Transcript for
In Search of the Good Corporate Citizen
Hitting the Numbers

Narrator: Every day seems to bring news of another ethical tumble in Corporate America.

Corporations once admired for financial brilliance are brought low because some employees crossed the line, while others kept silent.

Trust in whole industries has been demolished. CEOs are indicted. Corporate brands and reputations, that took decades to build, evaporate with the speed of the internet.

This program asks – is there a way forward?

Tom Donaldson: Welcome to In Search of the Good Corporate Citizen, I'm Tom Donaldson. From the trenches of global companies we're going to take on three tough ethics issues.

Paul Moore: It was like taking the lid off of a pressure cooker. Boom!

Aaron Beam: I committed fraud and that is what I'll be remembered for.

Tom Donaldson: The challenges of balancing a company's short and long-term goals.

Ben Heineman: The culture of silence is often what leads to the problems getting worse.

Tom Donaldson: We'll explore how senior executives grapple with expenditures that could mean disappointing Wall Street.

Bill George: These people are in the healthcare business. They are supposed to be worried about people's health.

Tom Donaldson: We'll discuss how companies can make sure that difficult ethical concerns get raised and heard.

Donna Boehme: It doesn't help to have somebody with the nominal title of chief compliance and ethics officer if they are not integrated and not present.

Narrator: In Search of the Good Corporate Citizen is made possible by a grant from Altria Group.

Tom Donaldson: Panelists for today's program include: Bill George, former Chairman and Chief Executive Officer of Medtronic and author of Seven Lessons for Leading in a Crisis, Ben Heineman, former General Counsel of General Electric and author of High

Performance with High Integrity, Donna Boehme, former Chief Compliance and Ethics Officer for both BP and the BOC Group and an international advisor on corporate ethics.

Tom Donaldson: To get a sense of what business people are thinking on these issues we sent a crew to financial centers in New York and London. First we asked people "Do you trust sales people?"

Man on the street: That is a very good question, do I trust sales people, I hope I could trust them.

Man on the street: Almost never.

Man on the street: No.

Woman on the street: Not one hundred percent, no. Do you?

Narrator: Next we asked what causes employees to engage in unethical acts?

Woman on the street: When you are under the gun and you have to deliver and it is a matter of your job and your livelihood…

Woman on the street: Money.

Man on the street: Greed.

Woman on the street: Some because they think they can get away with it.

Man on the street: Unrealistic expectations set on them so they don't feel like they have an option to make the right choices.

Narrator: Next, we asked are people in business rewarded for how they meet their targets or is it just whether they meet their targets?

Man on the street: Usually it's whether they make their targets. I agree.

Man on the street: I think it is probably very target driven.

Woman on the street: Usually it's whether they make their targets.

Woman on the street: Whether they make their targets.

Narrator: And 52 % believe they will be rewarded for results, not how they achieved them.

Tom Donaldson: So let's get started on our first segment about how good sales can sometimes go bad.

Tom Donaldson: And I would like to begin with you Ben, this has not been a good day for you. You are serving as the general counsel, the top legal officer of a major Fortune Five Hundred company. You have just put down the phone on a very discouraging conversation. You have been talking with your counterpart, that is the top lawyer, or general counsel, at another company. It is one of your best customers. He is furious. Because he says, I don't know Ben but your sales people seem to live on a different planet from the people who have to deliver the equipment you're selling us. …. Not only that, he adds, I don't expect to be sued if we walk away from this contract. What is your first move?

Ben Heineman: The first move is to find the facts, to say that the customer is terribly important, the relationship has to work in an ethical and fair way to both parties and I've got to get into it and find out what really happened.

Tom Donaldson: Well I've got more bad news for you. Because you talk with the people in your delivery group and they say "You know these sales people, they have been over-promising a lot. As a matter of fact we just lost another big customer about a month ago and for these products these low tech medical devices the stuff was on the drawing board but it hadn't even been developed at the time the sales contract was signed." It looks like your sales people are over promising. What do you want to do?

Ben Heineman: In all problems like this, you get the facts, if there is discipline warranted against individuals you take the discipline. Most importantly you fix the system. You find out what was wrong in the system, what was wrong between the design and the sales people and you change that. And then you make sure that is followed up and the remedies are in fact real.

Tom Donaldson: Bill, as the CEO, have you ever heard of sales people over promising?

Bill George: Sure.

Tom Donaldson: Happen a lot?

Bill George: It depends. It's the management's job to insure that they only promise what they can deliver and to make sure that the people doing the delivery, the people responsible for designing, developing, and delivering the products are fully in accord with that.

Tom Donaldson: But sales people have to hit targets. How do you align what is happening in sales with what needs to happen in the rest of the company?

Bill George: First of all they have good training. And they are only promising what they are allowed to deliver. I can tell you that a big part of that target, that bonus would go away if they were over promising more than they could deliver. Worse than that they might be terminated for doing that. It is up to management to know what you are signing in the contract. It is not just the sales department. They can't just go out and sign any contract they want particularly on a developmental product like you are discussing.

Tom Donaldson: And in a firm for which you are the CEO, you'd evaluate people just on hitting the numbers or would you have other criteria that would be important to you?

Bill George: Well I think you have to evaluate them on hitting the number and on a whole series of subjective things. Particularly when you are bringing in a contract, this may be a multi-year contract, it may take a long time to develop it, so you can't just pay them on the short term.

Tom Donaldson: A balanced score card approach?

Bill George: Well, I think that is a clear part of it. Customer satisfaction, is the customer happy, does the delivery go well, does the installation go well? You pay them all those things. By the way you don't just pay them cash you probably pay them some vehicle that is either withheld cash more likely stock that has restrictions on it.

