MASTERING THE EDGE OF ETHICS

From complex fraud schemes to the everyday expense report frauds, how do our ethics influence our business decisions? Why do good employees make seemingly unethical decisions? Are all unethical decisions intentional? Explore how employees make ethical decisions and how your organization may be creating incentives that increase the probability of unethical behavior. This session will discuss the relationship among the fraud triangle, organizational ethics, and personal ethics. It will additionally include real-world case studies and how employees responded when faced with ethical dilemmas.

JOHN HURLIMANN, CFE
Sr. Investigations Manager
Intel Corporation

John Hurlimann, CFE Investigations Program Manager Intel Corporation, is a 23-year veteran of Intel and a Certified Fraud Examiner with 10 years of experience in global investigations. He oversees investigations throughout North and Latin Americas, Asia, Europe and the Middle East. He has extensive experience in investigating conflict of interest and kickback schemes, as well as specialized expertise in forensics and data analytics. He frequently speaks on the topics of investigations and conflict of interest.

“Association of Certified Fraud Examiners,” “Certified Fraud Examiner,” “CFE,” “ACFE,” and the ACFE Logo are trademarks owned by the Association of Certified Fraud Examiners, Inc. The contents of this paper may not be transmitted, republished, modified, reproduced, distributed, copied, or sold without the prior consent of the author.
**Presentation**

This session will start with a discussion on the basic approaches to ethics, how ethics apply to individuals, how our ethics can be influenced down the “slippery slope” which moves us to the ethics edge and beyond, and finally a discussion on organizational ethics and a few thoughts on how to influence your organization to have a culture of integrity.

Our personal ethics are influenced by several things such as our religious influences, life experiences, our family influences, and our upbringing. For me, growing up in a rural area of Northern California on a cattle ranch meant a lot of hard work and witnessing firsthand how integrity matters when business deals were done with a literal handshake. Growing up in a small rural community, I came to realize it was your word, reputation, and integrity that were key characteristics to success. If my dad committed to our neighbor to sell our hay at a certain price in the spring and then hay prices went up by summer time, he would honor his commitment even if it meant losing a little profit. Failing to honor our commitments had a direct impact on our business. Having a reputation for no integrity would have a long-term negative on your business and livelihood. This not only applies to our personal ethics, but also to business ethics for small businesses to Fortune 500 corporations.

**Why Ethics Matter**

Why do ethics matter? Being ethical is good for business.

The Ethisphere ® Institute recognizes the World’s Most Ethical Companies each year based on companies that have proven that their ethics programs and practices are extraordinary. The Ethisphere Institute compared the performance of companies they have recognized versus
global index performance back to 2007 and found those who have been recognized as being more ethical have consistently outperformed other companies, and the gap is widening each year. Strong ethics appear to influence long-term performance.

Case Study
An example of how the reputation of a company had a direct impact on its ability to do business is when our company was looking at integrating more technology into sports. We reached out to the leadership at ESPN in an attempt to get a meeting to discuss Intel’s latest technology. To our surprise they returned our call and happily agreed to meet. When asked why ESPN agreed to meet with us they said, “Intel is a good company and has a good reputation” and “they were happy to meet with us.” This is an example of how strong ethics opened a door that might not have otherwise been
opened. Good ethics and reputation are good for business

Strong ethics are good for business, but the opposite is also true and can have a significantly greater negative impact. Take the recent VW “Diesel Gate” issue. After VW announced that 11 million cars were affected by the emissions testing defeat software, they took a $7.3 billion charge as a result of the expected recalls. Their reputation was also harmed as the Volkswagen brand saw sales decline more than 5 percent.

**Two Views**
There are two views on ethics: *utilitarianism* and *deontological*. The basic premises of these ethical decision-making views fundamentally differ.

