

Public Company Transparency:

What Light is Shed by the 9th Commandment?

by David W. Gill & John R. Mesher

Philadelphia Conference June 2012

David Gill, Mockler-Phillips Professor of Workplace Theology & Business Ethics at Gordon-Conwell Theological Seminary, and John Mesher, Former Senior Vice President, General Counsel and Corporate Secretary of Saint-Gobain Corporation, argue in this essay that the 9th commandment, prohibiting “false witness against your neighbor” takes business leaders some important steps beyond where our current laws and regulations take us in the matter of disclosure of material information to the markets. The authors summarize several representative cases, review the regulatory requirements, and then invite the 9th commandment to illuminate and guide the discussion.

Public companies are required by law to disclose, on a timely basis, *material* information to their shareholders. SEC Rule 10b-5 makes it unlawful for a public company either (a) to make any untrue statement of fact or (b) to omit to disclose a material fact in way that misleads investors. The purpose of the rule is to prevent public companies from deceiving, manipulating, or defrauding investors. Rule 10b-5 is limited to “material” matters – facts that could have an impact on an investor’s decision to buy or sell company stock. Some matters are clear (a major restructuring, a significant lawsuit, a major acquisition, the loss of an important patent, etc.) but there remains wide latitude for interpretation. How much transparency is right?

To begin with, let us consider the health condition of the CEO of a company. Are shareholders entitled to know this information? Apart from obvious falsification and denial, can *silence* be wrong? At what degree of seriousness does ill health need to be disclosed? Who makes that judgment call? When and how should shareholders and the public be informed? How *much* information should be shared?¹

CEO Health Case A: In the first example, the CEO has had ongoing health issues since 2003. When financial journalists and analysts ask what the problem is, his response is that “it is a private matter.” In 2009 the CEO announces to investors and employees that he has a “nutritional problem” that is being addressed by diet. But a week after this announcement he takes a leave of absence for unexplained medical reasons. He returns several months later with a liver transplant. A year later he takes another medical leave of absence for an unspecified reason and without indicating how long he will be gone. In an email to his employees, the CEO says “my family and I would deeply appreciate respect for our privacy.” The CEO later dies from pancreatic cancer.

CEO Health Case B: In a second example the CEO is diagnosed with Stage One prostate cancer. A week later his CTScan, bone scan, and MRI show good news that the cancer has not spread anywhere else in his body. The CEO begins a two month regime of daily radiation treatment. While his travel will be restricted, his daily routine will not otherwise be changed.

Here are two other scenarios to consider. In the first, the CEO does not disclose his risky weekend hobbies. In the second, the CEO academic background is misrepresented in at least one detail. Should these matters be made public? Are they significant enough to warrant that?

CEO Risky Hobby Case: In this example, the CEO flies stunt planes as a weekend hobby. He also races motorcycles, monster cars, and off road vehicles. One weekend he crashes his plane and is killed. The company's stock price drops upon the news of his death. These risky hobbies of the CEO were not previously disclosed to the shareholders.

CEO Resume Embellishment Case: Finally, in a fourth example a new CEO is hired by a high tech company. His resume says that his degree is in computer science but in reality his major was accounting. This resume flaw is contained in regulatory filings with the SEC.

We could easily add to this list of scenarios. Once an executive's successor has been identified, when should that information be disclosed? Should a pharmaceutical company disclose *all* drug efficacy trials (both negative and positive) to the FDA during the drug approval process? If a company's lawyer advises the Board that the company is committing a crime and the company refuses to stop the practice, should that be disclosed by the lawyer? To whom? How? When?

Operating in Compliance with Laws and Regulations

Let's be completely frank here: the statutory and regulatory laws under which we operate are not exactly equivalent to the "laws of God" or the "laws of nature" and the universe. They can be irritating, distracting, unfair in both concept and application, and even unjust and wrong in a very fundamental sense. There have been times when civil disobedience was the only appropriate stance to take. But any disregard for and violation of such laws and regulations had better be in the name of some truly higher, clearly recognizable value or principle, such as saving lives or freeing slaves. We had better be prepared to take the consequences for our law-breaking behavior. And most thoughtful observers would also say that we should not impose those negative consequences on others who have had no voice in the decision to break the law.

So our practice has to be to try in good faith to comply with our laws and regulations. Accepting these ground rules is an implicit condition of entry into the game. If we don't like the rules, there are ways to work to have them changed. In the meantime we need to remember with St. Paul that God is at work, even outside the church, to promote the good and restrain evil through the imperfect, secular, governing "powers that be" (Romans 13:1-7). We need to go along with St. Peter and "for the Lord's sake accept the authority of every human institution, whether the emperor . . . or governor . . ." (I Peter 2:13-14). Only in a clear cut case of conflict should we decide with Peter and the apostles that "We must obey God rather than any human authority" (Acts 5:29). Our stance toward the state and its laws and institutions should always be aware and critical, ready to fight against tyranny if that extreme situation arises. But normally, our default position is to try to work respectfully and in good faith in compliance with the laws of the land.

Rule 10b-5 gives companies wide latitude in determining if, when, and how to disclose matters. Some matters are clear, others are not. Often "materiality" is seen or acknowledged only in hindsight --- e.g., when the stock price drops after the facts are disclosed!

