by conflicts or threat of it, or interference stemming from geopolitical interest have handicapped the emergence of the institutions of good governance" reports the World Bank (2003, p.15).

The end of colonization left the region in an ideological, structural, and institutional void that could not be easily filled. Colonized countries were left vastly underdeveloped, illiterate, and deficient in capital, know-how and human resources to carry the task of its economic-social restructuring. Young governments with little public office experience took over. The absence of public accountability and balance and check mechanisms led to a great deal of discretion and

ensuing corruption of public officials and their entourage. The situation was made worse by foreign powers that "generally found it more efficient to work with authoritarian regimes" (Ibid, p. 67). This led to the belief that foreign powers, socialists and capitalists, were at the root of rapid deterioration of the quality of Islamic life (Najjar, 1992).

Strict control on the mass media (via ownership or censorship) and close kinship between government and businesses greatly limited the latter's role in exposing corruption. Indeed, "in all Arab countries, there are strict controls against criticism of government and big business corruption usually involves government in one way or another" (Izraeli, 1997). Most governments have agencies to combat corruption, but "official anti-corruption committees often constituted little more than talk shops" (World Bank, 2002, p.208). "The curtailment of the independence of the media has seriously hampered anti-corruption strategies in the region." (Azzam, 2004).

It is, henceforth, no surprise that for decades, the business environment has suffered major negative stereotypes. In his survey of business ethics in the Middle East, Izraeli (1997) noted that people, whenever asked about their opinion on the subject of business ethics in the region, "often responded with a chuckle or smile, a knowing wink and a derogatory wave of the hand. This was followed by a short explanation that these concepts are a contradiction in terms: business does not go with ethics and that Western norms of business ethics did not apply in the Middle East".

There is also little evidence of incorporation of good governance and business ethics within academic curricula, research, publications, or institutions promoting them (ibid). One reason could the fact that 92% of the population in the MENA region is Muslim. This religious homogeneity may have dampened the need for codification of, or training about, acceptable/ethical business practices. A study by Handy (1990) showed that Middle-Eastern executive believed ethics to be "very important contributor to their success". Yet little has been done since then to research, promote, institutionalize, or regulate the field.

CORPORATE GOVERNANCE AND BUSINESS ETHICS IN DUBAI

Given the scarcity of information about business practices in the region, this survey comes as the beginning of a benchmarking effort to see how companies in the UAE, and more specifically in Dubai, are dealing with governance concerns. It is an attempt to develop an understanding of standards adopted, control mechanisms set in place, perception of the quality of the business environment within respective industries, and whether companies believe systems in place are meeting the demand of corporate stakeholders. This would ultimately provide a baseline data about corporate Dubai and set the motion towards more research into corporate Middle East.

The timing of this survey is no surprise. The multicultural nature of the Dubai Business community, the fast growing pace of its economic activities, the increasing flow of foreign direct investment in the region, Dubai's goal to become the Financial hub of the MENA region, the establishment in the UAE of four financial markets within less than six years, the increasing role of

these markets in the corporate funding process, and the pressure for more transparency pursuant to international scandals and from international investors and organizations, made it very clear that a survey of this nature would give the business community, foreign investors, key decision makers and corporate stakeholders a greater insight into corporate governance in Dubai.

Moreover, success breeds scrutiny. Dubai's impressive performance has brought it to the lime light, and in the process, a few practices have unraveled and earned it heavy criticism. These practices have developed over time and went unchecked and unquestioned due to the predominantly laissez-faire economic policy of the country. Indeed, the UAE enjoys an "outward-oriented development strategy based on (i) an open trade regime and unrestricted capital outflows; (ii) a deregulated competitive business environment with low taxes; (iii) a well-developed physical and institutional infrastructure; and (iv) an open and unrestricted labor market, [which] resulted in an impressive economic growth and diversification of the UAE economy" writes the IMF in its UAE country report (2005, p.5).

DATA COLLECTION

The original goal was to reach a minimum of 30 decisions makers within government and private organizations. The list was drawn from the Dubai Chamber of Commerce and Industry's (DCCI) database, for the most comprehensive and up-to-date for businesses operating in Dubai. But often times, prospective interviewees were called to urgent duties, leading to last minute cancellations. Data was, therefore, collected through interviews of 17 key figures within Dubai organizations during the months of January-February 2005. Ten were conducted face-to-face, two were done over the phone, and the rest were self administered.

This attrition rate, while greatly limiting the validity of the study findings, was expected. The author went into this effort fully cognizant that the response rate may be low despite the big welcome this initiative had received from the press and the business community alike. It has frequently been reported that data collection in the Middle East posed significant challenges for researchers, "well beyond translation issues" (Marta et al., 2004). In a study about the marketing scene in Saudi Arabia, Tuncalp (1988) listed a number of research obstacles specific to the Middle-East: the lack of organizations set up to do research, little tradition of doing (marketing) research, and suspicious attitude towards questionnaires. Attia et al. (1999) stated that the cultural environment constitutes a strong barrier towards conducting research.

In the case of Dubai, the low response rate could be attributed to the heavy schedule of the targeted interviewees. Dubai is fast growing and prospective interviewees, especially the local ones, usually held several key positions and had great demand on their times.

The Survey

Survey questions were designed to address areas of business ethics and corporate responsibility towards employees, stockholders, the environment, and other stakeholders such as customers and suppliers. The questionnaire covered the following six main areas:

1. Demographic
2. Social commitments and philanthropy
3. Ethics Systems and Management
4. Worker health and safety
5. Corporate structure
6. Employee misconduct, corruption, environmental problems

Survey Findings

Demographics

The distribution of respondents by industry sectors is based on the Dubai Chamber of Commerce & Industry's Business Group (BG) Classification. There are currently 20 BGs within DCCI. Initially, the objective was to cover all business groups, but only 7 had been included, in addition to a government services organization. It is noteworthy, however, that some of the interviewees' organizations are diversified across several industries.

Table 1: Business Sectors Covered

Sector	No. of Responses
Business Services	1
Construction	2
Financial Corporation	2
Government services	1
Manufacturing	3
Real Estate	1
Transports, storage & communications	4
Wholesale, Retail & Repairing Services	3

The data in Table 1 is compiled based on interviewees' response and has not been checked for accuracy. For organizations that operate across several sectors and/or with offices outside of Dubai, employee and revenue data is reported corporate wide

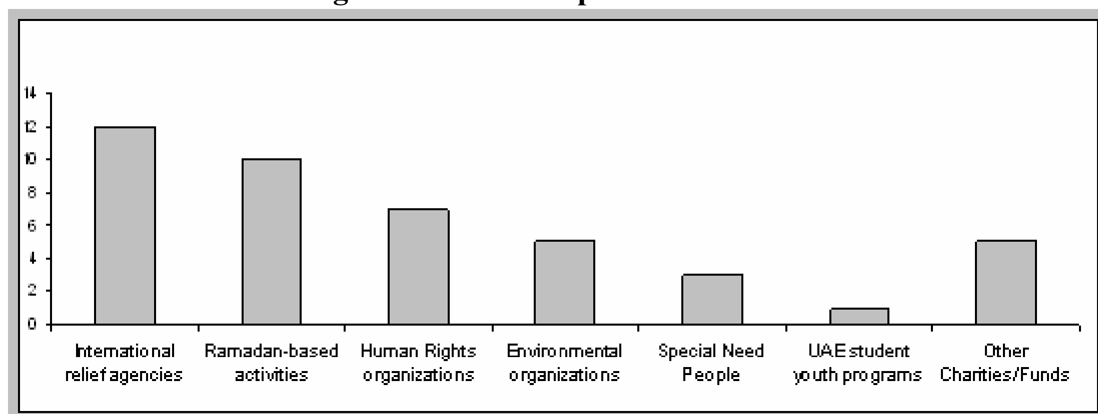
Demographic data revealed the following:

- ♦ Most business had international operations. Ten operated worldwide, four operated across the UAE, and three were operating exclusively in Dubai.
- ♦ The average number of employees was around 6,200 employees, ranging between 7 and 25000 employees
- ♦ Average reported revenues were above Dh0.875bn (around $235mn) but eight respondents declined to declare their organizations' revenues. Except for listed companies, businesses are under no obligation to declare revenues because of the tax-free environment. Financial disclosure has become, however, a highly debated issue due to the market downturn during Summer 2006 when some GCC markets, mainly in Saudi Arabia, Qatar, and Dubai, lost more than 50% of their capitalization.
- ♦ These organizations have been in business for an average 25 years, ranging from less than one year (a newly formed financial institution) to more than 40 years.
- ♦ Age group, years of professional experience, and years in current position have not been collected consistently, and as such, the information is not being reported. This information will be reported in a forthcoming UAE wide survey.

Social Commitment and Philanthropy

All but one interviewee from a newly established organization reported their respective firm being involved with one form or another of charity contribution (Figure1). The highest contribution had been for international relief agency, namely the Red Crescent, followed by Ramadan-based activities. The latter is particularly popular in the UAE given the holiness of the Month for Muslims. While there are obvious marketing benefits to their involvement, there are no tax-benefits to be derived for Dubai is in most part a tax-free environment.

Figure1: Philanthropic Contributions



When asked about their assessment of the contribution of their respective organizations, the majority (12 out of 17) believed their corporations gave an appropriate amount back to society. One respondent thought his company was giving too much, another one thought it was giving too little.

Volunteering

All interviewees but one reported their companies encouraged their employees to get involved with volunteering programs, 7 reported having a company-wide volunteering program and had organized a volunteering project. Dubai Holdings, one of the leading companies in the UAE, has one of the most progressive volunteering programs called the Leader. Program management was on a rotating basis. Assigned managers would allocate an average of 300 hours per year organizing and supervising social activities. Company had organized blood drives, marathons for charity causes and provided time off for those involved within these activities.

Ethics Systems and Management

The Ethics Resource Center - ERC (2000, p.9) assesses comprehensiveness of an ethics programs based on the existence of the following elements: written code of ethics, ethics training, and mechanism to report/seek advice about misconduct. Survey answers revealed that systems in place had no relation to the size of the business or to its activities. They also revealed the lack of a systematic approach to tackling ethics issues (see Table 2 and 3). At one end, one organization was reported to have appointed a senior manager responsible for corporate ethics, installed a direct line to a senior manager, an email hotline, a suggestion box, and a third party audit on the top of providing ethics training on a regular basis. At the other end were organizations that had none of the elements of an ethics system in place. This was the case of a construction firm with 7000 employees, a real estate with 11000 employees, a wholesale-retail business with 80 employees, and a Storage, Transport & Communication company with 11000 employees. It is customary for small businesses not have a formal system because of resource constraints. The ERC's 2000 National Business Survey did indicate the existence of a positive relationship between the comprehensiveness of the ethics system in place and the size of the firm (measured by number of employees). It was, therefore, surprising to have large organizations with highly diverse workforce operating without having any of the elements of an ethics' program.

Table 2: Ethics System in Place			
Ethics standards	Yes	No	NA
Have written ethics standards	10	6	1
Ethics training	9	7	1
Training is Mandatory	5	10	2
High Level Manager for Ethics	7	9	1

Table 3: Comprehensiveness of Ethics Systems in Place	
System in Place	No. of Responses
Code of Ethics +Training + Hotline	6
Code of Ethics + Training	2
Code of Ethics + Hotline	1
Code of ethics only	1
Ethics Training only	1
Hotline Only	1
No system in Place	4

Having an ethics system in place did not seem to translate into reporting of misconduct by employees or following up on misconduct by corporations. Twelve interviewees reported either their respective companies not keeping track of the number of reported cases or having 'no clue' as to how many misconduct cases were being reported. Five said that the number of cases was less than ten a year, mainly because the culture in place deterred misconduct.

The last section in the survey, 'Employee Misconduct', revealed an almost unanimous agreement among interviewees of widespread unethical behavior within respective industries. Given the low level of reporting misconduct, one would infer that misconduct goes unreported. One reason could be that Codes of Conducts and Ethics training, when existing, do not clearly indicate the need to report misconduct or the proper channels to do that. It has been reported that fear of retribution (Anonymous, 2006), the fear of being seen as a troublemaker (ERC, 2000), the belief that reporting would lead to no results (Trautman, 2000), the prevalence of an organizational culture that does not promote ethics, and failure to take action when misconduct is reported are common reasons for the 'code of silence'. In the case of Dubai, one might add cultural diversity and language barriers. The Labor department estimates that the UAE has 3.11 million foreign workers from 202 countries, which in many cases speaks no language but its own. This is usually the source of a great deal of

labor issues due to miscommunication. Accordingly, the Labor Department has recently announced its plan to make it mandatory for laborers to acquire basic knowledge of English prior to entering the country (Gulf News, 2006d). In addition, expatriates are usually hired on a contractual basis, and thus may see no incentives in reporting misconduct.

Some traits of the Middle-eastern culture may be another factor. The culture promotes above all loyalty to one's tribe, family, and friends. Local population in the Gulf region tends to be closely knit and intertwined, making it very hard to tell on a family member or a friend. In a business setting, it makes it hard to run regular audits and implement control systems, for may be viewed as a sign of distrust. The culture values forgiveness, for it promotes peaceful cohabitation of all concerned. This is coupled by reluctance to cause one to lose his or her job. Another trait is an upbringing/educational system that fosters deference to authority figures and deters doubting/questioning them. Authority figures are viewed as capable of no wrong-doing.

Actions taken varied from a simple reprimand to dismissal of the employee subject of the misconduct (Table 4). One of the firms that reported having no system in place did report taking actions when misconduct was reported. Another one, a manufacturing firm with 250 employees, had an ethics system in place but took no actions in case of misconduct. The failure to do so may act as a justification and encouragement for other misconduct to take place, resulting in a self-perpetuating cycle of misbehavior.

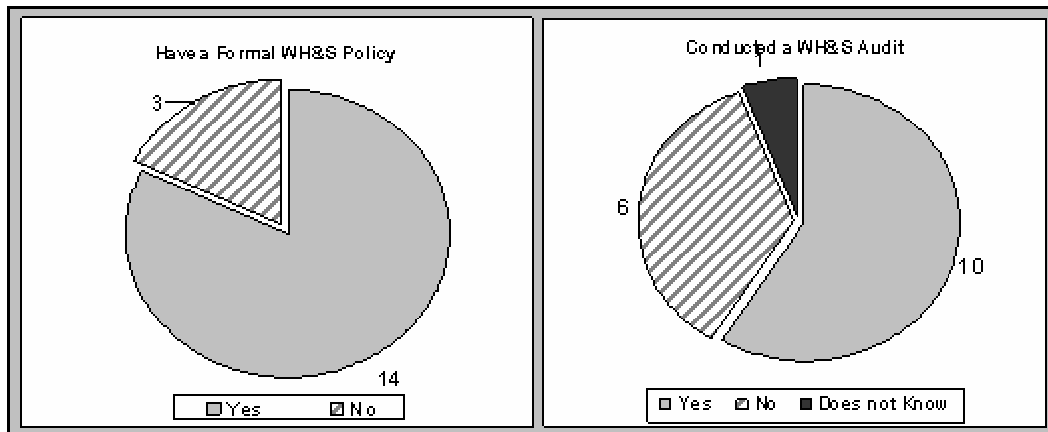
Table 4: Actions Taken in Case of Misconduct

Response to Ethical Misconduct	No. of Responses
Dismissal	8
Disciplinary action	10
Formal reprimand	6
Informal reprimand	6
No Action	4

Worker Health and Safety

All but three companies had a formal worker health policy (Figure 2), and their main motivation for having one went beyond legal compliance. The main concern of the majority (11 out of 17) was to protect workers' health. However, out of the 14 with a formal worker & health policy, only 10 reported conducting a safety audit in the past two years. Two out of the three organizations with no worker health & safety policies were also the ones reported not having an ethics system in place.

Figure 2: Worker Safety



Given the large influx of foreign labor in the UAE, the area of labor safety and health is one of the most regulated aspects of doing business in the country. Such strict regulation explains the more systematic approach businesses are taking towards labor issues. It is also the area that brought the UAE a great deal of criticism from the International Labor Organization and human watch agencies. Accordingly, the UAE recently granted workers the right to organize, established a Labor court and promised to draft a law promoting protection of expatriate labor rights, mainly the unskilled one (Gulf News, 2006a).

Governance Structure

Unlike labor issues, corporate structures and governance has received less attention from the regulator and the business community. One area that has started coming to the surface is that of conflict of interest and directorate interlocking. Because of the entrepreneurial nature of the local population and the limited number of qualified nationals to hold key positions in government agencies, government organizations often seek board-membership of business leaders, leading to potential conflict of interest. “You’ve got a small gene pool here which the government loads a lot of responsibility on,” said Charles Neil, secretary of the DIFC board. “This (corporate governance) is an evolutionary process … you don’t do it all in day one” was his comments about concerns raised in 2004 over supply contracts awarded to companies all controlled one way or the other by one of the board members of Dubai International Financial Center (Kerr, 2004).

While 15 out of 17 reported having a board of director or trustees, only 4 reported being aware of the existence of policies governing conflict of interest (Table 5). Independent directors were present in seven of the surveyed organizations. This is not much different from practices elsewhere. In eighty percent of the companies in the Fortune 500, the CEO is also the chairman of the board (Moffett et al, 2006, p. 18). The independence of board members has become a sought

after feature after the failure of large corporations in the US and elsewhere. Another feature that these failures brought to light was the conflict of interest arising from retaining external auditors for consulting. The question of using auditors for consulting work has become extremely important at the wake of the Enron case. The investigation revealed that Anderson Consulting had serious conflict of interest, earning $5 million in auditing fees, but more than $50 million in consulting fees in the same year from Enron in 2001 (Moffet et al, 2006). Only two firms reported doing so in this survey.

It is common practice for UAE organizations to seek the service of external auditors. There have been no reported cases of conflicting interest perpetrated by the profession. But the auditing profession is at its infancy stage. The one accounting professional association registered in the country is still focused at organizing and developing the profession ethics (Accountants & Auditors Association, n.d.), which may not be enough to address today's call for high moral standards and integrity.

Table 5: Governance Structure

Corporate Governance	No. of Responses
Formal Articles of Incorporation	16
Board of Directors	15
Have Independent Directors	7
Conflict of Interest Policy	4
Hire External Auditor	15
Use Auditor for Consulting Work	2

Employee Misconduct: In this section, interviewees were presented with a list of 13 questions relating to six broad areas of employee misconduct:

1. Substance abuse on the job
2. Misrepresentation: lying to customers and the Public, including selling defective product.
3. Discrimination on the basis of race, color, nationality, gender, and age.
4. Bribes: in the form of elicit payments or inappropriate gifts to government officials, bribes to secure contracts and bribes to avoid penalties and fines.
5. Stealing of confidential information.
6. Environmental protection: intentional violation of environmental laws and voluntary environmental standard

All but one interviewee reported being aware of at least one form of unethical behavior taking place within the industry. One respondent, a construction company, reported being aware of one single type of misconduct: lying to the public. A CEO of a Transport, Storage, and Communication services company reported being aware of all 13 types of unethical conduct. Another four chiefs reported observing between 10 and 12 types of misconduct within respective industries (Table 6).

