

# **Business Ethics and the Kobayashi Maru**

**Financial Executives International  
Panel Discussion: Business Ethics  
February 21, 2017**

# Agenda

---

---

**Introductions (5 minutes)**

**Survey Results (5 minutes)**

**I. What are Good Business Ethics?**

**II. The Kobayashi Maru No-Win Dilemma**

**Break (10 minutes)**

**III. Are Good Business Ethics Good For Business?**

**IV. Creating and Fostering an Ethical Business Culture**

**Conclusion (5 minutes)**

# Moderators and Panelists

---

---

## Moderators:

- **Timothy J. McCoy** – Shareholder and Attorney, Godfrey & Kahn, S.C.
- **Jeffrey W. Kowieski** – Partner and General Counsel, Wipfli LLP

## Panelists:

- **Ignacio Cortina** – Executive Vice President, General Counsel and Secretary, Oshkosh Corporation
- **Denis Hogan** – Senior Vice President of Business Support and IT, Bellin Health
- **Jay Moroney** – Principal, Integro Ltd.
- **Terry Warfield** – PwC Professor in Accounting and Chair of the Department of Accounting and Information Systems, Wisconsin School of Business

# Jeffrey Kowieski - Wipfli LLP

---



Jeff Kowieski is a Partner with Wipfli LLP, based in the firm's Eau Claire, Wisconsin office. Jeff serves as Wipfli's Risk Management Partner and General Counsel. Jeff's background is in the firm's tax practice, focused on high-value transactional structuring matters, including entity structure planning and business succession planning. Jeff is a graduate of the University of Wisconsin – Eau Claire (Business Administration and Accounting), and the University of Wisconsin Law School. Prior to joining Wipfli, Jeff was in private practice with a Wisconsin law firm.

# Timothy McCoy – Godfrey & Kahn, S.C.

---



Tim McCoy is a Shareholder of Godfrey & Kahn and member of the firm’s Corporate and Real Estate Practice Groups, practicing out of the firm’s Green Bay and Appleton offices. Tim represents clients in a wide range of general corporate and business law matters throughout Wisconsin. His practice includes mergers and acquisitions; the formation, organization and capitalization of new business entities; organization of joint ventures; and general advice regarding corporate and business matters. In addition, he regularly advises and represents clients in sophisticated commercial real estate transactions, including project siting and permitting, as well as real estate development and leasing matters, including the preparation and review of architectural and construction contracts. Tim is a graduate of the University of Wisconsin – Madison (philosophy), and the William Mitchell Hamline School of Law.

# Laura Meronk – Godfrey & Kahn, S.C.

---

---



Laura Meronk is a Shareholder in Godfrey & Kahn’s Corporate and Real Estate Practice Groups, practicing out of the firm’s Appleton and Green Bay offices. Laura represents clients in a wide range of general corporate and business law matters that are integral to the advancement of the company’s goals and objectives. A significant portion of her practice involves entity formation, corporate governance, mergers and acquisitions and commercial contracts. Laura regularly works with publicly-held and closely-held and/or family-owned businesses. In addition, Laura’s real estate practice emphasizes the development, purchase, sale and leasing of office, retail and industrial properties. Laura is a graduate of St. Olaf College and the University of Minnesota Law School.

# Terry Warfield – University of Wisconsin School of Business



Terry Warfield is the PwC Professor in Accounting at the University of Wisconsin School of Business. He also is Chair of the Department of Accounting and Information Systems. Professor Warfield's area of expertise is financial accounting. His primary research interests are financial accounting standards and disclosure policies, including the effects of accounting information and disclosures on securities markets. He currently serves as a trustee for the Financial Accounting Foundation. He received a B.S. and MBA from Indiana University, and his Ph.D. from the University of Iowa.