Tom Donaldson: Let's bring in the ethics officer here, Donna I want you to imagine that you are the chief compliance and ethics officer and by the way what do chief compliance and ethics officers do?

Donna Boehme: Bring information to senior leadership and ensure that they have seen the right context, they understand some of the fallout from different decisions and really how it will be seen among the community stake holders, employees. As a chief compliance and ethics officer you really want to encourage management to pay attention to how you compensate your people. Because ultimately you get the kind of behavior that you reward.

Tom Donaldson: Let's get real here if we can. Would an ethics officer tend to make the same kind of salary as the other people, the CEO and the chief counsel are making.

Donna Boehme: Probably not but I do think that the chief compliance and ethics officer has a critical role that is not yet fully understood.

Ben Heineman: The chief ethics officer is the CEO, the chief ethics officer has the title but the chief ethics officer has to be the CEO in the company. If it doesn't start at the top and it's not driven down by the CEO then it won't happen. And I imagine that Donna would agree with that. In a funny way, title is a little bit of a

Tom Donaldon: So you don't need Donna?

Ben Heineman: No we do need Donna. Donna's going to help drive the right behaviors and help all of us do the right job but if the CEO is not the chief ethics officer it won't happen.

Tom Donaldson: Let me try to follow that up. I want you to imagine in this scenario that we are talking about, which by the way is a true story, that there was a meeting that the top leaders of the company were at, there were others, in which they announced a new surge, a sales surge, a new sales initiative. They called it sales surge 100. Ambitious goals, they hope to increase sales by 100%, double sales within twelve months. Donna, you weren't invited to that meeting, should you have been?

Donna Boehme: That is the seat at the table. Being present and being able to make

Tom Donaldson: You should have a seat at the table?

Donna Boehme: I would say yes. I think that is critical. It doesn't help to have someone with the nominal title of chief compliance and ethics officer if they are not integrated and not present to be able to give their input.

Tom Donaldson: But Ben, I thought the CEO was supposed to be the chief ethics officer, do you really want the ethics officer at sales initiatives, at compensation meetings?

Ben Heineman: Of course, you want to debate inside the company about what's the right thing to do. As we've said many times it's not just what is legal to do it's what is the right thing to do. And that's going to be balancing a lot of considerations and someone with Donna's background has a very important perspective to bring to the table. She is not going to make the decision, the CEO is going to make the decision as long as it is not illegal but it's critically important to get her perspective.

Tom Donaldson: And Bill, how about it? Donna should be at the table?

Bill George: It is fine to have her at the table but I'm with Ben, the decision maker is the CEO and you bring all the people around but you make the call. There is nothing wrong with a sales surge. We've done them all the time. This is something you want to have but you do it with in certain ground rules. No one is suggesting you are going to get the sales unethically or out of compliance everyone has to be clear what those are. And Donna has to ensure that all of our sales people are properly trained on the ground rules here.

Tom Donaldson: One of the problems that comes up often as you know is the person who always hits those targets, the golden boy, the golden girl, but who has shall we say ethical challenges, they aren't pond slime but they are in the same family. How do we manage people like that, sales people, in a firm well. Ben?

Ben Heineman: I think we have to talk about the culture. You have to have a high performance with high integrity culture. Integrity means obedience to the law, following ethics and having values like honesty, candor, fairness reliability, and trustworthiness. That starts the whole sales process because if you don't have that you are going to have corrupt sales people. It's the whether not the how. You've got to have that kind of culture is the critical thing.

Tom Donaldson: So the answer is culture.

Ben Heineman: And culture developed by the leadership and so that the sales people know what is the right thing to do what is the right thing to say, what they can and can not do. The lines are clear.

Tom Donaldson: It's culture and leaders. Like the CEO have to put that culture in place, how do they do that Bill?

Bill George: They are out talking to people all the time. They insure that people are properly trained. They go and see procedures. They are out with the sales people. They are watching what is going on. They can't watch them all but they set a tone and they don't create a star culture. If you create a star culture you get that kind of behavior so you

Tom Donaldson: Star culture, what do you mean by star culture?

Bill George: You mention golden boys, golden girls where you play to that star who is always hitting the numbers. How did they do it? Look there is nothing more important than your reputation. And your sales people are your front line in your reputation. If they don't carry out your company reputation then ultimately they have to go away.

Tom Donaldson: Realistically, do golden boys, golden girls get special treatment even when it comes to ethics?

Donna Boehme: Well that depends on as Ben said the culture of that company. I've said it before you really have to pay attention to what you reward and who you reward and why.

Ben Heineman: At a minimum people should be trained about not deceptive practices, unconscionable terms, things that are just flatly wrong under the law. Then we have to go beyond that to talk about fairness. Because we want our sales people to represent the company in it's best light because we want repeat customers. One of the things you can measure is whether or not people come back to you.

Tom Donaldson: All employees regardless of what company they work for can find themselves under pressure to cut corners. We sent our crew to Alabama to talk with someone who had succumbed to that pressure and found himself on a very slippery slope.

Aaron Beam: Before the fraud broke, people would ask me what did you do before you retired? And I would say I was the founder of HealthSouth. But today when people ask me I kind of look away and I say well I was an accountant.

Narrator: Aaron Beam a former chief financial officer learned first hand just how dangerous the slippery slope can be.

Aaron Beam: There is just a tremendous amount of pressure out there to do whatever you've got to do to get the numbers that the street is expecting.

Narrator: In 1984 Beam and Richard Scrushy were two of the founding members of what became one of the largest healthcare service providers in the United States.

