Giving Chase

As captain of a U. S. Coast Guard cutter, Chuck is charged with patrolling the Mona Passage separating Puerto Rico from the Dominican Republic. Although not Hispanic, he and his wife are very fond of the warm, family-based culture of San Juan, where they live. While on patrol one day with his crew—many of whom are of Puerto Rican descent—an Immigration and Naturalization Service plane radios a request for Chuck’s cutter to intercept a small boat crossing toward a deserted section of the Puerto Rican coast. Chuck is not surprised. The passage, separating US territory from the Dominican Republic, an economically depressed nation, is a favored crossing-point for refugees, drug-runners, and would-be illegal aliens. Making for the boat, Chuck can see it is not filled with terrorists or drug dealers, but with grandparents and infants. It is heading toward an isolated beach filled with brightly dressed Puerto Ricans who are anticipating the boat’s arrival. These are families seeking to reunite. Knowing their keen sense of family, Chuck finds his heart going out to them. Yet his constitutional duty is clear: It is his job to prevent individuals from entering United States territory illegally by stopping them and returning them to the Dominican Republic. As Chuck and his crew close in, the refugee boat crosses a sand bar too shallow for the Coast Guard cutter. Chuck does, however, have an outboard-powered inflatable that might stand a chance of catching the small boat. Yet he knows giving chase so close to land might cause some of the passengers to panic and try to wade ashore while their boat is still dangerously far from the beach. While his duty is to enforce the law, he also knows that the Coast Guard’s job is above all to save life, not to endanger it.
Scenario: When Gatekeepers Fail

(Kirk Kardashian, October 2012)

Andrew Fastow had achieved the pinnacle of success and fame that could be expected of a chief financial officer. At the age of 36, he had been appointed the CFO of Enron, the hundred-billion dollar energy company. When Enron imploded, causing $40 billion in market value to disappear along with the pensions of thousands of people, Fastow fell much further than he had risen. Some called him the most hated person in America. Fastow served more than five years in federal prison for securities fraud, and now hopes his journey will serve as a warning to others.

Fastow’s story is a perfect example of the blurry line between genius problem-solving and fraud. The same much-lauded “off-balance-sheet” strategies that Fastow innovated to make Enron seem financially healthy were the ones that, upon closer review, landed him in jail. Fastow says his main mistake was ignoring the principles behind the rules he creatively circumvented, and using loopholes in the rules to get around them.

And, Fastow did not act alone. According to him, every sketchy deal he made was approved by accountants, attorneys, and the Enron board—the usual gatekeepers who guard against illegal action. The lesson here is that gatekeepers can sometimes act as enablers. Lawyers, instead of warning about fraudulent statements, can craft disclosures that are “technically legal” but completely incomprehensible. Auditors and consultants can help shape the numbers to comply with generally accepted accounting principles, instead of raising red flags as they should.

Fastow says that a series of minor indiscretions can slowly accrete into a major crime. It’s possible to go astray not with one shocking act of fraud, but by degrees.

How do we prevent another Enron-scale disaster, in a business environment where firms still employ legions of people to dream up ways to get around laws?
Global Ethics Scenario:

(Based on: Ethics Must Be Global, Not Local


You are a sales executive at a company that is trying to meet some very specific new business acquisition goals in this fiscal year. You fly to the Middle East to meet with the President of a company whose business would guarantee the financial success of your division. During the course of the meeting, the President makes it clear that a substantial bribe is expected in order to secure the new contract. Your company policy clearly states that bribes are unethical and will not be tolerated, however, you have inside information that the CEO turns a blind eye to bribes and expects sales reps to do whatever necessary to close the sale.

To build a truly great, global business, business leaders need to adopt a global standard of ethical practices. The business world has gone global, which has intensified the ethics debate.

Is it possible, or even advisable, for business organizations to operate with one set of principles in their homeland and another overseas? How should businesses deal with countries in which making payments to obtain business is common practice? Can businesses abstain from such practices and remain competitive? If you were leading such an organization, would you risk permanently damaging your company’s reputation in order to be successful? How would a single global standard of ethics be helpful in such situations?
Several universities actively recruited Kyle Kipps, a talented football player in southern Louisiana. Kyle’s father, Rexford Kipps, was an assistant football coach at the University of Southwestern Louisiana (USL) for eleven years. In March 1996, Nelson Stokley, USL’s head football coach, told Rexford Kipps that Kyle was to attend either USL or a college or university outside Louisiana. When Kyle notified Stokley that he had orally committed to play football at Louisiana State University on a scholarship, Stokley told Rexford Kipps to forbid his son to play football for LSU. Rexford Kipps argued that he could not and would not force his son to refuse to play for LSU. Consequently, Stokley terminated Kipps’ employment. Both the Director of Athletics and the President of USL approved Kipps’ termination, along with the President of the Board of Trustees.