# Jay Moroney – Integro Ltd.

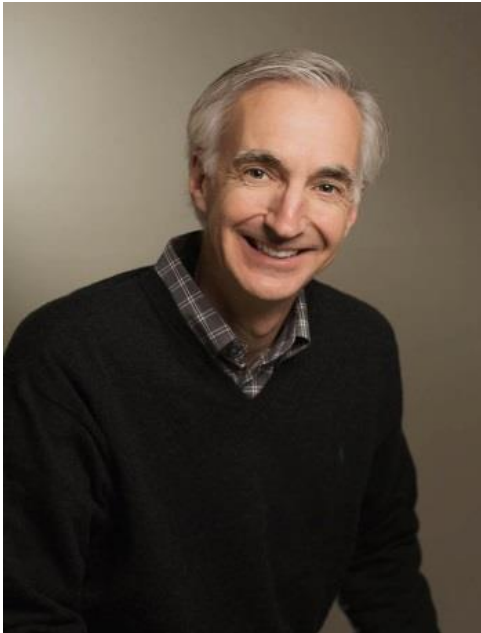
---



Jay Moroney is a Managing Principal and Leader of the Specialty Insurance Division of Integro Insurance Brokers. Jay personally works with leading accounting firms and law firms in the United States and Canada. Jay is a professional liability expert and frequently speaks on risk management and integrity issues related to professional services firms.



# Denis Hogan – Bellin Health



Denis Hogan serves as Senior Vice President of Business Support and Information Technology for Bellin Health. Mr. Hogan’s responsibilities include leading the health system’s Patient Financial Services, Information Technology, Human Resources, Talent Management and Environmental Services departments. Prior to joining Bellin Health, Mr. Hogan served as the Green Bay Market President for Associated Bank. He earned his B.A. in Finance from the University of St. Thomas, St. Paul, Minn. Mr. Hogan’s community involvement includes serving as co-chairman of the Community Partnership for Children initiative; a member of the Brown County United Way Board of Directors and Executive Committee; a member of the Greater Green Bay Community Foundation Board of Directors; and a member of St. Norbert College’s Schneider School of Business and Economics Board of Visitors. Mr. Hogan was the 2016 Individual Recipient of the American Foundation of Counseling’s “Ethics in Business” Award.