**Case Study: Trolley Footbridge Dilemma**
A classic case study on ethical dilemmas is the “Trolley Footbridge Dilemma.” Suppose you are standing on a bridge over train trolley tracks. You notice a runaway trolley coming down the tracks towards you. Past you and the bridge is a family stuck on the tracks. They are unable to move off the tracks. The trolley is going to hit them and kill them. Next to you on the bridge is a man wearing a heavy backpack. You quickly realize you could push this man off the bridge and stop the trolley from killing the family, but it would kill the one man. A *utilitarianism* view of this dilemma would suggest that we have to push the man off the bridge to save the family because it would result in a greater good. The *deontological* view would suggest that we do not push the man off the bridge as this would be committing murder.
Deontological
The deontological view judges the ethical decision as right or wrong based on the rights, rules, and policies of society and organizations regardless of outcome. The utilitarianism view judges ethical decisions based on the outcome (i.e., ends justify the means). We can think of those who enforce laws, rules, and policies as having a deontological view such as law enforcement, auditors, and investigators. The determination of what is right or wrong from a deontological approach judges the decision based on adherence to rules and duties. This is analogous to being a police officer.

Utilitarianism
The utilitarianism view prioritizes doing the greatest good for the greatest number of people. From the perspective of fraud and the anti-fraud professional, this is what we characterize as rationalization, which is one of the elements of the fraud triangle. One method to rationalize fraudulent behavior is to believe that the actions are for a greater good. Perhaps the greater good is for their family or, in their mind, for the greater good of their company. We characterize this view most like the character Robin Hood or the present-day version some might see as the activist group, Anonymous, who considers themselves “hacktivists,” hacking organizations for a greater good.

Case Study: A Noble Cause
An example of the utilitarianism approach can be demonstrated with this case study. Bill was an attorney who worked for a small technical engineering company overseeing patent applications. When workloads spiked, the company would occasionally outsource work to local firms. Bill had some indirect influence on
which firms were selected for the work. Bill’s sister Mary was going through a difficult divorce. Though Bill didn’t represent Mary, he was aware of her situation and provided her informal guidance and advice. Mary’s divorce was very messy. Her ex-husband, Mark, had hired his brother-in-law as his attorney, who was taking a predatory approach by trying to ruin Mary financially and destroy her career. As fate would have it, Mark’s attorney worked at one of the local firms to which Bill’s company would occasionally send work. Bill could no longer stand by watching his sister being destroyed. He decided to do something. He made a call to Mark’s attorney and made it clear that if he could see a way to ending the attacks on his sister and find a way to settle the matter, his firm may get more business from Bill’s company. If he couldn’t find a way to settle the matter then, “there may not be any more business for your firm.” Bill had a clear conflict of interest but given the situation, he saw a greater good in helping his sister. His utilitarianism approach or “noble cause” allowed him to rationalize his behavior.

_Trolley Track Dilemma_

Another version of the trolley ethical dilemma we reviewed earlier is known as the “trolley track dilemma” which changes the previous scenario just a bit. The scenario is the same with a runaway trolley heading toward a family, but this time you are standing at the track control lever and have the ability to switch the trolley to a different track to avoid the family. The problem is on the other track one person is trapped. Again, you are faced with the dilemma of doing the greatest good or complying with the rules. Interestingly, research has found that more people are willing to pull the lever than push the man off the bridge. One
explanation could be the distance from the act. This will be covered later in the personal ethics section.