In the four cases above, no matter what the subsequent history of the stock price, serious health crises of iconic CEOs like Steve Jobs at Apple or Warren Buffett at Berkshire Hathaway are unquestionably material to whether we would want to buy or sell stock in their companies. The impact of Steve Jobs on Apple's fortunes was so direct and significant that any subsequent threat that he might be taken down by a serious illness is material, if ever anything was. Of course we are not talking about every time the CEO gets a common cold or the flu. It is a judgment call.

The CEO with the life-risking hobbies certainly also seems to be in a situation where disclosure of this behavior should be made public. Some shareholders may actually be inclined to invest *more* in a risk-taking CEO! But that should be theirs to judge. We are not talking about driving a car, riding in commercial airplanes, or playing soccer on weekends; people can and do die in all types of activity. Nothing in life is risk-free. What matters is exceptional, frequent, and serious risk.

The CEO with the erroneous college major on the resume seems less serious. There are apparently no immediately threatening consequences. One doesn't get thrown in prison or even die from a resume mistake (as with cancer and stunt flying). Apparently there are no other mistakes (falsifications?) and the degree is legitimate. Naturally it should be corrected in all company records and publications and in the SEC filing, but it may not rise to the level that calls for an official press release and public *mea culpa*. The real issue is whether this glitch is symptomatic of something larger like inattention to details and accuracy, a tendency toward embellishment, a habit of "white lies"? And how does this CEO respond when this glitch is pointed out? Defensively? Humbly? There may (or may not) be a material factor lurking in this CEO's future.

Before taking our discussion more directly to the 9th commandment, let's note four points to keep in mind as Rule 10b-5 is our guide on these matters:

- (1) Let's be sure to have expert, excellent, ethical legal counsel from start to finish on these matters;
- (2) Let's be sure to respect the *intent* of Rule 10b-5 and not just focus on the formal, legal *edges* we might approach;
- (3) Let's be sure to do our discernment and then make major, impactful decisions with the wisdom of our *team*, not just as solitary would-be "heroes"; and
- (4) Let's think about the famous "Golden Rule" --- how would we like to be treated if we were in the shareholder's place or if we were considering an investment? What would we consider "material" information if we were sitting over there.²

From Law to Ethics

Ethics and law are (we hope) intimately related. Ethics is about figuring out and carrying out the *right* thing, even if you have a legal right to do otherwise. Our question is not just what is the *profitable* thing but what is the *right* thing to do in our business (or other arena of life). It isn't just about "what *everybody else is doing*" but about what is *right*, not just about what is *legal* but about what is *right*. We want our laws to be grounded in, and expressive of, what is right. But many laws are imperfect at best; they govern external speech and behavior at best (not the attitudes that give rise to our behavior); they tend to be negative (indicating what *not* to do), and they are often more about maintaining *order* than maintaining righteousness and justice.

Ethics, in contrast to law which has the coercive force of government behind it, is about *voluntary* self-government as individuals and organizations. "Govern yourself – or be governed" an old adage goes. Choose to do what is right, or society will choose to restrict your negative behavior. *Aggravate* the people by irresponsible and unethical behavior --- and *activate* the legislature and regulatory bodies. Sarbanes-Oxley and Dodd-Frank regulations didn't come out of nowhere. They are clumsy but inevitable reactions to unethical, deeply harmful business behavior.

It is gratifying that not only do we have SEC Rule 10b-5 as a *legal* guide on this topic, some companies and professional groups voluntarily commit themselves to an *ethical* standard along the same lines. For

example, the CFA professional association (Chartered Financial Analysts) very clearly insists that, in order to “maintain the integrity of capital markets” . . . “Members and Candidates who possess material nonpublic information that could affect the value of an investment must not act or cause others to act on the information” (CFA Institute Standard II(a)).³ You won’t be credentialed as a CFA unless you agree to this standard (See our Appendix A for CFA Institute Standard II(a)). And to give just one corporate example, Charles Schwab’s Code of Ethics is clear about their commitment as a company to steer far away from any risk or hint of insider trading.⁴ You will be disciplined or fired if you violate Schwab’s code of ethics on this matter.

The Boundary Established by the 9th Commandment

But let’s now go deeper still, to the most famous “code” of all time: The Ten Commandments (Decalogue).⁵ The ninth commandment declares, “You shall not bear false witness against your neighbor.” (Ex 20:16=Dt. 5:20). The term used in the Exodus version (*shaqer*) means “lying” or untrue witness. The term used in Deuteronomy (*shaw*) means “empty,” vain, insincere, frivolous witness---the same word that is used in the third commandment forbidding an empty, vain use of God’s name. So it is not just about mistakes, falsehoods, and lies; the commandment prohibits distracting, pointless communications that might negatively impact our neighbor. Jesus’ statements on “empty” communication are pretty strong: “You brood of vipers! How can you speak good things, when you are evil? For out of the abundance of the heart the mouth speaks. . . I tell you, on the day of judgment you will have to give an account for every careless word you utter” (Mt 12:34-37). These two terms (“lying” and “empty”) provide us with two angles on the same problem: communicating in a way that harms others.