Table 6: Frequency of Misconduct Observed	
No. of misconducts Observed	No. of Responses
10 to 13	5
5 to 9	5
1 to 4	6
0	1

Responses shown in Table 7 indicated that lying to the public in general and to customers in particular was perceived to be the most prevalent type of unethical behavior perpetrated by employees. This may bear close relation to the above findings about ethics system in place. In addition, most salesperson work on commission, and as such, may fell the need to resort to lying to customers in order to close deals and meet sales targets. In some cases lying occurs because of lack of training about product or services offered.

Table 7: Misconduct Observed	
Misconduct	No. of Responses
Lying to customers	12
Racial discrimination	12
Lying to public	11
Stealing confidential info	10
Gender discrimination	8
Paying bribe to avoid penalty	8
Violation of environmental law	8
Age discrimination	7
inappropriate gift to government official	7
Paying bribe for contract	7
Selling defective product	7
Violation of environmental standard	6
Substance abuse	4

Second on the list was racial discrimination. This is similar to reported discrimination against Hispanics and African Americans in the US, North Africans in France and Turkish in Germany. It is rooted in the social, educational, and professional status of these migrant ethnic groups. They usually have minimum education, are blue-collar workers and have low-paying jobs.

It is also noteworthy that locals face price discrimination. It is widely known that merchants practice a two-tiered pricing scheme whereby locals would be quoted and charged the highest price. Some may also interpret the *Emiritization* labor laws as fostering discrimination of the basis of country of origin. These laws mandating businesses to meet certain local-to-expatriate quotas in the labor force were enacted in order to promote the human capital of the country which would otherwise remain unskilled and untrained. The local authorities see it their duty to develop, train, promote, and provide jobs to the local population. Their argument is similar to the Infant Industry one still advocated by the World Trade Organization, whereby industries within young nations are given protection till they can compete. Some may argue it is a national security issue. For geopolitical reasons, nationals need to be ready to run the country should the expatriate work force leave the country.

Another reason for the perceived racial discrimination is wage differences. While in most countries wage differences are gender based, in the UAE, it is nationality and/or ethnicity based. Nationals tend to be paid higher than most expatriates for the same job rendered. Wages tend to also be highest for Caucasians, followed by Middle-eastern, then Asians. This practice of wage discrimination has been condemned by the International Labor Organization and urged the UAE to redress it (Khaleej Times, 2005). Gulf News (2006c) recently reported that the gap, while persistent, has been narrowing and remunerations are more and more based on skills rather than demographic criteria.

Substance abuse was not found to be a major area of concern. This may be due to the Islamic culture that frowns upon these practices. There are also severe penalties associated with substance abuse that could lead to deportation and banning workers from re-entering the country.

These findings bear an obvious link to the Ethics system in place and the business environment in which employees operate. It gives a clear indication that companies are either not addressing the issue of ethics on the job, or are missing the target when doing so. Survey responses already indicated deficiency in the areas of ethics training, reporting misconduct, and taking action in case of misbehavior.

LIMITATIONS AND AREAS OF FUTURE RESEARCH

This is a perception survey. The reality may be different altogether. But it was revealing to know what these business leaders thought of their own organization and the environment in which they were operating. Most interesting was their awareness of widespread misconduct practices within respective industries.

The findings of this survey, however limited, indicated disparity in governance systems and processes in place. Areas of strength were the organizations social responsibility programs and worker health and safety policies. Perception of widespread employee misconduct was, on the other hand, particularly alarming. Ethics systems lacked comprehensiveness. Areas of conflict of interests, independence of board membership, discrimination, lying to customers, illicit payments, infringement of environmental law and standards, among others are not properly nor systematically addressed.

One need to read these findings with great care, for the sample size is small, hence, greatly limiting the ability to generalize the survey findings. This underlies the need to undertake a similar survey on a wider scale. The main challenge to conducting this survey was the low priority given to discussing ethics and governance on the part of some business leaders. It is hoped this would change as leaders come to recognize the relationship between good governance and performance. In addition, the fear of repercussion and feelings of loyalty kept respondents from being open about ethical issues and corporate practices within own organizations. In some cases, interviewees had to be constantly reminded of the anonymity of responses reported.

The ethics profession is young worldwide, and is even younger in the UAE. Corporate governance is an emerging issue. It reached the UAE late 2005 with the establishment of *Hawkamah* Institute. It has to yet make inroads into corporate boardrooms. While corporations may be doing bits and pieces of what is considered proper corporate governance, they have not yet made it part of their strategic planning process. Corporate governance needs to be consciously and systematically addressed at the strategic level. The Dubai Financial Market – the local stock exchange, tried to address the issue by mandating a Governance Code on all listed companies (Gulf News, 2006b). But these companies represent less than 0.1% of the number of businesses operating in Dubai. Family-owned businesses and small businesses dominate the business landscape. Out of the 55,000 businesses operating in Dubai, 56% are family owned and 90% have less than 20 employees (Rettab et al, 2005). These need to be specifically targeted and brought into the debate.

Setting a state of the art infrastructure gave the UAE a competitive advantage over its neighboring countries and over other emerging markets. But the world community is expecting its corporate governance to be at par with its infrastructure. Whether governments can 'regulate' corporate governance is a matter of debate. Reaction to the 2002 Sarbanes Oxley Act is a good example of whether governments should regulate governance. The Act has been widely contested, for on the top of costs of implementation, it may act as a deterrent for good 'governors' to be involved in the governance process. The UAE culture, dominated by '*what the government can do for you',* puts a great deal of responsibility on the government to take the lead in addressing emerging issues. Professional associations, business forums, key public figures, and leading businesses may all want to play a bigger role in improving the business environment in Dubai and taking the lead into involving neighboring emirates and countries in the process. But it is imperative

that corporate Dubai streamline its governance processes in order to meet world's standards and expectations.

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About the Author:

Lamia Abdelaziz Obay is an assistant professor of finance at the University of Dubai-UAE. She received her PhD in International Finance and Banking from the George Washington University in 1997. Dr. Lamia has authored and co-authored several refereed journal and proceedings articles. Her primary area of research interest lies in the area of financial innovation and Islamic Finance.

THE FEDERAL FALSE CLAIMS ACT AND QUI TAM ACTIONS: WHAT EVERY HEALTHCARE MANAGER SHOULD KNOW

Angela Mattie,Quinnipiac University
Rosalyn Ben-Chitrit, Healing Healthcare Consulting, LLC

ABSTRACT

The False Claims Act (FCA) has been called the government's most successful weapon in the fight against healthcare fraud and abuse (S. Rep. No. 345, 1986). The FCA imposes liability on any person who "knowingly presents...a false or fraudulent claim for payment or approval" to the federal government (False Claims Act, 31 U.S.C. §3729, (a) (1), 2000). The qui tam provision of the Act allows employees, patients, contractors, or competitors to sue an organization or provider that has violated the FCA. In 2006 alone, closed qui tam cases in the healthcare domain resulted in awards of over $2.7 billion. Due to the significant financial impact and increase of qui tam lawsuits, healthcare managers must be aware of the issues and take steps to minimize and mitigate their organizations' exposure. This paper discusses applicable provisions of the FCA, its applications to healthcare fraud and abuse, and recommends management techniques to minimize qui tam vulnerability.

INTRODUCTION

Compliance with regulatory agencies has become a major focus for healthcare organizations of all types. Areas from patient referrals to billing and documentation have become targets for state and federal governments; investigation of healthcare fraud, false claims, and other types of noncompliance has become a major activity with greater emphasis and resources than ever. In addition, the False Claims Act (FCA) was modified to make it easier for employees to report fraud and abuse incidents. Due to the significant financial impact and increase of qui tam lawsuits, healthcare managers must be aware of the issues and take steps to minimize and mitigate their organizations' exposure.

This paper discusses the increased scrutiny of the federal government relating to compliance, specifically its use of the FCA and the corresponding vulnerability of healthcare institutions to qui tam actions. The article concludes with practical advice on mitigating the possibility of qui tam actions related to the federal FCA. The purpose of the paper is to review applicable provisions of the FCA and its applications to healthcare fraud and abuse, and to recommend management techniques that can minimize qui tam litigation.

THE FALSE CLAIMS ACT AND QUI TAM – THE BASICS

The FCA, enacted during the Civil War and amended three times since its passage, was initially meant to combat contractor fraud against the union army. The qui tam provision of the Act, from a Latin phrase meaning "he who brings a case on behalf of our lord the King, as well as for himself," allows a private person to bring a lawsuit on behalf of the government. It rewards citizens for coming forward as whistleblowers by offering them a percentage of the damages generated from a successful lawsuit. Private individuals with information about an organization that has submitted or caused the submission of false or fraudulent claims become extensions of the government in these instances, benefitting from the lawsuit, just as the government does. In effect, implementation of qui tam created a public-private partnership in which private individuals were authorized and supported by government to act as guardians of the public's trust (quitamhelp.com, n.d.). Private individuals help police government contractors that might otherwise take unfair advantage of limited government enforcement capacity.

Few qui tam actions were brought until the mid-1980's, when there again was rampant fraud against the government. Congress sought to use the FCA to control its contractors and suppliers. Whistleblowers were seen as important tools in ensuring that the government's interests were protected, and the public was encouraged to participate. The vigilance needed to ensure that there was no impropriety in transactions involving the government crossed into every sector that involved government funds. Qui tam plaintiffs, called *relators*, were the new deputies in the fight against fraud. The 1986 amendments to the FCA comprised several key changes, making the law more effective in bringing forth information to reduce fraud. Among these were:

- *Expanding the definition of one defrauding the government to include those who do so without specific intent (in addition to willful defrauders);*
- *Including individuals or companies that cause someone else to submit a false claim as a defrauder;*
- *Clearer rules for relators, including time frame for reporting the fraud;*
- *Increased penalties to losing defendants – from double to treble damages plus civil fines;*
- *Stronger financial incentives for relators, now including legal fees for successful lawsuits; and,*
- *Protection for relators from retaliation*

(False Claims Amendments Act of 1986, 2006).

Since 1986, the FCA has been used frequently to prosecute lawsuits on behalf of the government, particularly through the use of qui tam actions, with claims in defense and healthcare industries having the largest amount of activity. Healthcare-related claims have been successfully

prosecuted against medical facilities, pharmaceutical and medical-device companies, and individual providers. Implementation of the FCA and qui tam provisions has resulted in a spectacular success rate, beyond the expectations of those who enacted and amended the law. The FCA has been noted as the government's most successful weapon in the fight against healthcare fraud and abuse (S. Rep. No. 345, 1986).

False Claim Act Penalties

Civil damages under the FCA are substantial. Penalties can be monetary and programmatic, which can have significant impact on a healthcare organization of any size. According to the law, the government may recover up to three times the amount of damages it sustained as a result of the defendant's fraud plus $5,500-$11,000 per fraudulent claim. The 1986 amendments to the FCA state that even if a number of false claims are combined and submitted together, each separate false claim shall result in a penalty (False Claims Amendments Act of 1986, 2006). In other words, a facility that improperly billed 500 claims by adding an improper $1000 charge would be liable for $500,000 in damages plus a minimum of $2,750,000 for each of the claims submitted.

Healthcare providers must also take into consideration that FCA violations can create barriers to their participation in government programs, such as Medicare and Medicaid. Exclusion from these programs could be devastating to organizations that generate significant revenues from those sources. In addition, the government can impose corporate integrity agreements stipulating onerous compliance requirements that make day-to-day operations and management cumbersome and costly.

Qui Tam Whistleblowers

The Department of Justice (DOJ) has made qui tam litigation a top priority in combating healthcare fraud and abuse. Under the FCA, the government, as well as employees, patients, contractors or competitors can bring a lawsuit against an organization or provider that has violated the FCA. If successful with their actions, relators stand to gain between 15% and 30% of the total amount recovered plus reimbursement for reasonable expenses, costs and attorney fees (False Claims Act, U.S.C. §3730 (d) (1) (2), 2000); the average relator share is 17% (quitamhelp.com, n.d.). Even relators who participated in the fraud can bring a qui tam action. In these cases, the court may reduce the participating relator's share of the recovery. Only those individuals convicted of criminal activity relating to the alleged false claim are barred completely from recovery in a qui tam action (False Claims Act, 31 U.S.C. §3730 (d) (3), 2000).

Whistleblower Protection

Healthcare organizations can be liable for more than fraud and abuse violations under the FCA. A relator who is retaliated against because of bringing to light the false claim charge, whether or not the charge is proven to be valid, is entitled to sue the employer as a result of the retaliation. This special class of protection is commonly referred to as the whistleblower protection provision of the FCA. The provision states that:

> *Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of his employer or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole* (False Claims Act, 31 U.S.C. § 3730 (h), 2000).

Managers should keep in mind that the penalties for a successful retaliation lawsuit can be severe. It is worth avoiding any actions that might be considered retaliatory against employees who are known to have filed FCA actions. To be successful in a retaliation lawsuit, an employee must prove that: (1) the employee was engaged in protected activity, such as "lawful acts in furtherance of" a FCA action; (2) the employer knew that the employee was engaged in protected activity; and (3) the employer engaged in retaliatory conduct because of the employee's protected activity (*United States ex rel. Grandeau v. Cancer Treatment Centers of America*, 2005). If these elements are met, the employer's penalty includes forced reinstatement of the employee, two times the amount of back pay, interest on the back pay and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees (False Claims Act, 31 U.S.C. § 3730 (h), 2000).

WHAT IS A FALSE CLAIM?

The FCA imposes liability on any person who "knowingly presents or causes to be presented...a false of fraudulent claim for payment or approval" to the federal government (False Claims Act, 31 U.S.C. §3729, (a) (1), 2000). As noted, the new provisions of the FCA do not require an organization or individual to exhibit specific intent to defraud the federal government. Instead, the Act defines "knowingly" as: "having actual knowledge of the information; acting in deliberate ignorance of the truth or falsity of the information; or acting in reckless disregard of the truth or falsity of the information" (False Claims Act, 31 U.S.C. 3729(b), 2000). For healthcare provider organizations, the complexity of payor requirements and billing practices of multiple insurers can

be daunting. Nevertheless, organizations must be vigilant about their recordkeeping and billing practices if they want to steer clear of potential FCA violations. In a landmark case, the Court found that a psychiatrist's "seriously deficient" recordkeeping system resulted in submission of claims with reckless disregard for the truth or falsity of the claims; the penalty involved significant monetary fines, even with the government taking a very conservative stance and reducing the physician's penalty (*United States v. Krizek et al.*, 1997).

Within the healthcare sector, major areas of liability prosecuted under the FCA are: 1. improper coding or billing practices; 2. claims for medically unnecessary, not provided or not covered services; 3. lack of provider or patient eligibility; 4. provider violation of a statute or regulation; 5. false certification of cost reports; and 6. claims for services that do not meet quality of care standards.

Improper Coding or Billing Practices

While variations on improper coding or billing practices have been investigated, the Office of the Inspector General (OIG) has made two a priority in its enforcement efforts: upcoding and unbundling of services. (OIG Supplemental Compliance Program Guidance for Hospitals, 2005) Upcoding is using a billing code that provides a higher reimbursement rate than the actual diagnosis code for the patient. The OIG defines unbundling of services as: "the practice of a physician billing for multiple components of a service that must be included in a single fee. For example, if dressings and instruments are included in a fee for a minor procedure, the provider may not also bill separately for the dressings and instruments" (Office of Inspector General's Compliance Program Guidance for Individual and Small Group Practices, 2000).

Significant monetary settlements have been imposed for improper coding of pneumonia. Tenet HealthCare paid the United States $4.3 million to settle allegations that five of its Florida hospitals submitted fraudulent claims to Medicare by upcoding pneumonia diagnosis codes (United States Department of Justice, 2003). In another case, University Medical Center of Southern Nevada (UMC) agreed to pay the United States $1.16 million to settle allegations that it violated the FCA by upcoding a pneumonia diagnosis code (United States Department of Justice, 2002). In both cases, the hospitals improperly used a principal diagnosis code of 079 (respiratory infections and inflammations), defined as "pneumonia due to other specified bacteria." This code provides a higher reimbursement rate than an uncomplicated case of pneumonia.

Claims for Medically Unnecessary, Not Provided and Non-Covered Services

A review of the case history shows a significant volume of FCA lawsuits that relate to the provision of medically unnecessary services, services not provided and billing for services that are not covered by a federal program. Aside from the significant FCA penalties involved with these

cases, providers are at great risk for criminal complaints that accompany the false claim allegations. In addition, some of the larger cases involving these transgressions have resulted in penalties that go beyond multi-million dollar fines; there have been corporate integrity agreements, temporary or permanent exclusion from government-sponsored programs, and random audits by outside experts imposed on the defendants.

Most prevalent among the large cases where defendants have been found to be in violation of submitting claims for medically unnecessary services are facilities and laboratories. In some cases, these organizations bill for tests that are not ordered by a physician as was the case with HCA in 2000 (Corporate Crime Reporter, 2003, p. 8), or tests that are superfluous like those ordered at Fresenius Medical Care (Corporate Crime Reporter, 2003, p. 11) and Gambro Healthcare (Corporate Crime Reporter, 2003, p. 32); in at least one case, an organization was sued for inducing physicians to order medically unnecessary tests that provided no benefit to the patient (Corporate Crime Reporter, 2003, pp. 55-56). While unnecessary diagnostic testing is most common, providers must be on guard against providing and billing for medically unnecessary services. In 2003, Tenet paid the federal government "$54 million to settle allegations that it billed the federal government for unnecessary cardiac procedures and surgeries" (Corporate Crime Reporter, 2003, p, 30). A 2002 case resulted in American Medical Response, the nation's largest provider of healthcare transportation services, paying $20 million for "transportation that was not medically necessary or…lacked documentation of medical necessity" (Corporate Crime Reporter, 2003, p. 52).

As a prime example of how claims for unnecessary and non-existent services can impact a company, it is instructive to review the January 2000 settlement between Fresenius Healthcare, a provider of kidney dialysis products and services, and the US government. The lawsuit resulted in a payment of $385 million for false claims charges plus an additional $101 million for criminal wrongdoing. It was a landmark case with multiple facets, including "obtaining payment for hundreds of thousands of false, fictitious and fraudulent blood testing claims" and because it "improperly billed Medicare for certain diagnostic tests which were provided to dialysis patients as part of clinical studies" (Corporate Crime Reporter, 2003, pp. 11-12). Qui tam relators filed suit and were joined by the government in those suits; during the investigation, federal investigators found additional evidence of false claims, increasing the company's liability even beyond the realm of what the whistleblowers originally brought to light.

Organizations of many types have been sued under the FCA for claims submissions related to services or expenses that are not allowed or covered under the federal programs. Common among the defendants in these lawsuits are organizations that include marketing and other business expenses that are unrelated to patient care (Corporate Crime Reporter, 2003, pp. 8, 14-15, 48). Decisions determining what should be included in general expenses that are reimbursable should be carefully made. Failure to exclude items from otherwise approved and covered services, such as testing that is done for the purposes of clinical trials or studies, could result in qui tam litigation and significant FCA fines and other penalties.

