



Liar, Liar?

Drug
Trafficking,
Organized
Crime,
and Violence
in the
Americas
Today

Edited by
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Teach What You, or Know What You Teach?

Key Takeaways

- Board Discipline Cases
- Ethical Choices
- The Cost of fraud and unethical behavior in our industry
- Bouncing back from ethical lapses

Ethical vs. Legal

- Ethical behavior is doing the right thing when no one is watching – even when doing the wrong thing is legal
 - Aldo Leopold, University of Wisconsin Professor



Board Discipline Update

Jim Cownie Deputy Chief Counsel



Poaching From Employer



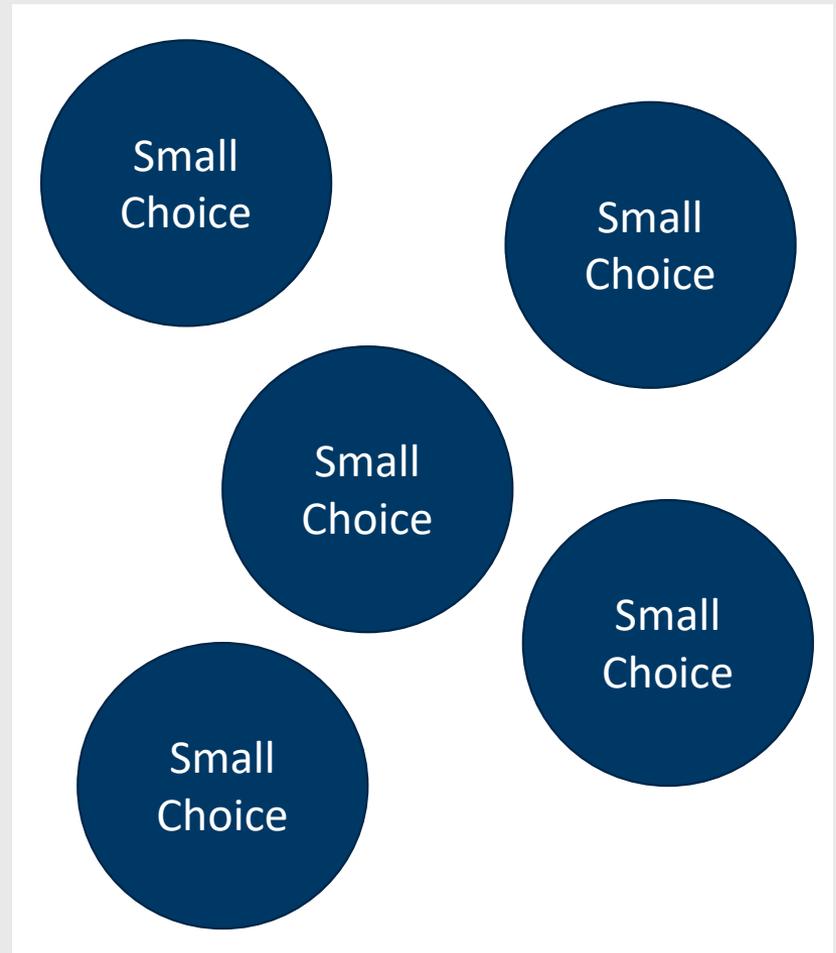
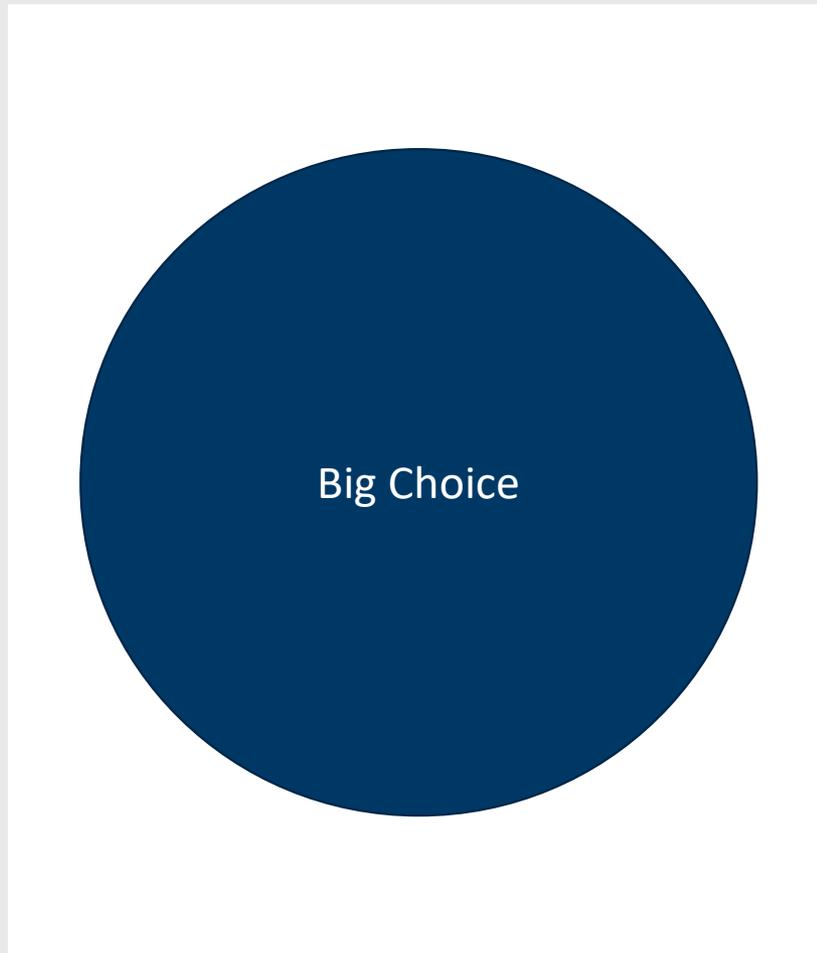
Case of the Collapsed Carport