# Ignacio Cortina - Oshkosh Corporation

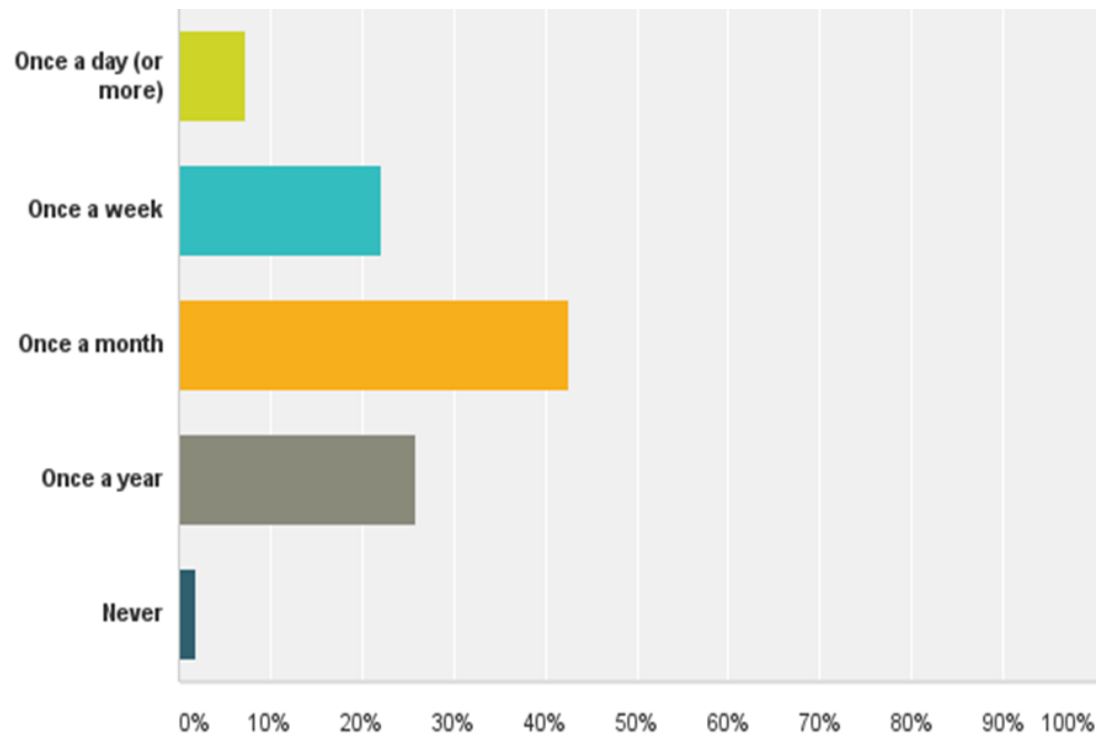


Ignacio Cortina is Executive Vice President, General Counsel and Secretary for Oshkosh Corporation, a position he was appointed to in November 2016. Mr. Cortina has responsibility for all legal, ethics and compliance, environmental affairs and sustainability matters in the Corporation. Most recently, Mr. Cortina served as Senior Vice President and Deputy General Counsel for Oshkosh Corporation. Mr. Cortina also held various roles of increasing responsibility at Oshkosh Corporation including Assistant General Counsel and Assistant Secretary, Access Equipment Segment, Litigation Counsel and Corporate Counsel. Mr. Cortina has been with the company since 2003. Mr. Cortina is a graduate of James Madison University and earned his law degree from the Columbus School of Law at Catholic University. Oshkosh Corporation was named to the 2016 World's Most Ethical Company® list by the Ethisphere Institute. Oshkosh is one of only 131 companies, representing 54 industry sectors in 21 countries named to this list.

