

The Future Is Here

Establishing and maintaining an ethical business environment starts when a new employee joins the firm at the start of his or her career.

By Tony Powell

Whether it is within your own firm or at clients' firms, an ethical firm is far more likely to be well-run, efficient, and profitable. But the environment within a firm can work against this in ways partners might not be aware of, including differences in motivation and psychology between different generations and how this affects the risk of some people cutting corners or not adhering to procedures and professional standards.

We had the opportunity to talk with Edi Osborne, the CEO of Mentor Plus, based in California, about this. In her work, Edi focuses primarily on helping the accounting profession develop and deliver business advisory services. With respect to ethics, her firm also performs assessments to find out people's values and look at who the rule-benders might be. There are certain behavioral styles that are more likely to bend the rules than others, she told us, which also shows up in employment assessments that can be performed.

Q: Who within a firm is most likely to bend the rules, look the other way, or worse?

A: In any business situation, when an employee doesn't perform up to par you have to ask, "Is this a people or process issue?" The good news is that more often than not, when people underperform (or don't follow the rules) it is a process issue, and processes can be fixed. Process can be anything from how we hire, orient, acculturate, train, or manage an employee. However, when it comes to ethics, the process begins long before new employees join the firm reaching all the way back to how they were raised and influenced by society. There is a raging debate about the question of ethics across all strata—business and personal. Some argue that values are changing (not for the better). Some argue that unethical behavior has not increased, just our awareness *via* the media has. I believe it is a bit of both. Media proliferation may be shining a brighter light on the ever-present dark side of society, but in doing so, we have become

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desensitized to unethical behavior. What may have easily appeared black and white 20 years ago may now appear in shades of gray. In either case, the greater question is who is more likely to step outside the lines (or look the other way when others do), what motivates them to do so, and what can be done to address the trend?

I don't have statistics that point to one type of firm member being more likely to step outside the lines, but I can tell you what I have observed about the circumstances that predispose it to happen and how to prevent it.

I read recently that the IRS paid a whistleblower \$4.5 million for reporting a client's illegal practices to avoid paying \$20 million in taxes. My reaction was, "It's about time." The good news is that professional ethics are as strong, or maybe even stronger, than ever because of Enron-like situations

coming to light. I believe that the underlying cause of rule-bending is more about the health of a firm's culture and the effect of a dysfunctional culture on young people, who don't have as much life experience to grasp the implications of poor choices or the political will to deal with the dysfunction in the firm.

Q: I imagine a practitioner at a fork in the road and considering a decision on whether to bend the rules, to go one way or the other. It's interesting that you identify younger people as being at risk when faced with ethical choices.

A: When you look at the Gen Y demographic, these are the young people coming out of college who are in the first three to five years of their professional development. Gen Y'ers have come to be known as "Gen Why?" They are always asking why, they challenge every assumption, every authority, every bit of convention and standard practices. They look at their peers, perhaps someone like Mark Zuckerberg, who founded Facebook, or the iconic renegade, Steve Jobs, of Apple who have become wildly successful by breaking the

rules and not following conventions. Gen Y'ers have grown up with the idea that challenging everything is not only healthy, it is a shortcut to success. Let's face it, we are bombarded daily with messaging that affirms rule-breaking as a positive practice. However, there is a difference between shifting paradigms and marginalizing truth and transparency.

So, how do you temper enthusiasm for change with stepping over the lines? There are two key elements that influence the choices we all make:

1. Do I matter?
2. Does my work matter?

The connections (or allegiances) that young people have made at this point in their career may not be strong enough to overcome temptations at the fork in the road as compared with someone who has made stronger connections. By connections, I mean to their team, their fellow firm members, the firm's clients, their peers, and the profession as a whole. Do they feel like they're part of the team? Are they part of something bigger than themselves? Do they see a future with the firm? If individuals already lean toward rogue behavior and they feel isolated, that they don't fit in, or if they can't envision a future for themselves with that firm, the fork in the road can be more problematic. If they feel like they don't matter to others, it's not a great leap to adopt the self-belief that what they do doesn't matter either.

It is imperative that firms help young people understand where they fit in the bigger picture and how important they are to the wellbeing of the firm. When we help young people make the connection between what they want for their future with their ability to attain it by making choices that are good for the firm, they are far more likely to address difficult questions with a "we" vs. "me" perspective.

