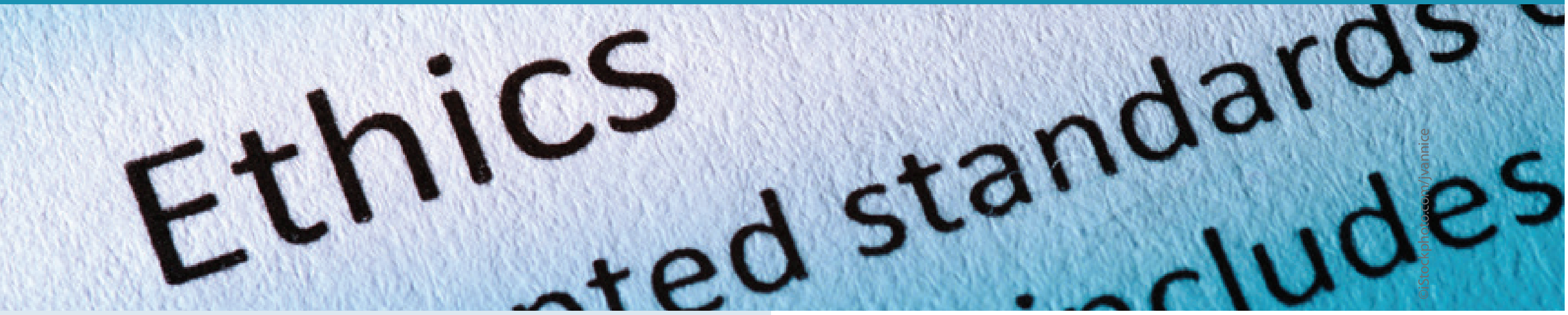
The No-Good-Choice Corner: Because You Waited Too Long

Use daily push-back to stay out of that corner of consequence

By Marianne M. Jennings, JD



My students raise an interesting question every semester, "Why do these dilemmas always come down to my job or being ethical? They are never left with any good choices."

Their point is a good one. So many of the cases we study in our review of business history come down to a singular decision point where an audit firm, an auditor, the head of internal audit, the CFO, the chair of an audit committee, and far too many employees are left in the untenable situation of throwing down the flag and losing their job or keeping silent and suffering through the misery of compromised ethics. No one has any good choices.

I have a simple response to my students' good question: "Because they waited too long to speak up."

In every case that we study, there are little decision points along the way that actually are critical junctures in the organization's path to headlines, fines, and in too many cases, self-destruction.

One of our guest speakers, who went to prison for his role as CFO in a multibillion-dollar fraud, explains the costs of waiting too long. When he first became CFO of a start-up organization, he traveled with the chief executive for a capitalization road show. In their first meeting, several potential investors had questions about the numbers in the start-up's financials. They were skeptical.

The chief executive assured them that he and his CFO (a CPA) had been up all night working on those numbers and they were solid. The CFO winced a bit in the meeting because they had not been up all night working on them. The numbers were done weeks earlier. The numbers were correct, but the "all night long" story was fabricated for effect, a show of dedication, etc. The CFO was uncomfortable at the time but reasoned, "It's a little thing. Just a little white lie to impress."

What we fail to recognize in these little white-lie situations and the seemingly inconsequential misinformation is that relationships are formed, assumptions are made and the character of both parties is assumed and cemented—all in one fell swoop of a little white lie.

The CFO recognized that he was now a prisoner of the chief executive and the chief executive was his prisoner as well. They were forever chained to each other because the CFO knew that what the CEO had said was not the truth and had let him get away with it.

The CFO knew that he was beholden to the chief executive because he would always have this story to tell: "Remember when we were trying to raise money and you let me tell the story about the all-nighter?" The chief executive knew that the CFO would always have the same story about him.

These little white lies are never the end. People never do just one thing, and, once started, you have to keep going in order to preserve what you began or what you want to keep quiet. When someone knows they have you as a go-along-to-get-along compadre, they will keep pushing. With the control they have now gained over you, they will continue to use you to obtain credibility, back them up, and eventually assist them in deception.

Examples abound

The students study hypotheticals to understand how waiting too long works. One involves a co-worker that calls

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a fellow worker to explain that she has a sick child and will be a few minutes late. She then asks the fellow worker to clock in for her or to tell their supervisor that she is out with a customer or getting supplies.