Aaron Beam: Richard was able to convince Citicorp venture capital to invest a million dollars in his start up company. By 1994 we were in all fifty states. We had forty thousand employees, we were the largest company in the state of Alabama. We had almost ten years of uninterrupted earnings growth and we were rock stars. I was a rock star in Birmingham Alabama.

Narrator: As the stocks increased in value Beam and other founders were ensconced with all the trappings of their success.

Aaron Beam: Everything was fueled though by the company continuing to grow to keep the earnings, to keep delivering good numbers to Wall Street so the stock would stay up. But it was getting harder to do. And it was really time to tell the street that our earnings were going to slow down. But Richard just couldn't do it. By 1996, Bill Owens, who was my chief accountant and I ran the numbers and we had missed street expectations really badly. Bill and I went in and we told him that we are going to have to report bad numbers. Richard said no. He says I need you to get the numbers where they need to be. There is no way in my mind I could justify that and that was the point I should have not been on the slope I should have gotten off and I didn't.

And the ability to do my job was hard. The company was becoming more and more bogus. We weren't really doing what we said we were doing. Everybody's energy was put into quote cooking the books rather than minding the store.

Well what happened, of course, the next quarter rolled around and we missed our numbers again and we went into Richard, showed him the numbers, and he says you gotta do it one more time guys. I didn't have the ethical bearing, the courage, or, I was weak. I didn't want to disappoint the street. I didn't want to disappoint the stockholders. I liked making five hundred thousand dollars a year. I enjoyed that.

Narrator: Beam continued to go along with the deception. But this only delayed the inevitable and pushed HealthSouth deeper into fraud.

Aaron Beam: I remember when we started committing the fraud Richard made the comment to us look guys everybody does this. Everybody has quote crap on their books. And don't be so all high and mighty to not think that other people do this too. I constantly keep thinking about it like teenagers and peer pressure. I think it's the same way in the business world sometimes. You compromise yourself a lot easier if you think everybody is doing it.

Narrator: The situation left Beam without many options. He could continue on with the fraud or he could blow the whistle on Richard Scrushy.

Aaron Beam: I was afraid of Richard, literally intimidated by him.

Narrator: Scrushy had control over every aspect of the company's deception including heading up the audit committee.

Aaron Beam: And he told them what to audit and what not to audit. He headed up the compensation committee. He made all the decisions about compensation. The corporate board level it was the worse imaginable set of controls that there could be because Richard controlled everything. And I wanted out so I literally retired.

Narrator: For the first six years of Beams retirement. He thought just maybe he had gotten away with the fraud. But in 2003 Beam's worst fears came to light.

Aaron Beam: I was watching the evening news along with my wife and they said "Breaking News: Massive Accounting Fraud Exposed at HealthSouth."

Narrator: In the hope for a lesser sentence, Beam, and other HealthSouth executives agreed to testify against Richard Scrushy.

Aaron Beam: They tell you that if you testify against Richard and you are honest and truthful and helpful we'll take that into consideration when we recommend to the judge what kind of time we think you ought to serve.

Narrator: Beam was sentenced to three months. Following weeks of jury deliberations, Richard Scrushy was acquitted.

Aaron Beam: When I heard about it, it was hard, I, I cried. It was just really a blow that I was so discredited and he was walking around free. I was fined about a total of five hundred thousand dollars, I had to auction off my home that I was so proud of.

Narrator: The government left Beam with enough for a modest home. With his fortune now gone Beam came out of retirement to run a small landscaping business out of Loxley, Alabama.

Aaron Beam: We call it a landscaping company but basically it is one man and a lawnmower. My legacy is not a guy that started one of the largest health care companies in the history of the United States that is not my legacy. My legacy is that I'm a felon and I committed fraud. And that is what I'll be remembered for.

Tom Donaldson: Bill, do you feel sorry for this guy?

Bill George: Actually, I do, here is a guy that started out just fine. He admitted he was weak. He lost sight of his true north and he got pulled off. But you know if you work, Tom, for an unethical person it's going to rub off on you eventually. He should have resigned early on when he realized he was working for an unethical person. But I'll go one step further, any company starting with the CEO who decides they are going to play Wall Street's game will eventually self destruct because they start serving Wall Street instead of serving all those patients at HealthSouth. These people are in the healthcare business they are supposed to be worried about people's health. Meanwhile they are worried about serving Wall Street. You will eventually destroy your company if you do that. So you have a multiplicity of problems here.

Tom Donaldson: Ben, is this guy whining, or do you feel sorry for him?

Ben Heineman: I think he is clearly culpable and I think that people who are part of institutions have a duty to speak out. The culture of silence is often what leads to the problems getting worse and so he had an obligation to either speak out to his chairman, which he tried to do, to the board which was inept or somewhere else. So I don't feel sorry for him. He knew he was wrong. He should have been strong enough not to perpetuate that culture of silence.

Tom Donaldson: Okay so let's take for granted that there are inevitable pressures in business. Whether it is to hit the numbers or make sales that can push some people maybe even pretty good people to do bad things some times. You've told us Ben, that culture is the solution and leadership in the company is key, my question is, and Donna, let me ask you this, how can we even know that somebody is ethically challenged? They don't tend to say that.

Donna Boehme: We have heard today that the CEO is the chief ethics officer and I agree that you can't have any kind of culture without the CEO setting the tone and driving it through senior management but I think that unless, the last time I looked, those guys had day jobs. And just because the CEO has a vision doesn't mean it's going to happen throughout the company. You've got to create checks and balances throughout the company and the systems have to respond to that and have to create early warning systems. so that you can know those things.

Tom Donaldson: What else are we missing here? I mean people in the audience work in companies where the kinds of things we are talking about happen every day. What are we saying about how a company can manage these pressures better?

