Firm Culture and Its Impact on Lawyers’ Ethical Conduct
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Sarah Gillaspey is Professor Hamilton’s research assistant and a second year law student at UST Law.

**Empirical Evidence**

The empirical evidence strongly supports our intuition that an organization’s culture exerts a significant influence on the ethical conduct of the organization’s members. In the academic context, McCabe, Butterfield, and Treviño’s 2006 survey of 12,000 students at 54 colleges and universities found that the “perception that other students [were] cheating had the largest effect on a student’s likelihood of cheating.”¹ Observed peer behavior was found to have more of an effect on student behavior than deterrence-based factors such as the perceived certainty of being reported or the severity of penalties if caught.² McCabe, Butterfield, and Treviño found “alarmingly high” percentages of improper behavior when students perceived a culture accepting of cheating.³ In this study, 56% of graduate business students and 45% of law graduate students admitted to engaging in some form of serious cheating on exams or papers during the past year.⁴

Other empirical studies point in the same direction. Tajfel and Turner found experimentally that merely watching an unethical act raised the probability that observers would follow suit, and the effect was more pronounced among in-group members.⁵ The implication is that we are more likely to follow ethical cues from those we consider to be in our in-group (for example by organizational rank, education, gender, class, or ethnicity). Similarly, the Illinois’ Commission on Professionalism (the Illinois Commission), based on a 2007 random sample of almost 1,100 Illinois lawyers, reported that “lawyers who behave unprofessionally are conscious of what they can get away with,” suggesting that these lawyers are aware of contexts when their

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¹ Data was collected from more than 5,000 business and nonbusiness graduate students at 32 colleges and universities in the United States and Canada during the 2002-2003 and 2003-2004 academic years. Donald L. MCCABE, Kenneth D. Butterfield & Linda Klebe Treviño, Academic Dishonesty in Graduate Business Programs: Prevalence, Causes, and Proposed Action, 5 Academy of Management of Learning & Education 294, 299 (2006).
² *Id.* at 300.
³ *Id.* at 299.
⁴ *Id.*
unprofessional behavior is accepted and when it is not. Additionally, there is support for this notion in a classic experiment. Additionally, McCabe, Butterfield, and Treviño found a connection between the perception that other students are not likely to report cheating and unethical conduct.⁶ They found that “the vast majority [of students] would be unwilling to report cheating under any circumstance … as a result of concerns about retribution and not wanting to be labeled as a ‘rat’ or ‘tattle-tale’.⁷ This reluctance to report further reinforces students’ perception of a peer acceptance of cheating, as it is believed that their peers are cheating and nothing will happen to the cheating students as a result of that behavior. Similarly, the Illinois Commission found that “lawyers themselves say they ignore, rather than confront, unethical behavior.”⁸ Lawyers stated that they felt that most of their peers, and even judges, turn “a blind eye to the problem,” making any system of accountability ineffectual.

**Fostering Ethical Culture**

McCabe, Butterfield, and Treviño suggest an “ethical community building approach.”⁹ Under this approach, community members seek to create a “culture of integrity” where “values and norms…are developed together,” and “moral socialization” is emphasized.¹⁰ There is a “clear communication of rules and expectations, [the] creation of normative pressures, [and there is a] commitment to prosocial values…and mutual respect.”¹¹

The Illinois Commission found that lawyers are looking to law firms to take a leadership role by disciplining their own lawyers who act unethically. The Commission suggested that ethical conduct could be better promoted by raising awareness of the nature and extent of unprofessional behavior to a state’s bar and the bench, training the judiciary to identify and punish wrong behavior, and working with law schools to train law students on how to deal with this behavior rather than ignoring it. Additionally, the public imposition of sanctions against wrongdoers can be useful especially if the sanctions undermine a culture of wrongdoing.

Creating social capital among lawyers and staff on an ongoing basis regarding the importance of ethics and effective peer review including reporting ethics violations should generate higher probabilities that lawyers and staff will in fact report misconduct. In a twist on

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⁶ MCCABE ET AL., supra note 6, at 299.
⁷ Id. at 301.
⁸ Id. at __.
⁹ MCCABE ET AL., supra note 6, at 302.
¹⁰ Id.
¹¹ Id.
his classic experiments, Milgram set out to determine whether individuals or groups could more positively influence whether the research subject would comply with the experimenter’s demands to give painful shocks to another subject under the guise that it would improve learning and retention. Milgram found that when two research assistants openly defied the experimenter’s demands (compared to one individual), more than twice the number of subjects disobeyed the experimenter’s orders to continue -- 90 percent compared to 35 percent. Milgram calls this phenomenon the “liberating effect” of the group – in other words, having at least one ally in speaking out against immoral authority was more than twice as successful. The term Milgram uses for the phenomenon is constructive conformity. In short, it pays to have allies in the face of speaking up within a climate of wrongdoing or organizational silence. Firms should encourage staff and lawyers to seek allies in speaking out against perceived misconduct.

Further support that the moral implementation skill of developing allies contributes to effective whistle-blowing comes from a more recent study examining the effect of social identity and group identification on the ability not to follow immoral orders from authorities. Haslam and Reicher conducted a study modeled after the Stanford Prison Experiment. In this randomized experiment, the results suggest that in defying morally deviant orders from authorities, increasing group cohesiveness – gathering one’s allies -- may lessen negative effects resulting from holding a dissenting moral view, and thus increase effectiveness.

**Goodpaster’s Model of Building Organizational Conscience**

University of St. Thomas Business School Professor Ken Goodpaster in his book *Conscience and Corporate Culture* suggests several key steps for corporate leaders to build an organizational ethical culture that should also work for law firms. The firm must orient, institutionalize, and sustain an organizational conscience. (“Does a Law Firm Have a Conscience? Minnesota Lawyer August 20, 2007). Law firm leadership must first orient the firm’s conscience by modeling (“tone at the top”), giving clarity about direction with mission

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12 We view obedience to authority as morally neutral and situational; it is appropriate and necessary depending on the context. The context in which disobeying authority is necessary occurs when those with authority and/or power are involved in perpetrating the wrongdoing.
13 The subjects being “shocked” were actually assistants of the experimenter; thus, no one was actually harmed physically in the experiment.
14 Assigning volunteers to the role of prisoner or guard, Haslam and Reicher manipulated the status position of each group (n=5, guards; n=10, prisoners). Unlike the Stanford experiment, the guards were bullied, experiencing increased stress in their role; the prisoners were the perpetrators. Because of the guards’ relative isolation and confusion with their role, they tended to work individualistically on their assigned duties. But guards who identified more with other guards were buffered from the negative effects of being bullied. *See* Alexander Haslam & Stephen D. Reicher, *The Psychology of Tyranny*, SCI. AM. MIND, October 2005, at 44.
and vision statements, and creating opportunities for reflection on “where we are in terms of ethical culture and where we seek to be.” The firm leadership can institutionalize a firm conscience through regular communication about ethical norms and ethical integrity, ongoing ethics education for all lawyers and staff, an ethics officer, an employee ethics hotline, performance assessments that include ethics, and assessment systems including gathering data from all employees for institutional improvement. The firm leadership can sustain a firm conscience by implementing hiring practices attentive to ethical values, promotion criteria that take ethical culture into account, and leadership succession planning to ensure that the next generation of leadership reflects the importance of ethical culture.