



Just how unethical is American business?

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Abstract This study of reports in the business news between January 1, 2000 and June 30, 2005 found that as of 1999, 40 corporations in the *Fortune 100* had committed behaviors that can be considered unethical. The behaviors of concern included three types of fraud (accounting, securities, and consumer), discriminatory practices, undisclosed executive pay, antitrust activities, patent infringement, and other violations of the law. Based on the “unacceptability” of the misdeeds committed, this article ranks the 40 firms into three categories. Further, it uses the research on business ethics and the behaviors of executives, boards of directors, and even government officials to suggest why these unethical behaviors were allowed to happen. Finally, it concludes with recommendations for improving business behavior, and suggests important roles for future business leaders and the broader American public. © 2005 Kelley School of Business, Indiana University. All rights reserved.

1. Unethical behavior in business: An issue of growing concern

In recent years, the business news in the United States has been rife with reports of misconduct by American corporations. The most widely publicized of these cases may be the accounting fraud at Enron and what was then MCI WorldCom; however, less trumpeted incidents of misconduct are troubling, as well. Examples of such lesser known events include consumer fraud at Prudential Financial, discriminatory practices at Morgan Stanley, and antitrust activity at DuPont.

Given the recent misbehavior in the U.S. business world, a reasonable person might wonder just how unethical American business really is. Do the misdeeds simply involve a few “bad apples”: a smattering of corporations that make the rest of

American business look bad? Or is the problem much broader than that? Further, if it is a widespread issue, what needs to be done?

This article addresses the issue by examining the recent behavior of *Fortune 100* corporations: the largest in the country. If only a small proportion of those 100 companies have committed unethical acts, the problem may be only a passing phase, one that can be solved through the corrective actions of the market and the investment community. On the other hand, if a sizable proportion of those 100 companies have engaged in serious misdeeds, it may be time to examine the elements of American society, both business and non-business, that promote that type of behavior.

1.1. Not a recent phenomenon

It is important to note that unethical behavior in U.S. business is not a recent phenomenon. Indeed,

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even before the nation had celebrated its 1876 Centennial, corporations were being charged with substantial misdeeds by both government and society leaders. Zinn (2003) describes some of the most dramatic examples of this misbehavior. For instance, by 1870, John D. Rockefeller, owner of Standard Oil Company of Ohio, was agreeing secretly with railroads that he would ship his oil with them as long as they provided rebates on their prices, a practice that drove many of Rockefeller's competitors out of business. The Robber Barons of the late 19th century paid huge bribes to garner political favor; for example, Daniel Drew and Jay Gould paid the New York legislature \$1 million to legalize their issue of watered stock for the Erie Railroad, and the Union Pacific and Central Pacific railroads paid bribes to Washington lawmakers to gain 9 million acres of land for their transcontinental expansion.

Zinn (2003) also identifies more recent examples of corporate misdeeds. Gulf Oil, International Telephone and Telegraph (ITT), American Airlines, and several other corporations made illegal contributions to the 1972 presidential campaign of Richard Nixon. And in the 1980s, as many readers will recall, savings and loan banks responded to the deregulation efforts of the Reagan administration by making risky investments that left them owing billions of dollars to depositors.

1.2. It's a small world

Although this article focuses on unethical behavior in U.S. corporations, there is no intent to imply that this problem is unique to America; quite clearly, unethical business activities occur across the globe. Consider the Dutch firm Nestle Corporation, which aggressively promoted its infant formula in certain African countries despite evidence that many consumers there had access only to unsafe water for mixing with the formula, and the Japanese firm Mitsubishi Electric, which delayed a recall of television sets that could overheat and catch fire (Ferrell, Fraedrich, & Ferrell, 2002). Other well-known incidents of unethical behavior reported elsewhere include the attempt by German firm Volkswagen to steal trade secrets from General Motors (Naughton, 1996), the guilty pleas of 10 executives of Italian firm Parmalat SpA for misleading investment markets about the firm's true financial condition (Galloni, 2005), and the conviction of the former CEO of French firm Alcatel Alsthom for abuse of social property, an offense "... ranging from embezzlement ... to any misuse of corporate assets" (Doro, 1997, p. 46).

1.3. Layout of an analysis

This article will first explain what the literature on business ethics suggests for achieving ethical behavior in an organization. That explanation will lay a foundation for the analysis of the recent corporate misdeeds. Next, a description will be provided of how the data on the most recent misdeeds of the *Fortune 100* companies were gathered; specifically, it will explain why the *Fortune 100* list from 1999 was selected for examination and will identify the types of corporate behaviors that are considered unethical in this analysis.

The article will then display and discuss the findings concerning corporate misconduct, including not only the list of firms reported to have been engaged in misconduct, but also the gravity of that misbehavior. As will be seen, many firms have been involved in more than one type of serious wrongdoing. Finally, the article will close with conclusions about the extent of the recent business misconduct and recommendations for improving the situation. Among other things, those recommendations will indicate that efforts toward improvement must involve both business and non-business elements of U.S. society.

2. Fostering a culture of ethical behavior: What the research suggests

A sizable body of research on business ethics indicates the actions that can be taken within an organization to help foster a culture of ethical behavior. According to that research, the single most important factor in achieving ethical behavior in an organization is top management commitment to that objective. As the following narrative explains, even though ethics programs, codes of conduct, and the development and enforcement of rules can help, these tools for improving behavior are unlikely to work without the full support and active involvement of top management.

2.1. It starts at the top

As mentioned, the research on business ethics has indicated the key role that top management commitment plays in developing an ethical organizational culture. Trevino et al. have provided evidence from several studies that affirms this. Weaver, Trevino, and Cochran (1999b) found that the commitment of top management is essential for ethical decision making to be integrated into a firm's

culture. More specifically, Trevino and Brown (2004) found that top executives must manage ethical conduct proactively by means of explicit ethical leadership and conscious management of the organization's culture. To this end, they suggest that top managers should study the cultures of their organizations to see what ethical messages are being sent. The researchers also assert that executives should communicate the importance of ethics, reward ethical behavior, and model that behavior themselves. Weaver, Trevino, and Cochran (1999a) found that top management commitment and involvement in an ethics program was much more important than simply increasing the scope of the program; in other words, management's decisions and actions in promoting the program are more effective than making sure that the program addresses a long list of ethical issues.