Both the “lying witness” of Exodus and the “empty/vain witness” of Deuteronomy relate first to legal disputes and trials, i.e., to perjury. The relevance of the 9th commandment for our discussion of business law and regulation is very direct. More broadly, the commandment covers all forms of slander, libel, gossip, tale bearing, insinuation, and insult of one’s neighbor. Martin Luther shows its breadth: “It forbids all sins of the tongue by which we may injure or offend our neighbor. False witness . . . corrupt teaching . . . the detestable, shameful vice of back-biting or slander by which the devil rides us.”⁶

The ninth command is not just about randomly spouting false information. It is about *harming your neighbor* through your falsehoods. The big problem here is the offense “against your neighbor” not just the offense “against the facts.” Old Testament scholar Brevard Childs explains, “The commandment is directed primarily . . . against the threat of false accusation. The original commandment is, therefore, not a general prohibition of lying but forbids lying which directly affects one’s fellow.”⁷ French Reformed theologian Alphonse Maillot writes, “One only becomes truly a liar in the Old Testament when one seeks to deceive the other, to lead him off into false ways, or when one seeks publicly the eyes and ears of others to give a false image. . . The lie, the truth, is *relational*.”⁸ This is closely related to the concept of “materiality” in our consideration of Rule 10b-5. In both terms the emphasis is on how something could affect another relevant party. “Material” is a more restricted notion of *financial* harm; the “relational” (“against your neighbor”) is inclusive of reputational and any other aspects of harm.

For a quarterback to pretend he is going to hand the ball off (but it’s a fake!) and thus “bear false witness” to the opposing team does not transgress the command because it does not harm those neighbors who have chosen to play football.⁹ Even in international diplomacy and conflict one might not disclose important facts that an enemy wishes to know --- but we are not obligated to do so because this could bring terrible harm to the neighbors we are defending (and perhaps to the enemy neighbors as well). But these kinds of cases (from games or statecraft) are the exception. The rule is: no false witness against your neighbor.

The ninth command is part of a broad biblical condemnation of the sins of speech (and a correspondingly vigorous promotion of speaking the truth). Any malicious, false witness, if found out, was sentenced to suffer whatever he intended for the accused by his false testimony (Dt. 19:15-21). The Leviticus "holiness code" instructed the people "Do not lie," "Do not deceive one another," "Do not swear falsely by my name and so profane the name of your God," "Do not go about spreading slander among your people" (Lev 19:11-12, 16; 20:9).

The Proverbs are especially full of counsel about our speech. For example, two of the "six things that the Lord hates" and that are an abomination to him are "a lying tongue" and "a lying witness who testifies falsely" (6:16-19). "A faithful witness does not lie, but a false witness breathes out lies" (14:5). "A truthful witness saves lives, but one who utters lies is a betrayer" (14:25). "Do not be a witness against your neighbor without cause, and do not deceive with your lips" (24:28). "Argue your case with your neighbor directly, and do not disclose another's secret" (25:9).

The prophets blasted the people for their sins of speech. In a classic and typical passage, Jeremiah writes: "They bend their tongues like bows; they have grown strong in the land for falsehood and not for truth . . . every neighbor goes around like a slanderer. They all deceive their neighbors, and no one speaks the truth; they have taught their tongues to speak lies . . . deceit upon deceit . . . Their tongue is a deadly arrow; it speaks deceit through the mouth. They all speak friendly words to their neighbors, but inwardly they are planning to lay an ambush" (Jer 9:3-8).

At the center of history and the Christian faith Jesus himself was condemned to death on the basis of false witness (Mk 14:55ff; Mt 26:59-60). This is no small matter before God. St. Paul says "Get rid of . . . slander and abusive language from your mouth. Do not lie to one another" (Col 3:8-9). James says in a famous passage: "How great a forest is set ablaze by a small fire! And the tongue is a fire . . . No one can tame the tongue" . . . "Do not speak evil against one another" (3:5-10; 4:11).

So much for actively propagating false or empty witness. What is the biblical teaching about silence or the failure to warn? Refusing to speak to or about someone can be a harmful, irresponsible act. On some occasions we must overcome our fear or laziness and raise our voices for the truth and for our neighbor. To stand by quietly and allow a miscarriage of justice to occur, or an innocent person to be slandered, is to be guilty. The Old Testament law held guilty any owner who failed to warn and protect others from an open pit they dug that someone might fall into or from one of their oxen known to gore (Ex 21:33-36). Ezekiel uses the image of the "watchman on the wall": "I have made you a watchman for the house of Israel. . . . you shall give them warning from me. If . . . you give him no warning . . . that wicked person shall die for his iniquity, but his blood I will require at your hand" (Ezek 3:17-19). Noah heroically warned the people of a coming flood (Gen 6). Joseph warned of a coming famine (Gen 41).