**Digital Ethics**

One topic worth mentioning is related to our hypothetical trolley track dilemma and is now an actual modern day ethical dilemma that must be solved. With advances in technology and computer processing power, there has been a greater adoption of self-driving, Autonomous Vehicles (AVs). These AVs promise to significantly reduce traffic accidents as more than 90 percent of accidents are attributed to human error. The AVs also promise to improve the environment through more efficient vehicles and routes as well as to improve the freedom of those who may not be able to drive themselves. It is inevitable that AVs will eventually be involved in accidents. The AV will be able to make decisions faster and in a more logical order than you or I could behind the wheel in a crisis. Some situations will require the AV to make an ethical decision at that moment. If there is a family in front of the vehicle, does the AV choose to avoid the family but run over a single pedestrian on the sidewalk (utilitarianism)? What if it can avoid both the family and the pedestrian by running into a wall, killing you or your passengers? What if your passenger is a child? It will be a challenge to define the algorithms and develop the coded logic or digital ethics to incorporate into these vehicles. Perhaps we will have the ability to select utilitarianism or deontological as a vehicle option? Do you want a vehicle that will always comply with laws regardless or one that will do the greatest good, potentially sacrificing you and your passengers or, for a significant discount on your insurance rates, will protect you and the car at all costs? It is not an easy problem to solve, but it brings our ethical dilemmas to the forefront.
Personal Ethics
We have discussed the two views on ethics and how the deontological view aligns with law enforcement, anti-fraud professionals, and auditors. Conversely, the utilitarianism view aligns with our employees or members of our organizations. The question then becomes how do employees move from complying with guidelines, our code of conduct, and laws to crossing the line? Turns out it’s a gradual process much like the story of the boiling frog. The premise is, if you place a frog in a boiling pot of water, it will jump out, but if you put the frog in cold water and slowly turn up the heat, the frog will not notice the slowly increasing heat and impending danger. Eventually, the frog is boiled without realizing what happened. Though the anecdote is not actually true, it is a good metaphor for what happens when employees move slowly toward the edge of ethics. We will review a few ways “the heat is increased” to the point of exceeding the ethical thresholds and expectations.

Relation to the Fraud Triangle
The three elements of the fraud triangle are opportunity, pressure, and rationalization. In the business environment, the opportunity element translates to poor controls or poor oversight. The pressure element can come from personal pressures or business pressures. We will cover opportunity and pressure in the organizational ethics section. First, let’s discuss what drives rationalization?

Four typical rationalization practices are:
- Small steps (just a little cheating)
- Distance from money
- Everyone is doing it
- For the greater good
Once rationalization leads to a fraudulent act, regardless of size, the next time rationalization is just slightly easier. Much like the adage “practice makes perfect,” it’s a matter of repeating the behavior and rationalizing a slightly larger fraudulent act. This is how the “heat” is slowly increased on our frog. Let’s review the four common rationalization practices.

**Small Steps**

The “small steps” rationalization helps employees believe the impact of their action doesn’t matter because it’s too small. Dan Ariely, a professor of psychology and behavioral economics at Duke University, performed a series of social experiments to understand this better. He took a group of students and gave them a paper with twenty simple math problems to complete. He gave them five minutes to complete as many as they could. At the end of the five minutes they were told to stop and count how many they completed. For each completed answer they self-reported, they were paid $1 in cash for each answer and then instructed to put their paper through a shredder implying no one would ever know how many they actually completed. What the students didn’t know was that Professor Ariely had rigged the shredder to only shred the edges of their papers. He and his team were able to review the test papers and determined how many cheated (paid more than they had actually completed). What he found was that a lot of people cheated a little. On average most completed four problems, but reported six. He repeated this experiment at different universities and in different countries. The results were consistent. This tells us that it’s likely most of our employees, when given the opportunity, cheat a little. Examples of a “little cheating” in the corporate environment would be inflating expense reports just a
bit, leaving work a little early, taking home a few office supplies, and spending “just a few minutes” checking Facebook, which turns into an hour of watching cat videos.

**Distance from Money**
A second rationalization technique is the distance from money. Going back to Professor Ariely’s experiments, he modified the experiment slightly by paying the students in plastic tokens instead of cash. The students would turn in their papers, collect a plastic token, walk across the room and trade in the tokens for cash. Surprisingly, the results showed an increase in cheating. In fact, the cheating doubled just by moving the act of cheating further away from the money. As a society, we continue to move further and further away from cash. We are moving from cash to credit cards, Electronic Funds Transfers, E-wallets, bitcoins, and Apple/Samsung pay. This increases the potential for rationalization (i.e., “I’m not really stealing because it’s not money”), and thus an increase in frauds within the corporate environment.