Other researchers have produced similar recommendations. Anand, Ashforth, and Joshi (2004) concluded that, to foster ethical conduct, management must promote an awareness of ethics, focus on more than numbers, and, perhaps most important, model ethical decision making. Holmes, Langford, Welch, and Welch (2002) found that employees are more likely to engage in ethical behavior if top management "... is firm in its expectations of ethical behavior of all employees, including themselves" (p. 97). Finally, Harrington (1997) concluded that, to achieve ethical behavior, top management needs to gain social consensus through changes in organization culture and by encouraging employees to live up to their responsibilities.

These ideas are established ways for top managers to improve the ethical culture within their firms. However, as the following analysis will reveal, they were insufficient to address the primary causes of the misdeeds most recently committed in the U.S. business world. The reasoning behind this conclusion is fully explained following the analysis of the data on the unethical corporations.

3. Gathering data

In gathering data on the misdeeds of the firms included in the *Fortune 100*, the first decision to be made concerned which year's *Fortune 100* listing to use. Although the *Fortune 100* remains relatively stable, several additions and deletions are made each year, and the changes can be rather substantial over the course of even 3 years. Two criteria seemed particularly important in deciding which list to use. First, since this article addresses the level of unethical behavior in U.S.

business, it seemed appropriate to use the *Fortune 100* list that included the most companies with misdeeds to report. Among other things, that list would reveal the extent of the misbehavior in terms of the number of firms involved at its worst point. A second criterion is somewhat more subjective, but perhaps just as significant. Specifically, it seemed important to use a *Fortune 100* listing that included both Enron and WorldCom, as both companies appear to be the "poster children" of the era in question. There seems little doubt that the word "Enron" will become to corporate misdeeds what "Edsel" is to product failure. And, of course, WorldCom is now famous for perpetrating the largest accounting fraud in the history of the business world: a pattern of lies that totaled more than \$11 billion dollars (Latour, Young, & Yuan, 2005). The *Fortune 100* list that met both of these criteria was the list as of the end of 1999.

3.1. What constitutes "unethical" behavior?

The next decision concerning the data to be gathered involved two considerations: determining the types of corporate behavior to consider unethical, and deciding on the time period over which the data on that behavior should be gathered. Some types of behavior may seem unethical to certain individuals but not to others. For example, Safeway has been criticized by institutional shareholders for alleged conflicts of interest on its board of directors (Chan, 2004); however, there is no evidence of misconduct because of those alleged conflicts. Many criticisms have also been leveled against former Disney CEO Michael Eisner, who has been accused of being single-minded and heavy-handed in his decision making and control of the firm (Gunther, 2004). Nonetheless, there has been no consensus on the issue, and a Delaware judge recently ruled in favor of Disney and Mr. Eisner in a lawsuit concerning one of the most serious charges: the severance package given to former President Michael Ovitz (Orwall & Marr, 2005). Finally, Kmart has been criticized by several compensation analysts for the sizable severance packages it has paid to its recently failed CEOs (Schwartz, 2002). In spite of this, Kmart did disclose to shareholders the size of the severance packages. Further, despite growing concerns about executive compensation, there is no clear-cut way to decide the level at which executive compensation is unethical.

A more specific and definite decision rule was needed to identify the types of corporate behavior that could be labeled "unethical." The analysis of

the media reports of corporate misdeeds for the time period in question uncovered three conditions that seemed to clearly signal unethical behavior:

- (1) a plea of guilty by a firm to charges of misconduct;
- (2) a ruling against a firm by a government agency or a court; and
- (3) an agreement by a firm to settle charges, often by paying a fine.

Rulings by courts or government agencies (either in the U.S. or abroad) were considered solid evidence of corporate misconduct, even if the firm was still appealing the ruling. Additionally, an agreement by a firm to settle charges, usually by paying a fine and agreeing to other restrictions on company behavior, was considered proof of misconduct, even if the firm was not required to admit guilt. Indeed, U.S. government agencies are well-known for allowing firms to settle charges with substantial fines without admitting guilt, just to close the books on a case.

The final data gathering decision concerned the time period over which data on corporate misconduct should be gathered. Since (1) the *Fortune 100* at the end of 1999 was the focus of the study, (2) the reports of corporate misdeeds did not begin to appear until after that date, and (3) those reports continued well into 2005, it was decided that the study would gather data for the entire period between January 1, 2000 and June 30, 2005. The data gathering included a few news reports published after June 30, 2005, but only because those reports clarified the outcome of a case that was initially announced before that date.

3.2. Ranking the firms

It was necessary to find a way to rank the firms according to the seriousness of their offenses. For firms that were required to pay fines as part of their punishment, the size of the fine was used as an indicator of how unacceptable their behavior was. The payment of a fine is a rather unambiguous indicator of unethical behavior, and the size of the fine can probably be used as a measure of the seriousness of the charge. Unfortunately, fine amounts are not always disclosed to the media; for example, General Motors recently paid an undisclosed amount to settle charges of discrimination in the lending practices of its GMAC unit (Pugh, 2004). Further, firms are sometimes allowed to take corrective action that does not include the payment of a fine; for instance, when General

Electric failed to disclose the extent of the retirement package provided to former CEO Jack Welch, it agreed to “cease and desist” from violating future disclosure requirements (Stein, 2004). The rankings of firms that either paid undisclosed fines or were not required to pay fines were based on the apparent seriousness of their behavior, judging from the media report of that behavior. Finally, within the guidelines just described, firms that engaged in multiple offenses were ranked higher in unethical behavior than their “peers” that committed only one offense.

