

Why Cummins Inc.'s CEO Reads His Firm's Ethics Investigation Reports — All 400 of Them

By Andrew Singer

Details matter. That applies when drawing a contract, furnishing a house, or designing a health care plan. It's also true when managing an ethics and compliance program.

That insight hasn't been lost on Cummins, Inc. (Columbus, IN), the storied manufacturer of diesel engines.

About 10 years ago, the \$11 billion (2009 sales) company stationed 10 "master investigators" around the world to manage investigations into alleged ethics violations involving Cummins' employees.



Tim Solso

The investigators report to Sondra K. Bolte, human resources (HR) director, Global Ethics Investigations, who helped develop the network and is the closest thing that Cummins has to an ethics officer. Last year the company conducted some 800 investigations, half of which (about 400) were substantiated.

There is nothing particularly unusual in this.

What sets Cummins apart from most other large companies, however, is that each substantiated investigation summary—a single report typically runs one to two pages—is read by Cummins Inc.'s chairman and CEO, Tim Solso.

"Mr. Miller taught me a long time ago that the only way you really know what's going on in your company is to walk the shop floor or the research labs," Solso told us via e-mail. "The company today is too big to do this, so reading these individual investigation reports is one way of learning about what's going in the organization at a grassroots level and how we are responding. It's important that I know that." Solso is referring to J. Irwin Miller, the company's president from 1947 to 1951 and chairman from 1951 to 1977—and mentor to generations of Cummins leaders.

Bolte delivers the summary reports to Solso each quarter. She recently handed over

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'I go back to Mr. Miller who said that when someone is mistreated, you want to have a sense of outrage.'

a packet of 150 cases to him. The CEO then sits down and reads the reports all at one time. He may read them on a long airline flight.

Consistency is critical

What is it that Solso is looking for?

Consistency, for one thing. "If it's not OK in the United States, then it's not OK in India or Australia," explains Bolte. If the CEO has questions, he will go right back to the master investigator for answers.

If the company leaves all decision-making to the managers in the native countries, those managers' views "might be colored by that culture," suggests Bolte. They might be more tolerant of behavior, say, that would not be acceptable in Columbus, Indiana.

Solso wants to know what grievances exist within the organization, he told us, but also "I need to know that we are consistent across the board in terms of what the remedies are for certain violations. If somebody is cheating on their time card in Plant A and they are fired, and the same thing happens in Plant B and the person only gets a write-up, that's not good."

The master investigators are stationed around the globe: in Australia (covering the south Pacific), Mexico, China, India, Brazil (covering Latin America), the UK (covering Europe, plus, most recently, Russia), Africa (including the Mideast), and Singapore (covering north and southeast Asia). Cummins, a truly global concern, draws more than half of its sales from overseas business. Three investigators are based in the United States. Most master investigators have human resources backgrounds.

These master investigators "represent Tim Solso in those countries where they work," adds Bolte, who has worked at Cummins for 30 years in various areas of finance, training, human resources, and customer support. Once a year the investigators all gather in a single room to meet with Solso.

Yet one has to ask: the CEO *himself* reading 150 one-to two-page reports a quarter—is that really the best use of his time? Isn't it a kind of imposition?

"No. I see this as a fundamental responsibility, not an imposition," Solso responds. "I am the senior person in management and I have great responsibility in the sense of creating the right environment and making sure that our people are treated well and have the opportunity to contribute to their full potential and their full ability."

Besides, he learns a lot from reading these reports, particularly how the company's "leaders" are responding to grievances. "I go back to Mr. Miller who said that when someone is mistreated, you want to have a sense of outrage. I have a sense of outrage, and have had throughout my entire career, about these types of things."

Cummins has achieved iconic status in the areas of corporate ethics and social responsibility, in good part because of the aforesaid Mr. Miller, a Renaissance man among businesspeople—he studied the classics at Yale. Among other accomplishments, Miller recruited world famous architects like Eero Saarinen, I.M. Pei, and Robert Venturi to design

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many of the municipal buildings in Columbus, Indiana, turning that small Midwestern town into an architectural Mecca. Martin Luther King, Jr. once called Miller “the most progressive businessman in America.”

When Miller died in 2004 at age 95 he was hailed by the *New York Times* as “the industrialist whose patronage turned Columbus, Ind., into a showcase for modern architecture.”

In an interview with *Ethikos* in 1992, Miller told us that “responsible business behavior is basically the best kind of long-range planning. You have to do many things in this world that don’t pay out tomorrow. But it may be the key to your survival 10 or 20 years from now.”

Miller, too, immersed himself in the details of the business. In that 1992 interview, he explained to us how as leader of Cummins he dealt with so-called facilitating payments in the developing world:

The company, founded by Clessie L. Cummins, the chauffeur of Miller’s great uncle, Will G. Irwin, today sells its diesel engines and generators all over the world. Some time ago, Miller recounts, one of its engines broke down in a Far Eastern country. The company had to fly in a spare part. When the replacement piece arrived at the Asian port, however, it was made clear to the Cummins representative on the scene that the part would never reach its destination unless he paid the customs officer \$50.

“What do you do?” asks Miller.

“We went to the government and explained the situation.

“The government official answered: ‘You pay the \$50.’” The official went on to explain that customs officers in that part of the world were simply not paid a living wage. They were expected to supplement their income with facilitating payments—the sort demanded on the docks.

“But \$500,” the government official continued, “that’s a bribe.”

Such distinctions may appear arbitrary. But the key thing, according to Miller, is that “we encouraged our guys to get it out in the open. Not to keep it secret. Talk to the government. ‘What role do you expect us to play?’

“There is a gray world out there. We tell our representatives: If you’re in doubt, don’t do it.”¹

¹ Singer, Andrew, “Influencing J. Irwin Miller: Socrates, Saarinen, Stradivari,” *Ethikos*, May/June 1992, p. 6.

Earlier, 50 percent of employees identified themselves on the ethics line. Now 75 percent do—a ‘measure of confidence,’ says Bolte.

Ethics training

It helps that the company’s senior leaders talk about ethics regularly as part of their agenda, says Bolte, who has been in her current position for 10 years. The company also conducts regular ethics and compliance training.

Employees undergo code-of-conduct training every other year. In areas with “issues” (e.g., problems with sexual harassment or abusive behavior), they’ll do the training every year, sometimes alternating between online training and face-to-face training.