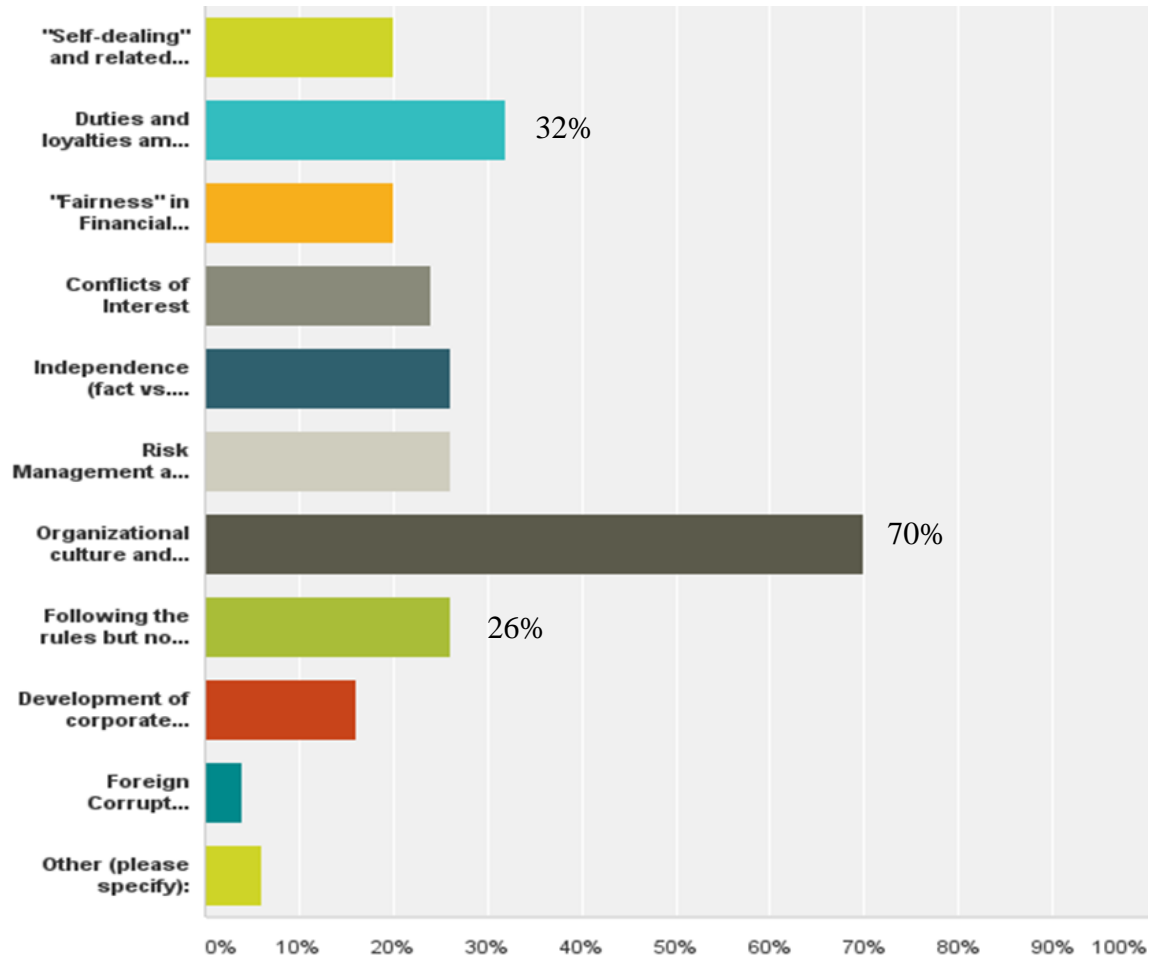


# Are Business Ethics Relevant to You?

Query: On average, how often in the course of performing your job do you encounter situations/decisions which raise ethical issues?