I believe firms are creating some of their own worst nightmares and potential liability by continuing to bring today's generation into the firm following the old model (*i.e.*, keep your head down, do as you are told, and eventually, you will have an important role in the firm). The Y generation, by and large, is more educated and more confident than any previous generation. They are not content to just hang out until they are given something important to do. Nor are they willing to follow directions blindly. It is not long before they start to look at the systems they are working within and ask questions: "Why are we doing it this way?" "This seems so inefficient or ineffective" or "It's a waste

of my time." That's when they might start to do what we call random acts of reengineering.

These random acts of reengineering are their way of dealing with what feels to them like a waste of their time. For Gen Y, their time is their most precious commodity; even if they want to spend it playing video games, it's their time. The Y generation sees their time as sacred. If they're involved in engagements where the reasons for having to do something a certain way have not been made explicit, they might not make the connection that taking a shortcut in one area ends up hurting the engagement in another. It's about connecting the dots between their behavior and the risks associated with a weak work product. If they don't care about the firm or they perceive that the firm doesn't care about them, if that connection is missing, they may be tempted to cut corners.

In some cases, reengineering a given process may be long overdue. It may be that the firm's established way of doing something is inefficient. Rather than risking random reengineering or shortcuts being taken that rewrite rules on a unilateral basis, the firm needs to have a *kaizen* process, a constant reengineering process, that allows people to raise their hand and say, "You know this doesn't feel very efficient to me. Is there a reason we do it this way?" Instead of a partner or manager saying, "That's the way we do it here," they need to stop and recognize that this generation needs to understand the why behind everything they are asked to do—or they start "coloring outside the lines," which can open the door to unforeseen liability.

Q: There are two sides of the coin. A young person can come into a company and see that it's doing things that are boneheaded, or at least appear inefficient. When I saw things like that, they wouldn't listen to me, because I was young and insignificant. But it might be that the question I asked was a kind of emperor's-new-clothes moment.

A: Yes, and these are bright kids. They've got a technology background, and they might look at something and say, "Why are we using this tool or that tool? Isn't there a better way to do this?" They are wired to ask paradigm-shifting and game-changing questions. The key is whether the firm is giving them an avenue to ask the questions and get a response. Is the firm getting young people involved in reengineering the system? Are we looking at the processes and encouraging questions such as, "Why do we do it this way?" and "How could we do it better?" The more these younger employees are engaged in the "How we can do it bet-

ter” aspect, the more ownership they’ll take of processes and the more they’ll adhere to the standards that have been set. You’re going to find young people are more likely to follow the rules if they are part of the rule-making team.

A firm can tell people what to do, but if it doesn’t tell them why it needs to be done a particular way or allow them to question, they end up feeling like robots, turning off their brains, and when the time comes that it matters, they won’t have any allegiance to the standard practices. They have allegiance to themselves to get the work done by what feels to be the most efficient way possible.

Q: At the start of their career, it seems there’s a lot less at stake.

A: There are a lot of young people who have no interest in becoming a partner. They don’t want the liability, they don’t want the work hours, and they don’t want the pressure. It used to be a firm could hold that carrot out and say, “If you play by the rules, you’ll become a partner.” Nowadays, a lot of people say “No, thank you, I’m okay with making \$60,000 a year and having time for my family and time for myself”—or getting an offer to go work in another industry.

Even if a young person wants to be a partner, sometimes a compelling future is no match for dysfunctional messaging in the present. I read an interesting article not too long ago about a situation where a young industry CPA was asked to produce what he called “dodgy invoices.” The reason he didn’t raise his hand about being asked such a thing was he was afraid that if he did, he would be fired and it would leave a big hole in his resume, or if he said anything about what was going on or resigned from his job and became a whistleblower, he would be sued for defamation. In general, CPA firms have been hesitant to raise their hand against their clients or employers. There’s an attitude of “if something’s not right, we fix things internally.” So this young person may have perceived that when things are sketchy or dodgy, we look the other way and just deal with it the way it is because we don’t want to raise any

About Edi Osborne

Edi Osborne, CSPM, CPBA, CPVA, Trimetrix, is a recognized leader in the area of Business Performance Measurement and Management. She was recently named by CPA PRACTICE ADVISOR as a Top 25 Thought Leader. She has a background working with small to medium-sized service, retail, and manufacturing companies from a host of different industries. She conducted business development roundtables all over the state of California and was instrumental in launching the Group Mentoring program co-hosted by San Jose State University’s Women Entrepreneur Department.