Ben Heineman: I think that we basically have two dimensions of the culture. One is the negative culture where we have rules that you can't cross the line and if you do you are punished. But you really have to create an affirmative culture where the people in the company want to do the right thing. And the right thing is understood. As I say, it's the law and ethics are clear. You can create an affirmative culture that people are proud to be part of and it's what the company represents and when you get that affirmative culture …

Tom Donaldson: That sounds great, Ben, how do we do it?

Ben Heineman: You do it by compensation, by education, and training. You do it by leadership, you have the leaders involved, there are many techniques for the how. What's important is the beginning acceptance of the why.

Bill George: It starts with governance, it starts with the board of directors. This place didn't have a board, the CEO is the chairman of the ethics committee?

Tom Donaldson: You're talking about HealthSouth?

Bill George: HealthSouth! It starts with the board of directors that is concerned about it. I serve on several boards. We are extremely concerned with these issues. You have to get reports every ethical violation. You have to test out how ethical is the management. You have to get information that is coming from other sources. Keep yourself in fully formed. This board didn't do it's job.

Tom Donaldson: Let's keep this in mind while we turn to the next ethical challenge.

IS ANYONE LISTENING?

Tom Donaldson: Are employees willing to raise tough ethical issues? We asked people on the street, if you saw your boss do something unethical would you feel comfortable reporting it?

Woman on the street 1: I would talk to my boss first about it?

Man on the street 1: Would I feel comfortable with it probably almost always no, would I do it, it depends upon maybe the situation.

Woman on the street 2: If it was unethical though I would have problems with it.

Narrator: Next we asked do you think senior management knows what kind of behavior really goes on inside their companies?

Woman on the street 3: I think senior management think they know what is going on I suspect they barely scratched the surface.

Man on the street: I think for the most part they do.

Man on the street: Not at all.

Man on the street: I think they do but they turn a blind eye for people to get results that senior management want.

Woman on the street: I do

Woman on the street: It's impossible, you are relying on middle management all the way through there's just no way.

Man on the street: I think the more layers you have in a company obviously the farther away you get from what's really happening.

Narrator: In fact, less than half the employees surveyed believe that senior management knows what kind of behavior really goes on inside their companies.

Tom Donaldson: Donna let me begin with you. You have been receiving recently some calls on the ethics hotline, the ethics helpline, this is where people can phone in anonymously and tell you about problems. And they say that at a plant that your company just acquired there is a wage freeze and as a result of that wage freeze good people are leaving. The catch is the good people knew how to run the plant safely. Bottom line, plant is unsafe, ethics officer what do you do here?

Donna Boehme: Well in that particular instance, a safety issue, that is going to be what we might call level one. Something that is a safety issue really needs to rise up.

Tom Donaldson: But how do we know, I mean the issue is in part wages, how do we know these people aren't just griping?

Donna Boehme: The percentage of people that call in that make spurious calls I think the misconception is that is a huge percentage, it's very low. It's a big step to call the helpline. I think ultimately, you need some expertise, to deal with the intake and manage it and make sure that the calls get managed the way they need to be. I just think there are a thousand and one ways that can go wrong.

Tom Donaldson: You talk with the plant manager and the plant manager says "Donna, please don't say anything about this, my job may be on the line, but to tell you the truth, I haven't been sleeping, they are right, we have lost the good people we need to run the plant safely but the division manager is on me to cut costs, I've got to do it. What now ethics officer?

Donna Boehme: With any call like that, any case, you've really got to pull together the right team to look at the facts and also whether that is a systemic issue for the company.

Tom Donaldson: Now you have to keep this claim confidential?

Donna Boehme: If confidentiality

Tom Donaldson: Plant manager has said we've got an unsafe plant but I don't want you to say anything about it. Do you say anything about it?

Donna Boehme: You have to manage the issue in a way that brings the right kind of issues up to the business leader, to the safety and environmental people.

Tom Donaldson: How about this division manager? He is the guy that has been putting pressure on the plant manager.

Donna Boehme: Ultimately that person gets interviewed as well.

Tom Donaldson: Let's do that interview. At least, let's imagine you get a call from me, I'm the division manager, by the way my division's doing very well thank you, I've been with the company a long time, I have a lot of power, I'm a vice president in the company. Donna, thanks for looking into this, frankly, this is a little above your pay grade, also it's a business issue, I handle these all of the time, we have to make these tradeoffs, it is not an ethics issue, I have to ask you to butt out. Bill are you interested as CEO in finding out about this? You don't know about it at this point but would you want Donna to come to you?

Bill George: Your first call comes to me, you can take action later, but call me right away and say Bill, here's what I've just been told. First of all we want a culture of candor and transparency here. Your job is not to protect the plant manager the division manager or anyone else your job, or even me, your job is to protect the company's reputation. You and the chief safety officer ought to be on the first airplane down to the plant and I want some of these people in my office very soon. First of all I want to go get the facts and put a fact finding team and I'll call the division manager and tell him we are going to do this.

Tom Donaldson: Bill she has a direct reporting line to you?

Bill George: Yes.

Tom Donaldson: Donna, how are you going to feel about jumping over some people for example the general counsel and going to the CEO?

Donna Boehme: I think that chief compliance officers should have a direct line to the CEO and not just the CEO to the board. So I wouldn't have any problem with that at all.

Bill George: And Ben, I want in my office to, I want him there.