Through an analysis of the data, the “unethical” firms were ranked according to the level of unacceptability of their behavior. Three categories of unacceptable behavior were used, based on the judged seriousness of a firm’s misconduct. The first category, “The Most Unacceptable Behavior,” includes firms whose misconduct led to fines of \$1 billion or more, with many of those firms committing multiple offenses. The next category, “The Second Most Unacceptable Behavior,” includes firms that paid fines of \$100 million or more, but less than \$1 billion; again, some of those firms committed multiple offenses. The third category, labeled “The Least Unacceptable Behavior,” includes firms whose misconduct led to fines of less than \$100 million.

4. The unethical *Fortune 100* firms

The analysis of media reports of corporate misconduct revealed eight types of activities that can be considered unethical. These included three types of fraud (accounting, securities, and consumer), discriminatory practices, undisclosed executive pay, antitrust activities, patent infringement, and other violations of the law.

The data on companies determined to have engaged in unethical behavior are presented in three ways in the following narrative. First, a detailed listing of the misdeeds committed by each of these firms is offered. Second, a summary of the firms engaged in each type of misdeed is presented, thereby indicating which types of misbehavior were the most common. Finally, the *Fortune 100* firms that engaged in unethical behavior are ranked within three categories according to the “unacceptability” of their behavior.

4.1. Specific misdeeds of each firm

Table 1 lists the specific misdeeds of each of the *Fortune 100* companies, alphabetically by company as the company name appeared in the 1999 list.

For companies that have since adopted new names (perhaps because of a merger or acquisition), Table 1 lists the new name in parentheses. For example, J.P. Morgan & Company is now J.P. Morgan Chase, Lorillard Tobacco is now part of Loews, MCI WorldCom became WorldCom (and then MCI), Philip Morris is now part of Altria, and Prudential Insurance is now Prudential Financial. Although FleetBoston was acquired by Bank of America in 2004, Table 1 lists it as an independent firm because its transgressions occurred under the FleetBoston name. Finally, Table 1 lists the *Fortune* 100 number of each firm, the nature of each firm's misdeeds, and a brief description of those behaviors. Again, the evidence yielding an "unethical" label for each of these firms was based on more than just being investigated, for example, by a government agency. Rather, each of these firms pled guilty to charges of misconduct, received a ruling from a government agency or a court, or agreed to pay a fine to settle charges.

Table 1 indicates that 40 firms have recently engaged in unethical behavior. Given the wide range of firms and industries involved and the eight types of unethical behavior committed, it would appear that the level of misconduct over the time period studied is the highest in American history. Although hard evidence for comparison with other time periods is not available, Zinn's (2003) review of U.S. history reveals no other period of time in which so many forms of misconduct occurred in so many industries and companies.

4.2. Firms engaged in each type of misconduct

One way to gain an overall view of the recent corporate misconduct is to list the *Fortune* 100 firms that engaged in the eight types of misdeeds: accounting, securities, or consumer fraud, discriminatory practices, undisclosed executive pay, anti-trust activities, patent infringement, and other violations of the law. Table 2 provides such a listing. As might be expected, some firms were involved in more than just one type of misbehavior. The most frequent type of misconduct, committed by 20 *Fortune* 100 firms, was accounting fraud, which typically involves the misrepresentation of financial results to falsely boost revenues or net income. The best known of these accounting fraud cases were those involving Enron and what was then MCI WorldCom. Enron is perhaps most infamous for creating off-balance sheet entities to hide debt with the intent of maintaining fictitious earnings (Bryce, 2002). The former CEOs of Enron, Kenneth Lay and Jeffrey Skilling, will go on trial in January

of 2006 for their roles in the Enron debacle (Emshwiller & Morse, 2005). As previously stated, MCI WorldCom committed the largest accounting fraud in history by falsely reporting \$11 billion in earnings by lying about both revenue and expenses over a 4-year period (Latour et al., 2005). In March 2005, Bernard Ebbers, the former CEO of WorldCom, was found guilty by a federal jury of securities fraud, conspiracy to commit fraud, and making false filings with the SEC.

The second most frequent type of misconduct was securities fraud, which usually involves such actions as falsely promoting company stock or otherwise lying to shareholders or other investors. Securities fraud was committed by 13 firms, including some of the best known and highly regarded companies in recent history: AT&T, Bank of America, Citigroup, Goldman Sachs, J.P. Morgan & Co., Lehman Brothers Holding, Morgan Stanley, Prudential Insurance, and Time Warner. As Table 2 indicates, six of these firms (Bank of America, Citigroup, Enron, J.P. Morgan & Co., MCI WorldCom, and Time Warner) engaged in both accounting and securities fraud.

Eleven firms committed consumer fraud, which includes such activities as misleading customers about product quality or safety, or misrepresenting the actual risks involved in financial products. For purposes of this analysis, consumer fraud includes corporate actions not only toward individuals, but also toward organizations. For example, the recent bid rigging by American International Group (Langley & Francis, 2004) and the manipulation of the West Coast energy market by Duke Energy (Stires, 2004) are both considered forms of consumer fraud here. In addition to these two high profile cases, other well-known instances of consumer fraud include those of Ford Motor and Merck (both of which failed to disclose safety issues concerning their products), Lorillard and Philip Morris (both of which paid part of a \$206 billion tobacco industry settlement concerning treatment of sick smokers), and Prudential Insurance (which misled customers about its insurance products). Of the 11 firms cited for consumer fraud, six were also found to have committed other forms of misdeeds.

Six companies have been successfully charged with discriminatory practices. Among these, Boeing and Morgan Stanley have both agreed to pay large fines for sex discrimination, and IBM has settled charges of discrimination in its pension plan for \$300 million. Of the six firms charged with discriminatory practices, all but one (General Motors) were also charged with other unethical behaviors.

