REDUCING CRIMINAL WRONGDOING WITHIN BUSINESS ORGANIZATIONS: THE PRACTICAL AND POLITICAL SKILLS OF INTEGRITY

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There is no dispute that criminal wrongdoing occurs in organizations, but there is divergence of viewpoints on how to reduce the occurrence of such wrongdoing. Following the framework of Paine,[1] there is a *compliance-based* approach and an *integrity-based* approach to reducing corporate wrongdoing. In essence, the compliance-based approach, motivated by the Organizational Criminal Liability and the 1991 Sentencing Guidelines and the 2004 Amendments, focuses on creating structures and processes that "exercise due diligence in seeking to prevent and detect criminal conduct by its employees and other agents."[2] By contrast, the integrity-based approach focuses on developing an organizational culture that enables and encourages employees to act honorably and responsibly as part of meeting a broader set of social obligations, including the law.[3] Analysis of these different approaches to reducing criminal wrongdoing must include the underlying social dynamics that motivate each approach. Those dynamics are *trust* and *distrust*.

As history suggests, trusting the virtue of business and its leaders is probably not a prudent strategy, requiring the need for more vigilance.[4] Such vigilance is the core of the compliance-based approach, and must be institutionalized in structures and processes that act as "checks and balances" to monitor and detect wrongful or unethical behavior. But building trust in business and its leaders is also necessary, as the compliance-based approach is inefficient and incomplete.[5] The building and maintenance of an organizational culture that would enable and encourage people

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1. Lynn Sharp Paine, *Managing for Organizational Integrity*, HARV. BUS. REV., Mar.–Apr. 1994, at 106, 106–17.

2. David Hess, Robert S. McWhorter & Timothy L. Fort, *The 2004 Amendments to the Federal Sentencing Guidelines and Their Implicit Call for a Symbiotic Integration of Business Ethics*, 11 FORDHAM J. CORP. & FIN. L. 725, 729 (2006).

3. Paine, *supra* note 1, at 111–12.

4. Roderick M. Kramer, *Rethinking Trust*, HARV. BUS. REV., June 2009, at 69, 69–77.

5. Paine, *supra* note 1, at 110–11.

to translate values into action is also needed.[6] This latter method is at the core of the integrity-based approach.[7]

   The foundational argument of my analysis has two pillars. First, I will argue that the managing of distrust and suspicions is at the core of the compliance-based approach to reducing corporate wrongdoing, which has focused on *accountability* strategies.[8] Second, I will argue that the building of trust and relationships is at the core of the integrity-based approach to reducing corporate wrongdoing, which has focused on *responsibility* strategies.[9] In other words, the key to reducing corporate wrongdoing is to manage distrust and suspicions while at the same time building trust and relationships. I conclude that corporations should adopt the compliance-based approach and the integrity-based approach simultaneously to reduce corporate wrongdoing.

I. TRUST AND DISTRUST: MANAGING ACCOUNTABILITY AND RESPONSIBILITY

   As human beings, trust is our default position, particularly with respect to business.[10] Yet across the past century, our trust in business has been severely tested, if not shattered, by scandals, financial crises, and abuses by business.[11] But through decisive leadership by some industry titans and corporate leaders, and governmental intervention through regulation and the creation of safeguards to rebuild the confidence in business, one finds trust in business to be a resilient, if not robust, phenomenon.[12]

   This recurring cycle of trust to distrust to trust in business provides historical context to the current state of affairs facing business. It may provide some reassurance to business that trust appears to be a resilient phenomenon.[13] But it also provides a reference point to highlight how the state of affairs facing business today may be different than it was in the past. For it also appears, based on an analysis of several surveys of the public, that distrust is a resilient phenomenon, defining a new business landscape in which it does not fade away but is always present, if not salient.[14] Indeed, one could argue that skepticism

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   6. Robert J. Bies & John J. Fontana III, The Executive Master's in Leadership Program at Georgetown University: Barriers and Gateways to Catholic Social Teaching in a Business School, Paper Presented at the Eighth International Conference on Catholic Social Thought and Management Education: Renewing Mission and Identity in Catholic Business Education 4 (June 18–20, 2012).

   7. Paine, *supra* note 1, at 106–107.

   8. Robert J. Bies, *At the Crossroads of Trust and Distrust: Skepticism and Ambivalence Towards Business*, *in* PUBLIC TRUST IN BUSINESS (J. Harris, A. Wicks & B. Moriarty eds., forthcoming 2013).

   9. *Id.*

   10. Kramer, *supra* note 4, at 71.

   11. Bies, *At the Crossroads of Trust and Distrust: Skepticism and Ambivalence Towards Business*, *supra* note 8.

   12. Kramer, *supra* note 4.

   13. *Id.*

   14. Bies, *At the Crossroads of Trust and Distrust: Skepticism and Ambivalence Towards Business*, *supra* note 8.

towards business, if not distrust, may be a rational response on the part of the public.

There have been several surveys of the public's trust in business that illuminate the underlying social dynamics of trust and distrust shaping the different approaches to reducing criminal wrongdoing in business organizations. In the next section, I review findings from the study conducted by the Public Agenda and the Kettering Foundation,[15] and four Edelman Trust Barometer surveys (2009,[16] 2010,[17] 2011,[18] 2012[19]). Taken together, the findings from these studies suggest the need for a new framework for analyzing approaches to reducing criminal wrongdoing in business organizations, which I will describe in section B below.