Tom Donaldson: The chief counsel, isn't it true that in most instances an ethics officer will be reporting to the chief, let's, Ben, do you want to

Ben Heineman: Yes, let me make a comment, what we need to talk about is the system that we have in place, not the particular case, you have to have these systems in place for having employees express their voice on concerns that they have legal, ethical, commercial, whatever it may be, and those concerns have to be reported at the top of the company. In the company that I'm familiar with they would come to the CFO and the general counsel, you wouldn't have this division of management problem because they would be above any operating person to begin with. They would handle the matter professionally, quickly, no retaliation, taken with great care and concern. If they couldn't handle it themselves because it was so serious then they would go see the CEO but the critical thing is to have a system where it comes to the top right at the beginning and everybody is encouraged indeed required to report.

Tom Donaldson: How realistic is that?

Ben Heineman: Extremely

Tom Donaldson: For the ordinary corporation?

Ben Heineman: Extremely realistic.

Tom Donaldson: So Donna, as the ethics officer would be able to go to the CEO, certainly to the general counsel if, is that right Donna?

Donna Boehme: I think it's important that there is a system in place because there are other things going on. There is a level of confidentiality that you need to preserve in the system so that employees have faith in the system. So there is more going on than every time I get a phone call I'm calling the CEO.

Ben Heineman: We have to distinguish between a report and the individual. You can report anonymously and still handle the matter substantively. That is what we are really talking about here. And that is a critical distinction.

Donna Boehme: That is where I am going. The system needs to support several different drivers one getting the information where it needs to go directly to the people that need to manage it but also protecting the confidentiality of the people that raised the concerns otherwise you'll never get a concern raised again. And dealing with the powerful managers along the line. And Ben I disagree, I think there are many instances where powerful senior managers can come in at the system and try and attack the way that the matter is handled. I've seen that all the time.

Bill George: That is why you need to inform the CEO, you protect confidentiality, the person on that hotline that reported that information, but you don't protect the plant manager or the division head.

Ben Heineman: I think we are ultimately in agreement I didn't suggest that at all.

Tom Donaldson: Just for time, I want to run a tape that relates to precisely what we are talking about if we look at the history of corporate scandals we find ourselves scratching our heads asking why didn't someone speak up? Our next story may shed some light.

Narrator: Three thousand miles from Wall Street in the small village of Wass, England. One man knows firsthand the challenges of business ethics. Paul Moore was hired to evaluate risk at a large British bank called HBOS.

Paul Moore: As soon as we started to take up the rocks and look underneath them almost everywhere we looked there were control issues, there were specific examples of potential miss-selling of products. Over selling of credit and so on.

I think I can sum it up by the lady of Halifax who said to me that we'd never hit our sales targets and sell ethically. It was like taking the lid off a pressure cooker- BOOM! It was that bad. Everybody in the front line knew that what was happening was wrong. They didn't feel confident to speak up.

Narrator: Senior management, according to Moore, was moving toward a new way of banking.

Paul Moore: They recruited a man who had worked for Azter which is now part of Walmart. He was a supermarket retailer to run the retail bank. So you can see how the mindset was working. We'll move away from that old way of doing banking which is kind of fiduciary, very cautious into a kind of retailing strategy. It was basically what we call a stack 'em high sell 'em cheap strategy.

Narrator: And, HBOS returns were beating the competition year in and year out.

Paul Moore: They were being told they were brilliant by the analysts, by the city, by the shareholders, by everyone, and there is me. I called myself a man in a rowing boat trying to slow down an oil tanker perhaps it was a man in a rowing boat trying to slow down the titanic. Maybe that's a better analogy. And um, so I'm a trouble-maker, I'm a nuisance.

The retail was a mixture of incentivize on sales targets and if they don't hit their sales targets you hit them over the head with a blunt instrument. So you have got both elements operating.

The chief operating officer of the retail bank, I won't mention his actual name, his nick name was Wacker. My boss used to take great pleasure in meetings in referring to him as Wacker. They celebrated the fact that his name was Wacker. So it was a kind of culture that celebrated bullying.

When a sales culture is out of balance with the controls and controls includes risk management, compliance, quality and so on. The interests of the customer doesn't come first it is the interest of the sale that comes first. So you will get wide spread overselling of credit. Wide spread miss-selling of products and so it is a very bad thing for ordinary people. They get the wrong thing.

Narrator: As Moore was beginning to report these results some of the senior business leaders got angry.

Paul Moore: As we tried to do our legitimate work in gathering evidence to demonstrate what the position really was it felt very much like we were going behind enemy lines. It was incredibly adversarial. Actually my job was to raise these issues. It was a formal part of my accountability to identify actual or potential breeches of law or regulation.

Narrator: According to Moore key aspects of his findings were kept out of board meetings and statements he made were left out of the minutes of those meetings. Still, others seemed to appreciate the information.

Paul Moore: We get to the October audit committee and the chairman just before I'm making my oral comments he says to me. I want to thank you for tabling the full version of the sales culture report I can now see just how serious things are. After the meeting I sent an e-mail to my two deputies saying all is well that ends well.

Narrator: But the story did not end well. Within a month the CEO summoned Moore to his office and told him he had lost the confidence of the business leaders and was being reorganized out of a job.

Paul Moore: When he fired me after I had written the e-mail that all is well that ends well. First of all I just couldn't believe it. So there I was I went out on the street and I cried. I just couldn't believe it. Why did I take the personal risk, why did I have a blindness to that personal risk. Because I cared about the organization, I cared about its customers, I cared about its shareholders, I cared about its colleagues.

Narrator: In fact, it seems Moore got it right. The bank's aggressive sales practices brought them into the same subprime mortgage thicket that had doomed other banks. Facing imminent collapse, HBOS had to be acquired by Lloyds Bank. So why didn't others come forward?

Paul Moore: They were like lemmings going behind the pied pipers of the chief executives who were being paid to take them all over the end of the cliff. A herd instinct creates such an energy that virtually nobody is going to have the courage to say stop because they will just get trampled.