Silence about a serious threat to others can be a grievous wrong. On the other hand, Ecclesiastes says, there is both a time to refrain from speaking --- and a time to speak. It is not always possible to remain silent or evade comment, but sometimes that is what we can and should do; we don't always have to comment or pass public judgment on everything. Proverbs counsels us to tell the truth but also affirms the importance of silence: "The prudent are restrained in speech." (Prov 10:19). "Whoever belittles another lacks sense, but an intelligent person remains silent" (Prov 11:12). "One who is clever conceals knowledge, but the mind of a fool broadcasts folly" (Prov 12:23). Obviously, protecting someone's privacy can be an important reason to choose silence. But silence in the face of a serious potential harm that could be averted is unacceptable.

Are there ever exceptions to the rule against false witness? Several famous stories indicate that the 9th commandment boundary was not always strictly observed, even by the heroes of the faith. For example, Abraham twice provided a deceptive, half-truth that Sarah was his sister (rather than boldly admitting that she was his wife) (Gen 12:18-19; 20:2-12). His son Isaac bore similar false witness about his own wife Rebekah (Gen 26:6-11). Jacob was frequently engaged in deceptive witness, including to his own father (e.g., Gen 27:18ff). More understandably, the Hebrew midwives deceived Pharaoh to save their babies, Rahab bore false witness to protect the Israelite spies, and Samuel deceived King Saul's people when he went to anoint David as Saul's successor (Ex 1:15-22, Josh 2; I Sam 16:1-5). Rahab and Samuel's cases are especially problematic because Rahab is held up as an exemplar of faith active in works (Heb 11:31; Jas 2:25) and Samuel was doing what God explicitly told him to do (I Samuel 16). Experts in moral casuistry (hair-splitting case analysis) might argue that what Rahab and Samuel did was *not* "against their neighbor" but something good for the world.¹⁰

Despite inconsistent performance by the people of God, the teaching of Scripture remains constant. Whether it is technically legal or not, the 9th Commandment prohibits all *false or empty witness* that *harms our neighbor*. This message is unrelenting and consistent. The boundary is clear.

In our first sample case, it may be unclear whether that first health scare in 2003 warranted full disclosure by the company. But certainly by 2009, the "nutritional treatment" excuse accompanied by an actual liver transplant --- and then the subsequent stone-walling is deceptive and wrong. The second example, the CEO who discloses the prostate cancer, seems exemplary. The third example, the secret risk-taking CEO who later died in a crash, is not "false witness" but rather an irresponsible failure to disclose a material fact. The fourth example contains a clear falsehood (perhaps a mistake, perhaps a lie) but without any imminent material impact. It must be corrected but if done so need not become a significant breach of law or ethics.

The Mandate within the 9th Commandment

We are not finished with any of the Ten Commandments when we have only heard and obeyed their negative, boundary-setting message. The commandments, despite appearances, are not just about avoiding what is wrong. There is a "fulfillment" of the law which goes beyond the simple negation that gets us started. Jesus said (Mt 5:17) he had not come to abolish but to *fulfill* the law. The Greek word *pleroma* means literally to "fill full." He calls us to a "*righteousness that exceeds* that of the Pharisees" (Mt 5:20). The Pharisees were narrow, negative, and legalistic. Jesus then illustrates this "higher righteousness" and "fulfilled law" by showing how the sixth commandment "You shall not murder" means not only avoiding murderous *acts* but murderous, insulting *talk* and murderous angry *thoughts* --- and it means *proactively* going to a foe or opponent and *making peace*. Not just "avoid murder" --- but "protect life." Later Jesus advises avoidance of oaths assuring our truthfulness (e.g., "I swear in God's Name that I am not bearing false witness!"). Instead keep it simple and speak the truth: "Let your yea be yea, and your nay be nay" (Mt. 5:33-37). Jesus often used the phrase "Truly, truly, I say to you...." Truth mattered to him. "I am the way, the truth, and the life" (John 14:6). The master theme of Jesus' message was not condemnation and bad news but truthful "good news" (*euangelion*) and he commissioned his followers to be his faithful, true witnesses throughout the world. No wonder that the crowds "were astounded at his teaching." "No one ever spoke like this before." (Mt 7:28-29).

Paul urged that we "speak the truth in love" (Eph 4:15). And just as he does with the 8th commandment so he develops the 9th commandment from its negative, boundary-setting "law" side to its positive, mandate-affirming "gospel" side.

#8: "Let him who stole steal no more --- but rather let him labor in order to give to those in need" (4:28). #9: "Putting aside falsehood --- let all of us speak the truth to our neighbors" (4:25).

It is not enough to avoid false and empty witness, we must speak the truth. And just as the negative side is qualified by that "against your neighbor" relational impact --- so on the positive side we do not just spout true facts; we must speak the truth "in love," to serve loving, constructive purposes, to build one another up, not tear one another down.

John Calvin emphasizes the relational aspect in its positive form: "For the legitimate observance of this precept consists of employing the tongue in the maintenance of truth, so as to promote the good name and the prosperity of our neighbor."¹¹ Jean Milič Lochman explains the relational nuance of the biblical vocabulary: "The Hebrew term *emeth* . . . refers to the trustworthiness, reliability, validity, and binding character of a personal behavior, but above all, in a concentrated form, the demonstration of fidelity between persons."¹² Martin Luther calls for the positive counterpart to false or empty witness against one's neighbor: "A person should use his tongue to speak only good of everyone, to cover his neighbor's sins and infirmities, to overlook them, and to cloak and veil them with his own honor. . . It is a particularly fine, noble virtue always to put the best construction upon all we may hear about our neighbor."¹³ Part of our challenge has to do with how we bear witness. Another part of the challenge is how we interpret the witness we hear from others about a third party. Luther's advice is superb: put the best possible construction on it. There is always room for interpretation. Put the best spin on what you hear, not the worst.