Table 1 The misdeeds of the unethical *Fortune 100* companies

Company	<i>Fortune</i> number as of 12/31/99	Nature of misdeeds	Status of investigation as of 4/1/2005
American International Group	17	Accounting fraud, consumer fraud	The firm paid a total of \$136 million in fines for two instances of accounting fraud (Leonard & Elkind, 2005). Executives of the firm also pled guilty to bid rigging (Langley & Francis, 2004).
AT&T	8	Securities fraud	The firm paid \$170 million to settle charges it had breached its fiduciary duties in its investment in At Home Corp. (Wetzel, 2005). The firm also paid \$100 million to settle a lawsuit for misleading shareholders about its financial future (Young, 2004).
Bank of America	11	Securities fraud, accounting fraud, undisclosed executive pay	The firm agreed to pay \$460.5 million to settle a suit by investors alleging that it failed to conduct adequate due diligence in underwriting WorldCom bonds (Morgenson, 2005). This settlement brought to more than \$1 billion the amount the firm paid due to corporate, investment banking, and trading scandals. Also, the firm failed to inform shareholders of a \$44.7 million bonus for its former CEO (Timmons, 2001).
Boeing	10	Discriminatory practices, accounting fraud, other violations of law	The firm agreed to settle, for an undisclosed amount, a class action lawsuit alleging pay discrimination against women (Holmes & France, 2004). It fired its CFO for criminal actions in seeking defense contracts (Holmes, 2003). It stole competitor documents concerning bids for a military rocket-launch contract. Finally, it paid \$92.5 million for hiding financial data during its merger with McDonnell Douglas.
Bristol-Myers Squibb	78	Accounting fraud	The firm paid more than \$800 million to settle charges of accounting fraud (Lublin, Davies, & Squeo, 2005).
Citigroup	7	Securities fraud, accounting fraud	The firm paid \$2 billion to settle an investor suit concerning its alleged role in the Enron accounting scandal (Pacelle & Sidel, 2005). It paid \$2.65 billion to settle a suit by investors alleging that it failed to conduct adequate due diligence in underwriting WorldCom bonds (Morgenson, 2005). It paid \$208 million to settle SEC charges concerning its mutual-fund operations (Pacelle, 2005). Japan banned the firm from government bond auctions due to alleged money laundering (Hovanesian, Dwyer, & Reed, 2004).
Coca-Cola	83	Antitrust activities, consumer fraud, discriminatory practices	The firm settled an antitrust dispute with the EU by agreeing to terminate unfair competitive practices ("Soft Drinks," 2004). It paid Burger King \$21 million for perpetrating a marketing fraud (Day, 2003). It settled SEC accusations of "channel stuffing" by agreeing to avoid future securities violations and maintain appropriate compliance procedures (McKay & Terhune, 2005). Finally, it paid \$192 million to settle a class action suit alleging racial discrimination (King, 2001).
ConAgra Foods	60	Accounting fraud	The firm agreed to pay \$14 million to settle a shareholder suit over allegedly fictitious sales and misreported earnings at a former subsidiary ("ConAgra Foods," 2005).
CVS Corp.	93	Securities fraud	The firm agreed to pay \$110 million to settle charges it misled investors about its future prospects in 2001 ("CVS Corp.," 2005).
Dow Chemical	89	Consumer fraud	The firm paid a \$2 million fine for violating an agreement to halt false safety claims about its pesticide products (Sissell, 2003).
Duke Energy	69	Accounting fraud, consumer fraud	The firm admitted that its energy traders conducted "round-trip" trades with other energy companies to falsely boost revenues (Stires, 2004). It also agreed to pay \$210 million for its role in manipulating the West Coast energy market.
E. I. DuPont de Nemours	42	Antitrust activities	The firm's DuPont Dow Elastomers unit pled guilty to Justice Department charges of conspiring to fix prices and agreed to pay an \$84 million fine (Westervelt, 2005). The firm also agreed to settle a federal class-action antitrust lawsuit related to purchases of synthetic rubber products.
Enron	18	Accounting fraud, securities fraud	The firm agreed to pay \$356 million to settle a class action lawsuit by employees who lost money in its 2001 collapse (Schultz, 2005). The firm engaged in illegal derivatives deals with off-balance sheet entities controlled by its CFO (Bryce, 2002). It also engaged in many activities that falsely boosted its stock price.

Table 1 (continued)

Company	Fortune number as of 12/31/99	Nature of misdeeds	Status of investigation as of 4/1/2005
Exxon Mobil	3	Accounting fraud	A state jury found the firm guilty of defrauding Alabama out of royalties from natural gas wells (O'Brien, Phillips, & McIntyre, 2004).
Fannie Mae	26	Accounting fraud	The SEC ruled that the firm violated accounting rules, thereby overstating its profits by \$9 billion (McLean, 2005).
FleetBoston	80	Securities fraud	The firm paid a \$21 million NYSE fine and forfeited \$38 million that its stock exchange traders earned by improperly trading for their own accounts before filling customer orders (Caffrey, 2004). It also paid \$70 million in penalties for its role in late trading and market-timing arrangements ("B of A, FleetBoston," 2004).
Ford Motor	4	Discriminatory practices, consumer fraud	The firm agreed to settle two class-action age discrimination lawsuits filed by middle managers for \$10.5 million ("Ford Settles," 2001). For an undisclosed amount, it settled 90 lawsuits involving rollover accidents involving the Firestone tires on its Explorer SUVs, which killed 47 people in South and Central America (Lifsher & Aepfel, 2003).
Freddie Mac	62	Accounting fraud	The firm agreed to pay \$125 million to settle charges by the Office of Federal Housing Enterprise Oversight that it manipulated earnings over a 3-year period through the use of impermissible accounting and derivatives schemes (Collins, 2004).
General Electric	5	Undisclosed executive pay	To settle SEC charges that it failed to fully disclose the extent of retirement benefits provided to its former CEO, the firm agreed to "cease and desist" from violating disclosure requirements (Stein, 2004).
General Motors	1	Discriminatory practices	The firm's GMAC unit settled, for an undisclosed amount, a lawsuit alleging discrimination in its lending practices (Pugh, 2004).
Goldman Sachs Group	54	Securities fraud	The firm agreed to pay \$12.5 million to settle a suit alleging that it failed to conduct adequate due diligence in underwriting WorldCom bonds (Morgenson, 2005). The firm agreed to pay \$40 million to settle charges that it accepted "kickbacks" in exchange for investment banking business (Anderson, 2005).
Honeywell International	65	Consumer fraud	The firm agreed to pay \$2.8 million to settle charges that it provided false information to the Air Force about its internal cost-management systems ("Industrial Brief," 2005).
IBM	6	Discriminatory practices, accounting fraud	The firm agreed to pay \$300 million to current and former employees to settle litigation over discriminatory practices in changing to a cash-balance pension plan (Schultz, Francis, & Bulkeley, 2004). The SEC ruled that the firm used revenue from patent licenses and profits from the sale of assets to improperly reduce selling, general, and administrative expenses, and falsely improve its reported income (Lyons, 2002).
Intel	39	Antitrust activities, patent infringement	Japan's Fair Trade Commission ruled that the firm illegally used rebates and marketing funds to induce Japanese personal-computer makers to favor its microprocessors (Clark, 2005). Also, the firm agreed to pay Intergraph Corporation \$675 million to settle a 7-year suit charging that its Pentium chips violated Intergraph's patent for its Clipper processor chip (Johnson, 2004).
J. P. Morgan & Company (J. P. Morgan Chase)	92	Securities fraud, accounting fraud	The firm agreed to pay \$2.2 billion to settle a suit by investors for its alleged role in the Enron collapse (Sidel and Pacelle, 2005). It earlier agreed to pay \$2 billion to settle a suit by investors alleging that it failed to conduct adequate due diligence in underwriting WorldCom bonds. The company had already agreed to pay an SEC fine of \$135 million for its role in the Enron fraud ("Banks, WorldCom," 2003).
Lehman Brothers Holding	88	Securities fraud	The firm agreed to pay \$62.7 million to settle a suit by investors alleging that it failed to conduct adequate due diligence in underwriting WorldCom bonds (Morgenson, 2005).