In live sessions they can address directly issues that have been causing recent problems; trainers can point out that the people “who behave like that are no longer here.” At Cummins, notes Bolte, “It doesn’t matter how many patents a person has”—a sign of distinction at an engineering-based company—“if they misbehave, they’re not going to last.”

Moreover, if managers tolerate wrongdoing in the people they supervise, “they (the managers) will be disciplined.”

Different cultures pose different challenges, of course. In India, older people tend to be venerated, notes Bolte, by way of example. That is simply the culture. Not surprisingly, there tend to be more older people at the top of business organizations in India. There is nothing wrong in itself with that. However, if senior managers yell at employees, humiliate employees, forcing their subordinates to “suck it up and wait” until they themselves can move into those top positions and do the same things to *their* subordinates – if that is the “culture” of the land – then it behooves Cummins to take matters in hand and “let them know that is not how we manage. This is not the Cummins way.”

“People around the world are the same,” observes CEO Solso. “Everyone wants to be treated with dignity and respect. You’ll hear people talk about certain cultures, and that certain things won’t work in some areas because their



The company's goal had been to resolve cases within 24 days. They recently cut that goal to 15 days.

culture won't accept it. I just don't buy that. I've traveled all over the world for the last 35 years and I'm certain that people are the same in this regard."

How do they turn these kinds of situations around? "We work hard to put the right people in top positions and we expect them to mentor" those under them, says Bolte.

A 'measure of confidence'

Cummins established an ethics hotline in the United States in 1997 and later brought it to its overseas locations. Things went fairly smoothly when the hotline was introduced in the UK, but it proved more problematic in some other countries—Cummins operates in more than 50 countries and has customers in 190 countries. It was "less readily understood," recalls Bolte. Some time back, Cummins moved hotline management to an outside vendor, EthicsPoint (Lake Oswego, OR).

Earlier, 50 percent of employees identified themselves on the ethics line. Now 75 percent do—a "measure of confidence," says Bolte.

"It says the employees trust the process." They don't fear that they will be retaliated against.

It's much easier to conduct an investigation when employees identify themselves. It's easier to pose follow-up questions. The (EthicsPoint) system will ask questions, too, of course. As Bolte noted in an *IndustryWeek* article:

"The reporting process is precise. Today, when a Cummins employee reports any action that is inconsistent with the code of conduct, the individual is directed to a specific set of questions that makes sure the company gets the information necessary to resolve the incident. These details include where the incident took place, at what time, which items were involved and whether particular individuals were involved. Reporters can also upload documents, name witnesses and provide any other details that can help Cummins recuperate losses and understand how to prevent similar events from happening."²

But the system has its limitations. It will typically record most necessary information, but sometimes, says Bolte, the reporting employees ("reporters") "will tell you what they *assume*, not what they have *seen*." Some probing and

follow-up is often necessary.

Follow-up questions are more difficult to pose with anonymous callers. Reporters must log back into the system via their computers, or they have to call the hotline again. It's easier if they supply their name and number at the outset.

Cummins wants to resolve cases quickly. The longer a case stays open, the more disgruntled employees become, in Bolte's view. (Some recent Ethics Resource Center data, interestingly, has suggested resolution time is not that important. See the Duke Energy story in the July/August 2010 issue of *Ethikos*.) You can't allow cases to remain open indefinitely. If employees are preoccupied with and worrying about their investigation, they become less productive, she suggests.

What are the most common issues that are reported via the hotline? Most are human resources related—as is the case at most other companies. In about 70 percent of cases, the issue centers on "employees and how they get along with each other," says Bolte. "How do we treat each other at work?"

About half of the reports are substantiated. Investigations are overseen and signed off by the master investigators, but they must also be approved by the relevant business unit, HR officer, and Bolte herself.

The master investigator often draws upon other functional departments to conduct the investigation, including legal, security, safety, internal audit, HR, and information technology (IT).

Statements are made at the beginning and the end of an investigation that there will be no tolerance of retaliation. This is for the reporter as well as others who may be interviewed.

The company tracks how long it takes to close a case. It also tracks the number of situations by country as well as *type* of issue. They are looking for trends, themes, what's 'happening' out there. They can also compare their own findings with those of their vendor, EthicsPoint, which has a much larger database containing input from many organizations.

A spike in reports

Recently there was a spike in hotline reports in one of Cummins' overseas markets. Supervisors reportedly were verbally abusing employees; they were rude and condescending. The problem was traced to a single business unit. There had been several similar reports over a six-month period. The company ordered up some special training for

this business unit.

When CEO Solso reads the summary reports, he, too, is looking for trends. “For example, if all of a sudden in one organization or in one location, I see an increase in sexual harassment claims, then I really want to know what’s going on because there could be a leadership issue. I’m not saying all the time you have patterns, but there have been circumstances where all of a sudden you seen an increase in a certain type of report and something’s changed to make that happen.

“Also, if we know the nature of the grievances and the location, we can design training programs to try and address these issues. The type of problem that bothers me the most is when you have a shop foreman, general manager or some other leader, and there is a pattern of abusing your people. I would say that usually a third of the issues are poor leadership. That’s one of the reasons we have leadership training.”

When ‘people quit calling the hotline’

During the economic crisis in 2008, the company did some “downsizing.” During this period, “people quit calling” the hotline, recounts Bolte. They felt grateful that they just had a job. This lasted about nine months. Then the company experienced a *spike* in calls. Employees were making up for lost time, apparently, releasing pent-up frustration. Soon after that, things reverted to normal.

How long does it take Cummins to resolve cases? The company’s goal had been to resolve cases within 24 days. They recently cut that goal to 15 days. They met the new 15-day goal this quarter, overall, but many individual locations did not make it.

The company began recently to classify cases by complexity. Cases are deemed more complex if they involve international travel on the part of an investigator, for instance. Sometimes heaps of data need to be reviewed—as in certain fraud cases. This, too, could make for a more “complex” designation.