The boundary is no false or empty witness against our neighbor; the mandate is to speak truth in a way that edifies, builds up, that neighbor. The mandate is to not just avoid falsehood but be proactive with truth. Noah warned of a coming flood --- and built an ark for anyone who wanted to come aboard. Joseph warned of a coming famine --- and created a food storage and rationing system able to save people from starvation. So when our first CEO example discovered his serious illness, the truth of his health threat could be disclosed *along with* a plan (a) to fight back for his health and (b) for a leadership team worthy of full confidence in carrying the company forward no matter what. Proactive and positive --- and truthful. Same with CEO in example three: alert the stakeholders to the hobbies but link them with a commitment by the company to boldly move forward with a degree of daring --- while assuring the stakeholders (I use this term because employees and customers surely deserve this care, as much as shareholders and owners) of the competence of the top management *team*.

Why False is Wrong and True is Right

Why are falsity and truth so important that the topic makes God's top ten list? We live not just in a material world of behavior and things but in a world of words and communication, of information, gossip, slander, joking, compliments, praise, and instruction --- a world where truth and falsehood matter. Terrible consequences result from a lack of truth. False or empty witness is wrong first of all because of its harm to the victim. Lives and fortunes are lost. Careers and reputations are destroyed. By contrast, telling the truth can help our neighbors by warning them of danger, informing them of opportunities, by building up, comforting, and encouraging them. Truth can redeem bad situations and bring hope and new life.

But not just the direct victim is harmed by false witness. False witness and lies harm society in general. *Markets* are undermined. Markets require "trust" which requires "trust-worthy" which requires honesty and truth.¹⁴ When trust is eroded by a casual or manipulative attitude toward facts and people, markets slow down if not stop altogether. False witness undermines confidence and foments cynicism. "Who can you believe anymore?" we ask with resignation. False witness often provokes lies of *retaliation*. It is an

ugly social order that no longer expects to tell or hear the truth. Laura Schlessinger has argued that truth is also “a precondition of *justice*. Only when we have a clear picture of how things are can we discern how to behave appropriately. If we don't have a clear or true picture of how things really are, we are more likely to behave in a way that is ultimately unjust.”¹⁵

Lies and false witness are also wrong because they harm the individual or organization that communicates them. Lies create an internal contradiction that destroys personal integrity and corporate culture alike because you know the truth but say otherwise. This poisons your mind and soul in the same way that your body is poisoned when you know something is inedible and harmful and you eat it anyway. When the company and its leaders are known to fudge the truth or engage in flat out lies, rank-and-file employees can be expected to do the same when it suits their own purposes. Life gets more complicated when individuals and organizations have to “cover their tracks,” destroy evidence, and live with suspicion and fear. Truth brings life; false witness kills.

The Bible puts all of this very graphically. The original sin in the Garden of Eden followed the serpent's bold false witness and contradiction of God's word (“You shall not surely die!”). The Devil is a deceiver, a liar, and the father of lies, according to Jesus (John 8:44-47). The Hebrew word “Satan” and its Greek translation “Devil” both mean “accuser”---one who hurls a lying accusation across at a foe. Satan “accuses the brethren day and night,” John's Apocalypse says (Rev 12:7-11). Babel/Babylon, another symbol of hardcore evil in the Bible, is the place of human arrogance---and of confusion of tongues. It is the exact opposite of all that is good and true in human communication. Thus the 9th commandment against false witness is not a lighter weight command. It takes us to the very essence of evil in an important sense. This is just as true for groups and organizations as for individuals.

On the positive side, God created a “very good” world by his Word---and God has redeemed the world by the “word made flesh” (Jn 1). God is the God of truth. “Grace and truth” came by Jesus Christ (Jn 1:17). Jesus said “I am the truth” (Jn 14:6). When the promised Holy Spirit comes, he “guides people into all truth.” That Spirit of God makes possible the Pentecost miracle in which Babel is reversed and communication among different language groups can once again occur. All of this is the basis upon which is built our mandate to speak the truth in a way that builds up others. This is just as true for groups and organizations as for individuals.

The prologue to the Decalogue is essential to understand the importance of the 9th commandment. “I am the Lord your God who brought you out of Egypt, the land of *slavery* . . . You shall not bear false witness against your neighbor.” It's about *freedom*. The commands are guidelines on *how to stay free*, having just been liberated from slavery. False witness gives away our freedom. It creates ignorance, cynicism, fear, and alienation. Lies necessitate an ongoing web of deception to cover one's tracks. One lie is rarely enough. What a foolish, exhausting distraction to have to always be thinking about how to cover up for one's lies. And when found out, liars (and lying organizations) have great difficulty ever reestablishing their trustworthiness. False witnesses create enemies who may be desperate and angry enough to do serious harm in retaliation. “The truth will set you free,” Jesus said (John 8:32)

The “afterword” to the Decalogue says, in several ways, several times, that if the people will obey the commandments “it will go well with you, and you shall live long in the land the Lord your God is giving you” (Dt 6 *passim*). *Success*: “it will go well with you.” *Sustainability*: “you will live long in the land.” Lies, uncorrected mistakes and falsehoods, false witness against competitors and opponents . . . these communication practices will eventually undermine success and shorten careers. That little tongue will set the forest on fire.