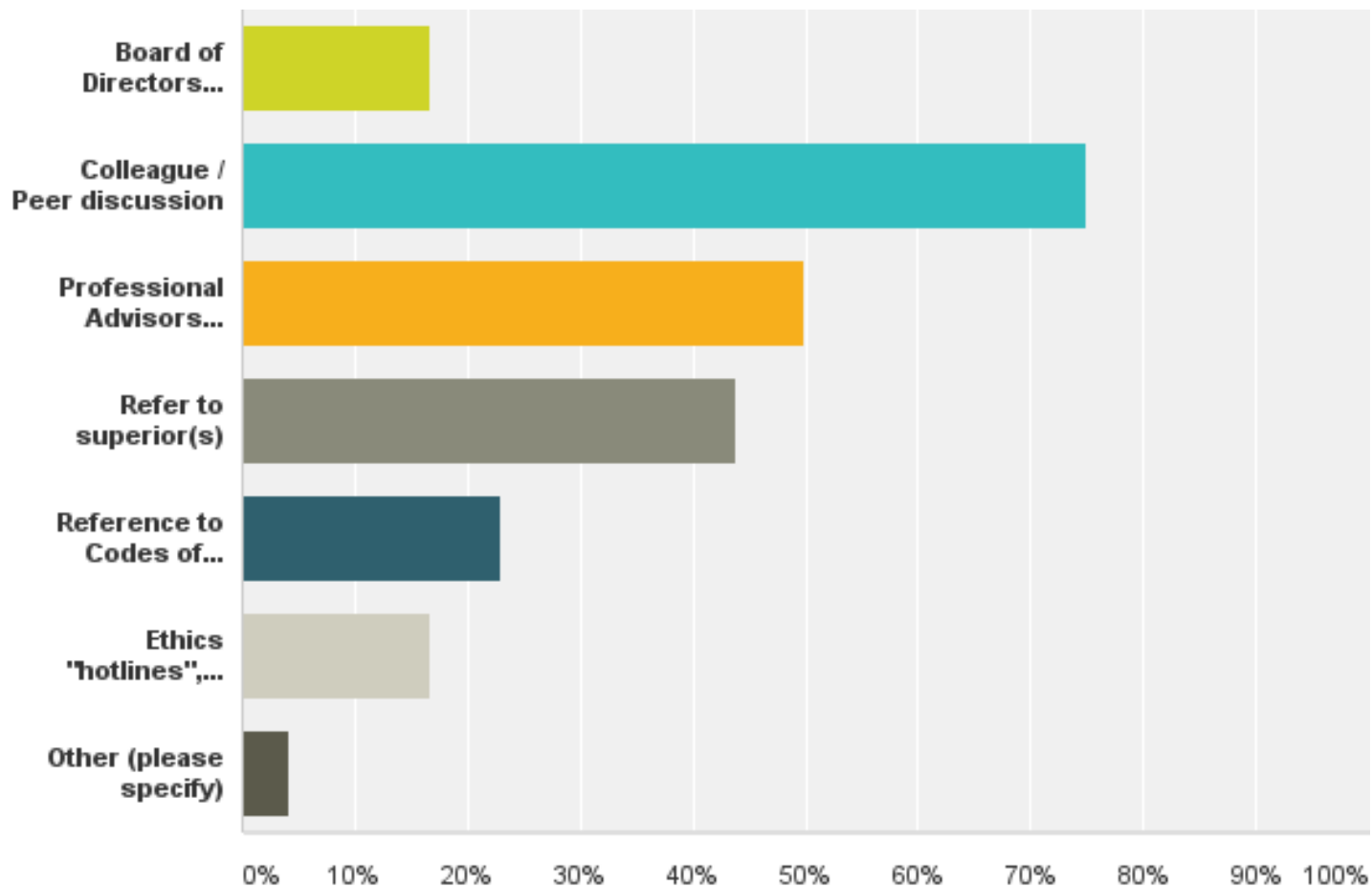
# Query: What business ethics issues do you encounter most often in your day-to-day work?



# Query: What business ethics issues do you encounter most often in your day-to-day work?

Answer Choices	Responses
"Self-dealing" and related business conflicts	20.00% 10
Duties and loyalties among management, owners and Board	32.00% 16
"Fairness" in Financial interactions / transactions among Affiliated Entities	20.00% 10
Conflicts of Interest	24.00% 12
Independence (fact vs. appearance....and hindsight)	26.00% 13
Risk Management and the costs of ethical failures	26.00% 13
Organizational culture and general behavior / conduct by employees	70.00% 35
Following the rules but not the "spirit" (CFO vs. Chief Loophole Officer)	26.00% 13
Development of corporate ethics policies / programs	16.00% 8
Foreign Corrupt Practices Act	4.00% 2
Other (please specify):	6.00% 3
<b>Total Respondents: 50</b>	

# Query: What resources do you use to resolve issues of business ethics?



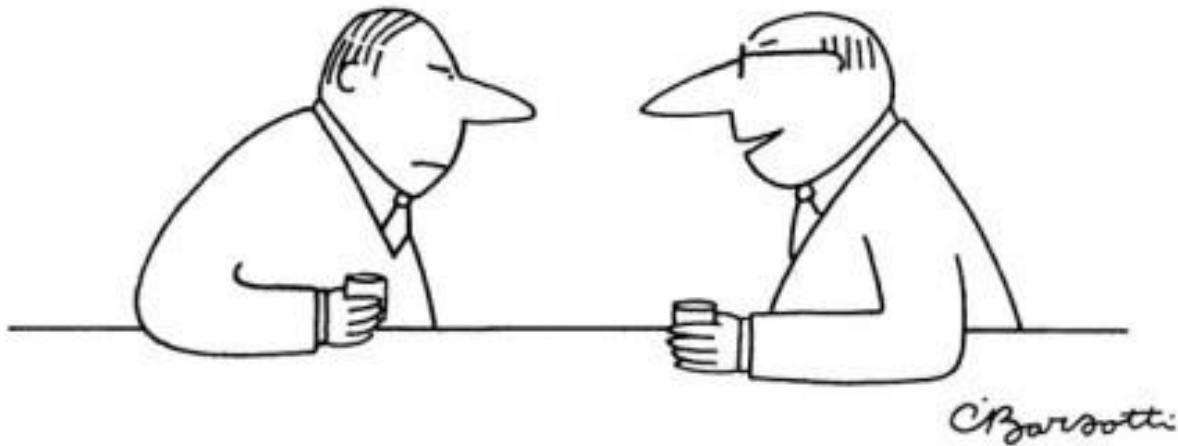
# Query: What resources do you use to resolve issues of business ethics?