These complex cases may reasonably require more time to resolve, and thus Cummins may soon track the amount of time it takes to close a case by complexity level. The new centralized database has helped:

“Case histories, notes and documentation stored in the centralized database give investigators information to help guide their cases. A member of the legal department, for example, could find out whether an employee has been implicated in a particular type of issue before, which disciplinary actions were taken

It’s well known among senior executives that the CEO makes it his business to stay informed on the details of the ethics investigations.

with similar issues, and how the employee was treated. New investigators can be easily added to the case and familiarize themselves with what steps have been taken toward the resolution of the issue.”²

They tend to have faster case resolution in the United States, but that’s because there are more “petty” cases, says Bolte. Complaining is more common in U.S. work culture. People in China, by comparison, are less likely to complain. Two-thirds of hotline calls are from the United States. But that, perhaps, overshadows the fact that the company has seen a “huge [call] increase in the rest of the world” in recent years.

“People here worry about when we get an increase in grievances,” comments Solso, “but actually you know some things are always going on in your organization, and if people don’t use all the avenues you have to report them, we won’t know about the problem.

“So, in a way, an increase in grievances is a good thing because it means more people trust the organization, and they trust the organization because we are responsive and they feel safe in raising these issues. That’s not always the case in some businesses,” notes the CEO.

“How a leader responds to these sorts of issues is one of the most important things they do,” Solso continued. “If leaders don’t deal well with these sorts of issues, then it tells me a lot about their capabilities and their potential to go forward.”

Overall, one of the company’s strategic principles is to create the right environment for success, “and that means every employee anywhere in the world is treated with dignity and respect – and when you have an environment like that, the business will be successful,” says Solso.

But details are critical, too. It’s become well known among senior executives at Cummins Inc. that the company’s CEO makes it *his* business to stay informed on the details of the company’s ethics investigations, “and if I do it, then they need to do it as well,” he adds. □

² Bolte, Sondra, “Reduce Misconduct by Making Ethics Everyone’s Business,” *Industry Week*, April 15, 2009.

The Ombuds As Coach At Eaton Corporation

By Andrew Singer

Sandy Cutler, CEO of Eaton Corporation (Cleveland, OH), speaks often about “doing business right,” and that goes beyond the obvious things, like honoring customer commitments. It includes helping an employee give voice to his or her grievances.

In 2002, Eaton, a diversified industrial company, established an ombuds office at Cutler’s urging. The vast majority of the cases that the office handles are *not* monumental issues of corporate wrongdoing or fraud, but individual complaints, mostly matters related to human resources (HR).

“Doing business right” is a key emphasis of the company, observes Ilene Butensky, and the ombuds office that she heads is viewed today “as a resource to help employees get there.”



Ilene Butensky

The company encourages its 70,000 employees to think of the corporate ombuds as a coach or teacher.

Say an employee has received a poor performance review from a supervisor—unfairly in the employee’s view. The ombuds might coach the employee on how to respond—what he or she might do. “Help me so I don’t sound defensive,” the employee might ask. The ombuds might discuss how to respond in writing versus responding verbally. They may engage in role-playing exercises with the ombuds playing the ‘boss.’

One tip that Butensky often provides in such cases: Focus first on the positive. In the performance review, the boss may have said some positive things initially before moving into problem areas. When *revisiting* the supervisor, begin with those “nice” things that the boss said in the review *before* getting into the contentious areas.

About one-quarter of calls to the ombuds office are from managers, supervisors, and executives. A first question from the ombuds is often: Have you talked to human resources or global ethics about this? A frequent answer: “I wanted to talk to you first.”

Many calls are HR-related, confirms Butensky. An employee might ask about employing relatives. Is this allowed at Eaton?

A ‘neutral’

Eaton began as an automotive products company, but its electrical, hydraulics, and aerospace divisions have grown substantially, and today it calls itself a power management company. It generates about \$12 billion in annual revenue and has 225 manufacturing plants around the world.

In the company’s “Office of the Ombuds” video, CEO Cutler gives the introduction. The ombuds is a “neutral—an independent—person,” he reminds employees. “They do not represent management, and they do not conduct investigations.”

The vast majority of the cases that that office deals with are not monumental issues of corporate wrongdoing or fraud but individual complaints, mostly human resources type matters.

Eaton has three ombuds officers for North America (including Butensky), plus one in Puerto Rico (covering the Caribbean and South America), one in China, and one in India.

The office began in the United States but was later expanded to Canada, Latin America, and the Caribbean. In 2008, Eaton established an office in Shanghai, China, and this year in India. (In India, the ombuds had performed strongly as an HR manager in one of Eaton's Indian manufacturing plants.) An ombuds office will soon open in the UK, and next year in Europe.

Three categories

Asked about the types of cases that arise, Butensky notes that the office keeps a database in which cases are separated into three categories: Individual, medium impact, and high impact. (Employee names are *not* reported in the database.)

'High impact' cases arise rarely; they account for only 2 percent of total cases. A serious safety concern might be considered high impact. So could a bribery case or an allegation of sexual harassment involving a senior executive.

When the office receives these cases, it notifies the proper internal offices right away. (Again, no employee names are disclosed.) The ombuds office itself never does investigations. It often brings cases to the ethics office, however.

A 'medium impact' case might be an internal policy that may not be administered consistently across the company. It's not a violation of the law, but it could be a violation of company policy.

Most cases—90 percent—are 'individual' cases. 'Compensation and benefits' is the No. 1 case type that employees call about. This encompasses pay, wages, benefits (e.g., How does disability pay work? What about leaves of absence?), etc.

The second most frequent complaint area is 'jobs and careers.' This might cover postings for an internal job, but also includes layoffs, overtime, or colleague and teamwork conflicts—i.e., "people not getting along and not wanting to bring it to the attention of their supervisor."

Ombuds backgrounds

Ombuds officers typically have varied backgrounds. At Eaton, they prefer ombuds officers who have some tenure at the company, who know the company's philosophy, and who are familiar with the way the company treats employees. They want ombuds officers who can "actively listen"

About one-quarter of calls to the ombuds office are from managers, supervisors, and executives.

to an employee, "and have an ability to address employees' concerns," says Butensky. Most of Eaton's ombuds officers have an HR background.

Butensky, who has headed the office for three years, has more than 30 years with Eaton, most of it in human resources, primarily in the compensation and benefits area. She is also an attorney. Another Eaton ombuds officer is a former machine operator who went back to school and secured a master's degree in human resources. Another is a lawyer who also had a technical background with the company.

The ombuds officer makes it clear to employees at the outset that "we don't provide legal advice," but the office may, under some circumstances, be able to provide resources so the employee may not have to spend a lot of money on a lawyer right away. (If the employee does hire a lawyer, the ombuds office typically bows out.) In this sense, the office can play an "intermediary role," and it's helpful to have officers with a legal background.

