



This article first appeared in the March/April 2003 issue of *Across the Board*.

The Myth of CEO Accountability

Plausible deniability is a more realistic goal.

By Peter Lilienthal

What are beleaguered CEOs and board members to do? The SEC is obligating them to certify the financial reporting of their companies. Their advisers are offering conflicting advice about how they should respond. The lawyers suggest that it's a risky idea to sign off. The PR and investor-relations gurus tell them they dare not do so. The government says they must or else.

On the surface, at least, stepping up to the plate and certifying that there are no shenanigans going on seems to be the responsible and self-respecting step to take. But then again, the consequences of a misrepresentation could be hazardous to one's health, comfort, and well-being.

The problem is that in the rush to restore trust in management, a lot of bright people are overlooking the fact that attesting to "certifiable accountability"

is something of a crapshoot. Take the example of Susan Keating, who recently resigned as president and CEO of Baltimore-based Allfirst Financial Inc. By all reports, Keating was a conscientious and capable CEO. She had every reason to believe that her organization was managed by experienced people upon whom she could rely to get the job done. The bank had received clean audit opinions for years, and there was no indication of an ill wind blowing. Then one day, out of the blue, it was discovered that a rogue foreign-currency trader named John Rusnak had singlehandedly defrauded the company of \$691 million.

Although few reasonable observers would consider it appropriate to characterize Keating as intentionally deceptive, criminal, or derelict in her diligence, what if she had vouched for the integrity of the company's reporting? Under the

new order of corporate governance, she very well might be facing jail time now. Ditto Jeff Noddle, chairman and CEO of highly regarded food distributor Super-Valu Inc. He claimed ignorance of the actions of an internal accountant that resulted in the restatement of three years' earnings to the material tune of some \$20 million, a reactive stock decline of 20 percent, and, ultimately, the filing of several shareholder lawsuits. The list of blindsided CEOs and board members could go on and on.

The plain and simple fact is that it's patently unreasonable to expect leaders in a large organization to be omniscient. It takes only one skilled person to commit fraud and two people to collude, and like a well-organized terrorist cell, employees with deception on their minds rarely publicize their subversions. Even if another employee does find out about the fraud and considers

reporting it, sharing bad news up the line doesn't tend to be good for one's career. Just look at what's happened to Coleen Rowley, the FBI whistleblower whose memo to FBI director Robert Mueller leaked its way to the press. Following her 15 minutes of fame and adulation, Special Agent Rowley has returned to her duties wiser and warier than ever. How were her actions viewed by her colleagues? Charles George, president of the Society of Former Special Agents of the FBI, blasted her in an editorial, comparing her to convicted traitor Robert Hanssen and stating that her behavior was "unthinkable."

And how about the fate of the notorious Sherron Watkins, Enron whistleblower extraordinaire? Instead of the corporate-development work she previously enjoyed, she spent her final months at Enron (she quit recently to consult and write a book) assigning valuations to the assets of her bankrupt employer. U.S. Sen. Mark Dayton of Minnesota may have said it best: "Being a whistleblower is the gift that keeps on giving."

It may be an uncomfortable reality, but there's probably no way that boards and CEOs can ever have complete confidence about the reported performance of an organization and its financial condition. I propose that rather than being able to claim *certifiable accountability*, the best corporate leaders can strive for is *plausible deniability*. That somewhat nebulous euphemism might most pragmatically be defined as being able to look a grandstanding public official or imperious journalist in the eye and state, "I believe that our company has been doing everything prudently possible to eliminate corporate abuses and to detect irregularities. What more would you suggest I should have been doing?"

Indeed, even that would be a bold retort, and such a plausible-deniability

defense would be foolhardy to take without the appropriate mechanisms in place to back it up. In that regard, it's a statement that few executives and board members should feel comfortable making.

That's not to say that many executives don't *think* they have the bases covered. Rather, they're innocently oblivious to the chinks in their accountability armor. A company can certainly declare, as Enron did, that it "requires a commitment to corporate responsibility, ensuring that our behavior and impacts produce positive returns for all our stakeholders" and that its "Code of Ethics is published in English, Spanish, and Portuguese and distributed with universal acknowledgement and agreement to comply by its employees"; or assert, like WorldCom, that the company's "public and private market success could only be achieved by maintaining an outstanding performance record within an operating framework concerned with integrity and business ethics." But these bold claims, obviously, do not necessarily bear on reality.