**Everyone is Doing It**
Another rationalization approach is the “everyone is doing it” approach. We frequently hear this from children as a rationalization for unwanted behaviors. This occurs in the corporate environment as well. If employees see others with fraudulent behaviors, though small, there is a greater opportunity for rationalization. Professor Ariely tested this theory as well. During his test, he hired an acting student to participate. After just one minute into the test, the acting student would stand up and state “I did them all.” They would then walk to the test administrator, collect their $20, and walk out. All other students taking the test knew it was not
possible to complete all 20 questions in the two minutes allotted let alone just one minute. It was clear this student had cheated. What was interesting is that when the acting student wore a sweatshirt implying they attended the same university as the other students taking the test (in-crowd), the average incidence of cheating went up, but when the acting student wore a rival university sweatshirt (out-crowd), the amount of cheating went down. When the students saw that “others like me” were cheating, it allowed them to rationalize their own cheating behavior. This can occur in the corporate environment as well. If employees see as a common practice their peers, managers, or other sales employees inflating expenses or reporting sales a few weeks early to hit quarterly quotas, it can spread to others, and rationalization becomes easier because “everyone is doing it.”

*For the Greater Good*
Going back to the utilitarianism approach to ethics, employees can rationalize fraudulent behavior by taking an approach that ultimately might result in a greater good for the company. As an example, this may be pulling in sales early, but rationalizing the behavior by saying “I’m just getting more sales for the company.” An employee might take a kickback from a supplier, but negotiated better pricing, rationalizing that they “saved the company money.”

**Practice, Practice, Practice**
We have reviewed a few ways in which our employees’ ability to rationalize can be influenced. If we go back to our boiling frog analogy, the frog boils because he is slowly adapting to his environment. This happens by repeating the behavior until it becomes a new baseline for what is
acceptable or a new “normal.” If we cheat a little our feeling of guilt or regret is minimal, because “it was just a little,” but something happens in our brains that rewire us and we become conditioned. The next time we are confronted with an ethical decision, it then becomes just a little easier to rationalize and allows us to increase the size or scope of the fraudulent behavior as our view is from our “new normal.” In the sports world we call it practice or muscle memory. We repeat the behavior and our ability to adapt increases. This is how the momentum down the slippery slope begins to increase or our frog begins to boil.

**Bias**

We have discussed personal ethics and how seemingly good people end up going down the slippery slope to fraudulent behavior. Another topic to consider when discussing personal ethics is bias. Bias can take many forms, but we should consider bias as it relates to us as anti-fraud professionals. Research has determined that everyone has bias, but more importantly, we have a bias blind spot. That is, we don’t recognize our own biases.

When doctors are asked if the gifts they receive from pharmaceutical companies influence their decisions about what medicine to prescribe, they indicate that they have no recollection of the gifts when filling out a prescription. However, if you ask the doctor if a gift might bias the decisions of other doctors, most agree that others would be biased by the gift. This is an example of a bias blind spot, which we must be aware of as we conduct audits, risk assessments, and investigations.

The key is to recognize that we are biased and ask ourselves if our opinions and recommendations are based on facts or if our decisions are biased in some way. Our
bias may be based on those that are part of our “in-crowd,” regional or location bias, those that are more like us, or we don’t leave open the possibility of a reasonable explanation for apparent fraudulent behavior.

**Case Study**

I conducted an investigation into alleged expense fraud where we identified an employee who had been reimbursed for airfare expenses for flying her mother across the country. The employee’s mother was not an employee and the mother had flown round trip from her home in Florida to our employee’s location in Santa Clara. Her mother had stayed for a few weeks and then flew back home to Florida. As an investigator, I saw this as an obvious fraud because the employee clearly flew her mother out for a two-week vacation. I interviewed the employee, and she explained she had to travel out of the country for a few weeks for work and, as a single mother, she would have had to hire 24-hour child care for her young son. Instead, her manager agreed to pay for the employee’s mother to fly out and stay with her grandson for the two weeks while she was traveling for work. This saved the company money and it was better to have grandma watching her son. Had I recognized my bias blind spot, I might have considered other reasonable explanations for the expense and simply discussed it with the manager instead of putting the employee through a subject interview.