Lack of Provider or Patient Eligibility

Providers and patients must both be eligible participants for all claims submitted to government programs. Although it may appear obvious, numerous cases have been successfully prosecuted because of failure to ensure that a physician or patient was an approved provider or beneficiary. The record shows multi-million dollar fines for inappropriate submissions of this type. Eligible providers must be properly credentialed and specifically included in the government programs for which bills are submitted. Claims submitted for services that are necessary but are provided by ineligible clinicians are false claims under the law. One common mistake made when submitting claims relates to hospital interns and residents who are typically excluded from participation as billing professionals. An audit done at the Clinical Practices of the University of Pennsylvania (CPUP) showed significant evidence of "billing by faculty physicians for services actually performed by resident physicians in training. Under the Medicare program, the United States already pays for a substantial portion of the residents' training and salaries, and their services cannot be billed to the Medicare program…" (Corporate Crime Reporter, 2003, p. 42). Although there were other issues in the Pennsylvania case, the lawsuit cost CPUP $30 million in fines plus additional costs that resulted from significant reorganization mandated in the judgment. Lawsuits against providers and entities that have billed for patients who are not eligible for services have also led to multi-million dollar fines. In June 2002, Los Angeles County and the State of California were fined over $73 million because they "directly or indirectly billed the federal health care program [Medicaid] for services provided to certain minors when these jurisdictions had no basis for concluding that these individuals financially qualified for Medicaid services" (Corporate Crime Reporter, 2003, pp. 26-27). This lawsuit resulted from a qui tam whistleblower working in Los Angeles County's Department of Mental Health.

Provider Violated a Statute or Regulation

False claims actions based on violations of the Stark and Anti-Kickback Statutes are receiving increased focus by the federal government. Under the federal Anti-Kickback Statute, "anyone who knowingly or willfully solicits or receives, either directly or indirectly, any remuneration in exchange for referring an individual for services under any federal healthcare program can be fined or imprisoned" (Federal Anti-Kickback Statute, 2008). The Stark Law prohibits a physician who has a financial relationship with an entity (or whose immediate family member has a financial relationship with an entity) from making a "referral" of a Medicare or Medicaid patient to that entity for "designated health services." The recipient of the referral may not present a claim for any designated health services furnished pursuant to a prohibited referral. Designated health services include: clinical laboratory services, radiology services, durable medical equipment, and inpatient or outpatient hospital services (Stark II Law, 2008).

Since penalties under the FCA are significant and the FCA provides a provision for private plaintiffs to pursue an action on behalf of the federal government, the federal government is motivated to "stack" false claims violations against providers and entities that have violated the Anti-Kickback or Stark laws. By stacking, the government contends that if a claim is submitted to Medicare where a prohibited financial relationship exists then these claims are not properly reimbursable under Medicare, the submission of these claims is a fraudulent act and subject to the separate penalties under the FCA.

In a 2006 case the court awarded the government $64 million in damages and penalties based on a finding that a Chicago teaching hospital submitted false claims to Medicare and Medicaid that violated the Stark and Anti-Kickback laws. The court found that the hospital's former CEO conspired with physicians to increase referrals to his hospital. Tactics in question included the use of a variety of physician contracts designed to induce referrals. The court found that the compensation in these contracts was grossly above fair market value for services never substantially performed (*United States v. Rogan*, 2006).

False Certification of Cost Reports

All Medicare Part A providers are required to file an annual cost report with the government. The cost report identifies all revenues and costs from the provider's departments and cost centers. It also includes all interim requests for reimbursement such as UB-92 claims. Certification of the cost report, usually by the CFO, is required. In signing the cost report, the CFO certifies that to the best of his knowledge and belief it is a true, correct and complete statement. The CFO's certification also indicates that he is familiar with the laws and regulations regarding the provision of healthcare services and that the services included in this cost report were provided in compliance with such laws and regulations.

The government has brought a number of cost report fraud cases in recent years using the FCA as a weapon of choice. One of the first cases applying the FCA to cost reports was United States ex rel. Thompson v Columbia HCA Healthcare Corporation (*United States ex rel. Thompson v. Columbia HCA Healthcare Corporation*, 1998). This qui tam suit alleged that Columbia HCA had violated the Stark and Medicare Anti-Kick Back law by making impermissible payments to referring physicians. The district court held that certification is a condition of payment under Medicare and fraudulent certification therefore is a violation of the FCA. The FCA can also be used to pursue fraudulent cost reports in which the provider has: falsely inflated costs related to patient care with services, supplies and equipment that are not covered, sought reimbursement for costs unrelated to patient care, such as marketing, and shifted costs to improper cost centers.

Claims for Services That Do Not Meet Quality of Care Standards

The federal government has made quality of care a compliance issue and has used the FCA to prosecute allegations of substandard care. The government has used two theories to pursue quality of care cases under the FCA. One theory is that the provider did not comply with the quality of care standards provided in federal and state laws governing Medicare or Medicaid providers. A request for payment from government programs implicitly certifies that a provider has met the quality of care standards, so if the provider fails to meet the required standard of care for a service, it has submitted a "false claim" and a violation of the FCA. One of the first cases to advance this theory was United States ex rel. Aranda v Community Psychiatric Centers. In this case, the psychiatric hospital was accused of "knowingly failing to provide the government insured patients with a reasonably safe environment" (*United States ex rel. Aranda v. Community Psychiatric Centers*, 1996). The government claimed that by submitting bills to Medicaid the hospital was implicitly certifying that it was abiding by applicable statutes, rules and regulations requiring the "provision to patients of the appropriate quality of care and a safe and secure environment" (*United States ex rel. Aranda v. Community Psychiatric Centers*, 1996).

The second theory used by the government is that grossly inadequate care is worthless. A claim submitted for this service is, therefore, false and allows the government to pursue a FCA action. This theory was applied when a former supervisor at SmithKline Beecham, Inc. filed a qui tam action alleging that the company falsified test results. The allegation was that test results for control samples fell outside the acceptable standard of error and SmithKline falsified these results, later billing Medicare for the worthless tests. The Court ruled that there was a cause of action under the FCA since the quality of the test results was so deficient as to be worthless (*United States v. SmithKline Beecham Clinical Lab*, 2001).

THE HIGH COST OF QUI TAM CASES

Cases brought by employee whistleblowers now account for the majority of civil fraud recoveries obtained by the United States. Between 2000 and 2006, the DOJ recovered over $12 billion in civil fraud recoveries; whistleblowers were responsible for almost $8 billion of these recoveries (Department of Health and Human Services and Department of Justice, 2007).

In 2006 alone, closed qui tam cases in the healthcare domain resulted in awards of over $2.7 billion. One study reported that "in the healthcare arena, the US government is recovering $15 back for every $1 invested in False Claim Act healthcare investigations and prosecutions" (Meyer, 2006, p. 4). These awards represent large hospital corporations and pharmaceutical companies, but also include individual medical centers, nursing homes and even individual physicians and medical personnel. Any organization that collects funds from government sources such as Medicare,

Medicaid, Tricore, the Veteran's Administration and others is a potential defendant in a qui tam action.

Table 1: Top False Claim Acts Healthcare Settlements			
Organization	Year	Type of Action	Settlement
Tenet Healthcare	2006	Billing violations	$900 million
HCA	2000	Unnecessary tests/billing violations	$731.4 million
HCA	2003	Violation of regulations/statutes	$631 million
Fresenius Medical Care of North America	2000	Billing violations	$385 million
HealthSouth	2004	Billing violations	$325 million
Gambro Healthcare	2004	Violation of regulations/statutes	$310 million
St. Barnabas Hospitals	2006	Billing violations	$265 million
First American Health Care of Georgia	1996	Billing violations	$225 million
Laboratory Corporation of America	1996	Unnecessary tests/billing violations	$182 million
Beverly Enterprises, Inc.	2000	Billing violations	$170 million
Medco Health Solutions	2006	Billing violations	$163 million
Sources: Taxpayers Against Fraud Education Fund, n.d., Top 20 cases; Corporate Crime Reporter, 2003			

STEPS TO MINIMIZE YOUR RISK OF QUI TAM LITIGATION

In regard to FCA lawsuits and qui tam activities, as in regard to medicine itself, prevention is preferable to a cure. Because of its complexity, however, it is challenging to ensure compliance with complex and ever-changing federal and state laws and regulations. Ethical leadership, thoughtful planning, and implementation of a variety of activities built into ongoing standard operating procedures makes it possible to enhance compliance, minimize the risk of qui tam and FCA litigation, and avoid the penalties associated with them.

In addition to the organizational and programmatic recommendations often cited are seemingly obvious requirements that should be attended to by all organizations. These requirements include continuous review of operations, ongoing education and clarification about billing requirements and policies for government-funded programs, and regular audits to ensure that claims – whether handled directly or outsourced to a contractor – are properly coded and submitted. One of the most important components of any compliance program, however, is having a leadership and management team that promotes ethical behavior and actively champions employees' efforts to serve the organization within the parameters of the law. This commitment should begin with the organization's Board of Directors and permeate throughout the entire organization.

Conduct an Ethical and Legal Workplace

The most important step in avoiding qui tam actions is to establish and continually reinforce an ethical culture that publicly and regularly focuses on compliance. This requires more than just compliance with state and federal laws regarding billing, kickbacks, cost reports and medical necessity. Management must have a good faith and meaningful commitment to a compliance program that becomes part of the fabric of the organization. Healthcare organizations must be committed to promoting an environment of ethical and legal business behaviors that is visible to employees, contractors and all other constituencies.

This commitment should be operationalized when selecting personnel, orienting employees, and during annual evaluations. Hiring decisions should incorporate methods to identify applicants who espouse the values of the organization. Once hired, new employees should receive orientation materials that describe the entity's commitment to compliance, the specifics about the compliance program, and a clear message that reporting concerns is encouraged, supported and valued. Annual evaluations should include a measure of accountability for all employees illustrating their commitment to compliance and support of an ethical workplace.

Have an Effective Compliance Program in Place

A compliance program can assist in avoiding potential issues and mitigating damages, but to be effective it must be "grounded in integrity and transparency, honored by senior management and communicated effectively and often to employees" (Getnick & Skillen, 2003). The OIG has published guidance in establishing compliance programs for different types of healthcare organizations, including pharmaceutical companies, ambulance services and hospitals. With regard to its guidance for the hospital industry, the OIG provides an outline that can be customized for organizations of all types and sizes. In its guidance for hospitals, "the OIG strongly encourages hospitals to identify and focus their compliance efforts on those areas of potential concern or risk that are most relevant to their individual organizations" (Office of Inspector General's Supplemental Program Guidance for Hospitals, 2005, p.4859).

Healthcare managers can find useful information and detailed suggestions relating to implementation and ongoing management of compliance programs at the OIG's web site, www.oig.hhs.gov. While there is no magic bullet or formulaic structure for a successful program, the OIG recognizes that most successful compliance programs address, at a minimum, seven basic elements, including:

- *assignment of compliance responsibility to a designated compliance officer and establishment of a compliance committee;*

- *development and implementation of standards of conduct and compliance policies and procedures;*
- *adoption of a process to receive complaints and protect the anonymity of complainants;*
- *effective training and education;*
- *internal monitoring and auditing of billing and coding through ongoing and regular performance of detailed reviews;*
- *responding appropriately to detected violations through corrective action plans; and*
- *enforcement of compliance through we1l-publicized disciplinary guidelines*

(Office of Inspector General's Publication of the OIG Compliance Program Guidance for Hospitals, 1998, p.8989*).*

Educate Employees on How to Report Concerns & Create Effective Communication Methods

All employees and contractors should be educated about their responsibility for immediately reporting erroneous claims or questionable procedures and practices. In order to ensure that all employees have non-threatening means of reporting, it is important to establish formal mechanisms for reporting questionable conduct. A telephone hotline, an e-mail address or a mailbox are ways to submit concerns. The method(s) selected should be well-publicized. In order to be effective, these communication channels should have three characteristics: provide anonymous and confidential reporting; shield the reporter from retaliation or retribution; and, satisfy the reporting employee that his concerns will be adequately addressed. Without these features, reporting and communication methods are likely to be of limited value.

In its Compliance Program Guidance, the OIG asserts that "a process, such as a hotline, to receive complaints, and the adoption of procedures to protect the anonymity of complainants and to protect whistleblowers from retaliation" (Office of Inspector General's Publication of the OIG Compliance Program Guidance for Hospitals, 1998, p. 8989) is needed to ensure effective communication and enhance awareness of potential compliance concerns within the organization. Compliance with the Sarbanes-Oxley Act has similar requirements and expectations, particularly regarding ensuring that employees are protected if they bring attention to practices and behaviors that concern them. This means that employees must be free from the following concerns: "Will I be punished or even fired if I draw attention to a practice that is making the company a lot of money? Will I be shunned by my colleagues? What can I do if senior management is part of the problem?" (Getnick & Skillen, 2003).

Comply with the Deficit Reduction Act Mandatory Fraud and Abuse Education Provisions

Although the OIG provides "recommended guidance" for fraud and abuse education, effective January 1, 2007, section 6032 of the Deficit Reduction Act (DRA) mandates fraud and abuse education (Deficit Reduction Act, 2006). Every organization that receives at least $5 million annually in Medicaid payments must comply with these requirements. Failure to comply can result in exclusion from the Medicaid program.

Organizations subject to the DRA are required to have written policies with "detailed information" on the following four topics: the federal FCA, administrative remedies for false claims statements, civil and criminal penalties under state false claims laws, and whistleblower protections under federal and state law. Entities must educate vendors, business partners and employees regarding the policies, and employee handbooks are specifically required to include this information. Although the Centers for Medicare & Medicaid Services have yet to provide guidance on what constitutes detailed information, even without this specific guidance, the DRA law is in effect and organizations should institute the following steps to assure compliance:

- *Review current employee handbook for DRA compliance;*
- *Create policies describing the laws as required by the DRA;*
- *Distribute the DRA-compliant handbook to employees and require written acknowledgement of receipt;*
- *Distribute written policies and procedures to the organization's contractors and agents;*
- *Require contractors and agents to distribute to employees;*
- *Establish mechanisms to have all contractors' and agents' employees acknowledge receipt;*
- *Consider an internet-based distribution and acknowledgement process.*

Train Managers to Receive Reports about Compliance Concerns

As with most other areas in which an authority figure is needed for guidance, employees may bring compliance concerns to the attention of their immediate supervisors as a first step. Organizations should incorporate training on how to handle these issues as a part of normal on-boarding and organizational training for managers. Ongoing reinforcement of the proper way to handle these complaints should be addressed in seminars run by internal staff or contracted professional organizations. In all training efforts, managers should be reminded of the importance of their responses to these issues in diverting qui tam claims.

As a critical and basic precept of the training, managers should be advised to handle employee concerns about compliance with a high degree of sensitivity. Supervisors should explain

the process that will ensue so employees understand the anticipated time frame for action. At the time of the initial complaint, managers should gather as much information as possible, documenting the allegations in as much detail as is available. It will be important to explain the necessity of reporting this issue to the corporate compliance officer while reinforcing that outside of this requirement, their anonymity will be maintained. Most importantly, supervisors should thank employees for coming forward and alerting the organization to this potential liability. Managers should encourage employees to return with any additional concerns about the matter as well as any perception of being treated unfairly.

Respond Quickly and Efficiently to All Complaints

Once a compliance issue is identified or a complaint received, the compliance officer should immediately begin an investigation. The nature and type of investigation will depend on the issue at hand. Investigations may involve auditing billing practices, interviewing personnel, reviewing contracts, or evaluating other business practices. Consideration should be given to involving legal counsel to invoke attorney-client privilege, potentially protecting the results of the investigation from discovery.

It is important to inform employees who report concerns that their concerns are taken seriously, that an extensive and prompt investigation is underway, and, if appropriate, that legal actions or disciplinary actions will result. A qui tam litigator has noted that while money may be a factor in a whistleblower's motivation to externally report a compliance issue, it is usually "factors other than money, such as the desire to redress a personal wrong, a perceived need to do the right thing, or as a last resort after efforts to get the company to address the problem have failed" that motivate such reporting (Skillen, 2003, p. 60). Employees who observe their employers conducting prompt and thorough internal investigations may change their minds about filing a qui tam suit.

Develop and Adhere to Non-Retaliation Policies

Organizations should develop, implement and follow a non-retaliation policy. This critical component of the program promotes a culture of compliance by building trust between the organization's management and staff at all levels. In whatever ways possible, management should create an environment that rewards employees for raising compliance concerns. The policy should define "good faith" reporting and make it clear that there will be no retaliation associated with it. "Good faith means the individual does not have to be right; but it does mean believing the information provided is truthful" (UPS, n.d.).

Subsequent to an employee's report of a concern, management should pay close attention to treatment of that employee and guard against any action that could be perceived as retaliation

for reporting. Both direct and indirect retaliation violate the FCA and are punishable with fines and other penalties. Direct retaliation, easily identifiable and preventable at the organizational level, includes firing, demotion, reassignment or poor performance reviews. More complex and subtle, and requiring increased sensitivity on the part of management, is indirect retaliation. Among the more common forms of indirect retaliation are employee harassment, ostracism and poor work assignments. One way of building a non-retaliation program is through engaging in ongoing dialogues with employees who report concerns in order to ascertain and document fair and appropriate treatment of these individuals; during these dialogues management can quickly identify and put an end to any concerns raised.

Familiarize Yourself with the Federal False Claims Act and State Laws

In addition to the federal FCA legislation, many states have passed laws to reduce the chance of being defrauded. Twenty-two states and the District of Columbia have their own FCA laws, each with its own rules and requirements. In addition, there are other governmental programs that require compliance and have whistleblower protections similar to those included in the federal FCA. Table 2 lists states with FCA legislation.

Table 2: States with FCA Laws				
California	Hawaii	Michigan	New York	Texas
Delaware	Illinois	Montana	Nevada	Virginia
District of Columbia	Indiana	New Hampshire	Oklahoma	Wisconsin
Florida	Louisiana	New Jersey	Rhode Island	
Georgia	Massachusetts	New Mexico	Tennessee	
Source: (Taxpayers Against Fraud Education Fund, n.d., State false claims acts)				

Even beyond these statutes, some states and localities have instituted legal protections and public policies that specifically support whistleblowers among their own employees. This is important information for managers in state or municipal facilities and programs. In almost every case, states have anti-retaliation laws that are specific to their own jurisdiction. Managers are well-advised to work with their senior leadership to gain a comprehensive understanding of the regulations pertaining to their location in order to properly administer personnel issues and ensure that personnel management for individuals who raise concerns about fraud or other irregularities are treated within the guidelines of those laws.

In addition to the FCA and related state laws, there are other federal agencies and laws that have whistleblower protections. These include the Occupational Safety & Health Administration,

the Equal Employment Opportunity Commission, the National Labor Relations Board and the Sarbanes-Oxley Act. The requirements for whistleblower protection for each of these should be reviewed with the organization's legal advisors in case of a whistleblower claim.

