

# ETHICS

## EVERYBODY THAT HAS INSTANT CRIMINAL SUCCESS

Considering I have thoroughly enjoyed twenty-seven years of multi-state trial practice interwoven into a magnificent academic-law school professor life of the same dignity, a passion for the courtroom and classroom bearing equal prominence and passion in my life, I, (as you may), ponder if some prominent corporate executives' define ethics as an anachronism for what I have touted as the title of this article?

Ethics, with human frailty or a proactive form of greed, I opine, differs significantly from Ethics without greed. Of course, the background of each individual must be examined. Given the make-up of each individual, as we microscope in litigation when relevant, I do so herein as an examination of one's family, social, religious, educational, employment and lifestyle. This article examines as many issues as space limitations permit about the somewhat illusive topic, Ethics. Is it alive, dead or merely transparent?

An examination of legal, philosophical and psychological matters of experts results in a general consensus that ethics merely means the difference between right and wrong, correct and incorrect behavior. A rather bravado and simplistic definition I think you may very well agree. How does one define beauty? How does one view acts of impropriety? Isn't it imbedded within one's matter of perspective? What is one's perspective? I believe the legal issues applicable to these questions define through the legal dogmas of *stare decisis* and *precedent* precisely what each is as related to factual evidentiary conduct as put before a Court in different cases.

America has witnessed corporate greed at an almost unprecedented level, but what is an "unprecedented level"? I suggest it has varied from generation to generation, as has the costs associated with different level political campaigns. Not long ago it was considered outrageously expensive to spend Fifty Million Dollars for running for a Federal elective office, now such a sum is considered a mere pittance, a sum that could not result in a present day victory for any candidate. See, perspectives, propriety and beauty all differ depending upon one's perspectives, frames of reference and the "time climate" in which each is viewed. When one listens to music without seeing the movie that may have plummeted it to the top of the charts, then one most definitely hears the lyrics and score differently than the person who saw and heard both, thus, one can visualize the movie behind the music and take from a re-listening adventure a different perspective. So true is it of much of the conduct of people making good and bad news.

Before I run out of space, lets jump deeper into Ethics, since it is set upon the foundation laid. Speeding in your car is a violation of law. Theft of anothers property is a crime. Illegal activity is defined by the common law we adopted from England hundreds of years ago, and from our own legislative enactment's at the State and Federal level, as well as from Court rulings. Is Unethical behavior always a crime? I opine, not so. It is universally considered unethical to lie? A lie does have more than one face. A compliment to a superior in the workplace about their attire, (attire you laud) but praise as looking very professional or very dignified is unethical, that white lie as it is known is unethical, but not illegal. We have dissected a lot of data to get to where we are in this article and probably agree on most of which is written, regardless of your definition of beauty or impropriety, or perspectives.

We now need to take this foundation and thrust it into real hard-core behavior happening in our society and see where we all arrive at the end of the article. Is it Unethical to have taken \$600,000.00 from a corporation as the head of a giant company because you thought you were permitted to do so, that is after you are paid your regular multi-million dollar salary and other fringe benefits? Is it unethical to turn State/Government evidence against the head of a giant company merely to receive a lesser sentence for your admitted criminal conduct? Is it unethical to offer a reduced sentence to someone in order to get them to turn State's evidence? Is it Unethical to alter financial books so that the stock price of your investors and Wall Street, both are positive about you, even though your financial image is inaccurate? Is it Unethical to use the power of your Government position to touch females in your office in a manner you think is appropriate/friendly - merely being a welcoming type of conduct, that is viewed and felt as sexually harassing? Is it Unethical for a legal, medical, or other licensed professional to alter documents when it is believed that some conduct of the past may result in liability (or is that merely the self-preservation index in people surfacing) on the license and career?

I believe, if your still with me, and if you are, Thank You, it has been a simple journey, one called scholarly, but yet poignant enough to get to the bottom, the guts of the meaning of the word ETHICS, and that each of the portrayals of conduct of actual existing cases in law in courtrooms taking place now is that none of those situations are Ethical. I seek to see that we can differentiate Unethical - Illegal - Violative of Criminal Law conduct from Unethical - Not Illegal - Not Violative of Criminal Law, human behavior. We all must agree there is a fine line between the two.

The Sarbanes-Oxley Act of 2002 was enacted into law, mostly in response to the corporate scandals that have emerged since 2000. It compliments existing laws that described what conduct is illegal, and is an additive to punishment. *I opine society needs, first and foremost enforcement of existing laws, laws that would result, upon a finding of guilt, adequate punishment.* Also, The Foreign Corrupt Practices Act of 1977 is another piece of legislation focused, as is Sarbanes on not only unethical conduct, but illegal conduct. Both Acts' **enhance** the results of a successful prosecution as to punishment. Both assist the government with proving guilt when it can show violations of the Act. Under Sarbanes, among other pertinent matters, new rules regarding corporate governance, established independence between public accounting firms and public companies they audit, and a new type of government oversight over public companies, their officers and public accountants was created. One example that streamlines "evidentiary" proof is by requiring CEO and CFO certification of each annual and quarterly report. The certification is *prima facie* proof of criminal conduct if the certification is false. Naturally there are numerous other additional requirements upon those dealing with the books of a company. The Foreign Corrupt..... Act is another example of trying to deal with the human condition known as unethical conduct.

I could list legislative enactment after enactment, all of which are a response to unethical conduct in the different environments each seeks to cure and manage. All in all, what is taking place in each of these enactment's is a message to unethical conduct that society will not tolerate same. Each does enhance many aspects of evidentiary law and the prosecution of crime. One may wonder, *if vigorous prosecution occurred by using existing law, would all these enactment's really be necessary?* After all, law is a set of rules that basically controls the conduct of members of society. Law is a message to people, yet society may possibly always possess members who view law from their own perspective, frame of reference and background, such

that individual interpretation of a law signals to such an individual that some act regarded by society as unethical or illegal may not appear so to such an individual. Given such complexities, society can rely on the Judicial Branch of the Government to resolve individual interpretations that are not representative of law, or the beliefs held by society. Unquestionably, not all unethical conduct is illegal, and most members of society can differentiate each. The problem, due to the fallibility index of humanity may probably always exist in the areas of unethical conduct that cannot be differentiated. If that is true, then more and more enactment's will be forthcoming in response to behavior that society for that period of time finds unethical. In this spiral of conduct and evolution we see the possibility that no one can ever clearly define what is precisely unethical conduct. It may be an evolutionary cycle that demands change to meet the social changes, customs and beliefs that occur rapidly within every evolving society.

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**Note:** I devoted the academic aspects of this article to my scholars, since I have the distinct honor of being a full time Faculty member of the University of Cental Florida traveling academically with my 1,000 plus students each semester through the world of The Legal and Ethical Environment of Business and E-Commerce.