You don't need to be a lawyer to be an ombuds officer, though, adds Butensky. Employees can choose whom they want on their team, and a lawyer can be particularly useful in some matters, like employment termination cases. If the employee wants to know how the termination came about, the ombuds officers can ask HR about it and get back to the employee. The ombuds/lawyer often can explain the layoff process that a plant or facility uses, for instance.

The ombuds *does* need to speak the language of the country in which he or she is based. Eaton's China-based ombuds speaks Chinese; its Puerto Rico-based ombuds (who covers the Caribbean and also South America) speaks Spanish, and so on.

Establishing new offices

When Eaton establishes a new ombuds office overseas, members of the headquarter ombuds office meet with employees at the new locations (e.g., Indian manufacturing plants), explain the purpose of the office, provide them with a pen or magnet with the office's toll-free telephone number, and so on. In China and India, where HR managers have also been tapped as ombuds officers, the compensation and

The office keeps a database in which cases are separated into three categories: Individual, medium impact, and high impact. Only about 2 percent are high impact.

benefits area is again the No. 1 employee concern.

More “leadership” issues typically arise overseas, however. Many of the managers and executives in places like Latin America and the Caribbean haven’t been with the company for a long time. Employees might complain that their boss is not treating them with dignity, is embarrassing them, etc.

Again, the ombuds explains whom they can talk with about an issue, how to approach that person, how to structure the conversation or, with the employee’s permission, the ombuds officer can speak with someone in the company on the employee’s behalf.

‘We don’t rewrite policy’

What’s the most frequent asked question about the ombuds office?

“What is it?” answers Butensky. That is, what *is* an ombuds office. That is especially the case overseas. Unlike ethics, the ombuds concept isn’t intuitive. “How do we translate the word?” she asks. “Do we even translate the word? Do we use a U.S. word? Do we use a Chinese word?”

In China, Eaton uses Chinese characters to describe what an ombuds office does, such as counseling and coaching.

Many of the challenges of the office are shared by ombuds officers everywhere. When there is a problem, “Employees want us to fix it immediately,” says Butensky. Often that’s not possible. “We have to work through others,” meaning other functional offices like human resources, for instance. With regard to company policy, the ombuds office can provide input, “but we don’t rewrite policy.”

Tracking trends

Another key function of Eaton’s ombuds office is providing trend reviews to senior management and human resources. These are compiled by geographic region and also by business sector “so they hear what we are hearing.”

It can be as mundane as food in the local canteen. Eaton has recently focused on employee “wellness.” The ombuds office has been able to provide senior management with

some early feedback on this initiative. Employees may not have fully understood why the food in the cafeteria is different. Healthier food—e.g., fresh fruit and vegetables—is often more expensive, which has spurred some complaints in the company about rising cafeteria prices. The ombuds office often hears these kinds of complaints earlier than others in the company and is able to pass them on to senior managers.

Ombuds vs. ethics office

Eaton’s ethics and compliance office was established at around the same time as the ombuds office. “In the best of all worlds, it’s best to have both,” Butensky says.



U.S. and Chinese versions of Eaton Corporation’s ‘Doing the Right Thing’ Posters

On the differences between the two: Ethics and compliance cases often involve a violation of the company’s code, or even the law—“more legal issues”—whereas the ombuds office is “more of a resource,” which can involve coaching, acting as a “listening board” and providing “trend” information to senior management. The ombuds office acts as an “ear to the ground,” says Butensky. The ethics and compliance office is almost a legal requirement today at large companies, she adds, while an ombuds office is often seen as “voluntary” on the part of a company.

That said, her office is located next door to the global ethics office, and she often brings issues to her ethics and compliance counterparts.

Asked about the key to having a successful ombuds office, Butensky answers that it is critical to have good people in the role—trustworthy individuals who are able to keep information confidential and who relate well to other people.

Again, the company doesn’t *have* to have an ombuds office, Butensky emphasizes, but it does so because it wants to provide another resource for its employees. In this sense, she believes, the office is a “differentiator.” □

UK's Bribery Act 'Surpasses the U.S.' In Breadth and Rigor

By Andrew Singer

For years, the U.S. Foreign Corrupt Practices Act (FCPA) was the gold standard when it came to anti-bribery compliance.

Enacted in 1977 in the aftermath of the Lockheed bribery scandals, the FCPA made it a felony to bribe foreign officials to obtain business. For years, the United States stood alone with its hard line on overseas payoffs.

But less and less that seems to be the case. First the OECD drafted its Anti-Bribery Convention, which has been adopted by 38 countries to date. And the recent UK Bribery Act that will take effect in the United Kingdom in April 2011 actually goes beyond the FCPA.



Brian Whisler

Take the issue of facilitating payments. The FCPA has long had an exception that allows these small payments for some essential business services, like getting a piece of equipment through customs or hooking up a telephone line. But this has always been a somewhat problematic area.

'A slippery slope'

Facilitating payments, in fact, have always been "a bit of a slippery slope," notes attorney Brian Whisler. When does a "tip" become a "bribe"? When is it no longer a facilitating payment? It isn't always easy to decide. "Facilitating payment triggered a lot of investigations, historically," notes Whisler, a partner in the law firm Baker & McKenzie LLP (Washington, DC).

The UK Bribery Act 2010 aims to dispel this ambiguity—by forbidding facilitating payments altogether.

The act also makes it a corporate offense *not* to prevent bribery being undertaken on the company's behalf, such as by an agent of the company. And not only does the act apply to individuals based in the UK but also to foreign companies and individuals doing business in the UK; it can be applied to acts taking place anywhere in the world.

In some ways, the UK may have been anticipating the direction in which U.S. enforcement is moving, suggests Whisler. In the last nine to 12 months, the U.S. Department of Justice (DOJ) said U.S. companies should refrain from making facilitating payments. Facilitating payments may be on their way out even in the United States, in other words.

Was the UK anticipating the DOJ's next move in this regard? Whisler admits that this is "just speculation" on his part, but it does seem reasonable to conclude something of this sort "given the level of collaboration of the two authorities" [UK and U.S.] these days.

Overall, the British legislation is "sobering," Whisler told us. It has extraterritorial

It's 'a different era. The Foreign Corrupt Practices Act doesn't trump everything now.'