Rexford Kipps brought constitutional and state law claims against all four. The defendants filed for summary judgment, arguing that Kipps employment status was at-will, which precluded any wrongful termination action. They further argued that Kyle Kipps’ choice would affect USL’s ability to recruit athletes. The district court granted the defendants’ motion for summary judgment. The judge’s decision: Even if defendants violated Kipps’ clearly established constitutional right, they are still entitled to qualified immunity if their actions were objectively reasonable. The record indicates that Kipps was fired because his son chose to play football for a Louisiana school other than USL. The Court found the defendants’ motivation for terminating Kipps was objectively reasonable.

This case provides a snapshot of the complexity of the link between ethics and the law. Do you believe that some view of what it means to do the right thing is responsible for the legal decision in this case? What reasons might the judge have had for supporting his decision that Kipps’ termination was legal? Which facts in this case are most important in your mind when evaluating the reasoning?
Scenario: The Case of Maria Elena

(Developed by Tom Shanks, S.J., director of the Markkula Center for Applied Ethics)

Maria Elena has cleaned your house each week for more than a year. She does an excellent job, and is well worth the $30 cash you pay her for three hours’ work. On a personal level, you’ve come to like her as well, as her English has improved and you’ve been able to have some pleasant conversations.

Over the past three weeks, you’ve noticed Maria Elena becoming more distracted. You ask her if something is wrong, and she begins to cry as she tells you she needs to make additional money. You calm her enough to tell you her story: She came to the U.S. six years ago with her child, who is now 7 years old. They entered the country on a visitor’s visa that has since expired, and Maria Elena now uses a social security number she made up. Her common-law husband also entered the U.S. illegally, paying smugglers $500 to secret him across the border. He now uses a false green card to work as a busboy, and the restaurant withholds part of his salary for taxes. In Mexico, they lived in a small village where it was impossible to earn more than $3 per day. It was a difficult life, and they realized the future would be bleak for their son if they stayed. Maria Elena and her husband were given a false picture of how life would be in the U.S., living three families to one run-down apartment, in fear of the INS. Their second child, five years old, was born in the U.S. Maria Elena says she is willing to put up with anything so that her children can have a better life. Maria Elena’s mother is dying in Mexico, and Maria Elena must return home, but she fears she might not be able to get back into the States. She needs to find a way to make enough money in ensure she can return.

You now know you have an undocumented immigrant working in your home. What is the ethical thing for you to do?
Scenario: Maria’s Dilemma

Maria recently became the purchasing manager of a small lawn mower manufacturing firm. She is excited about the opportunity to demonstrate her abilities in this new responsibility. She is aware that several others in the firm are watching her closely because they do not believe she deserves the position. Her new job requires that she interact with several senior managers and leaders. One vice president, Brian O’Malley, is someone she admires because he has earned the respect of the CEO on the basis of his success at making profits for the firm. Maria’s first responsibility is to buy the motors for the assembly line. The motors constitute 30 percent of the total construction cost of the lawn mowers. Consequently, even a small error on Maria’s part would have huge implications for the firm’s profitability. The bids from the motor suppliers, due at 5:00 p.m., are required to be secret in order to maximize competition among the suppliers. At 3:00 p.m., Maria accidentally sees Brian returning the submitted bids to the locked safe where they are to be stored, according to company policy, until all bids have been submitted. Then at 4:45 p.m., she notices a postal delivery of a bid from Stein’s Motor Company. Her head buzzes as it hits her that Stein’s president is one of Brian O’Malley’s cousins. Maria has a decision to make, quickly.

What should Maria do?
Scenario: Sweatshop Labor

(The Legal Environment of Business)

Nike and other shoe manufacturers can reduce costs by having their shoes made in countries where wages are lower than they are in the United States. Workers in Indonesia and Vietnam are willing to work long hours for significantly less than is demanded by American workers.