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Table 1 (continued)

Company	<i>Fortune</i> number as of 12/31/99	Nature of misdeeds	Status of investigation as of 4/1/2005
Lorillard (Loews)	72	Consumer fraud	The firm was part of the settlement between the tobacco companies and states' attorneys-general, in which the former agreed to pay \$206 billion for the costs of treating sick smokers (Woolley, 2005).
Lucent Technologies	22	Accounting fraud	The firm agreed to pay an SEC fine of \$25 million for failing to fully cooperate with an SEC investigation into charges of improperly reporting \$1.15 billion in revenue in 2000 (Gordon, 2004).
MCI WorldCom (MCI)	25	Securities fraud, accounting fraud	A federal jury found former CEO Bernard Ebbers guilty of securities fraud, conspiracy to commit fraud, and making false filings with the SEC (Latour et al., 2005). The firm recorded \$11 billion in fraudulent income by classifying operating expenses as capital expenses.
Merck	34	Consumer fraud, accounting fraud	A jury, having concluded that the firm's VIOXX pain pill caused a fatal heart attack, ruled that it must pay \$253 million (Stewart, 2005). Internal documents indicate the firm tried to keep safety concerns from harming the commercial prospects for that same drug (Herper & Langreth, 2004). The firm's Medco Health Solutions unit booked \$12.4 billion in revenues that it had not actually received (Foley, 2002).
Merrill Lynch	29	Accounting fraud, other violations of law	The firm avoided criminal prosecution for its role in the Enron scandal by agreeing to major restrictions on its future complex structured finance and special purpose transactions (Bayly, Furst, & Brown, 2003). Four of its former investment bankers were found guilty of conspiracy to commit fraud and falsify records in the Enron case (Eichenwald, 2004).
Microsoft	84	Antitrust activities, patent infringement	The firm paid 497 million euros for alleged antitrust activities in the European Union (Kanter et al., 2004). In the U.S., it agreed to stop abusing its operating system monopoly (Spanbauer, 2004). It paid large settlements to competitors to settle claims of anti-competitive behavior (Lohr, 2004). Finally, it agreed to pay InterTrust Technologies \$440 million for patent infringement (Cohen, 2004).
Morgan Stanley Dean Witter	30	Securities fraud, discriminatory practices	The firm agreed to pay \$40 million to settle charges it accepted "kickbacks" in exchange for investment banking business (Anderson, 2005). It also agreed to pay \$54 million to settle claims of sex discrimination (Kelly & DeBaise, 2004).
Philip Morris (Altria)	9	Consumer fraud	An Illinois state judge ruled that the firm misled consumers about the hazards of its light cigarettes (Sellers, 2003). Also, the firm was part of a settlement between tobacco companies and attorneys-general for 46 states, in which the former agreed to pay \$206 billion to cover the costs of treating sick smokers (Woolley, 2005).
Prudential Insurance (Prudential Financial)	48	Securities fraud, consumer fraud	The firm's Prudential Securities unit fired a dozen managers and brokers after regulators alleged that they engaged in mutual fund trading abuses (Levick, 2003). The firm also paid \$2.6 billion to settle a class action suit alleging that its insurance agents had misled customers. Finally, it paid a \$20 million NASD fine for misleading customers about variable life insurance policies.
Raytheon	82	Accounting fraud	The firm agreed to pay \$210 million to settle a class action shareholder suit concerning earnings charges that caused its stock to plunge (Karp, 2005). It also agreed to pay \$51 million concerning other civil charges.
Sprint	81	Consumer fraud	The firm paid \$5.6 million to settle government charges that it defrauded the General Services Administration (King, 2003).
Time Warner	45	Securities fraud, accounting fraud	The firm agreed to pay \$3 billion to settle investor charges concerning the accounting in its AOL unit at the time of merger with AOL (Angwin, 2005). Earlier, it paid \$510 million to settle criminal and civil securities fraud charges concerning the same issue.

Table 1 (continued)

Company	Fortune number as of 12/31/99	Nature of misdeeds	Status of investigation as of 4/1/2005
Wal-Mart Stores	2	Other violations of law	The firm agreed to pay \$11 million to settle a federal investigation into allegations it knowingly hired floor-cleaning contractors who employed undocumented workers (Zimmerman, 2005).
Xerox	87	Accounting fraud	The firm agreed to pay a fine of \$10 million to settle SEC charges that it defrauded investors by improperly accelerating revenues, overstating earnings, and disguising loans as asset sales (Morris, 2003). Six former executives also paid \$22 million in penalties and fines to settle charges of improper accounting.