It's little wonder that in a recent poll of nearly 13,000 employees conducted by consulting firm Watson Wyatt Worldwide, only 39 percent said that they trust senior leaders in the corporate world—or that from 2000 to 2002, the share of employees who believe that their companies conduct business with honesty and integrity has dropped from 68 percent to 63 percent. Actions do speak louder than words, and for

PETER LILIENTHAL is founder and president of In Touch, a Minneapolis-based provider of employee-communication systems. He has held senior management positions in a variety of Fortune 1,000 companies and served on a number of boards. He can be contacted via www.getintouch.com.

those boards and CEOs who would like to strive for the goal of "plausible deniability," there are five relatively easy and straightforward steps that can get them there.

1. Designate a chief accountability officer (CAO). When an organization desires to signal a shift in philosophic emphasis, the preferred technique is to designate an executive in charge. Over the years, such titular positioning has included officers for quality, ethics, people development, social responsibility, information management, and diversity—so why not begin with the appointment of a CAO? The proposed job description might read something like this: "Responsible for assuring that the statements, disclosures, and representations made by our organization are accurate, responsible, and in conformance with all applicable rules and regulations." That seems a heady and extremely difficult, if not impossible, assignment, but it is the essence of what "confirmed accountability" requires and is consistent with the corporate-governance climate *du jour*. Ideally, this is the person who will lie awake at night worrying about what's going on in the company that he doesn't know about.

In fact, the evolution of such a position could represent a very important restructuring of the corporate order. If the process works as I envision it, there will be far more emphasis on understanding employee behavior than on trying to dictate it. In my decade as a sideline observer of corporate initiatives, my conclusion is that much time and money has been wasted on trying to get things done from the top down, with not enough spent on determining whether employees are truly buying in to the latest and greatest corporate priority.

Corporate ethics programs are a good example. One recent writer on the subject succinctly echoed my skepticism: "Ethics is like spelling. If you don't get it by the sixth grade, it's pretty difficult to teach." Case in point: Ken Lay, Jeffrey Skilling, and their partners in deception had all, presumably, participated in Enron's ethics-training programs and dutifully acknowledged having read and understood the company's 64-page code of conduct. So why did they seemingly ignore all 64 pages? And how do abuses at the top of the organization, be they perceived or real, large or unwitting, get reflected in the conduct of the rank and file? That is important information to understand—and most importantly, to act on. The success of any CAO will depend on it.

Another case in point: In a recent Conference Board survey of senior ethics executives, nearly 60 percent said that their own boards of directors were insufficiently engaged in ethics and compliance issues. So whom do these highly placed individuals think has the ethical responsibility to speak up and admonish the board about this perceived dereliction?

I also don't believe in ministers without portfolio, and I can envision several functions that could benefit from consolidation under the banner of the office of accountability. Among the prime departmental candidates would be communications, internal audit, environmental/regulatory affairs, ethics, compliance, security, community relations, and maybe even legal. My prediction is that some of these might end up being eliminated and others subject to major reconstitution.

One might well ask whether anyone could be recruited to take on the role of corporate arrow-catcher and potential fall guy. Robert Macdonald Jr. of the executive-search firm Russell Reynolds Associates has an encouraging response to that kind of skepticism. "It's quite reasonable to expect that a senior executive at the end of his or her career

could be persuaded to take the position for a specific number of years, especially since this individual's decision should have minimal career-advancement consequences," he says. "By way of good candidates, this might be an internal executive with some existing knowledge of the financial issues, playing a complementary role to the board's audit committee, or an externally recruited executive who could provide an independent perspective similar to a lead director or outside chairman of the board."

Plausible Deniability Statement #1: In response to our board's desire to assure the quality and integrity of our

company's conduct, we created the position of chief accountability officer, hired a qualified executive to fill it, and gave the position some teeth by folding in several significant staff functions. The position reports directly to me and has a dotted-line relationship with the board of directors.

2. Involve front-line employees in the process of accountability management.

Consistent with my belief that organizations don't do enough to assure that employees buy into their espoused values, the very first thing I would do as a CAO would be to conduct employee focus groups around the topic of what is and isn't working organizationally. Having listened to many such feedback sessions over the years, I predict that little of what I would hear would be about pay, benefits, or egregious behavior. Rather, the discussion would center on feelings of not being listened to by management, hindrances to individual abilities to get the job done, and a lack of good communications.