In one sense, what Nike wants to do is smart business. By reducing labor costs, they can make more profits. In addition, Nike, by employing these workers, is giving them employment opportunities that would otherwise not be available. This situation is complicated. In the late 1990s, Nike’s profits dropped by as much as 40 percent. According to industry leaders, a major cause was the negative publicity shoe companies received from the production of their shoes in foreign “sweatshops.” In addition, Nike is rapidly moving its production facilities to China, where in factory-dormitory complexes, labor is regulated in military fashion. For example, young migrant women who work for Nike in China are allegedly restricted from leaving company grounds or quitting their jobs.

What would you do if you were in a position at Nike to decide whether to continue or revise your labor practices in foreign countries?

Since 1992, Nike has been implementing a code of conduct that mandates the enforcement of all child labor, fair wage, and health laws in its foreign plants. In doing so, is Nike moving toward improved ethics?
Ethics Must Be Global, Not Local

Adapted from an article by Bill George, February 12, 2008, Business Week.

“Situation ethics” was the notion of a flexible, pragmatic approach to complex dilemmas promoted by leading ethicists of the past. This notion promoted that business ethicists should adapt to local practices. However, the Foreign Corrupt Practices Act (FPCA) passed in the 1970s criminalized the act of making payments (bribes) in pursuit of contracts outside the U.S. Many U.S. executives lobbied to relax the FPCAs provisions arguing that it put them at a competitive disadvantage in bidding against non-U.S. companies.

Globalization of business in recent days has intensified this ethics debate. Making payments to obtain business is common practice in many parts of the world. Many multinational companies feel obliged to play the game, greatly risking their corporate reputation while running afoul of laws in their home countries.

The author asserts that the only way to build a great global company is with a single global standard of business practices, vigorously communicated and rigorously enforced throughout the organization. It goes far beyond establishing a corporate code of conduct. The CEO should be engaged in the process and employees in far-flung locations should know that if they miss their financial targets because they adhere to strict ethical standards, the management will back them up. According to the author, the bottom line is that good ethics is good business. There is a direct correlation between behaving ethically and creating long-term shareholder value.

If you were leading such an organization, how would you react when pressured by customers or competitors to deviate from company standards?
The Case of the Plant Relocation

Adapted from a case presented by Karen Musalo, Markkula Center for Applied Ethics, Santa Clara University

You are the CEO of Electrocorp which makes onboard computer components for automobiles. In your production plant, complex hydrocarbon solvents are used for cleaning. Some of the solvents used are carcinogens and must be handled with extreme care. Until recently, all your manufacturing operations have been located in the U.S. However, recent union negotiations have increased the compensation package for beginning employees to $15 an hour. Furthermore, stringent safety and environmental regulations have raised the production costs and reduced profitability. Shareholders have been complaining about their declining fortunes while competitors have moved their operations to lesser developed countries to lower their operating costs. You have been considering relocating several of your manufacturing plants offshore. Electrocorp is a major employer in many U.S. cities and you know that plant closures will cause major economic hardship in these communities. You have hired an experienced consultant to investigate the possibility of relocation to the following countries and her reports contain the following highlights:

Mexico:
- The prevailing wage is $3 per day, but there is high worker turnover as employees complain that they cannot live on $3/day. However, a ready supply of workers replaces those who leave.
- Environmental and health laws are lax compared to the U.S. and the toxic solvents need not be cleaned before being disposed.
- One identifiable business risk is bad publicity by activists that have begun to accuse companies of contamination leading to illness.

Philippines:
- The prevailing wage is $1 per day and young workers (under 16) may be paid even less. Workers complain that the rate of pay is not a living wage.
- Labor, safety and environmental regulations are comparable to those in Mexico but there are no public complaints or opposition regarding illnesses.

South Africa:
- The prevailing wage is $10 per day and there is a strong labor movement meaning that there could be future demands for pay raises.
- Equipment to reduce toxicity to an acceptable level will be required but they are not as expensive as in the U.S. Also, requirements for a solvent recovery system will also increase operating expenses relative to operating in Mexico and Philippines.

Should you keep your operations in the U.S. or move to one of these alternate locations?
Pegasus International Inc. is a leading manufacturer of integrated circuits (chips) and related software for specialty markets, as well as PC-based audio, video, and multimedia. Pegasus' long-standing strategy has been to anticipate changes in existing and emerging growth markets and to have hardware and software solutions ready before the market needs them. The company has also made significant strides in wireless communications.