Four firms (Coca-Cola, DuPont, Intel, and Microsoft) have been found guilty of antitrust activities. The Microsoft situation is certainly the most widely reported, particularly since that firm recently settled charges with both the United States and the European Union. In the U.S., the firm signed an agreement with the U.S. Justice Department and 20 states to curb its abuse of competition through its operating system monopoly (Spanbauer, 2004). In a more dramatic settlement, the firm agreed to pay a fine of 497 million euros (\$660 million at the time) to settle charges by the European Union that Microsoft violated EU antitrust laws (Kanter, Bryan-Low, Guth, & Clark, 2004). In addition, the agreement also calls for the company to provide a version of its Windows operating system without the firm's media player software.

Bank of America and General Electric allegedly failed to properly disclose the compensation of their executives. Again, the problem was not that exorbitant compensation packages were provided;

rather, the issue concerned the failure to fully disclose the details of those packages.

Intel and Microsoft have made substantial payments to settle charges of patent infringement. Specifically, Intel agreed to pay Intergraph Corporation \$675 million to settle a 7-year dispute over its alleged violation of Intergraph's patent for chip technology (Johnson, 2004). Microsoft agreed to a \$440 million license agreement with InterTrust Technologies to settle charges that it illegally used InterTrust's technology for "product activation" in its Windows and Office products (Cohen, 2004).

Finally, three firms have allegedly committed other violations of the law. Of these, Boeing's actions may be the most widely publicized. The company was fined for criminal behavior in its attempts to seek defense contracts (Holmes, 2003), with errant practices including secretly agreeing to hire into an executive position a government official who oversaw the allocation of those contracts.

Table 2 Fortune 100 companies categorized by misdeeds

Nature of misdeed	Corporations engaged in that misdeed	Number of corporations engaged in that misdeed
Accounting fraud	AIG, Bank of America, Boeing, Bristol-Myers Squibb, Citigroup, ConAgra Foods, Duke Energy, Enron, Exxon Mobil, Fannie Mae, Freddie Mac, IBM, J. P. Morgan & Co., Lucent Technologies, MCI WorldCom, Merck, Merrill Lynch, Raytheon, Time Warner, Xerox.	20
Securities fraud	AT&T, Bank of America, Citigroup, CVS Corp., Enron, FleetBoston, Goldman Sachs, J. P. Morgan & Co., Lehman Brothers Holding, MCI WorldCom, Morgan Stanley, Prudential Insurance, Time Warner.	13
Consumer fraud	AIG, Coca-Cola, Dow Chemical, Duke Energy, Ford Motor, Honeywell International, Lorillard, Merck, Philip Morris, Prudential Insurance, Sprint.	11
Discriminatory practices	Boeing, Coca-Cola, Ford Motor, General Motors, IBM, Morgan Stanley.	6
Antitrust activities	Coca-Cola, DuPont, Intel, Microsoft.	4
Undisclosed executive pay	Bank of America, General Electric.	2
Patent infringement	Intel, Microsoft.	2
Other violations of law	Boeing, Merrill Lynch, Wal-Mart.	3

4.3. The rankings: Most unacceptable to least unacceptable behavior

As [Tables 1 and 2](#) indicate, some firms committed misdeeds that were much more serious than others. To illustrate more clearly the differences in “seriousness” of those transgressions, [Table 3](#) ranks the unethical firms into three categories based on the level of unacceptability of their behavior. The first category includes the firms that committed

the most unacceptable behavior. The actions of these firms led to fines of \$1 billion or more, with many of the firms committing multiple offenses (some of which led to fatalities). The second category includes firms that paid fines of \$100 million or more, but less than \$1 billion; again, some of these firms committed multiple offenses. The third category, which is labeled “The Least Unacceptable Behavior,” includes firms whose misconduct led to fines of less than \$100 million.

Table 3 Rankings of the unethical *Fortune 100* firms based on their recent behavior

Categories of unacceptable behavior	Description of category	Corporations ranked within category	Level of fine (or other reason) for corporation's ranking
Category 1: the most unacceptable behavior	Involves behavior that led to fines or settlements of \$1 billion or more, and which may have involved more than one charge of misconduct.	Philip Morris (Altria)	Promoted product that led to multiple deaths
		Lorillard (Loews)	Promoted product that led to multiple deaths
		Merck	Promoted product that led to multiple deaths
		Ford Motor	Promoted product that led to multiple deaths
		MCI WorldCom	Recorded \$11 billion in false income
		Enron	Highest levels of accounting/securities fraud
		Citigroup	Paid \$ billions for multiple offenses
		J.P. Morgan Chase	Paid \$ billions for multiple offenses
		Bank of America	Paid \$ billions for multiple offenses
		Time Warner	Paid \$3.5 billion for accounting fraud
		Boeing	Criminal activity and discrimination
		Exxon Mobil	Defrauded Alabama out of oil royalties
		Prudential	Paid \$ billions for multiple offenses
		Microsoft	Paid \$1 billion for multiple offenses
		Intel	Paid \$675 million for patent suit
Category 2: the second most unacceptable behavior	Involves behavior that led to fines or settlements less than \$1 billion but more than \$100 million, or which included more than one charge of misconduct.	Bristol-Myers Squibb	Paid \$300 million for securities fraud
		IBM	Paid \$300 million for multiple offenses
		AT&T	Paid \$270 million for multiple offenses
		Raytheon	Paid \$261 million for multiple offenses
		Duke Energy	Paid \$210 million for multiple offenses
		Coca-Cola	Paid \$192 million for multiple offenses
		AIG	Paid \$136 million for multiple offenses
		Fannie Mae	Overstated profits by \$9 billion
		Freddie Mac	Paid \$125 million for accounting fraud
		CVS Corp.	Paid \$110 million for securities fraud
		FleetBoston	Paid \$100 million for multiple offenses
		Morgan Stanley	Paid \$100 million for multiple offenses
		DuPont	Paid \$84 million for multiple offenses
		Lehman Brothers	Paid \$62.7 million for securities fraud
		Goldman Sachs	Paid \$50 million for multiple offenses
		Merrill Lynch	Major Enron role; multiple offenses
Category 3: the least unacceptable behavior	Involves behavior that led to fines or settlements less than \$100 million.	Lucent Technologies	Paid \$25 million to SEC
		ConAgra Foods	Paid \$14 million for accounting fraud
		Wal-Mart	Paid \$11 million for illegal workers
		Xerox	Paid \$10 million for accounting fraud
		Sprint	Paid \$5.6 million—defrauded U.S. govt.
		Honeywell	Paid \$2.8 million—defrauded U.S. govt.
		Dow Chemical	Paid \$2 million for consumer fraud
		General Motors	Paid to settle discrimination charges
		General Electric	Violated pay disclosure requirements