Most people go along and help out the struggling co-worker. The nobility is their motivation, and the little white lie seems trivial. But there is a cost. The co-worker knows that the fellow worker lied for her and will lean on her in the future, knowing the threshold has been crossed.

The fellow worker will always succumb because she knows what the co-worker has done and she does not want that indiscretion known. On occasion, the fellow worker is able to stop it by refusing the second time with, "I covered for you once, but I can't." A one-time admission is a far better corner than a series-of-cover-ups corner.

With auditors, there are audit findings in the first year that will require managers to make changes over the course of the next year. If the changes are not made, the auditors and management end up in a no-choice corner.

In the Waste Management accounting fraud case, the auditors had a memo for management on the company's accounting practices—practices that were changing because Waste Management could not continue the growth in revenue it had experienced in its developmental years when there was no competition.

The changes the auditors recommended were related to issues such as depreciation computations and revenue booking. The CFO and chief accounting officer signed the first-year memo and initialed each requirement for change during the coming year.

At that point, the auditors were dealing with accounting interpretations and sticking with conservative accounting principles. However, at the end of the following year, management had failed to make the changes and, in fact, they were pushing the envelope on depreciation formulas even further. As the chief accounting officer described it, "The salvage values for those trash bins might get you a bucket of wings." In other words, management was pushing the envelope on credible assumptions for their depreciation formulas.

Still, the auditors went along because, well, management promised. And the year after that, the changes were again not made, and the year after that, and with each year, the accounting continued to become more aggressive. Once management started it could not stop because these formulas helped meet their numbers, implying they still had growing revenues.

The auditors could not throw down the flag because they had become prisoners of management, and vice versa. By letting management's failures to correct pass, the auditors defined who they were and what their lines of tolerance were. Both sides boxed themselves into the no-good-choice corner. Do we issue a clean opinion, keep the client, and risk a restatement? Or, do we refuse to issue a clean opinion, lose the client, and admit that we let them push the envelope?

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The managers had choices as well. Do we try to keep this going until the news is better, or risk a restatement? Or do we come clean and admit that things are way down and get fired for doing all of this? No good choices exist because both sides waited too long. Speak up on a depreciation formula and you may save your client, job, and career. Say nothing and everyone faces serious consequences.

Put the foot down

We back ourselves into these no-good choices corners. A student once asked whether it would have been ethical to lie to government authorities and give shelter to the Jews in Nazi Germany in order to protect them. He had given me a teachable moment.

I asked if he could see how the people of Germany got to that no-good-choice corner. Lie, defy the government, but protect lives. Or, tell the truth and watch families broken up and lives taken. Trace it back, is always my advice. How did the German people get to the point of the hunt for some of its citizens? I pointed out that the time to take a stand was when the persecution first began.

What were we doing when innocent citizens were forced to wear yellow stars as markers? When the small injustices emerge, we fail to take action. Convenience, lack of time, no real harm and a host of other rationalizations percolate to mind during these small infractions.

However, once the German people went along with the small infringement of the rights of some of their citizens, those in the government only pushed more. The push, without resistance, is always to the corner. A very bad and helpless corner.

A county prosecutor shared with me that she was very nervous because a young lawyer who worked in her office was slated to give the opening statement in a murder trial. The case involved the first murder in decades in her county. The public was demanding justice for the brutal and senseless murder of a young woman. However, the young lawyer had not been making progress in his trial skills. On the eve of the trial, she wanted to pull him from the case. Trace it back.

How did this young lawyer get to be second chair on a critical case without developing skills? The failure to address his missteps in petty larceny cases allowed him to believe he was doing great. The performance evaluations reflected the same evolving skills. Avoiding the difficult discussions in the little leagues puts you in tense big-league situations. To pull him now would be devastating, but the no-good-choice corner came from inaction.

Think through the situations with doctors, lab technicians, and other professionals whose small missteps are not corrected. Fear, time, pressure, and "it's a little thing" give us the justification for letting it go. But, we are headed for the no-good-choice corner.

Conclusion

Each day we are faced with little decisions, one-time actions, and seemingly justified breaches of protocol, codes and policies. Convenience, the desire to get along, time pressures and a host of other reasons give us the psychological comfort of doing nothing despite the misstep, lie or breach.

However, waiting too long puts you in that corner. Sadly, it is also a corner of consequence. The daily push-back does not carry nearly the same irreversible consequences of that no-choice corner. Use the daily push-back to stay out of that corner. **NP**

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Confidence is that feeling you sometimes have before you fully understand the situation.
~Unknown