Company A, in our earlier examples, seems to have survived the game-playing, deception, and stonewalling about their late genius CEO's health. But what was gained by their false or empty witness or failure to warn? It is hard to see any benefit in what they did. They have succeeded *despite* that false witness. If dishonesty becomes a longer term pattern, or if the company fails to deliver as brilliantly as it did under his leadership, the market may punish them. The risk-defying CEO's company did take a big hit upon his death. The prostate –cancer-announcing CEO's company maintained confidence and didn't miss a beat.

Today's Communication Context: Truth Against the Flow

Unfortunately, false and empty witness finds a lot of cultural permission and support these days.¹⁶ Speaking the truth in love is frankly counter-cultural. People and corporations bear false, lying witness about their own lives or products, epidemic cheating on tests and in school or laboratory, inflating or blatantly misrepresenting accomplishments on resumes or advertising, by cheating on tax returns, insurance claims, or annual reports. People bear false witness about others not just by courtroom libel and slander but by contributing to gossip, stereotypes, unfair grading or inaccurate reference letter writing. Gossip rags like the *National Enquirer* call out to shoppers checking out of stores. Political office seekers and their official and unofficial support groups blatantly misrepresent themselves and even more their opponents. What a world!

One basic problem is how to define and uphold truth and falsehood in our postmodern, relativistic era, in which everyone has a presumed right to define truth however they wish.¹⁷ False witness gets trivialized to mean little more than being false to your own feelings and perception. Journalists and even official government sources are sometimes also found to be fabricating story lines and details. The half-truths of advertising could fill a book all their own. All of this breeds legitimate cynicism about ever being able to make real distinctions of false and true witness. Individuals and companies don't have the character or leadership to resist and just sink to the lowest common denominator "everybody's doing it" level.

A second factor is the incredible pressure to perform and to serve the bottom line. This is true of sales agents needing to make quotas to receive incentive pay. It is true of executives trying to achieve targets to qualify for big bonuses and stock options. Athletes cheat by taking performance enhancing drugs under pressure to achieve. And companies are under extreme pressure to manage and manipulate the facts in order to woo investors and customers, get regulatory approval, receive good press, etc.. It takes strong boards and great leadership to resist these pressures.

A third factor is the human tendency to focus on the faults of others. This goes back to the beginning. When God asks Adam what has gone on, Adam points to Eve and says "The woman!" To make matters worse, he intimates that God is to blame when he says it was the woman "you put here with me." When God asks Eve what happened, she points at the serpent and says "The snake!" Jesus gives a powerful little image in the Sermon on the Mount: "Why do you see the speck in your neighbor's eye, but do not notice the log in your own eye? Or how can you say to your neighbor, 'Let me take the speck out of your eye,' while the log is in your own eye? You hypocrite, first take the log out of your own eye, and then you will see clearly to take the speck out of your neighbor's eye" (Mt 7:3-5). We will never get anywhere on this topic if our agenda is confined to identifying and condemning the false witness of others. "For it is time for judgment to begin at the household of God" (1 Ptr 4:17). Our inclination, like Adam, like Eve, is to focus on blame and on the faults of others. It would be bad enough if this voluntary assumption of the Accuser's role in the world merely highlighted the actual false or empty witness of others. But the spirit of the Accuser can never stop there but must go on to insinuate and misrepresent the opponent. The hidden motives of the opponent are represented by the Accuser with bold assurance. This temptation is

by no means the temptation of just one partisan group or another: it is a human weakness and failing, going back to the fall of Adam and Eve. Our contemporary culture just happens to treat this vice as a virtue that wins audiences, votes, and customers.

The cost of this capitulation to false witness, to individuals, companies, nations, and the world, is immense and growing. It attacks neighborhood and community, free and functioning markets, marriage and family, government, and civilization itself. Without truth spoken in love, without resistance to false witness against neighbors, everything is up for grabs.

Rebuilding Ethically Healthy Communications

The first step back toward an ethically healthy organization that eschews false witness in favor of proactively leading with truth is to revisit the topic of *purpose*.¹⁸ Business writer Douglas Sherwin explained how ethical values relate to mission and purpose in a classic essay several years ago: “The values that govern the conduct of business must be conditioned by ‘the why’ of the business institution. They must flow from the purpose of business, carry out that purpose, and be constrained by it.”¹⁹ The first question becomes: *what* purpose? and then: *what* values? If the company’s purpose is little more than accumulating wealth for its owners and managers, if it really is only about “moving money from your pocket into mine,” truth and other ethical virtues and values will be in deep peril. But if the purpose is (a) to create good, useful, and beautiful products and services or (b) to heal hurting people, liberate those in bondage, and fix what is broken, not only will the money take care of itself (most of the time), but sound ethical values and principles, like truth telling, will be motivated and leveraged by that constructive purpose.²⁰ If we want to resist false witness and promote a culture of truth, start by working on purpose and mission.