Answer Choices	Responses
Board of Directors involvement	<b>16.67%</b> 8
Colleague / Peer discussion	<b>75.00%</b> 36
Professional Advisors (outside counsel, internal counsel, public accountants, consultants, etc.)	<b>50.00%</b> 24
Refer to superior(s)	<b>43.75%</b> 21
Reference to Codes of Conduct (VICRA, AICPA, industry codes of conduct, etc.)	<b>22.92%</b> 11
Ethics "hotlines", professional associations	<b>16.67%</b> 8
Other (please specify)	<b>4.17%</b> 2
<b>Total Respondents: 48</b>	

# What Do “Ethics” Mean in the Business Environment?

---

---



"Get serious, John, we're talking business ethics not ethics."



# What are “Good Business Ethics”?

- Is compliance with the rules ethical per se? (What about the spirit of the rules?)
- Do business ethics evolve with social mores and norms? (e.g. the rise of social media internet culture)  
Should they? (e.g. environmental matters)
- Relativistic ethics



**“We’ve got to draw the line on unethical behavior.  
But draw it in pencil.”**

# What are “Good Business Ethics”?

© Randy Glasbergen / Glasbergen.com

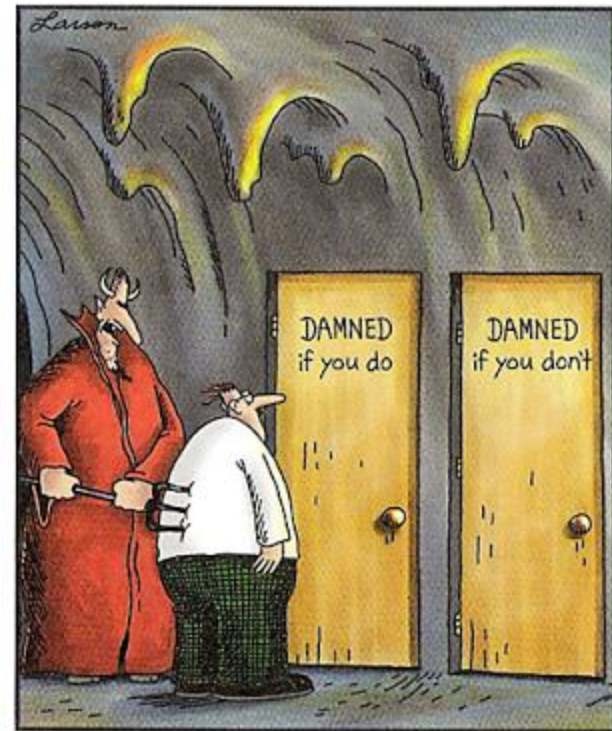


“When you say ‘ethical’ do you mean marginally ethical, semi-ethical, or appearing to be ethical?”

- What does it mean to run an “ethical organization”?
- What is your own Company’s definition of “good” business ethics?
  - Is it standard or uniform?
  - Is it documented? Is it shared?
  - How does it apply to customers, suppliers, investors, creditors and employees?