Be Prepared to Self-Report

An effective compliance program with open communication channels could lead to discovery of compliance concerns. Self-reporting these issues may mitigate damages and illustrates management's commitment to an ethical workplace. The Department of Health and Human Services' OIG established the Provider Self-Disclosure Protocol (SDP) for healthcare providers who voluntarily disclose billing and/or other compliance issues (Provider Self-Disclosure Protocol, 1998). Entities deciding to self-disclose are expected to conduct an internal investigation and self-assessment. Findings are then reported to the OIG using the guidelines detailed in the *Federal Register* (1998). The steps for self-disclosure are:

- *Describe how the incident was identified and discovered;*
- *Describe the organization's efforts to investigate;*
- *Document a chronological time line for the investigation actions;*
- *Describe action taken by the health care provider to eliminate the inappropriate conduct;*
- *Identify any health care entities/businesses involved;*
- *Document any disciplinary action taken;*
- *List any other appropriate notices provided to other government agencies*

(Provider Self-Disclosure Protocol, 1998, p. 58402).

On April 15, 2008, the OIG issued an open letter to health care providers announcing refinements to the SDP. These refinements were designed to help increase efficiency of the settlement process and, the OIG suggests, to "benefit providers who self-disclose" (Department of Health and Human Services, 2008). To that end, four pieces of information that complement the original self-disclosure documentation are now required from those wishing to participate in the SDP, specifically:

- *A complete description of the conduct being disclosed;*
- *A description of the provider's internal investigation or a commitment regarding when it will be completed;*
- *An estimate of the damages to the federal health care programs and the methodology used to calculate the figure or a commitment regarding when the provider will complete such estimates; and*

- *A statement of the laws potentially violated by the conduct…*
- *The provider must be in a position to complete the investigation and damages assessment within 3 months after acceptance into the SDP*

(Department of Health and Human Services, 2008).

While the federal government makes no promises on the actions or outcomes of self-reported compliance issues, the OIG states that self-reporting can be "a mitigating factor in OIG's recommendations to prosecuting agencies" (Office of Inspector General, 1998). Self-disclosure does not provide immunity from potential civil or criminal liability. Legal counsel should be consulted during all phases of the investigation and self-assessment to minimize risk and liability.

Closely Supervise Your Contractors

Information technology for claims processing is commonplace in the industry and is an effective way to streamline claims submissions. Healthcare managers and administrators should closely evaluate current and prospective technology partners and the frameworks on which the technology is built and maintained.

Algorithmic software for coding and claims submission uses built-in rules and logic based on insurance coverage requirements, including government programs and private insurance, quickly rejecting combinations of codes and other items that are not compliant. It is essential that contracted information systems vendors constantly update their software to ensure that changes in claims and coverage rules are correct. Also important when contracting with a vendor for claims processing software is considering the internal auditing of the contractor. According to industry experts, contractors should produce frequent, regular reports that evaluate disbursements and specialty coding among their customers. Important reports include benchmarks of claims submittals by geography and specialty as well as by national overview; contractors should review and make available, if requested, daily rejection files that can quickly pinpoint potential errors ensuring that they are caught quickly. (Frank Marshall, MedSynergies, personal communication, January 23, 2008)

Conduct Exit Interviews

Exit interviews with employees leaving the organization provide an opportunity to identify and remedy potential compliance issues, and a section of the exit interview or a questionnaire should be devoted to compliance-related issues. Organizations should have a formal process ensuring that compliance concerns identified during the exit interview are immediately investigated. A human resource professional trained to interview regarding compliance-related activities or the compliance officer can effectively conduct this portion of the exit interview. In-

person interviews allow for dialogue between the departing employee and the interviewee and may reveal more details about any concerns raised. Allowing departing employees to identify concerns and assuring them that these issues will be fully investigated and addressed may divert a qui tam action.

Questions should focus on whether the employee received compliance training, was provided information on the company's code of conduct, and participated in education regarding non-retaliation policies, False Claims Act and other compliance laws. Other questions should be posed to elicit information as to whether the departing employee knows of any activities or procedures that are non-compliant with company policy or raise potential legal concerns. Any compliance concerns that are raised should be directed to the compliance officer for immediate investigation and corrective action.

CONCLUSION

The best defense against a qui tam action is prevention. Of primary importance is creating an ethical culture with an effective compliance program. Two key components of successful compliance programs are open communication and support for employees who identify potential compliance issues. In addition, education for all employees on the rules associated with state and federal government programs as well as management training on how to most effectively manage staff and encourage dialogue and reporting of any concerns is essential.

Employees know if their employer is committed to "playing by the rules" and see their supervisors and the organization's management as models to that effect. Workers whose managers promote efforts to abide by laws and guidelines of government programs are less likely to hesitate about reporting their own concerns. A strong "organizational ethic," in conjunction with open communication channels, ongoing education and information sharing between management and staff about billing and financial strategies, clearly defined policies and procedures, and use of appropriate and vetted technology to minimize the risk of human error are all important components of a preventive approach to qui tam actions.

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EXAMINING STATE SPONSORED LOTTERIES AND THEIR EFFECT ON BANKRUPTCY FILING RATES: A TIME SERIES ANALYSIS

Robert J. Landry, III, Jacksonville State University
S. Keith Lowe, Jacksonville State University
Benjamin B. Boozer, Jr., Jacksonville State University

ABSTRACT

A significant body of research of state-level policies that cause the interstate variation of consumer bankruptcy filing rates is developing. Beyond the commonly tested economic and demographic explanatory variables, the possible impact of other policy choices on consumer bankruptcy filing rates should be examined. One such policy is the implementation of a lottery. To date there is very limited research, empirical or otherwise, examining the relationship between a lottery and a state's consumer bankruptcy filing rate. Prior research examining this relationship has yielded mixed results. This study is the first to utilize a time-series regression design to analyze the impact of enacting the lottery on a state's consumer bankruptcy filing rate. The primary research question in this study is as follows: What impact, if any, does the presence of a lottery have on a state's consumer bankruptcy filing rate? Prior findings of no statistically significant relationship between a lottery and a state's consumer Chapter 7 filing rate were confirmed. However, mixed results were found regarding the relationship between a lottery and a state's Chapter 13 filing rate, as well as a lottery and the total percentage of Chapter 7 consumer filings. Future research and potential policy implications are suggested.

INTRODUCTION

For the last quarter of a century, a generation of scholars has studied bankruptcy and the causes of the increasing consumer bankruptcy rate, particularly the dramatic increases in the mid-1990s. A primary area of focus has been on Chapters 7 and 13 consumer bankruptcies since these are the primary bankruptcy options used by consumer debtors (Wang & White, 2000), and it is filings under these two chapters which have dramatically increased in recent years (Landry & Yarbrough, 2007). Chapter 7 is commonly referred to as liquidation or straight bankruptcy in which the debtor obtains a discharge of most unsecured debts. Chapter 13 is often called a wage earners plan because the debtor usually funds a repayment plan to creditors with disposable income and receives a discharge after completion of the plan (Skeel, 2001).

A significant body of empirical research has developed on the causes of consumer bankruptcy, particularly when compared to the body of empirical research on other areas of the law (Boyes & Faith, 1986; Dixon & Settlage, 1998; Travis, 1999; Sullivan, Warren & Westbrook, 1989; Sullivan, Warren & Westbrook, 2000). Despite the progress in empirical analysis of the causes of consumer bankruptcy, there are still gaps in the research, highlighted by major areas of disagreement on the causal factors leading to increasing consumer bankruptcy filing rates (Warren, Westbrook, & Sullivan, 2006). With the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (Public Law 109-8, 2005), which was designed to limit the number of consumer filings (Lawless, 2007), continued research on the causal factors leading to bankruptcy is needed.

As empirical bankruptcy research evolves, scholars should attempt to address gaps in prior research and further examine areas of disagreement. Beyond the commonly tested causal relationships, the possible impact of other policy choices at the state and federal level on consumer bankruptcy filing rates should be empirically tested (Porter, 2006). One such policy is the implementation of a lottery. To date there is very limited research, empirical or otherwise, examining the relationship between the existence of a lottery and a state's consumer bankruptcy filing rate. Prior research examining this relationship has yielded mixed results (Edmiston, 2006; Landry, 2006). In light of the increasing number of states with a lottery (Freund & Morris, 2005) and wide-variation is state-level consumer bankruptcy filing rates (Weiss, Bhandari, & Robins, 2001), further research is needed. This study is unique in that it is the only known study to date that utilizes a time-series regression design to analyze the impact of enacting a lottery on a state's consumer bankruptcy filing rate.

The primary research question in this study is as follows: What impact, if any, does the presence of a lottery have on a state's consumer bankruptcy filing rates? To address this overarching research question, three hypotheses were formulated, each with a different dependent variable: per-capita Chapter 7 consumer-bankruptcy state filing rate, per-capita Chapter 13 bankruptcy state filing rate, and percentage of total consumer Chapter 7 bankruptcy filings. The three hypotheses are presented as follows:

H1: The presence of a lottery tends to increase a state's per-capita Chapter 7 consumer-bankruptcy filing rate.

H2: The presence of a lottery tends to decrease a state's per-capita Chapter 13 bankruptcy filing rate.

H3: The presence of a lottery tends to increase a state's percentage of total Chapter 7 consumer bankruptcy filings.

Three hypotheses with different dependent variables were necessary due to expected differences in relationships between a lottery and the various types of consumer bankruptcy. The theoretical underpinning is as follows. Lotteries are an implicit tax (Clotfelter & Cook, 1989; Rychlack, 1992;Wyett, 1991). The vast majority of studies have found that lotteries impose a regressive burden on purchasers and some scholarship characterizes the lottery as a type of regressive tax (Price & Novak, 1999). When lotteries are viewed as an implicit tax, Wyett (1991) finds they are arguably the most regressive form of state revenue or taxation. Wyett (1991) compared the regressive nature of the lottery to a whole host of taxes including federal income tax, state and local income taxes, alcohol taxes, tobacco taxes, gasoline taxes and consumer expenditure taxes and found a lottery was the most regressive tax in existence in the United States (Rychlak, 1992). When a poorer person and a wealthier person purchase a lottery ticket, the tax effect will be greater on the poor person's income than the wealthier person's income; and as such, the lottery will be regressive (Rychlak, 1992). This regressive nature of a lottery on poorer people is exacerbated because lottery tickets are purchased disproportionately by the poorest people (Price & Novak, 1999). As such, we expect states with lotteries, in light of the regressive nature of the lottery, to add to the financial stress of lower income people, leading to a higher aggregate consumer-bankruptcy filing rate.

Furthermore, beyond the regressive tax attributes of a lottery, states that have a lottery tend to have higher levels of income concentration, i.e. income inequality (Freund & Morris, 2005). The literature shows that on the individual level there is a positive correlation between low income and consumer-bankruptcy filings in the aggregate. Sullivan, Warren and Westbrook (1989) found that few debtors are affluent, and most are poor people earning less than one-third of most Americans. As such, states with lotteries will have higher income inequality and higher aggregate consumer-bankruptcy filing rates.

Although the aggregate consumer-bankruptcy filing rate is expected to increase, we expect the presence of a lottery to impact a state's Chapter 7 and 13 filings rates differently, hence the reason for three dependent variables. The purchase of lottery tickets by the poorer populations in a state, coupled with other factors, will likely increase Chapter 7 filing. As set forth in the first hypothesis (H1), it is expected that the presence of a lottery will increase a state's per-capita Chapter 7 filing rate. However, the purchase of lottery tickets is not likely to drive those with moderate or substantial resources into Chapter 13 bankruptcy. In fact, in light of the prevalence of educational lotteries, such lotteries may actually enhance access to and quality of education, thereby decreasing the likelihood of those with moderate or substantial resources from needing to file Chapter 13. As set forth in the second hypothesis (H2), it is expected that the presence of a lottery will decrease the per-capita Chapter 13 filing rates. In light of H1 and H2, the presence of a lottery likely increasing Chapter 7 rates, while leading to a decrease in Chapter 13 rates, leads to the third hypothesis (H3). It is expected that the presence of a lottery will increase the percentage of total Chapter 7 consumer bankruptcy filings.

LITERATURE REVIEW

There have been two empirical studies examining the relationship between lotteries and bankruptcy filing rates: one at the state level and one at the county level. Landry (2006) performed a state-level analysis wherein he employed a cross-sectional analysis over three time periods from 1980 to 2000 and a pooled analysis. The predictor variable of interest was a lottery and the dependent variables were per capita Chapter 7 consumer-bankruptcy filing rate, per capita Chapter 13 state filing rate and the percentage of total consumer state filings under Chapter 7. A host of economic, legal and social variables were included as explanatory variables. The results obtained were mixed, but suggest the need for further study in the intersection of bankruptcy and lottery policy areas (Landry, 2006).

The Chapter 7 analysis did not yield statistically significant results. The pooled analysis and the 1980 analysis suggested an inverse relationship, while the 1990 and 2000 analysis suggested a direct relationship. The extensive growth of lotteries since 1980 may explain the positive coefficients, but the mixed results and lack of significance warrant further analysis of the relationship between the lottery and per capita Chapter 7 rates (Landry, 2006).

The Chapter 13 analysis indicated a negative relationship in the three cross-sectional analyses and the pooled analysis, but only the 2000 and pooled analyses yielded statistically significant results. This suggests that states with lotteries have a lower Chapter 13 filing rate than states without lotteries (Landry, 2006).

The percentage of Chapter 7 total filings analyses showed the strongest results. For 1990, 2000 and the pooled data set analyses a statistically significant positive relationship between states with a lottery and the percentage of consumer-bankruptcy filings under Chapter 7. This finding was different than the outcome hypothesized by Landry. However, the consistent results in three of the four analyses suggests further research testing whether this positive relationship holds for individual states over time is warranted (Landry, 2006).

Edmiston (2006) performed a cross-sectional analysis at the county level for one year (2000) with aggregate consumer bankruptcy fling rates per 10,000 population as the dependent variable. The study employed a host of economic, legal and social control variables, and included the lottery as a variable of interest. The analysis yielded statistically significant results regarding several variables, including a lottery. The presence of a state lottery reduced the counties' bankruptcy filing rate when compared to counties in states without lotteries. This result was not expected, particularly in light of the relatively little variation in the data, despite the fact that 33 states have a state lottery (Edmiston, 2006). This result and lack of explanation for the results suggests that further study is needed.

A limitation of Edmiston's study is that the dependent variable is the aggregate bankruptcy filing rate, rather than examining separate analyses for the type of consumer bankruptcy: Chapter 7 and Chapter 13. The legal ramifications and distinctions between the type of consumer

bankruptcy are significant (Hynes, 2004) and the filing rates among the states for each type of bankruptcy vary to such a degree, that it warrants employing dependent variables that capture the different types of consumer bankruptcy.

METHODOLOGY

The methodology employed in this study is similar to the interrupted time-series analysis model used by Kellough (1990). As Kellough noted, the limited number of pre and post data points suggests that time-series is preferred to another modeling technique known as autoregressive integrated moving average (ARIMA).

The interruption in the model for this study is the implementation of a lottery, disturbing the applicable bankruptcy filing rate trend. Changes to the applicable bankruptcy filing rate may be short or long-term depending on the impact of a lottery.

Data are entered year by year (i.e., the cases are years, not states.) Three independent variables are employed. A counter variable is employed that is coded one for the first year of the analysis, two for the second year, and three for the third year and so forth. This counter variable is called *COUNTER*. The second independent variable is dichotomous in nature and is coded zero for observations before the policy intervention (implementing a lottery) and one for observations thereafter. This variable is called *LOTTERY*. The remaining independent variable is a post-intervention counter that is also coded in the following manner: coded as zero for observations prior to the policy intervention and one for first year after the intervention, two for the next year, three for the next year, and so on. This variable is called *AFTER*.

The intercept for the multiple regression equation describes the value of the dependent variable at the beginning of the time period, usually in 1980. The coefficient, or slope, for the *COUNTER* variable describes the annual increase or decrease in the dependent variable that was happening before the policy change. The estimated increase or decrease in those years is unaffected by the counter after variable, as that variable is coded zero for all years prior to the policy change. The coefficient for the policy variable (*LOTTERY*) estimates the one-time increase or decrease in the value of the independent variable that came about in the first year following the change in policy. The coefficient, or slope, of the *AFTER* variable estimates the increase or decrease in slope that occurred after the change in policy. The coefficient for the counter after variable must be added to the coefficient for time to get the estimated slope after the change.

The states selected were determined by considering states that implemented a lottery in the late 1980s or early 1990s. It is necessary to examine changes made in that time period in order to get sufficient data points before and after the change in policy. Two states were selected for this analysis. Indiana began a lottery in October of 1989. Georgia began a lottery in June of 1993. The lottery variables are coded at zero for the year the lottery went into effect. The lottery variables

the following year are coded at one. The counter-after variable is coded at zero during first full year of the lottery and then coded at one the next year, two the next, and so on.

For both states selected for this study (Indiana and Georgia), three interrupted time-series regression analyses were run for three dependent variables: per capita Chapter 7 consumer-bankruptcy state filing rate, per-capita Chapter 13 bankruptcy state filing rate, and Chapter 7 consumer-bankruptcy state filings as a percentage of aggregate consumer-bankruptcy state filing rate. The bankruptcy filing rates were collected from the Administrative Office of U.S. Courts and state-level population data from various editions of the *Statistical Abstract of the United States.*

Beyond the basic time-series analysis employed by Kellough, an additional time-series analysis was employed. Miller and Pierce (1997) employed a method similar to that used by Kellough (1990), but recognized that when serial data is utilized autocorrelation sometimes is present in the model. The existence of autocorrelation violates a basic assumption of Ordinary Least Squares (OLS) regression. Autocorrelation leads to an underestimation of the variance of the error terms and an overestimation of the significance of the coefficients.

To address the autocorrelation problem, transformation of the data, through the Cochrane-Orcutt (CORC) estimation procedure, is necessary to take into account the correlation of the error terms (Cochrane & Orcutt, 1949). The Durbin-Watson statistic is a test statistic used to detect the presence of autocorrelation in the residuals from a regression analysis (Durbin & Watson, 1950) and is used in this study to indicate when transformation of data is required. Bankruptcy data were transformed if the test statistic was found to be outside the acceptable range of the Durbin-Watson chart (Kellough, 1990). After transformation of data, interrupted time-series analyses were performed for each state, one for each of the three dependent variables listed above. This led to an additional six "transformed" models that can then be compared to the six models created from simple data for each of three dependent variables. This process is similar to that employed by Miller and Pierce (1997).

RESEARCH FINDINGS AND ANALYSES

The results of this study are grouped and presented in three sections for each dependent variable. Time series regression analyses for each of the two states chosen for this study (Georgia and Indiana) were conducted within each of the three dependent variables. Analyses were conducted upon each dependent variable using simple data and were repeated after the data is transformed using the CORC procedure.

Chapter 7 Analyses

An interrupted time-series analysis of lottery and Indiana's per-capita Chapter 7 consumer-bankruptcy filing rate was performed employing Kellough's regression model. Likewise, an

analysis was performed for Georgia. None of the independent variables was statistically significant at the 1% level in the Indiana model. Both *COUNTER* and *LOTTERY* were statistically significant at the 1% level and *AFTER* significant at the 5% level, one tail, in the Georgia model. However, in both models the Durbin-Watson statistic indicated autocorrelation which most likely results in an overestimation of the significance of the coefficients. In light of the Durbin-Watson statistic for each model, we employed the CORC procedure to transform the data to take into account correlation of the error terms as performed by Miller and Pierce (1997). We then ran a regression analysis for each state. Although, the CORC procedure resulted in regression models with acceptable Durbin-Watson statistics, the models did not yield any statistically significant results among the independent variables at the 1% level. These findings are consistent with Landry's (2006) prior cross-sectional analysis finding of no statistically significant relationship between implementation of the lottery and the per-capita Chapter 7 filing rate. Regression results for each state are presented in Tables 1 and 2, respectively.