Once an inspiring purpose and mission are firmly in place, the question becomes: how do we need to behave, how do we need to treat our stakeholders (investors/owners, employees, customers, regulators, business partners, families, neighbors, and competitors) *in order to* achieve our mission with excellence and success? Ethics is an account of these mission-enabling core values and key principles. This is where we explain and illustrate why and how truth-telling --- and false-witness-avoiding --- is a core value and principle we must observe on the way to success. Our people must see this topic in a more holistic way, integrating ethics with purpose.²¹ Always link ethics to purpose.

A related critical weakness in today’s business to treat ethics (and ethics training) as an *individualistic* exercise sitting in front of a computer screen tapping your way through multiple choice answers on an artificially selected, edited, pre-fabricated case. Ethics is a “team sport” led by the “tone at the top” of the organization, and not a solo sport. It is a community exercise in discernment and execution alike. The Decalogue, with the 9th commandment, was given to a *people*, not to Moses or Miriam walking through the desert by himself or herself. The more we can get our people at all levels to come together whenever an issue of values and ethics arises, the better. As we have seen, a basic principle may be very clear, even absolute --but the application in the trenches requires careful discernment by two or three minds.

In the cases of the CEOs with serious, life-threatening health issues, company leadership needs to be brought together to reflect carefully and develop a strategy of how to proactively tell the truth while trying to anticipate and allay the fears among stakeholders that may arise upon hearing this news. Creative, caring, articulate, ethical people working together will come up with a sound and effective strategy. The health challenge may force the company to face up to some matters previously ignored. All companies need a succession plan. But anytime a CEO has a special iconic status where the sudden absence of that CEO could create a crisis, it is essential that a succession plan be in place. After all, it isn’t just

illness that could strike; cars and planes have accidents, violent crimes occur. It is just not responsible to avoid having a plan in place. “Ninth commandment Christians” should take the lead in helping their companies be prepared, proactive truth tellers.

In the case of the hobby-risk-taking CEO, a similar succession plan needs to be in place. Even if the CEO feels immortal, injuries can happen. Other travel and illness vulnerabilities are out there. The Board and Executive team need to know about the risky hobbies. Just as some professional athletes are prohibited from risking their health in other sports or recreational activities, so a CEO or other leader (or a parent) might be well-advised to be more careful and cautious while there are others extremely dependent on them. Again, the issue moves from asking how close we can get to the line without violating Rule 10b-5 to proactively creating a truth-telling, confidence-inspiring company.

In the end, the 9th commandment certainly reinforces Rule 10b-5. But it takes us a good distance above and beyond that minimum standard. We could never try to write the 9th commandment into law, at least not with its full-orbed negative boundaries and positive mandates. It is a voluntary guide. But it is the brilliantly illuminating wisdom of the ages and, more specifically, of the God of the ages. Those who adhere to it, model it, teach it and promote it in their careers and companies do so under the promise that it will go well with them and they will live long in the land the Lord gives them. There can and will be tough times but even then, this is the best of all possible ways to live, work, and lead.

Appendix

Chartered Financial Analyst Institute Standards of Practice (Standard II A)

What Is “Material” Information?

Information is “material” if its disclosure would probably have an impact on the price of a security or if reasonable investors would want to know the information before making an investment decision. In other words, information is material if it would significantly alter the total mix of information currently available about a security in such a way that the price of the security would be affected.

(A) Material Nonpublic Information

Members and Candidates who possess material nonpublic information that could affect the value of an investment must not act or cause others to act on the information. The specificity of the information, the extent of its difference from public information, its nature, and its reliability are key factors in determining whether a particular piece of information fits the definition of material.

For example, material information may include, but is not limited to, information on the following:

- earnings;
- mergers, acquisitions, tender offers, or joint ventures;
- changes in assets or asset quality;
- innovative products, processes, or discoveries;
- new licenses, patents, registered trademarks, or regulatory approval/rejection of a product;
- developments regarding customers or suppliers (e.g., the acquisition or loss of a contract);
- changes in management;
- change in auditor notification or the fact that the issuer may no longer rely on an auditor’s report or qualified opinion;
- events regarding the issuer’s securities (e.g., defaults on senior securities, calls of securities for redemption, repurchase plans, stock splits, changes in dividends, changes to the rights of security holders, public or private sales of additional securities, and changes in credit ratings);
- bankruptcies;

- significant legal disputes;
- government reports of economic trends (employment, housing starts, currency information, etc.);
- orders for large trades before they are executed.

In addition to the substance and specificity of the information, the source or relative reliability of the information also determines materiality. The less reliable a source, the less likely the information provided would be considered material. For example, factual information from a corporate insider regarding a significant new contract for a company is likely to be material, whereas an assumption based on speculation by a competitor about the same contract is likely to be less reliable and, therefore, not material. Also, the more ambiguous the effect of the information on price, the less material that information is considered. If it is unclear whether the information will affect the price of a security and to what extent, the information may not be considered material. The passage of time may also render information that was once important immaterial.