Narrator: Moore now runs a data technology company. He has chosen to consult with companies about risk management but has given up on seeking internal positions with other companies.

Paul Moore: When you blow the whistle you can become a persona non grata, I have used the horrible expression toxic waste, the bank has toxic assets and I became toxic waste.

Narrator: After Moore was terminated, HBOS undertook what was supposed to be an “independent” investigation of Moore’s complaints. The investigation cleared HBOS and said Moore was out of line, but it was conducted by the same firm, that served as HBOS’s external auditor. Moore says this was an obvious conflict of interest.

Paul Moore: They described me in the report that was done after my dismissal. They said that I was extraordinary and I ranted and that I was prickly—very personal things to say about somebody. I suppose I was extraordinary to them because I was trying to say something to them that they simply couldn’t get. They thought they were so brilliant. Risk management isn’t about that it’s about looking forward isn’t it. They weren’t going to listen to me. It’s as simple and as dreadful as that.

Tom Donaldson: I would like to welcome our new guest, Bruce Shine. Bruce, you have represented a lot of whistle blowers and you’ve just seen an instance of somebody who tried to speak up and you know from our conversation before we were talking about a case in a company where a person didn’t feel they could speak up. Is this stuff realistic?

Bruce Shine: You kept on using the word earlier, culture. Listening to Mr. Moore’s story it’s the culture. He talks about lemmings and what he is really talking about is that there is the leader doesn’t have a moral sense to him, an ethical sense and that is exactly why the company does what it does. And that is why a man like him is so unwelcome because he is the bad news he is the one that tells you, your father has a drinking problem. And you don’t want to talk to him again.

Tom Donaldson: Does the average CEO, does the average general counsel get it?

Bruce Shine: If they have gotten it, it’s well before they ever came to the company. I think there is, some people, I don’t think you learn how to be ethical, I don’t think you learn how to do the right thing, you either have it and in many cases people don’t, or they have willfully decided to cast it aside for something more important. In one of your clips, greed, the person said.

Tom Donaldson: Aren’t a lot of whistle blowers, not very nice people?

Bruce Shine: What happens I think with many whistle blowers is that they start off thinking they are doing the right thing and then as time progresses and they are beat down and they are fired or they are or they are told we really don’t need to hear from you they become almost paranoid in some ways. These whistleblower lawsuits, they are not two or three months, they are three of four years. And if you go through losing your job, litigation, and all the rest, after three or four years you kind of feel that you deserve a special place in heaven.

Tom Donaldson: I take it, Bruce is not somebody you want to see in court defending an employee of your company who is a whistleblower? How do you and how does the chief counsel, how does the ethics officer, create the culture that we are talking about so that people feel that they can actually speak up?

Bill George: There is actually two kinds of CEOs, there is the presiding CEO that looks good to the board, gets reports, sits in his or her office, and studies the numbers. There is the engaged CEO that goes out with the people all the time so he or she knows what is going on. They are engaged with the people, they are active, and they have this sense. The only way not to have whistle blowers is to have a culture of transparency and candor so everyone feels that they don't have blow the whistle if everyone feels like we want it open if you insist and if you demonstrate that look you will never get fired for bringing bad news. You will get fired if you cover it up.

Tom Donaldson: So I take it, it is more than just saying it's okay to speak up, what else is involved?

Ben Heineman: Look, I think the system has to have two fundamental elements of people feeling that they can speak. Number one their concerns have to be taken professionally and investigated whether the facts go up down or sideways. That is essential, fair treatment of the facts where ever they run and no retaliation. On top of that you have to encourage the employees to report concerns that those two elements are critical but on top of that is the top leadership saying we want the employees to speak. We want to know first if there are problems of any kind that is what is necessary to make the system work.

Bruce Shine: Many of the people that I have represented have been CFOs, general counsels, they are not the CEO. But they have gone to the CEO, they've gone to the audit committee, and the audit committee hasn't paid attention. And the culture of the company is that the CEO really doesn't want to hear them.

Tom Donaldson: I want to throw something really tough at you. I want to go back to our scenario, do you recall, we have a plant manager who thinks it's unsafe, we've got a division manager who is trying to stuff it down. Happily we picked high integrity examples for our general counsel and CEO today I want you to imagine that they stonewall. Donna is in a bind, she is the ethics officer. Bill you have spent time on boards, does the board want to know about this?

Bill George: Absolutely. In this case the board was totally culpable. The chair of the board should have had the CEO and should have had his own investigation. If you let that kind of person Paul Moore be fired, let Donna be fired because she is doing her job, the board needs to hear. That is why you need to have an ethics committee or part of the audit committee is looking at these kind of issues. They have to come. The boards I've served on, they actually bring all these issues forward and tell us what they are.

Tom Donaldson: I'm going to put you on the spot, yes or no answer. Should we have a policy in companies that says in a situation where the ethics officer thinks she is being stone walled and the misconduct is at the upper levels she must go to the board not that she can go to the board, she must go to the board. Bruce?

Bruce Shine: I think it is a good one. Ah, yes.

Ben Heineman: Yes.

Bill George: Yes

Donna Boehme: One thousand percent yes.

MEET THE STREET

Tom Donaldson: I'd like to welcome our new guest, Bill Prachar. Bill, I want you to think back to a time before you were CEO. Back when you were climbing the corporate ladder. I want you to imagine that you're a division head. And I want you to imagine that your company is doing very well. Year after year, you have been hitting the numbers, as a matter of fact your company is doing very well. Stock rose twenty percent in the last year. Looks like you are going to beat the analyst's estimates on Wall Street. Bonuses by the way are in place. It looks like it is going to be a good year until the environmental manager visited you today and as he walked out of the office the only thing ringing in your mind was those pumps that manage the solvent in the container system in one of our plants are starting to go bad. They could leach into the ground in the neighborhood outside the plant. Concern you and what do you want to know?