Table 1: Time-Series Regression Results for Lottery and Indiana's Per-Capita Chapter 7 Filing Rate

State & Predictor Variables	Coefficient	*t*-statistic	*p*-value	Durbin-Watson	R-square
Indiana				0.75	.881
Intercept	1.563	3.84	$p < .01$*		
COUNTER	0.143	2.18	0.041		
LOTTERY	-0.084	-0.17	0.870		
AFTER	0.124	1.62	0.121		
Indiana (Transformed)				1.60	.514
Intercept	-0.029	-0.05	0.963		
COUNTER (LAG)	0.305	1.09	0.290		
LOTTERY (LAG)	-0.036	-0.07	0.948		
AFTER (LAG)	-0.038	-0.12	0.906		
* results are significant at the .01 level					

Table 2: Time-Series Regression Results for Lottery and Georgia's Per-Capita Chapter 7 Filing Rate

State & Predictor Variables	Coefficient	*t*-statistic	*p*-value	Durbin-Watson	R-square
Georgia				1.01	.881
Intercept	0.615	3.27	$p < .01$*		
COUNTER	0.146	6.61	$p < .01$*		
LOTTERY	-1.013	-3.74	$p < .01$*		
AFTER	0.084	1.97	0.063		

Table 2: Time-Series Regression Results for Lottery and Georgia's Per-Capita Chapter 7 Filing Rate					
State & Predictor Variables	Coefficient	*t*-statistic	*p*-value	Durbin-Watson	R-square
Georgia (Transformed)				1.44	.751
Intercept	0.840	2.41	0.963		
COUNTER (LAG)	0.144	2.06	0.290		
LOTTERY (LAG)	0.057	0.12	0.948		
AFTER (LAG)	0.134	1.20	0.906		
* results are significant at the .01 level					

Chapter 13 Analyses

For per-capita Chapter 13 bankruptcy filing rates, a separate regression analysis was formulated for the states of Indiana and Georgia, respectively. Each individual regression equation was used to gain insight into the relationship between the variables of lottery and Chapter 13 filing rates.

Indiana

Table 3 reports the regression results for interrupted time-series analysis of lottery and Indiana's per-capita Chapter 13 filing rate.

Table 3: Time-Series Regression Results for Lottery and Indiana's Per-Capita Chapter 13 Filing Rate					
State & Predictor Variables	Coefficient	*t*-statistic	*p*-value	Durbin-Watson	R-square
Indiana				0.51	.974
Intercept	0.085	1.40	0.178		
COUNTER	0.016	1.70	0.104		
LOTTERY	-0.013	-0.16	0.871		
AFTER	0.089	7.81	$p < .01$*		
Indiana (Transformed)				1.81	.790
Intercept	-0.051	-0.61	0.548		
COUNTER (LAG)	0.055	0.94	0.359		
LOTTERY (LAG)	0.055	0.85	0.408		
AFTER (LAG)	0.051	0.85	0.405		
* results are significant at the .01 level					

The only independent variable that is statistically significant is *AFTER*. This indicates that in the years after the adoption of the lottery, per-capita Chapter 13 filing rates did not decline, as hypothesized. Instead, per-capita Chapter 13 filing rates increased more quickly than they had prior to the adoption of the lottery. The Indiana experience tends to refute the hypothesis that adopting the lottery causes those rates to drop. In light of the Durbin-Watson statistic (0.51) for the model which indicates autocorrelation, the CORC procedure was employed to transform the data to take into account correlation of the error terms as Miller and Pierce (1997). A regression analysis was then employed. Although, the CORC procedure resulted in a regression model with an acceptable Durbin-Watson statistic, the model did not yield any statistically significant results among the independent variables.

Georgia

Table 4 reports the regression results for interrupted time-series analysis of lottery and Georgia's per-capita Chapter 13 filing rate.

Table 4: Time-Series Regression Results for Lottery and Georgia's Per-Capita Chapter 13 Filing Rate

State & Predictor Variables	Coefficient	*t*-statistic	*p*-value	Durbin-Watson	R-square
Georgia				0.85	.939
Intercept	-0.061	-0.25	0.809		
COUNTER	0.287	9.76	$p < .01$*		
LOTTERY	0.147	0.41	0.688		
AFTER	-0.209	-3.67	$p < .01$*		
Georgia (Transformed)				1.63	.601
Intercept	-0.213	-0.69	0.498		
COUNTER (LAG)	0.347	3.49	$p < .01$*		
LOTTERY (LAG)	-0.138	-0.35	0.732		
AFTER (LAG)	-0.256	-1.68	0.110		
* results are significant at the .01 level					

Both *COUNTER* and *AFTER* were statistically significant in the Georgia model. As reflected by the coefficient for *COUNTER*, prior to the adoption of a lottery, per-capita Chapter 13 filing rates were increasing at a rate of 0.287 per year in Georgia. The impact of *LOTTERY* was not statistically significant. Immediately after a lottery was adopted, as reflected by the coefficient for *AFTER*, the annual increase in the per-capita Chapter 13 filing rates slowed dramatically, from 0.287 to 0.078. The change in slope of -0.209 is in the hypothesized direction and is statistically

significant. The Georgia experience, then, tends to support the H2: that the lottery leads to a decrease in the per-capita Chapter 13 filing rate.

Again, in light of the Durbin-Watson statistic (0.85) for the model, further analysis was required. We employed the CORC procedure to transform the data to take into account correlation of the error terms as suggested by Miller and Pierce (1997) and ran the regression analysis. The CORC procedure resulted in a regression model with an acceptable Durbin-Watson statistic. The regression results are consistent with the simple initial regression results. The coefficient for *COUNTER* is positive and statistically significant at the 1% level. The coefficient for *LOTTERY* was not statistically significant. The *AFTER* coefficient is negative and is approaches significance at the .05 level, one-tail. This analysis indicates that a lottery had no initial impact on the Chapter 13 filing rate, but did lead to a decrease in the Chapter 13 filing rate. As such, both regression models for Georgia support for H2: the lottery leads to a decrease in the per-capita Chapter 13 filing rate.

Percentage of Total Chapter 7 Filings

For the percentage of total Chapter 7 filings, a separate regression analysis was formulated for the states of Indiana and Georgia, respectively. As before, each individual regression equation was used to gain insight into the relationship between the variables of lottery and the percentage of total Chapter 7 filing rates.

Indiana

Table 5 reports the regression results for interrupted time-series analysis of lottery and Indiana's percentage of total filings under Chapter 7.

The coefficient for *COUNTER* is not statistically significant at the 1% level, but is approaching significance at the 5% level, one tail. Prior to the adoption of a lottery, the percentage of total filings under Chapter 7 was decreasing at a rate of 0.19% per a year in Indiana. The *LOTTERY* coefficient is statistically significant and shows that immediately after the adoption of a lottery, the rate sharply decreased: an additional 2.70%, far more than the typical year-to-year fluctuation in the percentage of total filing under Chapter 7. The *AFTER* coefficient is statistically significant and shows that in the years since the adoption of a lottery, the percentage of total filings under Chapter 7 has declined much more rapidly than previously: -0.78% per year, instead of -0.19%. These declines tend to refute H3: lotteries tend to increase the percentage of total filings under Chapter 7.

As with the prior analyses, in light of the Durbin Watson statistic (1.18) for the model, further analysis was required. We employed the CORC procedure to transform the data to take into account correlation of the error terms as suggested by Miller and Pierce (1997) and ran the

regression analysis. The CORC procedure resulted in a regression model with an acceptable Durbin Watson statistic. The transformed results are consistent with the above results. The coefficient for *COUNTER* is negative but not statistically significant. The *LOTTERY* coefficient is negative and significant at the 5% level, one tail. It shows that a sharp drop in the percentage of total bankruptcy filings under Chapter 7 occurs after implementation of a lottery. The *AFTER* coefficient is negative and is statistically significant, indicating that the percentage of total filings under Chapter 7 filings continued to decrease after implementation of the lottery. The Indiana analysis in both models refutes H3: lotteries tend to increase the percentage of total flings under Chapter 7.

Table 5: Time-Series Regression Results for Lottery and Indiana's Percentage Total Bankruptcy Filing Rate - Chapter 7

State & Predictor Variables	Coefficient	*t*-statistic	*p*-value	Durbin-Watson	R-square
Indiana				1.18	.960
Intercept	94.131	123.64	$p < .01$*		
COUNTER	-0.194	-1.58	0.130		
LOTTERY	-2.696	-2.84	$p < .01$*		
AFTER	-0.590	-4.12	$p < .01$*		
Indiana (Transformed)				1.58	.923
Intercept	59.510	66.21	$p < .01$*		
COUNTER (LAG)	-0.076	-0.39	0.703		
LOTTERY (LAG)	-2.633	-2.39	0.028		
AFTER (LAG)	-0.719	-3.15	$p < .01$*		

* results are significant at the .01 level

Georgia

Table 6 reports the regression results for interrupted time-series analysis of lottery and Georgia's percentage of total filings under Chapter 7.

The coefficients for *COUNTER* and *AFTER* are both statistically significant at the 1% level and *LOTTERY* is statistically significant at the 5% level, one tail. As indicated by the *COUNTER* coefficient, prior to the adoption of the lottery, the percentage of total filings under Chapter 7 was decreasing at a rate of 1.50% per a year in Georgia. The percentage dropped an additional 6% (*LOTTERY*) the year after the lottery was adopted, which was a substantial drop, more than would be expected from year-to-year fluctuations in the percentage of total filings under Chapter 7. However, in the years since the adoption of the lottery, as reflected by the sum of the *AFTER* and

COUNTER coefficients the percentage of total filings under Chapter 7 has risen 1.5% per year instead of declining that same percent per year, as previously. The Georgia experience offers strong support for the H3: lotteries tend to increase the percentage of total filing under Chapter 7.

Table 6: Time-Series Regression Results for Lottery and Georgia's Percentage Total Bankruptcy Filing Rate - Chapter 7

State & Predictor Variables	Coefficient	*t*-statistic	*p*-value	Durbin-Watson	R-square
Georgia				0.92	.877
Intercept	58.759	33.55	$p < .01$*		
COUNTER	-1.497	-7.28	$p < .01$*		
LOTTERY	-6.268	-2.48	0.020		
AFTER	3.002	7.53	$p < .01$*		
Georgia (Transformed)				1.55	.693
Intercept	29.129	18.71	$p < .01$*		
COUNTER (LAG)	-1.126	-3.78	$p < .01$*		
LOTTERY (LAG)	-5.637	-2.36	0.029		
AFTER (LAG)	2.461	4.90	$p < .01$*		
* results are significant at the .01 level					

Again, in light of the Durbin-Watson statistic (0.93) for the model, further analysis was required. We employed the CORC procedure to transform the data to take into account correlation of the error terms as suggested by Miller and Pierce (1997) and ran the regression analysis. The CORC procedure resulted in a regression model with an acceptable Durbin-Watson statistic. The regression results with the transformed data produced the same exact results at the above regression analysis with *COUNTER* and *AFTER* statistically significant at the 1% level and *LOTTERY* statistically significant at the 5% level, one tail. Prior to the adoption of a lottery percentage of total filings under Chapter 7 was declining. There was an additional one time drop in the percentage of filings under Chapter 7 after the implementation of a lottery. That was followed by an increase in the percentage of total filings under Chapter 7, as reflected by the *AFTER* coefficient. Both Georgia regression analyses yield the same results and support H3: lotteries tend to increase the percentage of total filing under Chapter 7.

FUTURE RESEARCH

Future research should be conducted in three areas. First, this study should be expanded to include all states operating a lottery. This study used only two states (Georgia and Indiana) to

explore the effect of a lottery system upon consumer bankruptcy filing rates. While the two states used were among the first to implement a lottery, additional states would provide results more representative of the nation as a whole. Second, a study is needed that would use pooled time series analyses among all or a larger number of states administering a lottery. Pooling will likely limit the impact of autocorrelation. Furthermore, if Least Squares with Dummy Variables (LSDV) is employed, the impact of other state-level attributes that may impact the filing rates will be captured (Miller & Pierce, 1997). Third, to the extent that LSDV does not capture the state-level attributes, including other variables that have an effect on bankruptcy filing rates could provide a more robust regression analysis model. While the regression models did explain a large percentage of the variation within bankruptcy filing rates, the existence of a lottery within a given state is by no means the only valid predictor variable. This analysis could provide further insight into what other factors could be used to predict Chapters 7 and 13 bankruptcy filing rates within a specific state.

CONCLUSION

The first hypothesis (H1) tested was whether the presence of a lottery tends to increase a state's per-capita Chapter 7 consumer-bankruptcy filing rate. The regression results for the transformed data for both Georgia and Indiana did not yield any statistically significant results. This is consistent with the prior findings of Landry (2006). It appears the presence of a lottery does not have an impact on a state's per-capita Chapter 7 consumer-bankruptcy filing rate.

Prior research (Landry 2006) showed that states with lotteries tend to have significantly lower Chapter 13 filing rates than do those without lotteries. The differences were so dramatic and consistent that they suggested a causal association and the second hypothesis (H2): the presence of a lottery tends to decrease a state's per-capita Chapter 13 bankruptcy filing rate. The Indiana analysis offered no statistically significant support for H2, while the Georgia analysis offered strong support for H2. The very different results from the two states leave the hypothesis unconfirmed and needing further testing, which will be possible with the passage of time as more post-lottery data points become available in many states.

The third hypothesis tested (H3) was that the presence of a lottery tends to increase a state's percentage of total consumer bankruptcy filing that are under Chapter 7. Prior cross-sectional analysis (Landry 2006) supported the hypothesis. Indiana's regression results strongly refute H3 while Georgia's results strongly supports H3. The very different experiences in Indiana and Georgia are inadequate to either support or refute the hypothesis. When interrupted time-series can be run in additional states, it may become clear that the Indiana or the Georgia experience is the more typical.

It is clear that the results of the study are mixed. Even so the study adds to the existing literature in several ways. First, the study employed a more precise dependent variable than that

used by Edmiston (2006). It is unclear that if Edmiston employed dependent variables by chapter of bankruptcy if the negative relationship between the presence of a lottery and a county's aggregate bankruptcy filing rate would still exist. The different results based on the different dependent variables employed in this model suggest that the aggregate bankruptcy filing rate may not best capture the relationship between the presence of a lottery and the bankruptcy filing rate.

Second, the study confirmed the cross-sectional analysis of Landry (2006) for H1, at least in Georgia and Indiana. And although, it was not able to definitely offer support for H2 or H3, it shows the need to further empirically examine the relationship between the presence of a lottery and consumer bankruptcy filing rates. More research and employing more sophisticated time series models is necessary to learn more about the underlying causes of consumer bankruptcy in the United States and the relationship between the bankruptcy and lottery public policy domains.

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IN THE BEGINNING: ETHICAL PERSPECTIVES OF BUSINESS AND NON-BUSINESS COLLEGE FRESHMEN

Michael R. Luthy, Bellarmine University
Barry L. Padgett, Bellarmine University
Julie F. Toner, Bellarmine University

ABSTRACT

Recent scandals involving the actions of some prominent U.S. corporate leaders have reignited discussions concerning ethical behavior in business. These events have brought more attention to post-secondary schools of business that educate business professionals. The current study explores whether there are differences among college students at the beginning of their studies, prior to any post-secondary educational transformation. The central focus is whether there are ethical differences among freshman college students majoring in business disciplines compared to their non-business major counterparts. Results from a survey of several hundred first semester undergraduate freshmen in the United States indicate that with minor exceptions, the two groups have similar histories of ethical behavior and view the severity of various questionable behaviors similarly. Differences between the two groups concerning self-reported knowledge of moral perspectives and ethical issues, as well as the significance of various influences on students' ethical development are identified.

INTRODUCTION

In the last decade stories of questionable, and at times criminal, corporate activities have dominated the U.S. business press. Beyond the most well-known case involving Enron Energy, Cendant's "creative earnings," Archer Daniels Midland's price-fixing, Bankers Trust's leveraged derivatives and use of customer funds, and LongTerm Capital's high-risk bets with others' funds are all examples of unethical and/or illegal actions by North American managers. We can also cite Rite-Aid and Wal-Mart, who have been profiled for their charge-back policies that leave suppliers confused and temporarily or permanently underpaid. Sears Roebuck's disregard for bankruptcy laws, debtors' rights, and creditor priorities led to a $63 million fine-the largest in U.S. bankruptcy law history (Jennings, 1999). More recently, one can look to the U.S. Department of Education's administration of student loans and practices tied to preferred lenders as well as significant violations of the honor codes at several U.S. Military Academies.

Ethics represent the moral principles and values that govern the actions and decisions of an individual or group (Lazniak and Murphy, 1993). Results of public opinion studies indicate that 58% of American adults rate the ethical standards of business executives as only “fair” or “poor,” 90% believe white-collar crime is “very common” or “somewhat common,” and 76% say the lack of ethics in businesspeople contributes to plummeting societal moral standards (Krohe, 1997; Dallas Morning News, 1998; Walker Information, 1998).

In the essay, “The Myth of the Amoral Business,” DeGeorge (1999) discusses a commonly held view of American business. One of DeGeorge’s major assertions is that the American public does not view businesspeople as unethical or immoral, but instead, as being amoral due to the fact that ethical considerations are often seen as inappropriate in business situations. “Business is not structured to handle questions of values and ethics, and its managers have usually not been trained in business schools to do so,” (DeGeorge, 1999, p. 7). The re-examination of this line of reasoning has begun as a result of three significant societal trends: (1) more reporting of scandals and the public reaction to these reports; (2) organizing of consumerists, environmentalists, and other socially-conscious groups, and (3) emerging corporate codes of ethical conduct and ethics programs in addition to ethics conferences, and magazine and newspaper articles on the subject (DeGeorge, 1999). Although all three of these trends are important to the understanding of business ethics, the first two lie beyond the scope of the present paper. A brief account of the third, the corporate ethics movement and its impact on American society, follows.

THE CORPORATE ETHICS MOVEMENT

Prior to the 1960s, business ethics were discussed in U.S. culture but not in a widespread manner. During the decade of the 1960s, however, businesses came under increasing attack for a general lack of social consciousness and unwillingness to address questions related to consumerism, the environment, and the build-up in the U.S. military-industrial complex. Corporations often found themselves on the defensive. American business schools then began to offer “social issues” courses to explore allegations against business practices as well as to discuss possible solutions and remedies.

As the demands of students and consumer groups spread to the general population in the 1970s, the business ethics movement gained strength. Corporations and institutions of higher education responded to this growing widespread disapproval of infamous business practices by sponsoring conferences on business ethics. Over time, colleges and universities established business ethics as a discipline separate from the more general field of philosophy. Courses, textbooks, professional societies, and journals related to business ethics began to form. The media took notice of these events and reported them to the general public. Individual U.S. corporations also began to develop corporate codes of ethics during the decade of the 1970s. As firms became

increasingly sensitive to charges of unethical conduct, corporations also began to develop in-house ethics programs.