Since 1990, Ms. Osborne’s efforts have been focused primarily on helping the accounting profession develop and deliver business advisory services. As co-developer and primary instructor for the CPA Performance View program, endorsed by the AICPA, she has worked with a large number of accounting firms of all sizes. Ms. Osborne is co-founder of the Consulting Accountants’ RoundTable; an ongoing think tank and educational forum for practitioners dedicated to furthering their business advisory skills. She is also co-developer and primary instructor for the Mentor Plus® Certification in Strategic Performance Management and \$COPE Advisor Program.

Edi is a sought-after speaker known for her information-packed, entertaining style. She has presented her message to many institutes, international accounting leadership groups, state societies, accounting associations, CCH, Microsoft, ACCPAC (now part of Sage), and many other professional organizations.

Edi’s writing credits can be found in the JOURNAL OF ACCOUNTANCY, ACCOUNTING TODAY, INSIDE PUBLIC ACCOUNTING, and ACCOUNTING WEB, as well as state society and many other professional publications. She is co-author of the book, STRATEGIC BENCHMARKING FOR VALUE, published by Wiley and Sons.

She is fluent in the behavioral assessment arena with certifications in DISC, PIAV, and Trimetrix. This knowledge, coupled with her engaging facilitation style, has helped many organizations resolve conflict, build effective teams, and advance to higher levels of performance.

Ms. Osborne is a highly regarded professional facilitator for retreats, planning, and team-building events. She has studied and effectively applies both graphic facilitation and group facilitation methods that take any gathering to a higher level of cooperation resulting in lasting change. Some call her a change agent, others refer to her as a mentor and coach. Whatever hat she is wearing, she has a significant impact on those she works with.

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red flags. Our sensitivity to slides in ethics has declined. We have watched people cheat and steal and get away with it and become superstars in the media, leaving young people with the perception that breaking a few rules here or there is no big deal. But in a profession that is solely based on ethics and trust, knowing when and where the rules can be bent is a critical issue.

Q: If something fishy is going on, what can a practitioner do short of resigning the engagement?

A: There are avenues *via* the IRS and other regulatory bodies for whistleblowers to turn in clients who are breaking the law. More often than not, good firms disengage these clients long before a regulator gets involved. The more a firm walks away from questionable clients, the stronger the message becomes for the team that the firm does not tolerate unethical behavior. The message needs to be very clear: “Even when they’re paying us big bucks, we don’t tolerate it, because it puts all of us at risk.”

Q: Where do firms go wrong with their younger employees?

A: Firms need a consistent acculturation process that instills the firm’s values from the very start.

You’ve first got to create an awareness, and second, a safety net, for those young people who do see questionable behaviors, so they will not be afraid to raise a question or be labeled a tattletale. There needs to be a

strong message that says, “Guys, we all make mistakes. It’s absolutely critical that we identify them and fix them here. And if you’re unsure, please, please, please come to us, raise your hand, and let us look at it.” This becomes a standard practice, to question the way things are being done, instead of people being seen as tattletales.

Q: What sorts of best practices can help?

A: In the medical field, they have morbidity and mortality conferences. These are post-discussions of what went wrong in a particular case: Why did the patient die? What was missed? These discussions are kept confidential, and they’re learning exercises. Somebody has to stand up in the room and say what happened, say what the judgment call was that they made, good or bad, and then talk about what they would do differently. I think accounting firms need to set aside, even one hour a month, a time when people can come together to review ethical questions. The activity would go something like this: “The client comes to you and asks you to ignore [fill in the blank]. Within teams talk about how you would respond to that situation. And then we’ll discuss it.” The more practice young people have in a mock situation, the more knowledge and confidence they’ll have to deal with a real scenario when they come to a fork in the road. Doing this in a group setting is valuable because young people benefit from hearing how their peers respond to the question. Positive peer pressure may be the turning point for someone to make the right choice when it is needed most.

First Whistleblower Office Reward

Whistleblower attorney Eric. L. Young, of Egan Young Attorneys at Law, announced on April 8, 2011, that the IRS Whistleblower Office had paid its first whistleblower reward, more than \$4.5 million, in the first U.S. tax whistleblower case settled since rewards were mandated by Congress four and a half years ago.