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Walmart Celebrates Employee Who Declined Suppliers' Gifts

Wal-Mart Stores, Inc. (Bentonville, AR) is an enormous company with 2.2 million employees, 8,400 stores, and \$405 billion in annual sales. The numbers are never small at this organization—even for an 'integrity' award.

This year's annual "Integrity in Action Award," in fact, drew nominations from 7,600 Walmart "associates" (employees) around the world. About 60,000 Walmart employees voted to select the overall winner.

The award was established in 2006 by Walmart's Global Ethics Office "to reinforce and promote ethical behavior by recognizing associates who exemplify integrity every day and inspire others to do the same."



Todd Long

This year's overall winner was Todd Long, a food supervisor based in China, whom the company cited as "a model for Walmart ethics in the way he has routinely declined gift offers from suppliers—from token to lavish—seeking to enhance their business relationship with the company."

In an indication of the company's increasingly global reach, the 20-person global ethics office for the first time also named winners in each of its international "markets." These were:

- Analía Exeni, Human Resources Coordinator, Argentina
- Leonardo Nunes Sampaio, Administrative Officer,

Brazil

- Aquileo Sanchez, Corporate Affairs Community Director, Central America
- Ana María Zapata, Hostess, Chile
- Todd Long, Food Supervisor, China
- Mukesh Madhukar, Direct Farm Program Manager, India
- Ushio Tsuji, Pharmacist, Japan
- Angélica Becerril Bernal, Loss Prevention Manager, Mexico
- Bob Davis, Market Manager, Camden, Del., United States

Each regional winner was flown to Bentonville, Arkansas, to receive his or her award from Mike Duke, Walmart's chief executive officer, and Doug McMillon, Walmart International's chief executive officer, at the International Associates Conference on June 2, 2010. (This took place during the company's Shareholders' Week.)

Each recipient also received a brass compass in an inlaid hardwood box. (See photo above.) "The compass symbolizes the internal voice that each award recipient followed despite very difficult circumstances," said the company in its press release.

This year's integrity award winner was cited as a 'model' for the way he routinely declined gift offers from suppliers.

Why not cash awards?

In an interview, *Ethikos* asked if the company had ever considered offering cash payments to integrity award winners.

“Since the program’s inception, we’ve never actually considered offering a monetary award to associates for demonstrating integrity,” answered Ray Malouf, communication & education manager. “Our company’s culture is founded on doing the right thing every day.”

“Peer recognition is what really resonates” with associates, added Ben Newton, director, Communication and Education, Global Ethics Office. It isn’t insignificant to participate in Shareholders’ Week activities either, he said. Shareholders’ Week is like a large festival with lots of activities, entertainment, and concerts.

Those nominated for the award typically range from middle managers down to hourly workers—those with whom most Walmart employees interact. Senior executives are *not* typically nominated.

The company posts integrity award nomination forms on the Internet, and most nominations are submitted electronically, although some are still paper-based. These are passed on to the Global Ethics Office where they are screened to determine eligibility and rated using an “objective evaluation form.” Among the criteria the office uses:

- Does the associate meet or exceed all work performance expectations?
- Does the associate demonstrate an ongoing commitment to Walmart’s “three Basic Beliefs”: Respect for the Individual, Service to our Customers, and Striving for Excellence?
- Does the nominee demonstrate integrity daily through consistent actions and words?
- Does the nominee inspire other associates to always do the right thing?
- Is the associate known for proactively handling ethics issues?
- Do other associates believe that the nominee promotes positive ethical behavior?
- Is the nominee highly respected by his/her peers and management?
- Does the nominee consistently demonstrate the type of behavior our company wants to encourage?
- Does the nominee’s story provide a “teaching moment” when told to others?

Why not cash awards? ‘Peer recognition is what really resonates’ with employees, answers the firm’s ethics communications director.

Most nominations come from outside the United States—Walmart has stores in 15 countries—even though 1.4 million of Walmart’s 2.2 million employees are U.S.-based. Why more nominees from overseas?

There are larger stores in the United States, and there are simply more layers between store associates and the U.S. home office. It’s always been a challenge to reach that hourly worker in the stores when it comes to communications, says Dan Fogleman, a corporate communications manager.

There’s a lot of coordination between the global ethics office and the company’s ethics officers in its 12 international offices. Headquarters creates marketing materials, including posters, Internet announcements, etc., but it’s up to the individual markets to get these materials translated and actually implement the program in their respective markets.

The global ethics office (headquarters) looks at the various market winners and selects the top three candidates for the overall winner award. This year they created short videos on each of the three finalists and posted these online.

Leading with song

In Brazil, the regional winner was an administrative officer who reportedly brought his guitar to team meetings and led the group in songs about “leading with integrity,” recounts Newton. This was seen as an innovative way to “inspire” others.

In the United States, the regional winner, a market manager, talked about the importance of ethics consistently, finding ways to weave it into weekly meetings. He was nominated by more than one associate, which is not common.

The germ of the awards program goes back to the Walmart notion established by Sam Walton that personal and moral integrity is fundamental to the company, and that it has to start “with each of us.” The company has always had strict rules. “We can’t take a cup of coffee from a sup-

Continued on page 15

Ways to Ensure Employees Can Raise Ethics and Compliance Questions

By Joseph E. Murphy

This periodical has been excerpting chapters from “501 Ideas from 30 Years of Practice,” by Ethikos co-editor Joseph E. Murphy and published by the Society of Corporate Compliance & Ethics (SCCE). Our aim here is—to borrow from Mr. Murphy’s introduction to the book—“to make your life as a compliance and ethics professional easier by giving you a handy source of ideas for your program.”

The present installment (‘Ideas’ #218-#261) continues the discussion from last issue regarding ‘other’ useful communications tools and then moves on to helplines, reporting systems, and preventing retaliation.—AWS

218 C&E newsletter. Have a separate compliance and ethics newsletter, which can include interesting case studies. (See Murphy & McCollum “Communicating ‘in a Practical Manner’: Bell Atlantic’s Report on Integrity,” *Corporate Conduct Quarterly* (now *ethikos*) 4 (1996): 59.)