The decade of the 1980s saw increased interest on the part of U.S. organizations to at least appear sensitive to business ethics issues. By the end of the decade, many Fortune 500 Companies had adopted or put in place corporate ethical codes, whistleblower protection policies, ethical hotlines, ethics committees at the Board of Directors level, and ethics training programs.

The U.S. federal government took on an increasingly important role in the area of business ethics during the 1990s. A significant provision of the Federal Sentencing Guidelines (U.S. Sentencing Commission, 1993) was that companies could receive reduced fines for ethical lapses if they had taken steps to develop efficient programs to prevent and detect violations of law. Corporations then became more willing to establish standards and procedures for employees to follow. At that time, many organizations began an effort to establish a more ethical climate for employees that went beyond the letter of the law.

THE NEXT GENERATION OF MANAGERS

With current examples of unethical conduct rooted for the most part in members of the United States' Baby Boom generation and Generation X, one may wonder the effect (either positive or negative) these incidents may have on the next generation of American managers – those who are members of Generation Y.

Articles concerned with the cohort of the American population referred to as "Generation Y" (also known as the "Echo Boom," the "Baby Boomlet," the "Internet Generation," and the "Millennial Generation") those born between the years 1975 and 1995, can be found in outlets as diverse as refereed journals, the popular press, as well as international and regional conference proceedings. The interest in this group stems in large measure from their attractiveness to marketers and businesses in general. The ushering of Generation Y members to the forefront has coincided with their reaching economic adulthood, typically occurring between the ages of 17 and 21. The age of economic adulthood is viewed as significant because attitudes, values, and preferences (for products, brands, and firms) that form before and during this time are unlikely to change as an individual ages (Meredith and Schewe, 1994).

An additional consequence of this age cohort reaching economic adulthood, aside from their importance in their roles as consumers, is their emergence as managers, entrepreneurs, and business decision-makers. How individual members of Generation Y will perform in these roles will affect businesses as they interact with each other as strategic allies, channel partners, suppliers, and colleagues. How Generation Y members deal with customers, stockholders, and other stakeholders will have spillover effects for the general public as well. Consequently, an examination of Generation Y's ethical foundation is called for. Specifically, we address the following questions:

What influences do they view as important in their ethical and moral development?
How familiar are they with various moral perspectives and ethical principles?
How do they view actions and events from their past from an ethical perspective?

As they journey toward economic adulthood, one of the significant transformational experiences that many members of Generation Y share is a post-secondary education. This raises the issue of the influence of the classroom on their development and offers a potential point of access for investigation.

ETHICS IN THE CLASSROOM

Whether the topic is academic honesty or moral problems arising in one's chosen major or profession, educators are increasingly called on to address ethical issues. Media accounts of academic dishonesty at universities and research into students' attitudes toward cheating are on the rise. Given news accounts of unethical behavior by corporations and governmental entities, opportunities to discuss moral problems abound in educational environments. Questions arise, however, about the degree to which these opportunities are maximized, and the extent to which ethics instruction is effective in shaping the moral outlook and decision-making of students.

The accrediting agency for collegiate business schools (AACSB-International) has placed increased emphasis on teaching ethics to undergraduate and graduate business students (Silver and Valentine, 2000). Additionally, many companies are discovering that good business ethics is conducive to a good corporate image and higher profits. As a result, a growing number of business schools are teaching ethics (Boroughs, 1995). Students themselves believe, quite strongly, that the discussion of ethics and ethical issues is worthwhile and important. Many feel a course in business/marketing ethics should be required and more indicate that they would take such a course even if it was not required (Shannon and Berl, 1997).

In response to these forces, schools of business are offering or requiring substantive ethics courses. The teaching of ethics represents a beginning, but it must go beyond teaching ethics as institutional responsibility. The hope is that people will ultimately have a sense of personal values that transcend the laws and rules of institutionalized ethics and that business vocabulary will soon contain words like civility, decency, honesty, and fairness, taking their place right alongside the practical vocabulary (Gibbons, 1992). Instruction in ethics produces more enlightened consumers of ethics information who are able to make sound determinations about responsibility in ethical dilemmas (Carlson and Burke, 1998). Ethics instruction cannot turn an immoral person into a moral one, but teaching ethics can help prevent good people from making bad decisions (Johnson, 2000).

Teaching these topics in business is difficult because one must go beyond moral standards of behavior to analyze goals, norms, beliefs, and values. Analyses of ethical principles are needed

in those instances where a decision about an ethical problem cannot be reached based on moral standards of behavior alone. The goal is that through ethical analysis, students can learn to clarify issues and rank alternative moral actions (Hosmer, 1988).

Much attention has been given to the ethical attitudes of the general student population, both from the popular media and from researchers. Some of the most interesting questions raised often include students' beliefs about the frequency of academic dishonesty, its acceptability (including justifications) among peers, and the willingness to report a cheating peer to an appropriate authority. In the wake of reports on the social and economic impacts of large corporate scandals in recent years and perhaps the frequency of smaller but no less troublesome accounts of ethical lapses in business which occur on an almost daily basis, focus of the educational setting has naturally turned to the ethical attitudes of students in business as well as academic settings. For example, the moral sensitivities of business majors relative to non-business majors make for an interesting comparison. In an educational context these interests have naturally given rise to the question: can business ethics be trained? Both the difficulty of answering the question and the implications of each answer one might get to the question are the subjects of much discussion, inside and outside of academe. The question extends not only to the limitations of education but to the ability of persons to create and sustain a "good" workplace, i.e. a work environment which is rewarding (both financially and personally) to work in and which is also morally good.

ETHICS AND GENERATION Y

An early study conducted by Northwestern Mutual Life concluded that members of the U.S.' Generation Y are religious, intend to vote, and actively volunteer for good causes (Kate, 1998). According to the survey, Generation Y admires the following attributes: honesty/integrity, hard work/dedication, and motivation/desire. Kate goes on to report that among the students surveyed, the person they admired the most was their mother followed by their father. Nearly 90% believe in God and 57% attend religious services. While the influence of parents on members of Generation Y has been established, a number of other questions remain unexplored, including the differential effect, if any, of a business vs. non-business undergraduate college major, and the role of other influences on Generation Y's ethical development.

Empirical research exploring the ethical attitudes of the general student population, regarding the issue of cheating, has found that two-thirds of students acknowledge having engaged in academic dishonesty (Bernardi et al., 2004). The context of the situation, indicated in case-study scenarios, seems to be a major factor in students' estimation of both the likelihood and negative consequences of cheating activity. When segregated according to major, however, psychology majors appeared to be more sensitive to moral concerns than business majors.

Attitudes toward dishonesty among college students have also been measured using business case-scenarios (Smyth and Davis, 2004). Similar to other studies, in their research Smyth

and Davis also found that business majors demonstrate less sensitivity to ethical concerns than non-business majors. An overwhelming majority of students expressed the belief that cheating is unethical, however, almost one-half of the participants indicated that cheating was socially acceptable. In business case-scenarios, business majors were less likely to indicate a particular activity as unethical compared to other majors. Opinions about cheating and unethical business practices were not the only measure, however. Business majors reported engaging in more unethical activities, such as cheating, than non-business majors.

Ethics researchers have compared sub-specialties among business majors. For example, attitudes of marketing majors relative to other business majors have been measured. One such study indicates that marketing majors are less sensitive to moral issues and more likely to engage in activities which are less than ethical (Lane, 1995), while other studies have shown no statistically significant difference between marketing majors and other majors (Malinowski and Berger 1996; Peppas and Diskin, 2000). The research done by Peppas and Diskin measured students' agreement or disagreement with (a) provisions of a hypothetical code of ethics and (b) a series of value statements applying moral principles to business in general. This leaves open the question of sensitivity to specific contexts in which unethical business decisions or activities might take place, and whether or not marketing majors might show any statistically significant differences in their choices.

Similarly, there has been a good deal of research on the ethical perspectives of accounting majors. It is possible that the number of studies undertaken in this field has and will continue to increase due to the role of accountants in well-publicized corporate scandals of recent years. Moreover, psychological and personality factors influencing the ethical attitudes of accounting majors have been examined (Sankaran and Bui, 2003). The work of Sankaran and Bui suggests that competitiveness and age can be contributing factors to more insensitivity toward ethical issues; competitiveness can lead to "aggressive accounting techniques" (a concept that has been used to describe Andrew Fastow's behavior as CFO of the now defunct Enron), and with increased age a person may become indifferent to the ethical shadiness of some activities. Their study also indicates a statistically significant difference between business and non-business majors on the importance of ethics.

These results naturally lead to the question: can business ethics be taught? That is, can education succeed in training future business professionals to act ethically in the workplace? As with research into the ethical attitudes of business and non-business majors, studies related to this question focus on the effectiveness of an ethics component in the college curriculum (Ritter, 2006). Ritter suggests that women with some educational exposure to ethics training showed higher sensitivity to ethical issues and were more likely to apply that training to decision-making in a business case-scenario.

Educators face major obstacles in regulating academic honesty as well as communicating the importance of academic honesty to students. Therefore, the relative difficulty of improving

ethical sensitivity to the business environment among business majors appears to be an even greater task. Clearly there are significant challenges to the ability of students to be self-regulating. Some studies indicate that this is a particularly difficult issue for business majors. Moreover, some researchers challenge the notion that educational training or a single course in ethics can be effective in guiding students to make ethical choices (Peppas and Diskin, 2000; Ritter 2006).

The reason for focusing on freshmen and their selection of a college major in the research sample is to explore whether differences exist before subjects have had any of the transformational experiences that post-secondary education typically involves. If college business majors have fewer ethical qualms than others, investigating whether there is a predisposition of these students to be less sensitive to ethical situations, relative to the general student population can only be measured at this point in time.

METHOD

Sample

A convenience sample of approximately 200 first semester freshmen completed two tasks over a period of several weeks, at a small, private liberal arts university located in a one million plus population center in the Mid-south region of the United States. Subjects were enrolled in an entry-level course for those intending to follow a business career path or a "college success" course required of all new freshmen. For the latter course, only sections containing non-business students and those not taking the former course were included in the study.

Data Collection

Subjects completed a questionnaire, which asked about: familiarity with 13 different moral perspectives and ethical "theories" (two of which were fictitious and added to the list as a concept check to assess "yea-saying" behavior (Tashchian, White, and Pak, 1988)), the relative importance of 15 different social influences on their ethical development, and whether they had ever done specific "questionable" behaviors. Additionally, students were asked to rank order a number of behaviors (using a card deck) according to how ethical they believed each behavior to be.

After eliminating the questionnaire responses of non-freshman students, a usable sample size of 182 (95 business majors and 87 non-business majors) was retained for analysis. Although a convenience sample, the profile of the respondents reflects a sufficiently diverse and balanced group across most classification variables to reflect at least minimal generalization to the larger target population of traditional college freshmen (65% men, 34% women).

FINDINGS

Influences on Ethical Development

A major goal of the current study is to investigate the influences that business and non-business freshmen report as significant to their ethical development. In the survey, subjects were asked to rate each potential influence on a seven-point Likert-type scale ranging from "extremely unimportant" (1) to "extremely important" (7) (see Table 1).

Table 1: Influences on Respondents Ethical Development (mean scores)

Absolute Difference	*p*-value	Ethical Influence	Business Freshmen	Non-Business Freshmen
0.5	0.028*	Community groups	3.9	4.4
0.4	0.049*	Employers	4.5	4.1
0.3	0.152	Student groups	4.2	4.5
0.3	0.186	Church	4.9	5.2
0.3	0.214	Ethics statements by companies	4.0	4.2
0.2	0.234	Other family members	5.4	5.7
0.2	0.291	Friends	5.6	5.8
0.2	0.358	Entertainment	3.8	3.6
0.1	0.453	Mentors	5.1	5.3
0.1	0.498	News reporting	4.0	3.9
0.1	0.507	Co-workers	4.4	4.2
0.1	0.616	Parents	6.4	6.5
0.1	0.765	Grade school teachers	4.2	4.1
0.0	0.924	High school teachers	4.9	5.0

* statistically significant difference between business and non-business respondents

Perhaps most reassuring, and contrary to many of the fears expressed in the last few years (Coe, 1995; Krcmar and Vieira, 2005; Eagle, 2007), parents continue to have the most influence on their children's ethical development – for both business (6.4 out of 7) and non-business majors (6.5) – even more than friends, or the media. Both groups of respondents reported that teachers, at the primary, secondary and post-secondary levels, have also had a positive impact on students although not as great as church activities, employers, and other family members. Interestingly, news reporting and entertainment media, long touted as having a significant (and negative) impact

on children have apparently not had as significant an effect on their ethical development (although we acknowledge that it may be the case that college freshman tend to underestimate that influence). Most likely however, our results are due to the positive, insulating effect of the other influences respondents rated higher. Further examination of Table 1 highlights a number of influences where there appears to be significant sample differences. Most notably, the influence of community groups on development of ethics was much higher for non-business respondents than for business respondents. The only other statistically significant difference between the two groups was attributed to employers. The influence of employers is greater for business majors than non-business majors. One possible explanation is that students drawn to business majors and future careers may have had work experience with organizations thereby beginning to learn the ethos and standards of business practice. This might also point to more community organization experience for those who ultimately were drawn to non-business majors.

Knowledge of Moral Perspectives and Ethical Issues

Another major goal of the current study is to determine the extent to which traditional freshmen have been exposed to, and have retained knowledge of, various moral perspectives and ethical principles. Based on an examination of selected textbooks (e.g., Peter and Donnelly, 2006; Kerin, Hartley, and Rudelius, 2007) a listing of ethical perspectives was constructed. This list was supplemented with additional theories as a result of discussions with other researchers.

Subjects were asked to assess their degree of familiarity with each of the 13 ethical constructs. Seven-point Likert-type scales were used ranging from "somewhat familiar" (1) to "extremely familiar" (7). A separate check box for "totally unfamiliar" was also provided. For each construct, the percent of business and non-business respondents answering "totally unfamiliar" is presented along with the average for those respondents who indicated some degree of familiarity. (see Table 2).

Table 2: Avowed Familiarity with Moral Perspectives and Ethical Principles

		Business Students		Non-Business Students		
p-value	Ethical Concept	Mean Familiarity	No Knowledge	Mean Familiarity	No Knowledge	Brief Description **
0.0001*	Situational Ethic	3.2	28%	4.6	33%	Circumstances govern what is ethical.
0.0001*	Materiality	4.0	19%	5.0	21%	Is it significant?
0.0003*	Moral Idealism	3.7	19%	4.8	15%	Rights are universal regardless of outcome.
0.0008*	Nelson Decision Rule	1.4	81%	3.2	72%	Non-Existent Ethical "Theory"
0.001*	Machiavellianism	3.3	55%	4.6	45%	Whatever I can get away with is

Table 2: Avowed Familiarity with Moral Perspectives and Ethical Principles						
		Business Students		Non-Business Students		
p-value	Ethical Concept	Mean Familiarity	No Knowledge	Mean Familiarity	No Knowledge	Brief Description **
						acceptable.
0.006*	Narcissism	3.5	37%	4.4	24%	No regard for others.
0.015*	Kant's Categorical Imperative	1.6	81%	2.9	75%	Universal law or behavior.
0.020*	Professional Ethic	3.7	26%	4.6	34%	Action viewed as ethical by colleagues.
0.039*	Golden Rule	5.4	17%	6.0	7%	Treat others as you want to be treated.
0.056	Utilitarianism Principle	2.7	67%	3.6	45%	Greatest good for the greatest number.
0.146	Cost / Benefit Analysis	2.9	21%	3.4	36%	Gain/loss tradeoff
0.214	TV Test	2.8	46%	3.3	56%	Comfortable explaining to a TV audience?
0.274	Galbraigth Role-Play	1.9	88%	2.5	77%	Non-existent Ethical “Theory”

* Statistically significant difference between business and non-business respondents

** Brief descriptive information was not provided to subjects in survey instrument. In many instances, the titles of the moral perspectives and ethical principles have a “plain face reading” that conveys one or more aspects of the construct itself (e.g. professional ethic, cost/benefit analysis”). In the case of others (e.g. Golden Rule, Narcissism, Machiavellianism) respondents likely have varying degrees of knowledge due to either their widespread use in U.S. society and culture, and/or in mandatory or elective secondary school classes such as English literature and economics. Additionally, many private and some public secondary schools have instruction in philosophy, morality, and/or ethics. As a result many students have had exposure to moral perspectives or ethical principles named in this study.

The two non-existent ethical “theories” contained in the listing were the Galbraigth Role-Play and Nelson Decision Rule. An overwhelming majority of the respondents for both groups admitted having no knowledge of either construct, indicating a minimum of yea-saying behavior or problems with social desirability responses. Business students however, were markedly more willing to admit that they did not know about the constructs than non-business students. For the remaining respondents, those who indicated some degree of familiarity, the relatively low averages among these individuals lends credence to the interpretation that the generic terms “role-play” and “decision rule” were significant enough to elicit some response, even though the personalization aspect must have been unfamiliar.

For the other eleven moral perspectives and ethical principles respondents reported varying levels of familiarity. The one most familiar to all respondents was “The Golden Rule” (i.e. treat others as you want to be treated). Materiality and was viewed as next most familiar for business

majors while for non-business majors, materiality, moral idealism, and professional ethic were clustered together in terms of familiarity. Among those who expressed some familiarity, the level of that familiarity also was lower. It is likely that formal coverage of these concepts is minimal to non-existent in courses taken by respondents. Additionally, exposure to these constructs in everyday life or conversation is also unlikely, especially compared to such a widely known construct as the Golden Rule.

For nine of the eleven ethical constructs, there were statistically significant differences between business and non-business respondents. In each case the expressed familiarity with the moral perspective or ethical principle was higher with respondents not majoring in business disciplines.

Respondents' Behavioral History and Assessment of Ethical Transgressions

For this portion of the study, subjects were presented with a questionnaire listing 36 specific behaviors and asked to indicate whether they had ever done each behavior. Several weeks later respondents were provided note card decks with each of the 36 behaviors printed on separate cards. They were asked to order the cards from 1 (the behavior they considered most ethical) to 36 (the behavior they considered most unethical – in their view. The results of these two tasks are reported in Tables 3 and 4 (see Tables 3 and 4).

The rankings (1 to 36) were converted to quartiles (i.e. positions 1-9 first quartile, 10-18 second quartile, 19-27 third quartile, and 28-36 fourth quartile). The quartile number was multiplied by 25 yielding values of 25, 50, 75, or 100 for each behavior. Higher numbers on this "severity index" represent behaviors viewed as more severe ethical transgressions.

The "Ethical Rank" of each behavior was determined by multiplying the severity index number times the percentage of respondents in either the business or non-business cohort. For example, if 90 percent (0.9) of non-business majors had ranked a given behavior in the last quartile (card deck position 28 or higher) the severity index would be 90 (0.9*100).