# What are “Good Business Ethics”?

- Are ethics situational? Can an action be ethical in one context, and not in another?
- What about the “No-Win” Situation?



“C’mon, c’mon—it’s either one or the other.”

# Kobayashi Maru – The No-Win Scenario

---

---



# Kobayashi Maru – The No-Win Scenario

---

---

*“A crucial feature of good ethical decision-making in the real world is understanding the limits of your powers. You try to make choices that bring lots of good consequences and minimal bad ones, that fulfill your obligations to everyone to whom you have obligations (including yourself) - but you’re doing it in a complicated world where you must make your choices on the basis of imperfect information, and where other people are doing things that may impose constraints on your options. Ethics cannot require us to be omniscient or omnipotent. This means that sometimes even the most creative and optimistic ethical decision-maker has to face a situation where none of the available choices or outcomes are very good.”*

The Philosophy of Star Trek: The Kobayashi Maru, No-Win Scenarios, and Ethical Leadership, Janet Stemwedel – Forbes Magazine

# Time for a Break (10 min)

---

---

# Are Good Ethics Good for Business?

---

- Why is it important to act ethically in the workplace?
- What does it cost?
- Is it worthwhile?



# Ethical Breakdowns: The Good, the Bad and the Ugly





# Are Good Ethics Good for Business?

---

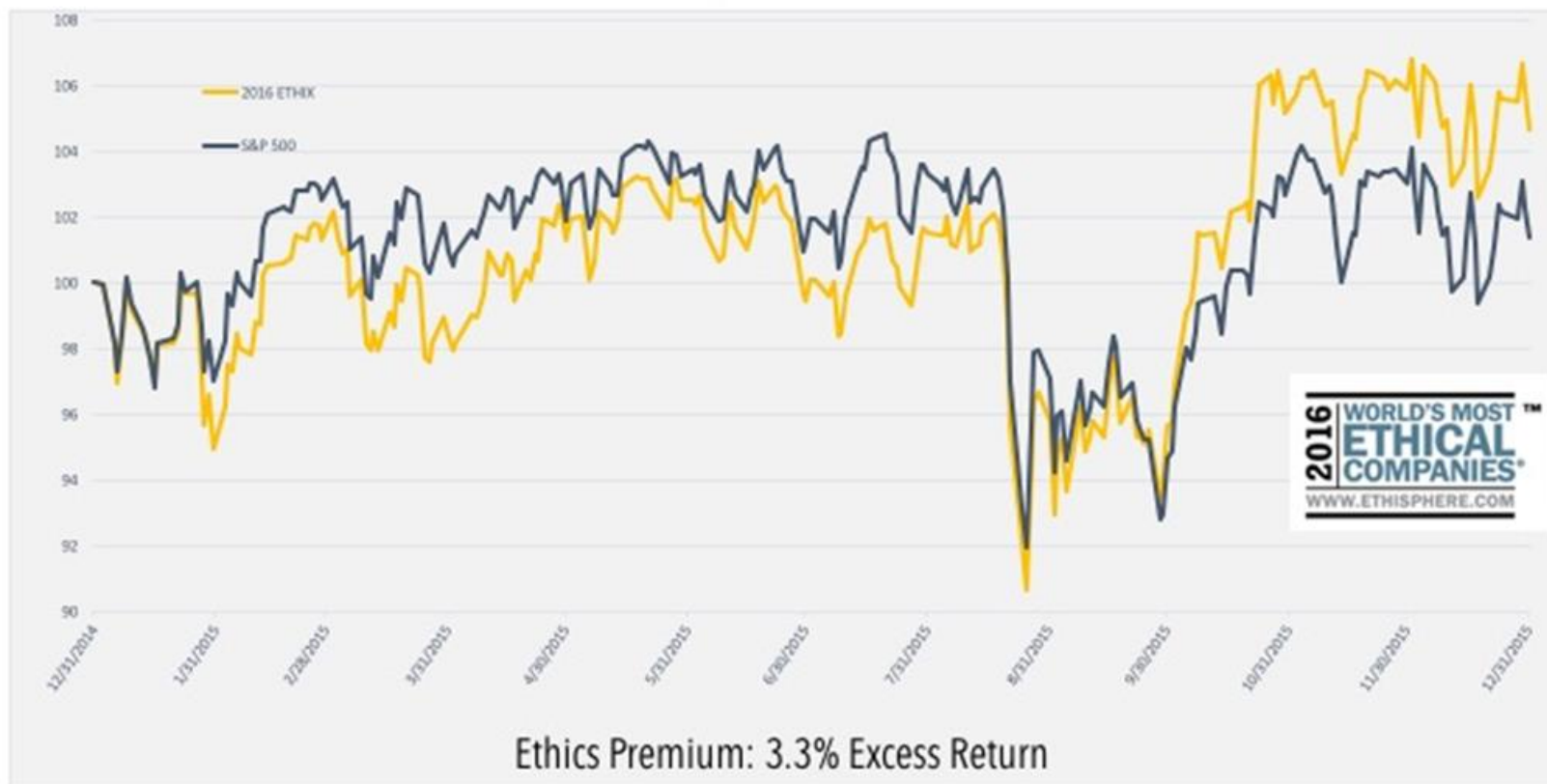
---

- **Customer/Supplier/Employee Loyalty and Trust**
- **Reputation and Brand**
- **Ability to Attract and Retain Top Talent**
  - According to The 2016 Deloitte Millennial Survey:
    - 87% of Millennials worldwide agree that “the success of a business should be measured in terms of more than just its financial performance.”
    - 25% of Millennials think that ethics, trust, integrity and honesty are *the most important values* a business should follow if it is to have long-term success
- **Reduced Legal, Compliance and Regulatory Costs**