What Constitutes “Nonpublic” Information?

Information is “nonpublic” until it has been disseminated or is available to the marketplace in general (as opposed to a select group of investors). Dissemination can be defined as “made known to.” For example, a company report of profits that is posted on the internet and distributed widely through a press release or accompanied by a filing has been effectively disseminated to the marketplace.

Members and candidates must have a reasonable expectation that people have received the information before it can be considered public. It is not necessary, however, to wait for the slowest method of delivery. Once the information is disseminated to the market, it is public information that is no longer covered by this standard.

Members and candidates must be particularly aware of information that is selectively disclosed by corporations to a small group of investors, analysts, or other market participants. Information that is made available to analysts remains nonpublic until it is made available to investors in general. Corporations that disclose information on a limited basis create the potential for insider-trading violations.

Issues of selective disclosure often arise when a corporate insider provides material information to analysts in a briefing or conference call before that information is released to the public. Analysts must be aware that a disclosure made to a room full of analysts does not necessarily make the disclosed information “public.” Analysts should also be alert to the possibility that they are selectively receiving material nonpublic information when a company provides them with guidance or interpretation of such publicly available information as financial statements or regulatory filings.

¹ For discussion of the CEO illnesses of Apple’s Steve Jobs and Berkshire-Hathaway’s Warren Buffett, see Davia Temin, “Announcing CEO Illness – Best Practices from Buffett to Jobs,” *Forbes*, 18 April 2012, and Ben W. Heineman Jr., “Disclosure of Steve Jobs’s Illness: Round 2,” *The Atlantic Monthly*, Jan 2011.

² The Golden Rule is famously part of the Sermon on the Mount (Matthew 7:12) where Jesus says it is summary of “the Law and the Prophets.” So when we wonder about the essential message of the Law (including the 9th command) or the Prophets, this little formula will help us get it straight.

³ The CFA Institute Code of Ethics and Standards is available at <http://www.cfainstitute.org/ethics>

⁴ The Charles Schwab Code of Ethics is available at http://www.aboutschwab.com/governance/code_of_conduct/

⁵ This discussion of the 9th Commandment draws heavily (with occasional repetition of language) on David W. Gill, *Doing Right: Practicing Ethical Principles* (InterVarsity Press, 2004), Ch. 11 “Truth Telling”

⁶ Martin Luther, *Large Catechism*, p. 44

⁷ Brevard Childs, *The Book of Exodus* (Philadelphia: Westminster Press, 1974), p. 424.

⁸ Alphonse Maillot, *Le Decalogue* (Geneva: Labor et Fides, 1985), p. 138. (translation by David W. Gill)

⁹ The famous article “Is Business Bluffing Ethical?” by Albert Z. Carr, *Harvard Business Review* (Jan-Feb 1968), actually argued in favor of accepting some degree of bluffing as part of the basic rules of the “business game.”

¹⁰ It might also be said that Rahab is commended in Hebrews for her faith and in James for acting out her faith --- but without endorsing the precise “means” she chose; and that Samuel actually did “offer sacrifices” as God suggested, even if it was clearly intended to distract the observers from his real mission, i.e. to deceive them.

¹¹ John Calvin, *The Institutes of the Christian Religion* (Grand Rapids: Eerdmans, 1975), 2.8.47.

¹² Jan Milič Lochman, *Signposts to Freedom* (Minneapolis: Augsburg, 1982), pp. 142-143.

¹³ Martin Luther, *Large Catechism*, pp. 47, 48.

¹⁴ Francis Fukuyama, *Trust: The Social Virtues & the Creation of Prosperity* (Free Press, 1995) massively and definitively shows how functioning, prosperous economies depend on trust and trustworthiness and the values-commitments that sustain them.

¹⁵ Laura Schlessinger & Stewart Vogel, *The Ten Commandments* (New York: HarperCollins, 1998), p. 271.

¹⁶ Cynthia Crossen, *Tainted Truth: The Manipulation of Fact in America* (Simon & Schuster, 1994) provides a searing indictment of business, journalism, and government on this topic.

¹⁷ Sissela Bok’s *Lying: Moral Choice in Public and Private Life* (Random House/Vintage, 1978) remains the best comprehensive discussion of lying in its various forms and possibilities.

¹⁸ See David W. Gill, “What Do You Love? Mission-Control Ethics,” Ch. 4 in *It’s About Excellence: Building Ethically Healthy Organizations* (Eugene OR: Wipf & Stock Publishers, 2008/2011), pp. 95-118.

¹⁹ “The Ethical Roots of the Business System,” *Harvard Business Review* Nov-Dec 1983, p. 186.

²⁰ These two purposes mobilize the workers to bring their best self to work because they tap directly into the image of the Creator and Redeemer stamped on every man and woman on earth. Nikos Mourkogiannis describes four basic core purposes grounding great companies. *Purpose: The Starting Point of Great Companies* (Palgrave Macmillan, 2006). His four purposes are very compatible with the Creator/Redeemer concept.

²¹ The Decalogue itself shows this moral architecture: commandment number one establishes the ultimate purpose: serving and loving Yahweh as God. The remaining nine flow from God’s character and support the relationship to him.