Table 3: Respondent behavioral history

Pct. Point Diff.	Statistically Significant (alpha =)		Behavior	Business Freshmen	Non-Business Freshmen
	0.1	0.05			
22**	*	*	Tried to use a coupon after it had expired?	61%	39%
11	*	*	Drank alcohol underage?	85%	74%
12	*	No	Tried marijuana?	46%	34%
10	*	No	Told something to someone that you had promised not to reveal?	82%	72%
-5	*	No	Reused a canceled postage stamp?	1%	6%

Table 3: Respondent behavioral history					
Pct. Point Diff.	Statistically Significant (alpha =)		Behavior	Business Freshmen	Non-Business Freshmen
	0.1	0.05			
11	No	No	Discovered that you received too much change from a purchase at a retail store and kept it?	68%	57%
11	No	No	Purposely opened a letter or package addressed to someone else?	49%	38%
9	No	No	Told an untrue story (or cried) to a police office to get out of a parking or traffic ticket?	18%	9%
9	No	No	Eaten food in a grocery store that you did not pay for? (free samples don't count)	24%	15%
9	No	No	Returned an item to a store that you had used and did not get a replacement?	35%	26%
8	No	No	Told someone a lie to get out of attending a social occasion?	92%	84%
7	No	No	Called in sick to work when you weren't?	52%	45%
7	No	No	Left a restaurant without paying the check?	15%	8%
7	No	No	Cheated on a test?	71%	64%
6	No	No	Rocked a vending machine to get a product you didn't pay for?	21%	15%
5	No	No	Purchased marijuana?	22%	17%
5	No	No	Told a lie to avoid hurting someone's feelings?	98%	93%
4	No	No	Resold a ticket to a concert or sporting event for more than face value?	13%	9%
4	No	No	Mixed Canadian coins in with U.S. coins to pay for an item?	27%	23%
4	No	No	Took a magazine from the waiting area at a doctor's office, haircutting salon, etc.	15%	11%
4	No	No	Parked in a handicapped parking space that you weren't entitled to use?	29%	25%
3	No	No	Loaded a copy of a software program on your computer that you did not pay for?	39%	36%
3	No	No	Used "slugs" or Canadian money in U.S. vending or washing machines?	14%	11%
3	No	No	Used a fake I.D. card?	23%	20%
3	No	No	Falsely reported losing money in a vending or washing machine.	8%	5%
3	No	No	Took a towel(s) from a hotel?	37%	34%
2	No	No	Hit or noticeably scratched someone's car and not left a note?	27%	25%
1	No	No	Found change in a pay telephone and kept it?	73%	72%
1	No	No	Took office supplies (e.g. tape dispenser, etc.) home from a job?	29%	28%
0	No	No	Saw someone cheating on a test and did not report it?	89%	89%
0	No	No	Shoplifted an item from a store?	24%	24%
-1	No	No	Looked in someone's medicine cabinets, or closets, etc. when they weren't around?	55%	56%
-2	No	No	Purchased an illegal drug other than marijuana?	7%	9%
-4	No	No	Sneaked into a movie without paying for it?	28%	32%
-4	No	No	Tried an illegal drug other than marijuana?	14%	18%
-10	No	No	Told someone on the phone that there was someone at the door to get out of talking to him or her?	55%	65%

* statistically significant difference between business and non-business respondents
** Percentage point difference calculated by subtracting Non-business incident rate from business freshmen incident rate

In terms of the behavioral history of respondents, there were only two behaviors (attempting to redeem an expired coupon and underage drinking) that were statistically significant between the two groups – with business majors reporting a higher percentage of the behavior at the 0.05 level. If a 0.10 alpha level is used, the list where there are significant differences between the two groups increases to five (smoking marijuana, revealing a secret, and reusing a cancelled postage stamp). With the exception of the stamp issue, again business majors more often engaged in the behavior than their non-business major counterparts. A mere reporting of behavioral history however, is not in itself sufficient to draw conclusions. The severity of various behaviors also needs to be factored into the analysis.

Table 4: Ethical Severity of Different Behaviors

Pct. Point Diff.	Statistically Significant (alpha=)		Behavior	Severity Index	
	0.1	0.05		Business Freshmen	Non-Business Freshmen
8.4	No	No	Took a magazine from the waiting area at a doctor's office, haircutting salon, etc.	46.5	38.1
8.2	No	No	Purchased an illegal drug other than marijuana?	84.4	76.2
8.1	No	No	Cheated on a test?	63.8	55.7
7.8	No	No	Purchased marijuana?	73.8	66.0
6.4	No	No	Told a lie to avoid hurting someone's feelings?	25.3	18.9
5.2	No	No	Looked in someone's medicine cabinets, or closets, etc. when they weren't around?	50.2	45.0
4.9	No	No	Shoplifted an item from a store?	86.2	81.3
4.3	No	No	Hit or noticeably scratched someone's car and not left a note?	78.5	74.2
4.1	No	No	Falsely reported losing money in a vending or washing machine	56.7	52.6
3.8	No	No	Saw someone cheating on a test and did not report it?	46.8	43.0
3.7	No	No	Told someone a lie to get out of attending a social occasion?	32.2	28.5
3.1	No	No	Called in sick to work when you weren't?	43.4	40.3
3.0	No	No	Discovered that you received too much change from a purchase at a retail store and kept it?	44.7	41.7
2.9	No	No	Returned an item to a store that you had used and did not get a replacement?	55.5	52.6
2.7	No	No	Told something to someone that you had promised not to reveal?	60.6	57.9
1.7	No	No	Tried an illegal drug other than marijuana?	78.7	77.0
0.9	No	No	Loaded a copy of a software program on your computer that you did not pay for?	45.7	44.8
0.3	No	No	Told someone on the phone that there was someone at the door to get out of talking to him or her?	27.1	26.8
0.0	No	No	Parked in a handicapped parking space that you weren't entitled to use?	63.0	63.0
0.0	No	No	Used a fake I.D. card?	53.7	53.7
-0.5	No	No	Used "slugs" or Canadian money in U.S. vending or washing machines?	38.8	39.3
-0.8	No	No	Tried marijuana?	64.9	65.7

Table 4: Ethical Severity of Different Behaviors					
Pct. Point Diff.	Statistically Significant (alpha=)		Behavior	Severity Index	
	0.1	0.05		Business Freshmen	Non-Business Freshmen
-1.6	No	No	Reused a canceled postage stamp?	33.5	35.1
-1.9	No	No	Found change in a pay telephone and kept it?	20.5	22.4
-2.1	No	No	Eaten food in a grocery store that you did not pay for? (free samples don't count)	57.3	59.4
-4.0	No	No	Left a restaurant without paying the check?	76.4	80.4
-4.3	No	No	Purposely opened a letter or package addressed to someone else?	67.2	71.5
-5.2	No	No	Mixed Canadian coins in with U.S. coins to pay for an item?	34.0	39.2
-5.3	No	No	Took office supplies (e.g. tape dispenser, etc.) home from a job?	45.1	50.4
-5.6	No	No	Tried to use a coupon after it had expired?	19.3	24.9
-6.2	No	No	Took a towel(s) from a hotel?	39.0	45.2
-6.6	No	No	Resold ticket to concert /sporting event for more than face value?	45.6	52.2
-7.8	No	No	Told an untrue story (or cried) to a police office to get out of a parking or traffic ticket?	45.6	53.4
-7.9	No	No	Sneaked into a movie without paying for it?	52.2	60.1
-9.5	No	No	Drank alcohol underage?	46.4	55.9
-10.1	No	No	Rocked a vending machine to get a product you didn't pay for?	47.2	57.3
* statistically significant difference between business and non-business respondents (none were)					

Comparing the severity indices of business and non-business respondents across the 36 statements we observed that 18 of the behaviors are viewed by business majors as more severe (i.e. more unethical) than their non-business major counterparts with 16 of the behaviors viewed by non-business majors as more severe and 2 equally severe. Despite these differences, the two groups were not statistically significantly different at either the 0.05 or 0.10 alpha levels.

DISCUSSION

The results of the present study support several findings. Responding freshmen students selecting business as a college major, when compared to their non-business major counterparts, report relatively lower familiarity with a number of moral perspectives and ethical principles. Moreover, our results indicate this lower level of familiarity does not lead freshmen business majors to a differential assessment of the severity of behaviors or potential ethical transgressions. While there were some statistically significant differences, freshman business majors ratings of the influences on their ethical development generally parallel those of their non-business counterparts. The question remains what these results mean.

It will take years for members of America's Generation Y to come into their own as full and controlling members of business organizations, government, and other facets of society. Early indications are that while members of Generation Y do posses, to differing degrees, knowledge about a number of significant moral perspectives and ethical principles, they are more willing to engage in socially responsible behavior (e.g. recycling efforts on campus, community service projects, volunteerism) than members of previous generations. Concerns often expressed in the popular media that this generation of college students has been unduly affected by violent video games, movies, and music; sexually explicit messages; athletes and other celebrities (e.g. Paris Hilton, Howard Stern, Barry Bonds) appear to be unfounded. In reality, as with previous generations, family members continue to represent the most prominent influence on their children's world-view of what constitutes ethical behavior.

An article by Deborah Johnson (1985) asserts that professional codes of ethics should be created with four types of obligations in mind: (1) obligations to society; (2) obligations to the employer; (3) obligations to customers; and (4) obligations to colleagues. In the present study, members of Generation Y have demonstrated that they can make the leap from theory to application where business practice is concerned.

If Johnson's (1985) general approach is adopted as a goal or template of organizations, these students are poised to become more circumspect in their decision-making and potentially more ethical leaders, whether they assume their roles coming from a business or non-business college background.

Given the exploratory nature of the current study, the use of a convenience sample at a lone institution is appropriate. The next step in this research stream will involve sampling a larger number of students from multiple institutions, thus affording the opportunity for increased external validity.

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A COMPARISON OF THE ETHICS OF BUSINESS STUDENTS: STATED BEHAVIOR VERSUS ACTUAL BEHAVIOR

Sanjay Gupta, Valdosta State University
Donna J. Cunningham, Valdosta State University
Avinash Arya, University of Michigan, Flint

ABSTRACT

Today's business community has demonstrated a *paucity of business ethics, and raised concern among business educators about the efficacy of ethics instruction as part of a business education. While some business faculties are struggling to incorporate an increased ethics component into their curricula, others believe that ethics cannot be taught in the classroom. In an effort to contribute to our understanding of the dynamics of ethical decision-making by business students, this research was devised with several objectives: (1) to examine the ethical choices business students make when faced with an ethical dilemma in a controlled environment, (2) to examine whether business students will make the choices they stated they would make when actually placed in a similar ethical dilemma, and (3) to determine whether age, gender, student status, or GPA are factors that influence ethical choices made by these students.*

Results of this research indicate that while the majority of business students state they will make ethical choices when faced with an ethical dilemma (Stated Behavior), most students' Actual Behavior had no correlation to their Stated Behavior. Additional findings indicate that a student's ethical choices are not influenced by his age, GPA, major, or student type (graduate versus undergraduate, or traditional versus non-traditional). However, our findings indicate that female students are more likely to behave ethically than male students.

BACKGROUND

Today's business community has demonstrated a paucity of business ethics, and raised concern among business educators about the efficacy of ethics instruction as part of a business education. Ever since details emerged about the corporate scandals at Enron, Tyco, MCI WorldCom, and Arthur Andersen, among others, the Association to Advance Collegiate Schools of Business (AACSB) has struggled to determine what steps may be taken in higher education to prevent future ethical embarrassments (Verschoor, 2007). A study done by the Center for Academic Integrity found that 74 percent of business majors admitted to cheating. (Vierria, 2007).

More recently, at Duke University's Fuqua School of Business, nearly 10% of a first-year class was found guilty of cheating on a take-home final exam. This occurred in spite of the school's emphasis on ethical behavior. And as we go to press, the FBI is investigating the roots of the current financial crisis with probes of 26 companies, including Fannie Mae, Freddie Mac, Lehman Brothers and AIG Insurance, among others (Arena, 2008). One former FBI investigator has predicted that the scale of the financial fraud likely to be uncovered will dwarf that committed by Enron.

While some business faculties are struggling to incorporate an increased ethics component into their curricula, others believe that ethics cannot be taught in the classroom. In an effort to contribute to our understanding of the dynamics of ethical decision-making by business students, this research was devised with several objectives: (1) to examine the ethical choices business students make when faced with an ethical dilemma in a controlled environment, (2) to examine whether business students will make the choices they stated they would make when actually placed in a similar ethical dilemma, and (3) to determine whether age, gender, student status, and grade point average (GPA) are factors that influence ethical choices made by these students. To date, there has been no research examining whether business students' predicted ethical behavior matches their actual ethical behavior, so these questions provide a fertile area for research.

The remainder of this paper is organized as follows: the next section provides a review of prior research and presents the hypotheses to be tested in this study; the third section discusses the data collection and methodology used to test the hypotheses; the fourth section reports the descriptive statistics and the results; the summary and conclusions of the study are discussed in section five; the final section indicates the limitations of the current research and provides possible direction for future research.

LITERATURE REVIEW AND HYPOTHESIS DEVELOPMENT

In the struggle to improve the ethics of business students, and ultimately the ethical climate of business, business educators and others have undertaken research to determine why and to what degree a business student cheats. Studies have compared business students to non-business students, male to female students, older students to younger ones, traditional students to non-traditional students, and graduates to undergraduates. Other researchers have examined cultural demographics, integrity culture, personality variables, and a student's Personal Ethical Threshold (PET) (Kisamore, et al, 2007). All of these studies seem to have been undertaken in the belief that the more we understand about our students' ethical decision-making process, the better equipped we will be to bring about their future ethical conduct.

Prior research indicates that the two factors which most consistently predict behavior that is more ethical are gender and age (Comer & Vega, 2007; Ruckinski & Bauch, 2006; Peterson et al, 2001; Ruegger and King, 1992; Trevino, 1986). In 1998, Borowski and Ugras conducted a meta-analysis of 47 individual previous studies on gender and 35 previous studies on age which had been

conducted between 1985 and 1994. Their meta-analysis found consistent links between female gender and ethical behavior, and older age and ethical behavior. Women formed ethical attitudes at a younger age, and were less influenced by outside factors than men. Generally, as people aged, their attitudes and behaviors became more ethical.

Even so, one recent study concluded that age played almost no role in ethical behavior in a study of moral reasoning in business managers (Forte, 2004). It may be that age is a factor for students still developing in maturity, but not for adults who have already matured. Or perhaps, in this context, a distinction should be made between "age" and "maturity." It is unlikely that mere chronological age, alone, would make one more ethical. In any case, we proceeded based on the greater weight of research which leads to the conclusion that women will generally act more ethically than men, and older students will generally act more ethically than younger ones.

As to the ethics of business students in particular, studies disagree on whether business students are less ethical than other students. Some studies have concluded that business students are less ethical than non-business students (Comer, et al, 2008, Lopez, et al, 2005, O'Clock, et al 1993), and that this result crosses cultural lines (Ozdogan, et al, 2007, Turkey), (McGee & Guo, 2007, China), (Landry, et al, 2004, Hispanic students), and (Peppas & Diskin, 2000, Australia). Other studies have found inconclusive results (Ford and Richardson, 1994; Beltramini, et al, 1984). Because of this inconsistency, Borowski and Ugras (1998) conducted a meta-analysis of those studies that examined the effect of a business major as opposed to a non-business major on ethical conduct. Since their results were also inconclusive, they, too, came to the conclusion that any causal relationship between a student's major and his ethical perceptions was difficult to make.

Some research has attempted to compare majors within business to discern whether a particular major indicates a likelihood of more or less ethical conduct. Such studies have made the observation that business majors derive from differing sciences, e.g., management and marketing draw from the behavioral sciences, while finance and accounting draw from the quantitative sciences (Lopez, et al, 2005). The difference in derivation seems a likely source of differences in perceptions. For example, accountancy majors were found to have a greater ethical awareness as compared with other business majors (Cohen, et al, 1998), a result which may be explained by the fact that accountancy is a more rule-based discipline than, for example, marketing. However, Borowski & Ugras (1998) found no correlation between business major and ethical perceptions.

Most of the research done to determine the effect of a major course of study, including those analyzed by Borowski & Ugras, has used the Defining Issues Test (DIT), which measures the moral development of the subject. When different research criteria were used, namely a Multidimensional Ethics Scale designed to elicit the underlying rationale or mode of ethical reasoning behind a particular decision, accounting majors scored highest, and liberal arts majors lowest. (Cohen, et al, 1998)

While most research regarding the ethics of business students tends to measure their moral development or ethical perceptions, no research appears to have been conducted on the question

of whether a student's own predicted ethical course of action will actually be implemented. It may be successfully argued that following ethics instruction, students learn to discern what the ethical course of action would be. Then, faced with questions regarding ethical challenges, students learn to give the "correct" answer. But the real test should be what the student will actually do when faced with an ethical dilemma. Will the student's own predicted course of conduct actually be carried out?

A number of studies have recorded the reaction of consumers who have been given too much change at the check-out counter (Steenhaut & Kenhove, 2005; Vitell, 2003; Muncy and Vitell, 1992). For the consumer, the dilemma is, "Should I report the error and return the excess change? Or should I keep quiet, and pocket the money?" The studies concluded that the higher the degree of relationship commitment a customer felt toward the retailer, the more likely he was to report the error. However, a significant number of consumers admitted to pocketing the extra money.

These studies, and others, have a goal of measuring the ethical conduct of the consumer who is given more than he was entitled to receive (Polonsky et al., 2001; Erffmeyer et al, 1999; Chan, et al, 1998). One may hypothesize that if consumers were asked whether they would return excess change, the majority would report that they would return it, but the exercise would show that they would not. The current study was created using a similar methodology, first, asking students what they would do if overcompensated, and second, by giving students a higher or lower grade than the one that was earned. Thus, the study was created to measure whether a student's stated future course of action would be his actual course of action. In other words, he may "talk the talk," but will he "walk the walk?"

The following hypotheses (stated in their alternative form) were tested:

H1: Students' stated behavior will have no correlation to their actual behavior.

H2: Students whose grades are deflated will be more likely to report the error than students whose grades are inflated.

H2a: The greater the amount of grade deflation, the more likely students will be to report the error.

H2b: The greater the amount of grade inflation, the less likely students will be to report the error.

H3: Students with relatively high cumulative GPAs will be more likely to report an inflated grading error than students with relatively low cumulative GPAs.

H4: Graduate students will be more likely to report an inflated grading error than undergraduate students.

H5: Non-traditional students will be more likely to report an inflated grading error than traditional students.

H6: Female students will be more likely to report an inflated grading error than male students.

H7: Accounting majors will be more likely to report an inflated grading error than non-accounting majors.

METHODOLOGY AND DATA COLLECTION

Since the current research involved the use of grade changes which were not part of normal instruction, Institutional Review Board (IRB) approval was obtained prior to data collection.

The first objective of this paper was to examine the ethical choices business students said they would make when faced with an ethical dilemma in a controlled environment. A Business Ethics Quiz (Exhibit A) was developed to measure students' "Stated Behavior." The Quiz contained four different business scenarios designed to measure ethical responses. Each posed an ethical dilemma which might be faced by business professionals, and asked students to state what their behavior would be if placed in that situation. In one scenario, each student was asked whether he would return compensation wrongly paid to him as an employee.

The Business Ethics Quiz was administered during Fall semester of 2007, and Spring semester of 2008. In both semesters, the Quiz was administered in the third or fourth week of classes in a 16-week semester. Students completing the Quiz were enrolled in the following courses: Principles of Managerial Accounting, Cost Accounting, Legal Environment of Business, Business Law, and an MBA Managerial Accounting course. They were given approximately 10 minutes to complete the Quiz.