This is exactly the same type of in-

formation that management hears year after year from employee surveys. Unfortunately, senior executives tend to forget how much the workplace is like Abraham Maslow's hierarchy of needs. Work provides the underpinning for an employee's lifestyle, and unless and until employees feel secure and self-actualized, they will not likely move to embrace more esoteric management priorities such as ethics, diversity, and accountability. To be able to claim plausible deniability, it's necessary to be able to demonstrate that the organization has an environment in which bad news is genuinely welcomed and acted upon.

Ideally, the chief accountability officer is the person who will lie awake at night

This level of comfort cannot be created by executive fiat. It's one thing to state that a company has an open-door policy; it's quite another to convince employees that there's no risk in it being an exit door. As is the case in just about any policy- and procedure-development process—whether it's Total Quality Management, Six Sigma, or dress codes—the end result will be more palatable and embraced if it has taken into account the perspectives of representative employees.

Plausible Deniability Statement #2: We actively involved employees from all levels of the organization in the development of our accountability policies and procedures, and we support numerous ongoing efforts to demonstrably open the lines of communication.

3. Eliminate any restrictions on issue reporting.

Trying to uncover potentially damaging organizational problems is a bit like mining for diamonds: The truly valuable nuggets of information are few and far between, but if you want to maximize the like-

likelihood of finding them, you need to be willing to sift through a lot of lumps of coal. The more digging you do, the greater the number of diamonds in the rough that you're likely to uncover.

In the vast majority of organizations, prospecting for critical information is conducted in nearly the opposite way: The "mine bosses" arrange for the workers to gather in a classroom, they bring in a consultant to teach them the difference between good stones and bad stones, and then they turn them back into the trenches and cross their fingers that workers will remember and recognize the distinctions as they go about their labors. If that sounds like a pretty inefficient and ineffective approach, try putting it in the context of any ethics, diversity, or compliance programs that your organization has implemented. Someone from on high says, "Get it done!" and rarely does anyone insist, "And prove to me that it's working."

worrying about what's going on in the company that he doesn't know about.

The demonstrably more successful approach is to tell your employees, "Bring all of your raw material to us. We will put it through a sifting process and determine what quality grade to assign it." While the by-product may be more work for management, it's amazing what a learning and reinforcing experience it can be to get one's hands dirty in this way.

Indeed, there's a very great distinction between telling your employees that X, Y, and Z are the only subjects that you want to hear from them about and telling them that what's important to them is important to you. Just how to create this type of a universal, unfettered feedback system and how to operate it are beyond the scope of this article. What's important to appre-

ciate is that the fewer boundaries that are placed on what employees are encouraged to talk about, the greater the chances that you'll hit pay dirt.

Plausible Deniability Statement #3: We actively encourage our employees to come forward to management with any issues, ideas, concerns, and questions that they have. We place no restrictions on what they can discuss, and we attempt to maintain an environment in which feedback of any kind is genuinely valued—and acted upon. In addition, we continuously confirm that the system is working.

4. Route all problem reporting through an independent resource.

Sharing bad news is seldom a pleasant experience, and all too often, it's the messenger who bears the brunt of the reaction. By far the most pragmatic way to deal with this reality is to enable individuals to communicate their concerns outside the chain of command. It's a model that was used

with great success by Winston Churchill during World War II. In order to receive the most accurate and objective assessments possible, Churchill created the Central Statistical Office, an entity that existed almost for the sole purpose of providing unfiltered information. A good example of how the office added value occurred in 1941, when the office's chief deduced that the Bomber Command had been overstating its success in hitting its targets. Churchill launched a series of studies and reforms that made the Royal Air Force more capable—and accountable.

The contemporary model for generating timely, unvarnished, and unfiltered feedback is to contract with a third party that specializes in

providing employee-feedback systems. Such independent resources include both dedicated "hotline" intermediaries and legal and audit firms. What they do is make it as easy and comfortable as possible for employees to share their observations with management. Some vendors are restrictive in nature (e.g., limited to waste, fraud, and abuse issues); others support the encouragement of employee commentary on any and all subjects.

Why would a company resist providing the easiest and safest possible upward-communication channel? Most frequently, the argument is predicated on the naïve belief that management trusts that its open-door system is functioning effectively. Once again, poor downtrodden Enron provides a perfect case in point. Outsiders viewed Enron—designated one of *Fortune's* most admired companies in 2000—as having a collegial atmosphere and a value system that encouraged open communication. So why, then, did so many colleagues of Sherron Watkins who shared her concerns fail to inform Emperor Lay or Grand Vizier Skilling that they had no clothes? While striving to have open doors and candid communications are noble and admirable pursuits, from a practical perspective, they are difficult to achieve and even more difficult to defend. Other frequently cited reasons for resisting the procurement of an independent communication channel are fears about potential breaches of confidentiality, concerns about being inundated with frivolous employee claims, cost, and philosophical aversion to the concept of anonymous reporting.