A CPA in-house accountant and auditor who discovered a \$20 million-plus tax liability at a large national financial services firm, which the *FORTUNE* 500 company then declined to report, was given the third highest category of IRS whistleblower reward under the new law, 22 percent, according to Young.

“This groundbreaking IRS \$4.5 million reward originated like many of our government fraud whistleblower cases in health care, defense contracting, pharmaceutical sales and marketing, and other sectors,” Young explained.

“Our client discovered that the financial services firm was failing to pay taxes, but after speaking up was simply ignored. As such, the right thing was done in deciding to report this employer’s tax misconduct to the IRS,” Young said.

For tax and *qui tam* whistleblowers, this case clearly underscores the importance of working with an experienced whistleblower lawyer, Young explained.

Why? Young revealed that his client originally had filed an IRS “Form 211” with the new Whistleblower Office without counsel, known legally as “*pro se*.” When more than two years had elapsed since the original filing and no IRS response had been received after numerous client inquiries, the client reached out to Young, an experienced whistleblower attorney in state and federal courts.

After assessing the client's case and concluding that it indeed appeared to be in limbo, Young immediately contacted the IRS Whistleblower Office. He determined that his client had never received a "Claims Number" after the original Form 211 filing. Assigning this number is only the first step in IRS whistleblower procedure, Young explained.

"In our subsequent contacts with the Whistleblower Office, we provided the original case documents and information that fully exposed the financial services firm's tax misconduct. We also clearly and convincingly demonstrated to the IRS Whistleblower Office how effective our client's efforts were in advancing this case," Young said.

"As a result, we believe our efforts enabled our client to earn this enhanced, 22-percent reward in America's first IRS Whistleblower case under the new program," Young said.

In fiscal years 2007 through 2009, when rewards under Section 7623 were mandated, the IRS Whistleblower Office reported receiving more than 12,000 new cases. Earlier in 2011, the Whistleblower Office modified its award criteria to allow whistleblower rewards based not just on taxes and penalties received, but also when improper refunds or credits have helped to offset taxpayer liability.

"It may last only for a short time, but it's nice to know that at this moment Egan Young is the only law firm in the U.S. to help a client win a mandatory IRS Whistleblower reward," joked Young, who for years has represented whistleblowers in *qui tam* cases under federal and state false claims acts.

"Since Egan Young will always be the first law firm to help a client win a substantial reward under the IRS Whistleblower program, we've developed a reference microsite for this historic case. Potential whistleblowers and their attorneys can now visit www.First-Tax-Fraud-Reward.com to learn more about this first-ever case," Young said.

The Tax Relief and Health Care Act of 2006 required the IRS to set up a Whistleblower Office by December

2006 and then pay rewards to tax whistleblowers. Prior to this legislation, now Section 7623 of the Internal Revenue Code, the IRS had the option to pay rewards to individuals it previously referred to as "informants."

"The IRS and its Whistleblower Office have restrictive confidentiality standards," said Brandon J. Lauria, an Egan Young attorney who also represented the whistleblower, "and our client welcomes this cloak of anonymity." Young and Lauria explained that the client continues work as an in-house CPA and never wants to be known as the source of detailed information that cost the employer more than \$20 million, nor will the law firm disclose the taxpayer's identity.

Throughout the years-long investigation of the whistleblower's allegations, IRS Large Case Examination never officially revealed to the taxpayer that a whistleblower had provided tax liability information, nor did the company officially learn the client's name, Young explained.

Somewhere today in the United States an anonymous CPA who helped the IRS Whistleblower Office return millions to taxpayers can rest easier knowing that the first-ever mandatory IRS Whistleblower reward was paid because an employer failed to pay its fair share of taxes.

Young thanked Stephen Whitlock, Director of the IRS Whistleblower Office, office analysts, and other professional staff for their outstanding help in working with him and Lauria to bring this first-ever IRS tax whistleblower case under the new program to settlement.

"I don't envy the daunting challenges Mr. Whitlock faced in starting the IRS Whistleblower Office from scratch and then being inundated with 12,000 Forms 211 filings," Young said. "The IRS whistleblower floodgates have opened a tiny bit with our groundbreaking case. Egan Young looks forward to more tax whistleblower rewards for our clients, as are whistleblower attorneys across the United States." ✦

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