219 Branding the program. Develop a “branding” strategy for the program. This can be used on all program materials, to help convey a consistent, coordinated message. One branding symbol companies have used is a lighthouse. In this sense the compliance and ethics program is a guiding light. (See Murphy & McCollum, “Communicating ‘in a Practical Manner’: Bell Atlantic’s Report on Integrity,” *Corporate Conduct Quarterly* (now *ethikos*) 4 (1996): 59; See Singer, “Marsh’s Business Reforms: Much Ground Covered in Little Time,” *ethikos* 19 no. 6 (May/June 2006): 1, 3.)

220 Compliance manuals. Use compliance manuals in the compliance risk areas, such as antitrust. (See Murphy, “Compliance Guidance From the United Kingdom,” *ethikos* 20 no. 5 (Mar./Apr. 2007), foreign bribery and government contracting.)

221 Dos and don’ts. Provide a list of dos and don’ts in the compliance risk areas. These could be done on laminated pocket cards. (See Sigler & Murphy, *Interactive Corporate Compliance: An Alternative to Regulatory Compulsion* (Westport, CT: Quorum Books, 1988): 85.)

222 Best ideas contest. Have a contest throughout the company for the best compliance and ethics communications ideas. (See Boehme, “How BP Communicates Integrity: Creative Engagement to Win Hearts and Minds,” *ethikos* 19 no. 5 (Mar./Apr. 2006): 1, 3.)

223 Knowledge contests. Have contests among different departments to see which department has the best knowledge of ethics and compliance. (See Singer, “TAP Pharma Isn’t Afraid to Show ‘a Little Levity,’” *ethikos* 19 no.5 (Mar./Apr. 2006): 16.)

224 Posters. Use posters asking an interesting compliance question and giving the page in the Code, or the location on the compliance and ethics Web site, where the answer can be found. (See Boehme, “How BP Communicates Integrity: Creative Engagement to Win Hearts and Minds,” *ethikos* 19 no. 5 (Mar./Apr. 2006): 1, 2.)

Idea #236: Use a neutral ombuds office to surface issues people might otherwise be afraid to raise.

Idea #235: Before launching a helpline or other reporting system, test it out in one business unit first.

225 Telecommuters. If there are telecommuting employees, include coverage of compliance and ethics and of the code in any telecommuting agreements. (See Berg, “Ethics and the Inclusion of the Virtual Workforce,” *ethikos* 14 no. 2 (Sept./Oct. 2000): 7, 9.)

226 Tchotchkes. Consider job aides and promotional items to promote the program and such features as the Web site and helpline. There is a very broad variety of these items, ranging from coasters to hats, to calendars. (See Murphy, “Job Aides, Toys or ‘Tchotchkes’: Getting the Compliance Message to Employees,” *ethikos* 14 no.5 (Mar./Apr. 2001): 8; Kaplan & Murphy, “App. 8-S: Compliance Job Aides,” in *Compliance Programs and the Corporate Sentencing Guidelines* (Eagan, MN: Thomson/West; 1993 & Ann’1 Supp).)

227 E-mail newsletters. Provide an e-mail newsletter with current compliance events, answers to common questions, etc. (See Zinn, “ComplianceGrams: A Case Study in Communicating and Teaching Compliance,” *Corporate Conduct Quarterly* (now *ethikos*) 4 (1995): 1.)

228 Management directives.

Send management directives from senior line managers to employees covering key compliance areas and the company’s related compliance policy. These can be posted where employees will see them. (See Jordan & Murphy, “Compliance Programs: What the Government Really Wants,” *ACCA Docket* (July/Aug. 1996): 10, 20; *Reich v. Food Lion*, no. 4:93CV457 (M.D.N.C., Aug. 3, 1993).)

229 Online games. Provide an ethics/compliance game online to cover key compliance points in an interesting way. (See Boehme, “How BP Communicates Integrity: Creative Engagement to Win Hearts and Minds,” *ethikos* 19 no. 5 (Mar./Apr. 2006): 1 2-3.)

230 Audio conferences. Have audio conferences where

employees can call in with questions about compliance and ethics issues. (See Singer, “TAP Pharma Isn’t Afraid to Show ‘a Little Levity,’” *ethikos* 19 no.5, (Mar./Apr. 2006): 16-17.)

231 Calendars. Issue calendars with a different compliance and ethics message on each day or month. (See Murphy, “Job Aides, Toys or ‘Tchotchkes’: Getting the Compliance Message to Employees,” *ethikos* 14 no. 5 (Mar./Apr. 2001): 8, 10.)

232 Compliance and ethics puzzles. Include a compliance and ethics related crossword puzzle or word search in your company’s newsletter. Completed submissions of the puzzle/answers can be submitted for a drawing to win a prize (where such drawings are legal, of course.) (From Doug Beeuwsaert.)

I. USSGs item 5, helplines, reporting systems, preventing retaliation

Compliance and ethics programs need a way to allow employees and others to raise questions and obtain advice. It is also essential that the company prohibit retaliation. These aspects of a program are part of item 5 of the USSGs (U.S. Sentencing Guidelines for Organizations).

233 Anonymous caller call-backs. Ask anonymous callers to call back at set time intervals so they can get progress reports on their calls, and respond to requests for additional information. (See “How United Technologies’ Board Meets its Compliance Obligations,” *ethikos* 11 no. 1 (July/Aug. 1997): 4-5.)

234 Employee training. Include coverage of the helpline system and non-retaliation policy in employee training, to increase awareness of and confidence in the reporting system. (See Martens & Crowell, “Whistleblowing: A Global Perspective (Part II),” *ethikos* 16 no. 1 (July/Aug. 2002): 9-10.)

235 Testing it first. Before launching a helpline or other reporting system, test it out in one business unit first. (See Murphy, “Hotlines, an Overview,” *Corporate Conduct Quarterly* (now *ethikos*) 4 (1995): 7, 10.)

236 Ombuds office. Use a neutral ombuds office to surface issues people might otherwise be afraid to raise.



Joe Murphy

501

**IDEAS FOR
YOUR COMPLIANCE
AND
ETHICS PROGRAM**

Lessons from 30 Years of Practice

JOSEPH E. MURPHY, JD, CCEP

Idea #246: Have an open door policy among managers that welcomes employee comments and concerns.

(See Singer, "Ombuds office Helps Coca-Cola Bottler Avoid Explosions," *ethikos* 19 no. 3 (Nov/Dec2005): 11; Singer, "Alliance-Bernstein Invests in New Ombuds office," *ethikos* 19 no. 6 (May/June 2006): 12.)