The retort to all of these arguments is pretty elementary: If you want to convince your organization's stakeholders that you're doing everything reasonably possible to root out problems, you need to demonstrate that you're making it as easy and risk-free as possible for employees to bring their

concerns forward. This cannot be confidently accomplished by any internally based reporting structure, even by using an ombudsman. And, of course, an equally important development is the passage of the Sarbanes-Oxley Act, which, among its numerous requirements, calls for the implementation of a confidential and anonymous reporting system that is directed to the board of directors.

Plausible Deniability Statement #4: Our company is committed to the principle of making it as easy and risk-free as possible for our employees to communicate their concerns. We have engaged the services of an independent company that provides a toll-free hotline that can be accessed by any of our employees, anywhere in the world that we operate. If an employee prefers, what she has to say can be completely confidential and anonymous. We guarantee it.

5. Establish an accountability-focused reporting process that includes the CEO and the board.

Clearly, CEOs and board members can't act on what they don't know—and the unfortunate reality is that many find themselves isolated from the raw, hard data of their far-flung organizations. In fact, many senior leaders are starved for "informal" information, a void that some attempt to fill by arranging for employee breakfasts, telephone call-in days, and just walking around. Unfortunately, this kind of first-person knowledge-gathering tends to be inefficient and time-consuming, so most CEOs are left to being kept in the loop by their lieutenants, and the board, in turn, by the CEO. As a result, the information that reaches them typically has gone through several layers of filtration and is subject to inherent delays in transmission.

It was just that kind of flow challenge that recently embarrassed Steve Sanger, the highly regarded chairman and CEO of General Mills. Following

his company's acquisition of the Pillsbury Co. last year, economies were being sought by combining the two sales forces. On December 19, 2001, Sanger reported, "Our integration is progressing well, putting us on track to achieve our full-year objectives for fiscal 2002." Just three months later, on March 20, 2002, Sanger found himself disclosing that the integration process hadn't been proceeding quite as rosily: "Our transition to a new, combined sales organization handling the entire range of Pillsbury and General Mills products resulted in an unusually weak start to the third quarter."

Did the sales-force problem blossom in only a three-month period? Unlikely. Rather, it appears that Sanger's open-door communication system failed him—problems that were probably well known to the employees in

about what may or may not be simmering on the front lines.

If the buck stops with the CEO and the board, then that's where the information needs to flow—and it needs to get there with as little editing, equivocating, and polishing as possible. That's what the four preceding action steps are intended to accomplish, and with the addition of this loop-closing fifth step, any CEO or board member should be able to make a legitimate claim of plausible deniability.

Plausible Deniability Statement #5: Any employee in our organization, regardless of location or position, can at any time pick up a phone or send an e-mail or fax directly to an independent resource that guarantees to protect the sender's anonymity if that is requested. The subject matter of every message received is shared in confi-

Even the best and the brightest CEOs and boards can be caught off guard.

the field somehow didn't get channeled where they needed to go. This is the kind of information that is the lifeblood of corporate reporting and, thereby, plausible deniability. If CEOs and boards truly want to be accountable, they need to make themselves more accessible, especially to those on the front lines.

How should the process work to maximize credibility? It's pretty simple. The independent resource that is responsible for channeling its part of the feedback should have the capability and expertise to prepare a monthly executive summary of the issues that it has been hearing. That report should be transmitted directly not only to the chief accountability officer but also to the CEO and designated board representatives. Although the interpretation of the chatter may be subject to error, this kind of summary at least provides a framework for discussion

dence with me, the audit committee of the board, and our chief accountability officer. We take seriously our responsibilities to receive critical and controversial feedback and to investigate and inform stakeholders about issues that might affect them.

When the day is done, very few CEOs and boards are involved in the chicanery, deception, stock manipulation, insider trading, and other misdeeds that have given American corporate governance a black eye. Truly, there will always be a few bad apples, but even the best and the brightest can be caught off guard. While there is no perfect system, it is indeed possible to make a case for plausible deniability. These five steps offer the most credible way for CEOs and board members to demonstrate their commitment to being held accountable.