Ignorance is no excuse....



Board Rules in Materials Context



STOLEN WITHOUT A GUN

Investigative Journalism
The Collapse of MCI/WorldCom



WALTER PAVLO, JR.
& NEIL WEINBERG

THE MCI/WorldCom Story

Walt Pavlo – MCI Worldcom – Part 1

Accounting Fraud

- Customers in arrears allowed to sign promissory notes; this turned the debts into short-term assets
- Indicating customers were promising to pay immediately, when in reality they only promised to pay later
- Using money from customers who paid on time to make it appear as if customers in arrears were making regular payments.

STOLEN

WITHOUT A GUN

Investing in the American Dream
and the Collapse of FICO, WorldCom,
and the Collapse of FICO, WorldCom



WALTER PAVLO, JR.
& NEIL WEINBERG

THE AMERICAN DREAM
AND THE COLLAPSE OF FICO, WORLD.COM

Walt Pavlo – MCI Worldcom – Part 2



Walt Pavlo – Consequences



Highway Construction Industry Case Studies

- What does a low-trust environment look like?



Scrap Metal Diet



Bad Bridge Bearings



Short on Materials



Concrete Reports Full of Hot Air



Poly-Carb Settlement in South Carolina

Recent Minnesota Experience

- Statistically improbable test results – no natural variability
- Altered source documents – cut & paste, white-out, different type fonts
- Mix production possibly varies from mix design; lower quality aggregates
- Suspicious third party test results



Board Rules in Materials Context

Mn Rules Chapter 1805

- Knowledge of Rules is imputed
- “Personal Conduct Rules”:
 - Avoid **any act** which **may** diminish public confidence in the profession.
 - Do not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation
 - Do not sign or seal documents not prepared by or under the direct supervision of the licensee

Mn Rules Chapter 1805 pt2

- Conflict of interest rules:
 - Employment, Compensation, Gifts
- Knowledge of improper conduct:
 - Knowledge or reason to believe
 - Licensee has violated statute or professional rule
 - Duty to report
 - Duty to disclose when board is investigating

Other State Laws

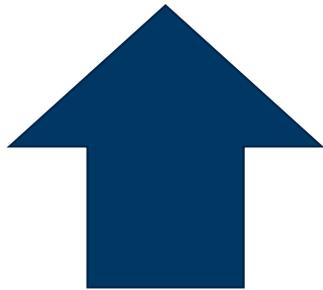
- Minnesota Example: Code of Ethics for Employees in the Executive branch



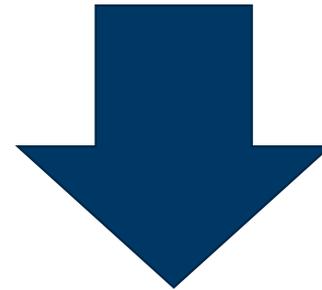
Combating Unethical Behavior

What Does it Cost? The Trust Tax

- Compliance Costs
- Audit, Investigative & Legal Costs
- Project Bids
 - Testing QA/QC costs



- Speed
- Public Trust & Confidence
- Return on tax \$\$ Investment



Spectrum of Unethical Behavior

- nibbling around the edges - good specs
- consistently borderline quality - good qa/qc
- Fraud/ theft/false claims - audit, legal, OIG

The Fraud Triangle

All three components must be present at the same time for someone to commit fraud



Three Elements of Fraud

Do You Have a Fraud Reporting Mechanism?