**Organizational Ethics**

We have reviewed personal ethics and bias. We will now review organizational ethics and ways to influence a culture of integrity. First we will close out on the fraud triangle by talking about opportunity and pressure as they relate to organizational ethics.
Opportunity

Opportunity as it relates to organizational ethics can be seen as our control environment, including oversight. How strong are the controls in our organization? How well do we test them? Is there good oversight? If we have a weak control environment, then we create greater opportunity for fraudulent behavior. Your investigation team is the frontline of the control environment as they see first-hand the results of a breakdown in controls. It’s important that your investigative team, audit team, and controls team have a good working relationship. A root cause analysis should be completed after an investigation to identify potential gaps in controls and prevent repeat excursions. The investigations team should engage with the audit or controls team to review the gaps and work to mitigate them. The audit team should consider investigations when doing a risk assessment. Reviewing trends can also show a gap in training or a lack of clear expectations within business groups.

Pressure

Employees might have personal financial or other pressures at home, but organizational pressure also plays a significant role in the pressure element of the fraud triangle. Organizational pressure can come in the form of performance goals, such as difficult sales goal, or aggressive project timelines. How are we incentivizing employees to meet those goals? Consider the unintended consequences of the incentives. If sales employees are paid commissions based on booking deals instead of when the deals are billed, then they might book questionable deals early or deals that could fall through when it comes time to bill the customer. Aggressive project timelines with limited resources will
put pressure on employees to cut corners to save time. Are there enough resources for project timelines?

**Tone-at-the-Top**
One of the key characteristics of an organization with integrity is a strong ethical tone-at-the-top. An organization’s senior leaders must be visible and open with their support of strong ethics. Does the leadership team hold senior employees accountable when they have ethical missteps? Does management walk the talk? If your organization does have a strong tone at the top, is it visible to the organization? Sharing stories and examples with the organization about strong ethical leadership is an effective way to communicate the tone at the top, for example, through a video message from the CEO or an ethics newsletter. If your organization does not have a strong tone at the top, then it might be difficult to influence change, but it does provide perspective on the organization you are working in.

**Tone in the Middle**
Though we frequently hear about “tone-at-the-top,” more importantly is “tone-in-the-middle.” This is the ethical tone of the mid-level to first-level management. The integrity of the organization spreads down to the lower levels by the mid-level management. The lowest levels of the organization will look to their direct management as role models for ethical behavior. There may be strong tone-at-the-top, but if local management isn’t aligned with that tone, it can have a negative impact on the first level teams. Conversely, a strong tone-in-the-middle can compensate for a weak tone-at-the-top. Showing strong support for the code of conduct, required training, clearly communicating expectations, and then holding employees accountable
to those expectations at the first levels of the organization have significant impacts on driving a culture of integrity.

**Code of Conduct, Policies, Guidelines**

It might seem basic, but all organizations should have a clearly documented code of conduct followed by fair and reasonable polices and guidelines. These are the basic building blocks of a strong ethical organization. It provides a foundation to the organization when the organization is faced with a choice related to ethics and integrity. The code documents an organization’s principles and helps guide the organization. A good code of conduct in itself is not enough, but it is a required element for an organization of integrity. Enron had a 64-page “code of ethics” and VW Group has a very nice code of conduct on their website. A good code of conduct is a minimum requirement for an organization of integrity. Next are the documented policies and guidelines that provide clear guidance to the organization on expectations and can answer questions on specifics, such as travel and entertainment, expectations regarding conflict of interests, and expectations on the use of corporate laptops, among other things.

So our organization has a clear code of conduct and well documented policies and guidelines, what’s next? Training. It’s not enough to document expectations; employees must be trained on those expectations. It is imperative we ensure that employees regularly take the code of conduct training and understand the company policies and consequences for not complying with them.
Referring once again to the experiments of Professor Ariely at Duke University, he again ran his cheating experiment, but with a slight difference. In this version of the experiment, he had the student’s sign an agreement that they acknowledge and comply with the university’s “code of ethics” before taking the test. This simple act caused a change in the cheating behavior. Just by reminding the students that they were being held to a documented set of principles resulted in a drop in cheating. What is interesting is there was no actual “code of ethics” at the university, but the students believed there was.