The systems and products of their wireless business have been selling well in already existing markets in the U.S., Japan, and Europe. But, like any company, Pegasus is eager to grow the business. At a strategy session with the Wireless Division, Pegasus CEO and division managers decide to explore the potential of expanding their business to China.

Initial research indicates that China is likely to develop into a huge market for wireless because its people do not currently have this capability and the government has made spending on wireless a priority. There is, however, one concern. China allocates frequencies and makes franchise decisions city by city, district by district. A “payoff” is usually required to get licenses.

Pegasus managers have done their homework, and tell the CEO that most companies contract with agents to represent them in the country and to get the licenses. What these contractors do is their own business. The CEO wonders if paying someone to do the crime is the same as doing the crime, but his Wireless Division manager says it will be a huge mistake not to do business in all the countries expecting payoffs. There is a lot to gain, and the manager wonders if it’s really a big deal if local contractors are forced to make payoffs every now and then. The CEO wants his company to succeed, he wants to maximize shareholder value, he wants to keep his job, and he wants to model ethical leadership. His company enjoys an excellent reputation among its customers and suppliers, employee morale is high, and ethics is a priority at the company.

What should he decide in this case? Why?
Scenario: The Case of the Plant Relocation

(Karen Musalo, Markkula Center for Applied Ethics)

You are the chief executive of Electrocorp, which makes the onboard computer components for automobiles. In your production plants, complex solvents are used to clean the chips and other parts. Some of the solvents used are carcinogens and must be handled with extreme care. Until recently, all of your production plants were located in the U.S. However, the cost of production has risen, causing profits to decline. Shareholders are complaining.

There are a number of reasons why production costs have risen. The union representing workers in your plant waged a successful strike resulting in increased salary and benefits. The pay and benefits package for beginning employees is around $15/hour. In the U.S., your plants also have to deal with stringent safety regulations, which have been expensive in both time and money. Environmental regulations have also made Electrocorp’s operations more costly.

Many of Electrocorp’s competitors have moved their operations to less-developed countries where operating costs are less expensive, and you have begun to wonder if Electrocorp should do the same. You have hired a consultant to investigate sites for possible plant relocation, such as Mexico, the Philippines, and South Africa.

Mexico offers lower salaries (around $3/day) but the employees complain it’s not a living wage, so there is high turnover. There are fewer health and safety regulations, however, citizen health groups have begun protests resulting in the potential for bad publicity for your company.

The Phillipines offers even lower wages (about $1/day). The workers complain it isn’t a living wage, but it is the present market rate. There are equivalent health and safety regulations as Mexico, but there haven’t been public complaints or opposition.

South Africa is not as favorable in economic terms as either of the other two countries, since the prevailing wage is around $10/day. There is also a strong union movement. Exposure to toxic chemicals in the workplace is not permitted at as high a level, either. They also require a solvent recovery system, which increases operation expenses.

You have to decide how you would like to proceed. Your options: further investigate one or more of the overseas sites, or simply continue all operations within the U.S.
Scenario: The Postal Service Headache

Deborah Vargo-Adams was employed as a distribution clerk for the U.S. Postal Service. Adams was regularly absent from work and had been reprimanded and suspended several times. After receiving a notice of removal, Adams filed a grievance claiming that she suffered from migraine headaches and was frequently unable to go to work. The Postal Service reinstated Adams under the condition that she provide them with medical documentation of her illness and acceptable evidence for future absences when required. At first, Adams complied with the conditions. During an eight-month period, Adams was absent without leave more than two days, was late to work seven times, and was absent nine days. On each occasion she provided notice and excuses for her absence. Seven of those notices were rejected for lack of proper documentation. After the rejections, Adams stopped submitting written excuses, but continued to verbally notify her superior that the absences were related to her illness. She continued to have an attendance problem, and was eventually terminated.

Do you think the Postal Service should have made a better attempt to accommodate her health condition? Did the termination constitute a wrongful discharge?

Brian McNally is a part-time faculty member at a mid-sized university located in Boston, Massachusetts. He has worked for the University in his current capacity for less than five years, but is well-versed in the university’s policies he has agreed to uphold.