237 Location. For an ombuds office or other confidential source that employees can go to for advice and assistance, place the person's office where employees can approach without being noticed, such as a floor with conference rooms. Also, allow meetings to be arranged off site. (See Singer, "Alliance-Bernstein Invests in New Ombuds office," *ethikos* 19 no. 6 (May/June 2006).)

238 Ombuds report. Provide an annual report by the ombuds office to all employees, explaining what the office does. (See Singer, "Do You Know Me? I'm the American Express Ombudsperson....," *ethikos* 19 no. 2 (Sept./Oct. 2005): 12, 13.)

239 Ombuds independence. Ensure the ombuds' independence by using an employment contract and having the ombuds report to the CEO with the ability to report to the audit committee as well. (See Singer, "Do You Know Me? I'm the American Express Ombudsperson....," *ethikos* 19 no. 2 (Sept./Oct. 2005): 12, 14.)

240 Ombuds data. Use the ombuds' office case data and trends as a guide for what is happening in the company. (See Redmond & Williams, "The Organizational Ombuds: Complementing the Ethics office," *ethikos* 17 no. 2 (Sept./Oct. 2003): 10.)

241 Call-back times. Give helpline callers a set call-back time and a case number for a status report or resolution, and in case investigators have more questions. (See Singer, "Bracing for Deregulation, AEP Boosts Ethics Training," *ethikos* 11 no. 1 (July/Aug. 1997): 1, 3; Singer, "Exelon Excels at Reaching Out," *ethikos* 16 no. 6 (May/June 2003): 7, 8.)

242 Web-based helpline. Use an online or Web-based helpline system as an adjunct to the telephone line.

243 Helpline. Call the line a helpline, rather than the harsher sounding "hotline," and make it clear that the line provides advice and not just a reporting outlet. (See

Murphy, "Hotlines, an Overview," *Corporate Conduct Quarterly* (now *ethikos*) 4 (1995): 7, 8; "The Conference Board Benchmarks Ethics and Compliance Programs," *ethikos* 20 no. 3 (Nov./Dec. 2006): 14, 15; Singer, "Developing Effective Helplines: Shell Oil and Lubrizol," *Ethikos* 19 no. 2 (Sept./Oct. 2005): 5.)

244 Customer complaint lines. Monitor customer service/complaint lines for indications of consumer protection and product safety concerns. (See Sharpe, "The Value of a Complaints System in Effective Legal Compliance Systems," *ethikos* 18 no. 3 (Nov/Dec 2004): 11.)

245 E-mail box. Consider an e-mail box or a reporting form that can be downloaded from the company's intranet site and mailed in to report concerns. (See Singer, "Aventis' Helpline: Translating from the Urdu (et al.)," *ethikos* 17 no.3 (Nov./Dec. 2003): 4.)

246 Open door. Have an open door policy among managers that welcomes employee comments and concerns. This may require training for managers so they know how to respond to employees. (See HHS, "OIG Compliance Program Guidance for Pharmaceutical Manufacturers," *Federal Register* 68 (May 5, 2003): 23,731, 23,741.)

247 Showing the flag. Have those who handle helpline calls for the company make presentations to employees throughout the company, so employees feel comfortable knowing what happens if they call the helpline. (See Martens & Crowell, "Whistleblowing: A Global Perspective (Part II)," *ethikos* 16 no. 1(July/Aug. 2002): 9, 11.)

248 Publicity. Publicize the helpline through such vehicles as the code, posters, handout cards, brochures, telephone stickers, and tchotchkes. (See Murphy, "Hotlines, an Overview," *Corporate Conduct Quarterly* (now *ethikos*) 4 (1995): 7, 9; Singer, "Developing Effective Helplines: Shell Oil and Lubrizol," *ethikos* 19 no. 2 (Sept./Oct. 2005): 5, 7.)

249 Legal review. To be sure that calls were appropriately handled, you can have a lawyer review the helpline call records periodically to spot any legal issues that might have been missed. (See Murphy, "Hotlines, an Overview," *Corporate Conduct Quarterly* (now *ethikos*) 4 (1995): 7, 9.)

250 Non-retaliation outreach. Have a periodic follow-up/call back system to check for possible retaliation against those who have used the helpline or otherwise raised compliance concerns. (See Murphy, "Hotlines, an

Overview,” *Corporate Conduct Quarterly* (now *ethikos*) 4 (1995): 7, 9; Singer, “Waste Management’s Helpline Use is No Longer ‘off the Charts,’” *ethikos* 16 no. 1 (July/Aug. 2002): 5-12.)

251 No caller ID. If the helpline is handled internally, make sure there is no caller ID and that employees know this. (See Murphy, “Hotlines, an Overview,” *Corporate Conduct Quarterly* (now *ethikos*) 4 (1995): 7, 9; Singer, “Developing *Effective* Helplines: Shell Oil and Lubrizol,” *ethikos* 19 no. 2 (Sept./Oct. 2005): 5, 7.)

252 Test calls. Place occasional test calls to the helpline to test out its timeliness and effectiveness.

253 Database. Have a centralized database of the helpline calls and investigations. This allows analysis to ensure consistency. (See Muse, “Hotlines Must Adapt to an Ever-Changing Global Environment,” 20 *ethikos* no.11 (Jan./Feb. 2007).)

254 Feedback. Give callers feedback, such as an idea of what investigative steps were taken and whether any corrective actions were warranted. (See Murphy, “Hotlines, an Overview,” *Corporate Conduct Quarterly* (now *ethikos*) 4 (1995): 7, 9; Martens & Crowell, “Whistleblowing: A Global Perspective (Part II),” *ethikos* 16 no. 1 (July/Aug. 2002): 9, 11.)

255 Outsourcing. Use a third party service to answer helplines, to ensure 24-hour coverage and help protect anonymity. (See Singer, “Developing *Effective* Helplines: Shell Oil and Lubrizol,” *ethikos* 19 no. 2 (Sept./Oct. 2005): 5-6.)