Bill Prachar: Well it does concern me. It is a bad time of year for that to happen as we are approaching the end of the quarter, or the end of the year. I would want to know how serious it was. I would want to know if it is a real problem or if it is a problem that somebody is anticipating would happen.

Tom Donaldson: Here is how serious it is. You have talked to the plant manager and he says these pumps were made in Sweden. The problem is they don't make them anymore. They can't be repaired. You have to replace them and six months ago you got an estimate and unfortunately that estimate was for about eighty, ninety million. That is going to throw off everything you wanted to do for Wall Street. Where do you go from here?

Bill Prachar: Well I'm afraid I'm going to have to go to see the chairman and tell him we have to do this. Messing around with environmental problems and not using capital appropriately to deal with those problems can be actually a criminal offense. And so I think I would have to step up.

Tom Donaldson: Bill I want you to assume that are compliant with the regulations and the law. Now the experts who know these pumps are saying to you it is just a matter of time when they are going to go but it is not as if they'll probably go right away. If you go to the CEO he has to make that decision doesn't he? You don't give him any options.

Bill Prachar: He does. I give him no options. It is a call I have to make. If I am putting the environment in jeopardy, I am affecting the community where I do work, I am affecting the reputation of my company and I think I have to take that into account to make that kind of decision.

Tom Donaldson: Chief counsel, concerned about this kind of thing?

Ben Heineman: Of course, and I think the first question is what does the law require when you have knowledge that something is going to fail and it may do environmental harm, violate various environmental laws? You can give the CEO options if in fact there is a range of time but you are going to make sure that you get it ahead of time. Or if it happens you can stop any environmental damage but we need to know more facts here. But if there is the risk of environmental damage unless we spend the money and that environmental damage will be illegal in some fashion or harm the community in an ethical sense then we have to take the expenditure now. And indeed I think you can explain these things to Wall Street. Wall Street will understand a one off expenditure for a special problem. And if it doesn't understand then it is the short-termism off Wall Street and the company has got to manage but for both the short term and the long term and everybody who is a good CEO knows that.

Bill Prachar: I think there is a real temptation to try to double think these kind of issues, to try to rationalize a reason not to do it. I certainly wouldn't be a hero walking up at the last moment and saying that I had a several million dollar expense that is going to hit the bottom line so I would feel quite a bit of pressure to think very hard about could, is this the type of problem that is going to cause severe environmental consequences or is this the type of problem that will play out with a little risk but we can get through it? I think I'd be hard pressed not to have to think about that.

Tom Donaldson: Donna, this seems to be an environmental issue, is the ethics officer interested here?

Donna Boehme: Absolutely, the environmental issue can be a huge risk. The compliance and ethics officer has a role in bringing the information and not just that but maybe context information around that. That's really if they have a seat at the table.

Tom Donaldson: A seat at the table? What's that mean? What's a seat at the table?

Donna Boehme: Well, I think, too often chief compliance and ethics officers are in name only. They are somewhere down the food chain. Where they really don't have a seat at the table to be at the meetings where things are happening and to raise issues that need to be raised.

Tom Donaldson: Bill, you're still the division manager, and you just got a call from me, I'm head of People for the Planet. Do you want to talk to me?

Bill Prachar: No. I don't want to talk to you Tom. These are difficult problems. Having said I don't want to talk with you I probably would assuming I could do it within the confines of the rules that now affect talking to outsiders about financial matters.

Tom Donaldson: So you would talk to me?

Bill Prachar: Yes, I would talk to you.

Tom Donaldson: Would you meet with me?

Bill Prachar: I would meet with you yes, assuming you are a legitimate group with a legitimate set of interests. That is representing a, yes, I think that a mistake that has been made in business is not meeting and not being transparent with outside groups that have interests that whether you disagree with them or agree with them are legitimate.

Tom Donaldson: And Donna, you are shaking your head but Ben?

Ben Heineman: You absolutely have contact with stake-holders and get their point of view. I think you've raised a larger problem that I really think we ought to identify and that is how do you do prevention in companies? You don't necessarily wait for bad things to happen to get things done. Part of being a good company, and part of being a good citizen is on all dimensions, environmental, sales, products, you're trying to get ahead of the problem.

Tom Donaldson: And it can be done?

Ben Heineman: And it can be done and it can actually be more cost efficient. If you do proper kinds of maintenance and repair on your plant and equipment you will have fewer environmental problems.

Bill Prachar: But bad things will happen.

Tom Donaldson: Our last set of interviews provides some optimism on these topics.

Narrator: We asked people on the street if they think senior executives at most companies value ethics and integrity over short term business goals.

Man on the street 1: I think they do absolutely value that and in the long term I think that is what keeps business and things running properly.

Woman on the street 1: It depends what sort of company you are working for.

Woman on the street: Some companies money talks and some companies ethics is very important.

Narrator: Do people think a strong ethics program makes a difference?

Man on the street: Yes absolutely, I do yes.

Woman on the street: Yes, it does.

Man on the street: I believe so, yes.

Woman on the street: I do believe communicating that and talking about it makes a huge difference.

Man on the street: It establishes a baseline if there is a need for behavioral change.

Woman on the street: I think anything that builds into a company ethics, that people understand the values of the company, yes, I do think it is worth doing.

Narrator: Research indicates that companies with a strong ethical culture have almost 75% less misconduct than other companies.

Tom Donaldson: We just saw some optimism and we have been talking for awhile about how predictable currents, pressures to make sales to hit numbers, the estimate that Wall Street provides, that these kinds of pressures create currents that can be dangerous. How much optimism can we really have? We watched the Enrons, we watched the AIGs, we watched the Lehman Brothers fall on an almost regular basis. How much hope can we have?