Fourteen firms are listed in Category 1 (“The Most Unacceptable Behavior”). The first four, Philip Morris, Lorillard, Merck, and Ford Motor, all promoted products that have led to multiple deaths. Although Philip Morris (now part of Altria) and Lorillard (now part of Loews) both produce legal products (i.e., tobacco products), it is their behavior in the promotion of those products that yields their number one and two rankings, respectively, among all the unethical firms (Sellers, 2003; Woolley, 2005). Specifically, both Philip Morris and Lorillard paid fines totaling billions of dollars to cover the costs of health problems (including death) resulting from the deceptive promotion of their products. Merck recently lost its first lawsuit concerning a death allegedly caused by one of its products, with the most damning evidence being that Merck knew early on that the product could lead to heart attacks (Stewart, 2005; Herper & Langreth, 2004). Ford paid a substantial fine to settle lawsuits concerning deaths resulting from its Ford Explorer SUV (Lifsher & Aeppel, 2003). Although this problem involved tires produced by Japanese firm Bridgestone, Ford clearly contributed to the situation by recommending lower tire pressures for a “smoother ride,” resulting in the tires separating at highway speeds.

The remaining 10 firms in Category 1 either paid at least \$1 billion in fines or committed offenses that warrant their placement in this group. MCI WorldCom and Enron are ranked fifth and sixth, respectively, not because of fines, but rather because the behavior of their executives has led to prison terms (Latour et al., 2005; Schultz, 2005). Further, even though the financial impact of the companies’ misdeeds on investors, employees, retirees, and other stakeholders cannot be objectively determined, it is clearly enormous. Among the other eight firms, it is telling that four of these “worst-case” offenders are in industries dealing with finance, insurance, and other financial services. Included are Citigroup, J.P. Morgan Chase, Bank of America, and Prudential Financial.

All 13 firms listed in Category 2 (“The Second Most Unacceptable Behavior”) have paid fines of at least \$100 million, but less than \$1 billion. This category is the only one of the three in which the firm rankings were based almost exclusively on the size of the fine paid. This is due to the fact that most of these firms also committed multiple offenses, and those that did not still perpetrated wrongdoings that warranted the ranking given. The one exception, a difficult firm to rank, is Fannie Mae, for which no fine has yet been decided. It is ranked just above Freddie Mac in terms of unacceptability solely because its offenses were larger

in scope than those of that company. Whether Fannie Mae should be ranked even higher depends on the final outcome of its case.

Most of the 13 firms included in Category 3 (“The Least Unacceptable Behavior”) committed transgressions that, although unethical, simply do not warrant their being ranked with the worst offenders. Although DuPont, Lehman Brothers, and Goldman Sachs (the three top-ranked firms in Category 3) did pay substantial fines for their misdeeds, the rest of the companies in this category committed offenses that seem to pale in comparison to those of the firms in categories 1 and 2. For example, the fines paid by Dow Chemical, Sprint, and Wal-Mart were small in comparison to the other fines listed in Table 3 and concerned single instances of misbehavior. Although wrong, General Electric’s failure to fully disclose Jack Welch’s retirement benefits was also a single instance of misbehavior and had no financial effect on shareholders. Finally, the settlement of the discrimination charges at General Motors concerned only its GMAC lending unit and not the broader automotive operations.

5. A disappointing conclusion

The primary finding from the data presented is that 40 firms (40% of the firms in the *Fortune 100* as of 1999) have recently engaged in behaviors that can be considered unethical. This level of misbehavior in American business is substantial, and leads to the key questions of what allowed this behavior to occur and what can be done about it.

5.1. What allowed this to occur?

As mentioned previously, a considerable body of research on business ethics indicates the actions that can be taken within an organization to help foster a culture of ethical behavior. Of these, the single most important factor in achieving ethical behavior in an organization is top management commitment to that objective. The success of efforts such as ethics programs and codes of conduct is limited unless top management supports those endeavors. As the research on business ethics indicates, management must promote an ethical culture by communicating regularly about ethics, applying the reward system appropriately, and, perhaps most important, behaving ethically themselves (Trevino, Hartman, & Brown, 2000).

Therein lies a root cause of the widespread unethical behavior that recently occurred in the U.S. corporate world. Specifically, the evidence of

recent years indicates that many top executives, including those at some of the largest U.S. companies, have not demonstrated the kinds of behavior that pave the way for these ideas to work. As Carroll (2003) indicates, the three major causes of many of the recent misdeeds (certainly those involving accounting and securities fraud) were executive greed, the failure of boards of directors to perform as expected, and the dereliction of government officials, particularly the U.S. Congress. This article has already explained the failure of the top managers at the unethical firms. Now the roles of boards of directors and government officials will be examined.

5.2. The failure of boards of directors

Concerning the role of boards of directors, one needs only to consider the actions (or lack thereof) of the boards of the unethical firms listed in Table 1. Enron's board actually voted to waive the firm's code of ethics in allowing CFO Andrew Fastow to serve as general partner of its off-balance sheet entities (Berenbeim, 2002). Further, although only three of Enron's board members were members of management, the other, supposedly "independent," board members all had conflicts of interest that should have disqualified them (Bryce, 2002). WorldCom's board consistently failed, at least until it was too late, to demand the financial reports that could have alerted them to the accounting shenanigans at that once-great firm (Jeter, 2003). Finally, the board of directors at American International Group seems to have been intimidated into submission by longtime CEO Maurice Greenberg, at least until a few "heavyweights," former NASD head Frank Zarb included, became members (Mason, 2005).