In McNally’s survey course on American History, an international student turns in her first term paper. During the grading process, McNally discovers that the student’s work is a textbook case of plagiarism. The majority of the paper is copied directly and without attribution from the references listed at the back of the student’s paper, and little of the work is the student’s own.

The university has a strong policy about plagiarism, which is outlined in the course syllabus that McNally knows this student received. When confronted about plagiarizing her paper, she claims she did not realize what she was doing was plagiarism, since the academic culture in her own country is very tolerant of such copying. McNally explains to her that the policy, as outlined, requires that he fail her, but that he would consider her explanation over the weekend.

McNally thinks that on one hand it is right to fail her and maybe even eject her from the class, because there would be no chance for her to pass the course after failing this assignment. He would be just in his decision because the rules were clear. On the other hand, it is right to show mercy and ask her to rewrite her paper. If she truly did not understand the rule, it would seem unfair to penalize her so harshly, especially if this was just a case of cultural mistranslation.

What should McNally do?
In 2010, the Texas State Board of Education ignited controversy over the content of public education in that state. It voted to adopt, along partisan political lines, a new “social studies and history curriculum that amends or waters down the teaching of the civil rights movement, slavery, America’s relationship with the U.N. and hundreds of other items,” according to the Associated Press.

As this decision affects the education of approximately 4.8 million Texas schoolchildren, many political and civil rights groups were gravely concerned over the effect this could have on the development of political and cultural knowledge and ideology. Moreover, the change in curriculum may have drastic effects on many children who do not live in Texas. Because the state is such a dominant consumer of textbooks, many textbook publishing companies produce books that conform to Texas curriculum requirements but which are then sold to districts across the country.

It is impossible to teach every event in human history—even only those that we know about. Therefore, decisions must be made about which events and ideas are meaningful, interesting, or otherwise worthy of inclusion in a curriculum.

Is it morally acceptable for policymakers to select a public education curriculum that reinforces their own ideology? Given the impossibility of including every historical event in public school curriculum, how do we go about selecting which events in history ought to be included?
Since a little boy, Randy wanted to be a firefighter in his hometown of Chicago. Every day his school bus drove by the fire stations in town Randy’s nose would be pressed against the sliding glass bus window as he watched the fire men and women scrub the trucks and raise the flag. Within 18 months after high school graduation, Randy had completed Fire School and passed the Chicago Fire Department’s entry exams. He was assigned to the fire station on the corner of Jefferson and 3rd, one of the fire stations he had ridden by so many times as a child.

Ten months into the new job, Rosa Hernandez became Fire Chief of Randy’s station. Rosa was originally from Honduras. She seemed very kind, but her tendency to hug her subordinates made Randy very uncomfortable. Randy confided in a coworker about his discomfort, but was advised to drop the topic because the last person who complained about Rosa never worked in Chicago again. Randy is married, and he and his wife have one little boy and a little girl on the way. With upcoming hospital bills, mortgage payments, car payments, etc., what should Randy do?
Scenario: The Case of Wu

(Written by Thomas Shanks, Executive Director of the Markkula Center for Applied Ethics)

Wu, an illegal immigrant from China, expected a glorious new life after a harsh six thousand mile voyage to escape from South China to San Francisco. Instead, the 31-year-old Chinese tailor is hiding in the South Bay, fearful of being found either by the ruthless smugglers who brought him here or by U.S. immigration officials. Living as a fugitive, worried about his family and his own safety, brings intense pressure and cruel isolation. Wu paid the smugglers an initial $3000, but still owes them $25,000. He is worried about his family in China. Wu was a tailor and was able to support his family on an annual income of $1600 until he lost his job. He felt he had no future in China, jobless and with an elementary school education, so his family worked together to come up with the $3000 for his passage. Wu says they had no idea what it is really like in the U.S. He is forced to find part-time jobs so he can keep moving to avoid deportation. He takes jobs that pay far below minimum wage, works too many hours, and endures abusive employers who are willing to ignore his illegal status. Wu knows his situation is bleak. Even if he could smuggle his family out of China, California is considering laws that would make him and his family ineligible for health care, public education, and other government benefits. Any children born here would be denied U.S. citizenship, and he would somehow have to acquire a permanent U.S. residency card.

A friend introduces you to Wu and asks you to help him. What is the ethical thing for you to do?