# The Ethics Premium

## Ethics is the Measurable Differentiator

Performance of 2016 Honorees as Compared to the S&P 500 Over the 2015 Calendar Year



# How Do You Foster an Ethical Business Culture?



# Strategies to Foster an Ethical Business Culture?

---

- **The Importance of “Tone at the Top”**

- Warren Buffett in a memo to Berkshire Hathaway managers: *“We can’t be perfect but we can try to be. As I’ve said in these memos for more than 25 years: ‘We can afford to lose money – even a lot of money. But we can’t afford to lose reputation – even a shred of reputation.’ We must continue to measure every act against not only what is legal but also what we would be happy to have written about on the front page of a national newspaper in an article written by an unfriendly but intelligent reporter.”*

- **Corporate Code of Ethics or Value Statement**

- Helps your company and management team define and maintain standards of acceptable behavior

# Do Good Business Decisions Result in Good Business Ethics?

---

---

- **MIT research shows that the causes of poor ethical decisions are often the same as the causes of poor decisions generally**  
(<http://sloanreview.mit.edu/article/ethical-leadership-and-the-psychology-of-decision-making/>)
- **Consider whether do a quick “Ethics Check” when making decisions:**
  - **Is it in accordance with Company policy?**
  - **Is it in accordance with our culture?**
  - **Is it fair?** (Would anyone lose out?)
  - **Are we proud of this?** (How would I feel if family or friends read about this in the newspaper?)
  - **How will our customers/clients react?** (Would they be more inclined to trust us or feel cheated or betrayed?)
  - **Is it legal?** (Would I be violating federal, state or local law or regulations?)

# Conclusions

---

---

- Business Ethics are either very easy or very hard?
- Context matters.
- The best choice may be the least objectionable outcome.
- There may be a demonstrable “Business Ethics Premium.”
- “Good Business Ethics is a key component of corporate culture (or not).”

# Final Thoughts

---

**Comments? Questions?**

**THANK YOU.**