 An official website of the United States government [Here's how you know.](#)

HHS Office of Inspector General

MENU

Submit a Hotline Complaint

OIG Hotline Operations accepts tips and complaints from all sources about potential fraud, waste, abuse, and mismanagement in the U.S. Department of Health and Human Services' programs. Every report we receive is important, however, not every submission results in an investigation. Due to the high volume of complaints we receive, it is not possible to contact every complainant. However, Hotline tips are incredibly valuable, and we appreciate your efforts to help us stamp out fraud, waste, and abuse.

What You Need to Know

HHS-OIG's Hotline reviews and investigates thousands of complaints each year. We recommend you review [Before You Submit a Complaint](#) to understand the type of complaints we do and do not investigate and the complaint process.

How to Contact the OIG Hotline

Start your online complaint with HHS-OIG by selecting an option below. We accept complaints about fraud, waste and abuse in Medicare, Medicaid and other HHS programs and from HHS employees, grantees and contractors who are reporting wrongdoing at HHS and its programs (whistleblowers) for the first time.

[File a Complaint Online](#)

<https://www.oig.hhs.gov/fraud/report-fraud/index.asp>

 DEPARTMENT OF TRANSPORTATION



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Report Wrongdoing

Report Wrongdoing / Questionable Activity Form

The form below is used to investigate allegations of wrong doing. If you believe wrong doing has occurred please provide as much data as you are able. You are not legally required to provide any data; however the more data you provide the more likely your concern will be addressed.

Some examples of things to report, but not limited to:

- Discrimination
- Sexual harassment
- Conflicts of interest and ethics violations
- Fraudulent behavior
- Mismanagement or misconduct
- Abuse of authority
- Violence/threats

Questions?

Call us at 651-366-4152.

<http://www.dot.state.mn.us/reportwrongdoing/>

Combatting Unethical Behavior

- The Players

- Project Engineers & Inspectors
- Materials Engineers
- Auditors
- OIG and other investigators
- In-house Legal Counsel
- State Attorney General
- US Attorney

- The Tools

- Data analytics to check for collusion
- Disincentives/Quality-Related Adjustments
- Loss of pre-qualification
- False Claims Acts (federal & state)
- Suspension/Debarment
- Fraud
- Conspiracy

Suspicious Bids – Data Analytics

- Bid collusion still happens
- Anti-competitive patterns
 - Identical unit prices
 - Rotation among a few firms

Suspension/Debarment

- A “time out”
- Not presently “responsible”
- Time for contractor/supplier to take steps to become a “responsible” party again

- False representation
- Knowledge of falsity or reckless disregard
- Intent to induce reliance
- Causes action in reliance
- Party suffers damages

Conspiracy

- Two or more parties agree to commit a crime together
- One or more of the parties committed some overt act in furtherance of scheme

The Problems with Fraud & Conspiracy

- Proving intent
- Evidence
- Need Whistleblower

False Claims Act

- Civil, not criminal
- Knowingly presenting a false claim
- Knowingly using a false record or statement
- To get payment from, or avoid repayment to, the government
- Government doesn't need to prove fraudulent intent, but mere negligence or mistake does not create liability



Bringing it All Together- Making Ethical Choices

Unethical vs Honest Mistake?

- Unethical

- Conscious deviation from established norms, Intent
- Harm
- Often personal gain
- Often accompanied by a “cover up”

- Mistake

- Unintended deviation from, or lack of, established norms, Lack of intent
- Often technical or “trivial”; though can still cause harm
- Personal gain is less frequent
- Disclosed/acknowledged
 - Corrective action

Why Do We Make Unethical Choices?

- Ethics viewed as avoiding negative, rather than embracing positive
 - Problem: ambiguity & time pressure
- We make self-interested rationalizations
 - Who is/can be our sounding board?
- We ignore whistleblowers and nay-sayers, especially when things seem to be going well
 - SEC and Markopolos vs. Madoff

Why Do We Make Unethical Choices?

- We may lack moral humility
 - Not as ethical as we think we are
 - Professor Marc Edwards:
 - Press conference experiment
 - If “you let your guard down and lack moral humility, you will wake up some day having done something horrible, even though you start down the path with the best of intentions”
 - “Real world ethical dilemmas are gut-wrenching, life-changing experiences that require you to put yourself in harms way to do the right thing”

Why Do We Make Unethical Choices?