I frequently hear employees comment, “Why do I have to take the code of conduct training every year?” It goes to the old adage of “out of sight, out of mind.” If we continue to remind our organizations of our principles and expectations through training, newsletters, posters, and other avenues of communication, it will have a positive impact on our organizational ethics.

There is one last point on an organization’s code of conduct. No organization is perfectly aligned with its documented code of conduct. There is always some gap between the actual organizational ethics and the documented expectations. Our goal should be to continually work to keep that gap as small as possible. An organization might have “whisper ethics,” which creates a large gap between what is expected and what is actually happening. Sales organizations might take a “wink and a nod” culture focused on closing deals over holding strong to the ethical expectations. If a sales manager tells their employee, “I know what the policy says, but just close the deal,” to hit quarterly goals versus waiting until the deal is ready only widens the gap between the expected ethical culture and the actual
culture. Our objective is to continue working to minimize that gap.

**Reporting Channels**

Another element to creating an organization of integrity is providing a trusted channel for asking questions or reporting concerns. If there are gaps in organizational integrity, your employees are witnessing it. In the ACFE 2016 *Report to the Nations*, it is noted that for organizations with more than 100 employees, nearly 44 percent of all frauds were detected by tips. Having a trusted reporting network is critical to identifying potential ethical issues within your organization. The keys to building a trusted reporting channel are:

- Allowing anonymous reporting
- Responding quickly to employees when they do report something
- Taking a zero tolerance position on retaliation
- Closing with the reporting party when the matter has been resolved.

The last element is arguably the most important. If the reporting party doesn’t believe their concern was taken seriously and resolved, they will not report again and they will also tell others within the organization that it doesn’t do any good to raise concerns. This will have the biggest impact on building an organization of trust and integrity.

One last item to consider regarding reporting is the method used for reporting. The method should take into account cultural differences. Certain regions, such as Europe, prefer to report in person to someone they know and trust instead of submitting a concern through an anonymous website or hotline. Ensure that there are various methods of reporting.
**Accountability**
Let’s face it, not everyone in our organizations will meet our ethics and integrity expectations. If we have documented clear expectations and properly trained them on those expectations and they are still sliding down the slippery slope to the edge of ethics and then over that edge, we should conduct a fair and thorough investigation and hold them accountable to our expectations. This can be in the form of a progressive discipline model of issuing a verbal warning, then a documented warning, and then termination. Some violations will require immediate termination if the act is egregious enough or if the organization has taken a zero tolerance position to set the tone such as immediate termination for retaliation.

**Monitoring**
The last point on organizational ethics is monitoring and reporting. Having data on how much is being reported, what is being reported, from where, and the outcome of the investigations, are good indicators of what is happening within our organizations. If we are seeing a large volume of HR concerns raised at one location, perhaps there is a management or tone-in-the-middle issue. If employees consistently ask questions about gifts, meals, and entertainment policies, then perhaps it’s not clear enough or the training isn’t adequate.

Conversely, if we see low reporting from the organization or low reporting from certain sites or geographies, then our trusted reporting channels might not be established. Data on what employees are reporting can help focus where more training might be needed, or if we see a consistent problem within a site
or organization, then there might be a problem with first or mid-level management.

The best way to build trust within an organization is to be transparent about what is happening. Case studies are the most effective way to demonstrate to the organization real examples of the ethics of your organization and how your organization takes action when there are incidents. Each case study is a powerful teachable moment. The case studies can be developed in a way to maintain the privacy of individuals, but they should still communicate organizational integrity.

Wrap Up
We reviewed why strong ethics and an organization of integrity are good for long term business and we discussed the two views on ethics—utilitarianism and the deontological view.

Two elements of the fraud triangle, pressure and opportunity, can be influenced by organizational goals and controls respectively, but it’s the rationalization element of our employees’ personal ethics that start employees down the slippery slope. Our organizations’ tone-at-the-top, tone-in-the-middle, code of conduct, policies, and guidelines all help pull our employees back up the slippery slope. With trusted reporting channels, accountability, and monitoring we can help keep our employees from going over the edge of ethics.