256 Training supervisors. Train supervisors on how to respond to subordinates’ complaints and concerns when expressed to the supervisors, and emphasize the importance of the non-retaliation policy. (See Kaplan, “The Tone at the Middle,” *ethikos* 20 no. 2(Sept./Oct. 2006): 5, 7; Singer, “Creating an Open, Non-Retaliation Work-

Idea #252: Place occasional test calls to the helpline to test out its timeliness and effectiveness.

place,” *ethikos* 19 no. 5 (Mar./Apr. 2006): 4, 5.)

257 Encouraging callers. Communicate to employees that calls made in good faith are encouraged, and that “good faith” means that the employee believes something is true, even if it later turns out not to be so. (See Singer, “Creating an Open, Non-Retaliation Workplace,” *ethikos* 19 no. 5 (Mar./Apr. 2006): 4.)

258 Call records. Keep a record not just of complaint calls, but also of calls for advice. Both types of calls show the reporting system is working.

259 Prioritizing calls. Have a system for prioritizing calls, such as “urgent,” “serious” and “routine.” (See Singer, “Developing *Effective* Helplines: Shell Oil and Lubrizol,” *ethikos* 19 no. 2 (Sept./Oct. 2005): 5, 6.)

260 Benchmarking. Measure the impact of your reporting system by comparing the percentage of your employee base who use the system, to numbers at peer companies. (See Petry, “Assessing Corporate Culture: Part II,” *ethikos* 19 no. 1 (July/Aug. 2005): 10, 13.)

261 Local contacts. In the various business units and locations have compliance and ethics people designated to handle concerns and questions. They can serve as a communications liaison. (See Martens & Crowell, “Whistleblowing: A Global Perspective (Part II),” *ethikos* 16 no. 1 (July/Aug. 2002): 9, 11.)

(*501 Ideas from 30 Years of Practice* is available from the Society of Corporate Compliance & Ethics [www.corporatecompliance.org], 6500 Barrie Road, Suite 250, Minneapolis, MN 55435, telephone: 888-277-4977.) □

Walmart... Continued from p. 11

plier,” says Fogelman.

The sheer size of the company makes running such a program a challenge. Some of the newer markets, like India, where Walmart has a joint venture, are not as well-established. The communications departments in those countries may not be quite so skilled at getting out information about the program.

The integrity award is the highlight event of the com-

pany’s Ethics Awareness Month, a program established six years ago to raise awareness of the company’s code of ethics and ethical decision-making. Ethics Awareness Month also includes the company’s Leadership Speaks Series, where the company brings in outside speakers “to create an open dialogue about integrity.” This year’s speaker was Cynthia Cooper, a former *Time* magazine ‘Person of the Year.’ Cooper was the WorldCom auditor who blew the whistle on that company’s fraudulent activities. □

U.K. Bribery Act...Continued from p. 9

jurisdiction. It goes beyond the FCPA. There is a strict liability standard for corporate entities that don't take safeguard measures against bribery and corruption. A prosecutor no longer has to show corrupt intent, as under U.S. law.

Also, the UK Bribery Act covers commercial bribery—bribes to private parties not involving governments at all—one of its most dramatic differences from the FCPA.

As four attorneys for law firm Schulte Roth & Zabel recently noted, it may also lead to more compliance training for company employees:

“Of particular significance to commercial organizations conducting business in or from the UK will be the creation under the Act of a new strict criminal liability offence for failure to prevent bribery by a person associated with the organization. The only defense will be for the organization to prove that it had in place ‘adequate procedures’ to prevent such payments occurring. This creates an enormous incentive for organizations to develop and implement corporate compliance programs directed at detecting and preventing corrupt payments.

“Importantly, it should not be assumed that procedures compliant with the U.S. Foreign Corrupt Practices Act will be adequate for the purposes of the Act. Organizations subject to the Act should review their policies and procedures and take this opportunity to protect themselves from liability.”¹

The “adequate procedures” part of the legislation, still to be spelled out in the guidance expected later this year, looks like it was borrowed from the U.S. Sentencing Guidelines for Organizations, the so-called seven elements. These preventive measures are recommended in the Guidelines—*strongly* recommended if organizations want their penalties reduced if and when they get into trouble—but they have never been codified. “The UK is now codifying the principals [found in] in the Sentencing Guidelines,” says Whisler.

It probably won't be an exhaustive list, he adds. But it does appear that the UK will now have a “stricter regime”

¹ See “Bribery Act 2010: the UK's new anti-bribery and corruption law and its interaction with the US Foreign Corrupt Practices Act,” by Neil Robson, Christopher Hilditch, Betty Santangelo, Yoon Lee and Ana Kang, Schulte Roth & Zabel LLP, August 26, 2010, <http://www.lexology.com/library/detail.aspx?g=6a042d08-bcf0-47ca-8b16-cdf6dbcbef6bc>.

The act ‘provides enormous incentive for organizations to develop and implement corporate compliance programs directed at detecting and preventing corrupt payments.’

in place, one that could place “robust demands” on some U.S. companies, at least those operating in the UK.

Not all conclude, however, that the UK act will necessarily be more rigorous than the FCPA. “The UK law has a big out for companies, unlike U.S. law,” says Joseph Murphy, an attorney (and an editor of this publication), who has filed comments on behalf of the Society of Corporate Compliance and Ethics with the UK's Serious Fraud Office on what the standards for “adequate procedures” should be. “A compliance program, referred to in the law as ‘adequate procedures’ is a defense for companies. In the U.S., your compliance program is not a defense to liability, although prosecutors say they will consider it in determining charges against a company. From a prosecutor's perspective, therefore, the UK law is more lenient than FCPA.”

Indeed, “An overarching question is whether the UK will enforce this law,” says Murphy. “Probably most treaty signatories make facilitating payments illegal, but in the time since the treaty took effect there have been no known prosecutions anywhere for facilitating payments.”

Baker & McKenzie's Whisler says that some multinational companies may now have to revamp their FCPA training programs to take account of the UK standards.

Once the FCPA was the world standard for anti-corruption enforcement, observes Whisler. Other countries' companies got off easily by comparison. German companies, for instance, famously itemized bribes to foreign officials on their financial statements.

Is a convergence now taking place, at least in the more advanced economies, with regard to anti-bribery measures in particular and compliance in general? There is, agrees Whisler, who applauds the efforts of the OECD nations in “taking a collective approach” toward anti-corruption enforcement.

It's “a different era,” Whisler adds. “The FCPA doesn't trump everything now.” The UK law “surpasses the U.S.” in terms of breadth and rigor. □