- Lack of organizational emphasis – “Tone at the Top”
- We don’t build ethics into our decision-making process; Don’t talk about it until something bad happens.
- Our organizational systems of incentives, rewards, and advancement doesn’t align with our stated values around ethics and integrity.

Building an Ethical Career

- Kouchaki and Smith, Harvard Business Review
Jan/Feb 2020
 - Prepare in advance for moral challenges
 - Make good decisions in the moment
 - Reflect on and learn from moral successes and failures

Breaking it Down

- Prepare in Advance
 - Freeze + Panic = Bad Outcome
 - What ethical challenges might we face?
 - What are your lines in the sand?

Breaking it Down

- Prepare in Advance
 - What are your lines in the sand? How do they reflect your values?

achievement, autonomy, compassion, community, creativity, fairness, faith, friendships, honesty, justice, kindness, knowledge, leadership, love, loyalty, peace, popularity, recognition, religion, reputation, respect, service, trustworthiness, wealth

Breaking it Down

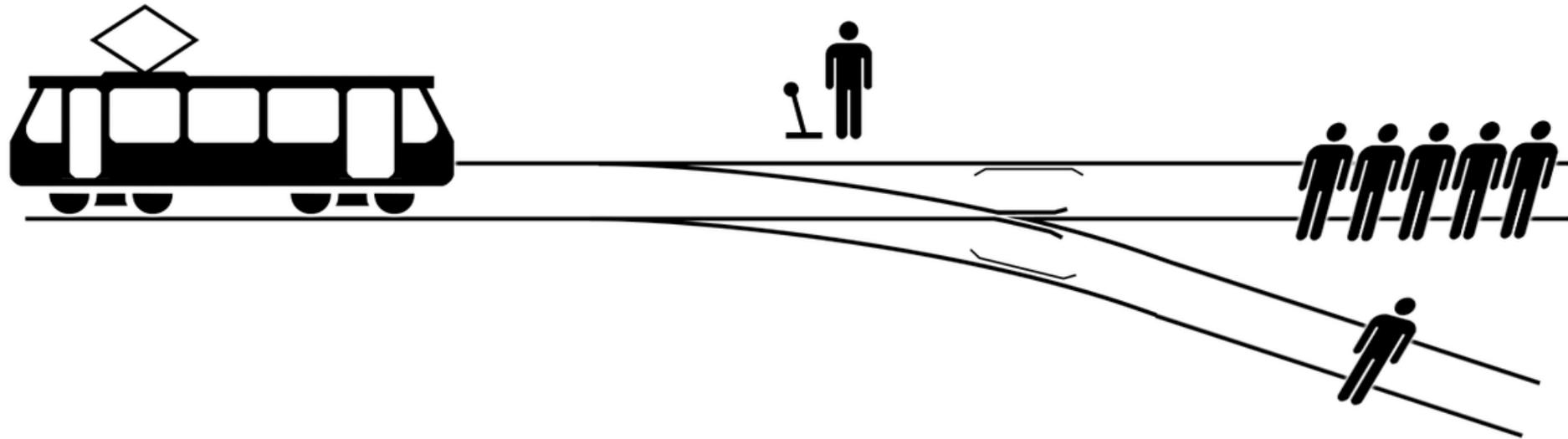
- Make Good Decisions in the Moment
 - Trusted advisor
 - Organizational resources?
 - Resources outside the organization:
 - Licensing board? Employee Assistance Program?

Breaking it Down

- Make Good Decisions in the Moment
 - Document?
 - Elevate?
 - Apply the “mom test”

Breaking it Down

- Reflect on & learn from successes and failures
 - Did actions align with your intentions? Why or why not?
 - What harm was created or avoided?



Ethics in an Imperfect World: the Trolley Problem



Whistleblower Protection

Recovering From Ethical Failure: Egil Krogh and Walt Pavlo



Egil Krogh on Justification

- I see now that the sincerity of my motivation was not a justification but indeed a contributing cause of the incident. I hope that the young men and women who are fortunate enough to have an opportunity to serve in government can benefit from this experience and learn that sincerity can often be as blinding as it is worthy.

Walt Pavlo on His Current Work

- I've paid a significant price for what I've done, and I tell people that, and I educate people with a cautionary tale about what's going on out there. I'm trying to make a difference, and it's a chance for me to move on with my life, and I feel good about my career, for once. I enjoy my work.



Let's Celebrate

Thank you again!

Jim Cownie

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