Ben Heineman: I believe we need to change the definition of what a CEO does and we have to start there. The CEO has to balance risk and taking risk and has to fuse performance with integrity. That is not the way the CEO is defined now, we have to redefine it, change the training, change the compensation, and change the board oversight, that is a tall order that is a major change in the way we govern corporations today so we have a cause for distrust of what has happened in the last few years. The only cause for optimism is if people buy into a different vision.

Tom Donaldson: If you could wave your wand and get a different kind of CEO in our nations business what kind would that person be?

Ben Heineman: That person would have the fundamental task of balancing risk taking with risk management and fusing performance with integrity.

Tom Donaldson: And that is in contrast to just hitting the numbers

Ben Heineman: Hitting the numbers and the stock price

Tom Donaldson: Which tends to be what?

Ben Heineman: We have focused way too much on in the last ten years no question on driving stock prices and short term stock prices among the investors and that is what the boards have been looking at.

Tom Donaldson: Agree with that Donna? We need a holy new concept of a CEO?

Donna Boehme: I absolutely agree. And I think that I'd like to see CEOs that understand ethical culture ethical leadership is more than just tone, more than just words, it really needs to be driven through the corporation in some ways that are often difficult. Require resources and hard judgments and that those judgments and actions are

Tom Donaldson: What kind of actions do you have in mind?

Donna Boehme: I think integrating it into how you compensate people.

Tom Donaldson: How you pay them.

Donna Boehme: How you pay them. You get the behavior that you reward. How you promote people, how you discipline people, how you train, how you communicate but it needs to be integrated into every aspect of that corporation not just an add-on.

Bill Prachar: I think what is missing is the CEO who is willing to say I don't want that raise I didn't deserve it this year I shouldn't get it. So that his people know or her people know that the leadership that he or she is showing goes to compensation as well. And I think the ability to say to the board sorry I don't deserve a raise this year would take a tremendous amount of courage and if we had more CEOs like that who could really assess how their company is doing and how their leadership is being perceived we'd go a long way to solving some of the problems we have been seeing.

Tom Donaldson: Not so many of those now a days.

SO, WHERE ARE WE?

Tom Donaldson: While working for the government, Win Swenson, helped pioneer the basic format for compliance and ethics programs used in the United States. He has been monitoring how companies have responded to that model – what kinds of ethics programs they have adopted – ever since.   Win, do most US companies have strong ethics programs, how are we doing?

Win Swenson: Well, Tom, I think many companies do have strong programs and I think that is some very good news because we don't hear about that. What we hear about are the scandals that companies get embroiled in and we don't really ear that a lot of companies put a lot of energy and resources and effort to get this right. Now having said that, as some of our panelists indicated before there is a spectrum and some companies approach this in more of a window dressing kind of a way, they'll have a code of conduct they'll have a compliance officer just as you know Enron did but it won't be imbedded into the operating structure of the company, it's cosmetic.

Tom Donaldson: What does it take to have a really "strong" ethics program? What does it take to go beyond window dressing?

Win Swenson: Well I think that is a great question too, because even less is understood, I think about how difficult it is to do this right. Let's just start and think about how big some of the companies are that we are talking about. Many of these companies have fifty thousand, a hundred thousand, two hundred thousand employees or even more in some cases. They are the size of cities. What are the odds on a given day that someone in a city will do something they shouldn't do? They are pretty good. Now multiply that risk by the number of laws that employees can trip up on from antitrust, and advertising rules, environmental health and safety, gathering competitive intelligence, sexual harassment. The list is really pretty daunting. And then finally when you bring into the equation the number of countries that most businesses are operating in today to be competitive they maybe in is scores of countries with different cultures and values, in many cases those countries if they are developing have economies that are rooted in corruption so, getting it to the point where every employee every day is doing the right thing every day is a challenge.

Tom Donaldson: Do other stakeholders I mean, groups that have a stake in what the company does have a role here I'm thinking about the government, I'm thinking about institutional stakeholders?

Win: Well they do. I think let's take the government, the government of course has to be aggressive in enforcement, they have to hold companies to the line. I think we have to recognize we can't enforce our way to a solution. It is a little bit like I think how we approach speeders out on the highway. You may have a patrol car positioned somewhere. And that patrol car may catch a few speeders and others will see that guy getting caught and they'll slow down but it doesn't mean that people aren't speeding everywhere else. So we don't have the resources to enforce our way to a solution. I think government has to really reflect on what you were talking about before which is there are different kinds of companies that can find themselves in trouble. From the companies that have really tried to do everything the right way but still saw a rogue employee do something wrong to the companies that really approach this in a window dressing kind of way and what happened was almost inevitable. They need to move away from these almost cookie cutter deferred prosecution agreements and consent decrees that seem to say one-size fits all and calibrate penalties and the way they talk about these cases in terms of those distinctions.

Tom: How about the institutional investors? Do they have a role?

Win: I think they need to play a role too. I think at this point we have socially responsible investment funds but really the investment community does not understand much about ethics management of the companies they are investing in. I think they should for a couple reasons. One it's going to protect the investments they are making to understand that risk profile. Secondly, if they do that I think it will send a very important message to the management of these companies that how they manage ethics matters to the bottom line. And I think if society in general gets in line behind these companies that are trying to do this well I think we will have much more success in this search for the good corporate citizen.

Tom: Thanks Win and thank you for joining us on "In Search of the Good Corporate Citizen."

Credits

Narrator: In Search of the Good Corporate Citizen was made possible by a grant from Altria Group.