5.3. The negligence of government

Another obstacle to the improvement of corporate behavior is the U.S. political process. Indeed, a wealth of evidence suggests that, rather than taking steps to correct corporate behavior, political leaders and government officials have turned a blind eye to or even supported the misconduct. As Huffington (2002) indicates, the culprits include not only certain members of the U.S. Congress, but also relatives of those elected officials, who serve as corporate lobbyists and board members.

Consider first the influence corporate lobbyists have on members of Congress. In 2002, there were 38 corporate lobbyists in Washington for every

member of Congress (Huffington, 2002). These lobbyists included not only former members of Congress, such as Vic Fazio and Haley Barbour, but also relatives of current Congressmen and Congresswomen. For example, Chet Lott, who has lobbied on behalf of BellSouth and munitions maker Day and Zimmerman, is the son of Senator (and former Senate Majority Leader) Trent Lott of Mississippi. The sons of Senators Harry Reid (Nevada), John Breaux (Louisiana), Orrin Hatch (Utah), and Ted Stevens (Alaska) have also served as lobbyists for business firms. Further, Linda Daschle and Anne Bingaman, the wives of Senators Tom Daschle (South Dakota) and Jeff Bingaman (New Mexico), have lobbied on behalf of such firms as American Airlines, Boeing, and Global Crossing.

Several relatives of members of Congress have even served on the boards of directors of the largest U.S. corporations. Included in this group are Wendy Gramm, wife of former Senator Phil Gramm of Texas, who was on the Enron board during its recent collapse, Susan Bayh, wife of Senator Evan Bayh of Indiana, who sits on the board of E*Trade, and Ruth Harkin, wife of Senator Tom Harkin of Iowa, who is on the board of directors for Conoco Philips. Largely due to these types of relationships, corporations have been able to affect the development of legislation and regulations through soft money political contributions totaling more than \$1 billion in recent years. A dramatic example of the results of that influence is the Financial Services Modernization Act of 1999, which abolished the separation of investment and commercial banking originally established by the Glass-Steagall Act, thereby paving the way for much of the recent misconduct in the financial industry (Huffington, 2002).

Another example of the success of corporate lobbying efforts involves the Congressional reaction to proposed rules by the SEC to prohibit accounting firms from providing consulting services in addition to auditing services, a combination of services that underlies many of the recent corporate misdeeds. Within a month of the SEC proposal, 46 members of Congress, including two-thirds of the Senate Banking Committee, wrote letters opposing the new rule (Levitt & Dwyer, 2002).

Even when new regulations are approved by Congress, the outcome is usually less forceful than desired. For instance, despite the passage of the 2002 Sarbanes-Oxley Act, accounting rules still allow companies too much discretion in using estimates to calculate their earnings (Henry, 2004). As a result, the three major instruments investors must have to fully understand a firm's financial condition (the income statement, the

balance sheet, and the cash flow statement) are out of sync with one another.

5.4. Recommendations for improvement

Although many, and probably most, *Fortune 100* firms are led by ethically responsible CEOs and boards of directors, the data reported indicate that a substantial proportion of those firms (40, to be exact) have recently behaved unethically. Some improvement in the behavior of those firms may have already occurred due to the efforts of investors, consumers, and employees: the stakeholders harmed most by the recent corporate misdeeds. All three of these groups have filed lawsuits against the culprit firms; in particular, institutional investors have been quite effective in placing pressure for improvement on boards of directors. On the other hand, based on the evidence presented, any dramatic improvement in business behavior depends upon the efforts of business leaders themselves and the broader American public. The role each can play in these improvement endeavors is explained below.

5.4.1. The role business leaders can play

Although the top executives of most of the unethical firms identified in this study seem not to have followed the recommendations of the business ethics literature, there is reason to hope that more top managers will do so in the future. Despite its limitations, the Sarbanes-Oxley Act of 2002 does include features that are likely to encourage boards of directors to select and monitor top executives such that they will make more ethical decisions. Among other things, it calls for changes in corporate governance that should help to improve the situation. In addition, the Act requires that members of the audit committee of the board of directors be independent directors, and further states that the audit committee "... is directly responsible for the work of any accounting firm employed by the company [and] must create procedures for employee complaints or concerns over accounting or auditing matters" (Pearce & Robinson, 2005, p. 40).

Some of the firms identified in this article as unethical are now being led by top executives who clearly wish to improve the level of ethics in their companies. A good example is Citigroup's relatively new CEO Charles Prince, who is replacing his predecessor's emphasis on fast growth and short-term earnings with a longer term focus on such issues as the firm's reputation, internal controls, and ethics (Langley, 2005). Another positive case in point involves the recent executive transition at

Boeing. The board of directors not only replaced CEO Phil Condit following the firm's misdeeds under his leadership, it also quickly replaced his successor due to behavior the board saw as questionable (Lunsford & Karp, 2005). The new CEO, James McNerney, has indicated that new ethics policies at the firm will be enforced.

5.4.2. The role of the American public

Although an increasing number of business executives are likely to behave ethically in the near future, any long-term, widespread improvement in corporate behavior may ultimately depend upon the American voting public. Given the influence corporations have had over government officials through such efforts as lobbying and campaign contributions, and the ready response of government leaders (particularly the U.S. Congress) to business influence, it appears that any major improvement in business behavior will require that the American public demand more responsible action from those government leaders.

Specifically, the voting public needs to call for reforms in the American political process, with special emphasis upon the areas of business lobbying and campaign contributions. Appropriate reforms in these areas could go a long way toward achieving the political outcomes (both legislation and government regulations) that can improve corporate behavior. The difficulty of this lies in finding a way to make the voting public more aware of the shortcomings in the relationship between government and business leaders. Perhaps it is time for those business executives who truly want change to take the lead in this; that is, to either encourage an improved business-government relationship or make the public more aware of the problem. Although no easy task, encouraging greater ethical behavior from American corporations is the right thing to do, and an effort in which all should take part.

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