Over those two semesters, a total of 272 students completed the quiz. One hundred fifteen (115) of those students were subjects of this research. Descriptive statistics of the students participating in the research are included in Table 1.

Table 1: Descriptive Statistics

Respond	Grade Change (I=Inflate; D=Deflate)	Gender	Mean Age	Mean CGPA	N
N	D	F	20.25	3.07	8
		M	20.36	2.94	11
	I	F	23.05	3.12	20
		M	23.03	2.99	31
Y	D	F	24.94	3.23	18
		M	23.76	3.21	21
	I	F	21.20	3.21	5
		M	21.00	3.43	1
Total			22.92	3.10	115

The second objective of this research was to examine whether students would actually make the choices they stated they would make when placed in a similar ethical dilemma. The second phase of the research, to measure students' "Actual Behavior," was implemented during the last two weeks of each semester, the 15th or 16th week of the 16-week semester. The delay between the administration of the Quiz (phase I) and the grade inflation or deflation (Phase II) was created purposely to avoid any connection in the students' minds between the Business Ethics Quiz and the grade inflation or deflation.

A random sample of students in each class for whom "Stated Behavior" was measured in the Business Ethics Quiz were given erroneous grades on a major assignment. The correct grades for that assignment had been communicated to these students before the erroneous grades were posted, so that the students would know that the posted grades were not correct.

Of the sample group which constituted about 40% of each class, half, or 20%, received inflated grades, and the other half received deflated grades. For each group of inflated or deflated grades, about half of the students (10% of subject students) were given a "substantial" grade inflation of 20% (i.e., for a grade of 70, a score of 84), and the other half were given a "nominal" grade inflation of 10% (i.e., for a grade of 70, a score of 77). Similarly, for those students whose grades were deflated, half of the sample was given a "substantial" grade deflation of 20% (i.e., for a grade of 70, a score of 56), and the other half was given a "nominal" grade deflation of 10% (i.e., for a grade of 70, a score of 63).

Method of Inflation/Deflation		
Error type	Sample size	Type of Error
Inflation	20% of students in class	1/2 - substantial inflation
		1/2 - nominal inflation
Deflation	20% of students in class	1/2 - substantial deflation
		1/2 - nominal deflation

The following definitions were used for the variables contained in our research. The students' answers to question 3 of the Quiz became their "Stated Behavior." Question 3 asked whether the student would report and return compensation not earned. If the student selected choice of 'c' on question 3 of the Quiz, which stated that the student would report and return compensation not earned, that response was considered to be ethical. Any other response to that question was considered unethical.

"Actual Behavior" was considered to be ethical if a student reported an inflated or deflated grade to the instructor, and unethical if he did not. A non-traditional student was defined as being 25 years old or older. A "high" cumulative GPA was defined as a GPA of 3.0 or higher on a 4.0 scale.

For H1 and H2, ethical behavior was defined as ethical when the student reported grade error regardless of its direction, up or down. However, one could argue that even unethical students would report a grade deflation error. Ethical behavior is demonstrated when one reports a grade inflation error, something that is not in the student's self-interest. Therefore, all the remaining hypotheses are tested only on the sub sample that experienced grade inflation error.

If students reported the grade not earned, and had predicted that they would return the compensation not earned, then their Actual Behavior would match their Stated Behavior. Students had an entire week or more to report the grade inflation to the professor.

RESULTS

H1: Students' stated behavior will have no correlation to their actual behavior.

This null hypothesis is supported ($\chi 2$ =1.42, d.f.=1, '*p*'value=0.23, table H1). Most students predicted on the Quiz that they would report an overpayment of compensation erroneously paid to them. This is their Stated Behavior. The Actual Behavior is whether the student whose grade is inflated reports the error to the instructor. If he does, his Actual Behavior is deemed ethical.

However, the results show that many students who stated that they would report overpayment of compensation did not report the grade inflation. Although they predicted that they

would behave ethically, when placed in a similar actual ethical dilemma, they did not act ethically. Their Actual Behavior did not match their Stated Behavior.

Ironically, some students predicted that they would NOT report an overpayment of compensation, and then did not report an inflated grade, consistently predicting that they would not act ethically. Of those 16 students whose grades were inflated who predicted that they would not behave ethically, 94% (15) did not. But though their "Actual Behavior" matched their "Stated Behavior," the behavior itself was not ethical. Perhaps some comfort can be taken in the observation that at least they were being honest.

Table H1: Stated vs. Actual Behavior

	Respond		
Frequency Percent Row Pct Col Pct	N	Y	Total
Ethical	49	36	85
	42.61	31.30	73.91
	57.65	42.35	
	70.00	80.00	
Unethical	21	9	30
	18.26	7.83	26.09
	70.00	30.00	
	30.00	20.00	
Total	70	45	115
	60.87	39.13	100.00

H2: Students whose grades are deflated will be more likely to report the error than students whose grades are inflated.

This hypothesis is supported. As tables H2a and H2b indicate, students are much more likely to ask for correction of their grades if their grades were deflated than if their grades were inflated. The difference is significant ($\chi 2$ =38.8, d.f.=1, '*p*'value<0.01). A total of 115 students' grades were inflated or deflated (58 deflated and 57 inflated). Of those students whose grades were deflated, 67% (39) reported the error to the instructor. Of those students whose grades were inflated, 11% (6) reported the error to the instructor.

H2a: The greater the amount of grade deflation, the more likely students will be to report the error.

This hypothesis is not supported ($\chi 2$ =0.45, d.f.=1, '*p*'value<0.50, See table H2a). A student's decision to report grade deflation is not affected by the degree of deflation. This result is not surprising, since once the student notices deflation it is reasonable for him to report the error in order to improve his grade.

It is possible that this result may also have been a function of a student's academic grade at the time of this experiment. For example, a student with a grade of 71% may be more likely to report a 10% deflated error in grade because it lowers his grade from a C to a D. On the other hand, it is possible that a student with a grade of 99% might not report a 20% deflated error in grade reporting if the student perceives that it will not have an effect on the overall grade. We did not examine this in our research.

Table H2a: Amount of Grade Deflation (Low=10%, High=20%)			
	Respond		
Frequency Percent Row Pct Col Pct	N	Y	Total
High	7	18	25
	12.07	31.03	43.10
	28.00	72.00	
	36.84	46.15	
Low	12	21	33
	20.69	36.21	56.90
	36.36	63.64	
	63.16	53.85	
Total	19	39	58
	32.76	67.24	100.00

H2b: The greater the amount of grade inflation, the less likely students will be to report the error.

Since some of the cells have 5 or fewer observations, a continuity correction is made in the reported Chi-Square statistic. The results do not support this hypothesis (Continuity-adjusted $\chi 2$ =0.32, d.f.=1, '*p*'value<0.56, See table H2b). In other words, the students' decision to report grade inflation is not affected by the degree of inflation. One positive interpretation of this finding is that

students who are ethical will report grade error whether large or small, and perhaps even though it may have an adverse effect on their eventual grade.

An alternative interpretation is that even though the amount of grade inflation was substantial (20%), students did not think that it was material enough to result in a higher grade. One should keep in my mind that only a small number (6 out of 57, see Table 1) reported grade inflation and the average cumulative grade point average of this group was the highest in the sample. It is possible that these students were already earning an A in the course, so that inflation would not increase their grade. That being the case, there was no point in reporting it.

For those few who reported substantial grade inflation, one might hypothesize that the error was so obvious as to be likely to be noticed, so that the student decided to report it (and look virtuous) rather than let it be discovered. In fact, in three instances, students whose grades were inflated received more than 100 points on a 100 point assignment. None of them reported the error. The next hypothesis explores this concept further.

Table H2b: Amount of Grade Inflation (L=10%, H=20%)

	Respond		
Frequency Percent Row Pct Col Pct	N	Y	Total
H	23	4	27
	40.35	7.02	47.37
	85.19	14.81	
	45.10	66.67	
L	28	2	30
	49.12	3.51	52.63
	93.33	6.67	
	54.90	33.33	
Total	51	6	57
	89.47	10.53	100.00

H3: Students with relatively high cumulative GPAs will be more likely to report an inflated grading error than students with relatively low cumulative GPAs.

This hypothesis is not supported (Continuity-adjusted $\chi 2$ =0.96, d.f.=1, '*p*'value<0.32, See table H3). While one can understand why struggling students might be less likely to report an

inflated grade, these results indicate that the students with high GPAs are just as unlikely to report an inflated grade.

Table H3: CGPA H=if>2.99; L=if <=2.99			
	Respond		
Frequency Percent Row Pct Col Pct	N	Y	Total
H	27	5	32
	47.37	8.77	56.14
	84.38	15.63	
	52.94	82.33	
L	24	1	25
	42.11	1.75	43.86
	96.00	4.00	
	47.06	16.67	
Total	51	6	57
	89.47	10.53	100.00

H4: Graduate students will be more likely to report an inflated grading error than undergraduate students.

There seems to be no difference between the reporting behavior of undergraduate and graduate students when the grades are inflated (Continuity-adjusted $\chi 2 = 0.03$, d.f.=1, '*p*'value<0.85, See table H4). Although there is only one graduate class in the sample, it is interesting to observe that none of the six graduate students reported inflated grades.

Table H4: Student			
	Respond		
Frequency Percent Row Pct Col Pct	N	Y	Total
Graduate	6	0	6
	10.53	0.00	10.53
	100.00	0.00	
	11.76	0.00	

Table H4: Student			
	Respond		
Frequency Percent Row Pct Col Pct	N	Y	Total
Undergraduate	45	6	51
	78.95	10.53	89.47
	88.24	11.76	
	88.24	100.00	
Total	51	6	57
	89.47	10.53	100.00

H5: Non-traditional students will be more likely to report an inflated grading error than traditional students.

There seems to be no difference between the reporting behavior of traditional and non-traditional students when their grades are inflated (Continuity-adjusted $\chi2 = 0$, d.f.=1, '*p*'value<1.0, See table H5). Neither is likely to report grade inflation. Since non-traditional students have been defined as 25 or older, it appears that in this study, the age difference between traditional and non-traditional students does not influence their ethical choices.

Table H5: Student Profile			
	Respond		
Frequency Percent Row Pct Col Pct	N	Y	Total
Nontraditional	8	1	9
	14.04	1.75	15.79
	88.89	11.11	
	15.69	16.67	
Traditional	43	5	48
	75.44	8.77	84.21
	89.58	10.42	
	84.31	83.33	
Total	51	6	57
	89.47	10.53	100.00

H6: Female students will be more likely to report an inflated grading error than male students.

A significant finding of this study is that gender does influence ethical behavior. Among the subject students, female students are more likely to make ethical choices (that is, reported grade inflation error) and the difference is significant, at the 10% level (Continuity-adjusted $\chi 2 = 2.64$, d.f.=1, '*p*'value<0.10, See table H6).

This finding is consistent with previous research which has concluded that the factor which most consistently predicts more ethical behavior is gender (Comer & Vega, 2007; Ruckinski & Bauch, 2006; Peterson et al, 2001).

Table H6: Gender			
	Respond		
Frequency Percent Row Pct Col Pct	N	Y	Total
F	20	5	25
	35.09	8.77	43.86
	80.00	20.00	
	39.22	83.33	
M	31	1	32
	54.39	1.75	56.14
	96.88	3.13	
	60.78	16.67	
Total	51	6	57
	89.47	10.53	100.0

H7: Accounting majors will be more likely to report an inflated grading error than non-accounting majors.

Results indicate that there is no significant difference in the ethical behavior of accounting majors as compared with other business majors (Continuity-adjusted $\chi 2 = 0.03$, d.f.=1, '*p*'value<0.85, See table H7). In fact, none of the accounting majors reported grade inflation error, nominal or substantial.

Anecdotally, some accounting students have reported that after Arthur Andersen's vast ethical failure in the case of Enron, they became acutely aware of their ethical responsibilities, and

wanted to save the reputation of the profession by acting ethically. Unfortunately, our study shows that in this case, they did not.

One possible explanation derives from a recent study (Verschoor, 2007), which suggests that students tend to be unethical when there is more at stake. Since accounting majors typically draw the highest salaries of all business majors, one may hypothesize that students seeking such high-paying jobs would be more likely to be unethical in order to improve their GPAs, and therefore their job prospects.

Table H7: Major

	Respond		
Frequency Percent Row Pct Col Pct	N	Y	Total
ACT	6	0	6
	10.53	0.00	10.53
	100.00	0.00	
	11.76	0.00	
OTH	45	6	51
	78.95	10.53	89.47
	88.24	11.76	
	88.24	100.00	
Total	51	6	57
	89.47	10.53	100.0

SUMMARY AND CONCLUSIONS

Today's business community has demonstrated a paucity of business ethics, and raised concern among business educators about the efficacy of ethics instruction as part of a business education. While some business faculties are struggling to incorporate an increased ethics component into their curricula, others believe that ethics cannot be taught in the classroom. More recently, at Duke University's Fuqua School of Business, nearly 10% of a first-year class was found guilty of cheating on a take-home final exam. This occurred in spite of the school's emphasis on ethical behavior.

The current study was designed to measure students' ethical response's (Stated Behavior), and then see if their actual conduct (Actual Behavior) would match their Stated Behavior. Students' ethical responses were measured by means of a Business Ethics Quiz, in which one of four

scenarios asked what they would do if given compensation not earned. A random sample of students who answered that question became subjects of the study, and their predictions became their "Stated Behavior." Later, these students' grades were inflated or deflated, and an opportunity was given them to report the error. Most of the students whose grades were deflated reported the error, but most of the students whose grades were inflated did not report the error. This was their "Actual Behavior."

Results of this research indicate that although business students may state they will make ethical choices when faced with an ethical dilemma, their "Stated Behavior" had no correlation to their "Actual Behavior." Additional findings indicate that student ethical choices are not influenced by their age, GPA, business major, or student type (graduate versus undergraduate, or traditional versus non-traditional). However, our findings do indicate that female students are more likely to behave ethically than male students.

LIMITATIONS AND DIRECTIONS FOR FUTURE RESEARCH

One limitation of this study is that we did not control for the extent of ethics coverage by the instructors of the courses where the data were collected, or by ethics instruction in prior courses taken by these students. To do so would have required evaluating the kind, extent and quality of ethics instruction across the college, a daunting, perhaps impossible task. It is theoretically possible that the results of the study may have been affected by ethics instruction, either contemporaneous or prior to the current study. Whether student ethical behavior is influenced by the extent of exposure to ethical training is an important avenue of future research, and may provide some insight into the question of whether there should be an increased focus on ethics coverage in the business curriculum, and if so, what form it should take. In addition, if ethical training does result in more ethical conduct, corporations recruiting business students can more actively express a preference for students who have been trained in ethics and corporate responsibility.

Another limitation of this study is that student responses to the ethics quiz and their response to the inflation or deflation of grades might have been affected by known consequences. An argument could be made that behavior may tend to be more ethical if there are negative consequences attached to unethical behavior. However, in this study, the students did not know whether or not there would be consequences for failing to report an inflated grade.

Finally, it would be most helpful for researchers to distinguish between chronological "age" and "maturity" or "judgment." It is possible that some age-related factor other than chronological age is at work in ethical decision-making.

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EXHIBIT A

Name: ______________________________

Course: ______________________________

Business Ethics Mini-Quiz

1. You are a member of the upper management team at PharmCo., a midsize pharmaceutical company. Your Research Director has just told your team of an important new discovery. After years of effort, one of the company's research teams has discovered a drug that will reverse pattern baldness, the leading cause of male hair loss. The potential for profit from such a drug is enormous, but the Director cautions that two of the 8 principal researchers on the team believe that the drug may also increase the possibility of potentially fatal cerebral aneurysms in a very small percentage of users. If you were charged with making a decision about how to proceed, which of the following actions would you take?

   a. Since the potential risk is "small," and since 6 of 8 researchers don't report a problem, you take steps to get the product to market as soon as possible.

   b. You direct the Research Director to perform follow-up studies of the new drug to see whether or not they show significant side effects, including potentially fatal cerebral aneurysms, to see if the research was correct.

   c. When you submit test results to the FDA, you omit any reference to the concerns cited by the 2 researchers, since they are not conclusive.

2. You are the president of a large corporation which is in the business of manufacturing, among other things, chemical products used to eradicate termites. You have just reviewed a confidential report, prepared by one of your top scientists, questioning the effectiveness of the product and the claims your business has been making to homeowners, pesticide treatment firms, and the general public. You have heard rumors that a lawsuit will be filed shortly against your corporation claiming that this termite product is ineffective. Since, as President, you are charged with making a decision about how to proceed, which of the following actions would you take?

   a. Destroy the report before the lawsuit is filed, since after it is filed, you may not destroy evidence.

b. Talk to the scientist who prepared the report, and see that he retracts the allegation of possible ineffectiveness of the product.
c. Question the scientist who prepared the report to determine the basis for his concern.
d. Sell the right to make the termite product to another firm as quickly as possible, without mentioning the confidential report; after all, it is proprietary, confidential company information.

3. You work as a salesperson for a firm that sells housewares directly to stores. Last month, the firm instituted a sales incentive program that would pay you a bonus for each new store you sign up for a two-year contract. The bonus is based on a sliding-scale percentage of the monthly adjusted sales to the new stores. The adjusted sales are computed by a complex formula which takes into account sales, returns, discounts, mark ups and other factors. The sliding scale bonus pays 1% for $0-$250,000, 2% for $250,000 - $500,000, and 3% for $500,000-$1,000,000. Despite your best efforts, even after working 75 hour weeks, your monthly tally was only $245,000. Your earned bonus, at 1%, is $2,450. However, having just received your check, you note with astonishment that the bonus paid to you was $6,750. You are unable to explain the discrepancy. The error could be anywhere in the formula, and might never be discovered. The average bonus for the month under the new incentive plan is $6,800. It occurs to you that, since your bonus is in line with others, probably no one will notice the error. What would you do in the circumstances?

   a. Say nothing, and keep the extra bonus. Besides, you earned it by working 75 hour weeks.
   b. Say nothing, and keep the extra bonus. Chances are remote that anyone will discover the error, and if they did, you could always plead ignorance.
   c. Return the excess bonus because you didn't earn it.

4. A drug company applied for the approval of the Food and Drug Administration (FDA) to market a miracle drug that the company believed could cure some cancers. This was widely reported in the news, and the company's president was a personal friend of yours, so you bought about 4,000 shares of stock for about $10/share.. During the period that the company's application was under consideration, the company's stock rose to $65 per share. The president of the company learned that the FDA application was about to be denied, and called to tell you that he believed that the stock would start trading downward. You must decide quickly what to do. Which of the following actions would you take?

a. You decide to sell your 4,000 shares quickly, and make a profit of about $200,000.

b. When the SEC discovers your sale of stock just prior to the FDA announcement, they question you about "insider trading." You tell them that your friend, the company president, advised that you sell.

c. When the SEC discovers your sale of stock just prior to the FDA announcement, they question you about "insider trading." You advise that your sale of the stock was pre-arranged, and that the stock was to be sold automatically if it fell below $60/share.

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