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Cover Page Footnote

I would like to thank Fran Evans and Jon Hoak for the generous donation that made the Project for Law and Business Ethics possible. I would also like to thank Christine Gall, Esq., for her critical comments and encouragement while drafting this essay.

UNEARTHING CORPORATE WRONGDOING: DETECTING AND DEALING WITH ETHICAL BREACHES IN THE BUSINESS WORLD

*Eric C. Chaffee**

On October 25, 2007, the Project for Law and Business Ethics hosted a symposium entitled, *Unearthing Corporate Wrongdoing: Detecting and Dealing with Ethical Breaches in the Business World*. The event gathered academics, practitioners, and business leaders to discuss and analyze creating and maintaining a culture of integrity in the business community. Speakers from the event either authored or co-authored the three essays that follow this introduction.¹

The Project for Law and Business Ethics is a new initiative at the University of Dayton School of Law. The Project was founded in 2007 from a generous donation by Fran Evans and Jon Hoak for research, scholarship, and teaching relating to business ethics. The Project's goals include:

- Exploring the role of the law and lawyers in promoting the ethical operation of business entities;
- Preventing ethical breaches in business entities before they occur;
- Creating a dialogue between the legal profession and the business community on ethical issues; and
- Analyzing the role of law in regulating ethical practices in business.

This list of goals is ambitious, but it highlights the important role of the Project. The Project is a unique academic initiative. Although other academic institutions have created centers and institutes focusing on professional ethics, the Project is the first endeavor created by a law school

* Assistant Professor and Chair of the Project for Law and Business Ethics, University of Dayton School of Law. I would like to thank Fran Evans and Jon Hoak for the generous donation that made the Project for Law and Business Ethics possible. I would also like to thank Christine Gall, Esq., for her critical comments and encouragement while drafting this essay.

¹ Robert J. Ridge & Mackenzie A. Baird, *The Pendulum Swings Back: Revisiting Corporate Criminality and the Rise of Deferred Prosecution Agreements*, 33 U. Dayton L. Rev. 187 (2008); Paul Fiorelli & Ann Marie Tracey, *The "Value" of "Values" in Small Business: Compliance and Ethics Programs for "the Rest of Us"*, 33 U. Dayton L. Rev. 205 (2008); Jon S. Hoak, *HP Ethics from the Top Down . . . and the Bottom Up*, 33 U. Dayton L. Rev. 225 (2008).

to focus solely on the intersection of law and business ethics. The Project is yet another example of the University of Dayton School of Law's commitment to being a leader in legal education and its dedication to improving the practice of law.²

The October 25, 2007 symposium was the inaugural event for the Project. The event focused on unearthing wrongdoing in a business setting and featured panel discussions on ethical compliance and monitoring systems within business entities, internal corporate investigations, government investigations, and shareholder litigation.³ The panels were composed of academics, practitioners, corporate counsel, and present and former federal prosecutors.⁴

The following essays, authored or co-authored by those who spoke at the event, continue the discussion that began at the symposium. In *The Pendulum Swings Back: Revisiting Corporate Criminality and the Rise of Deferred Prosecution Agreements*, Robert J. Ridge and Mackenzie A. Baird explore the rise and evolution of corporate criminal liability and the dangers that it poses to financial markets, innovation, shareholders, and innocent employees.⁵ The authors analyze the Department of Justice's struggle to develop a uniform approach to the prosecution of business entities⁶ and discuss the increased use of Deferred Prosecution Agreements as a means of policing and reforming corporate offenders without litigation.⁷

In *The "Value" of "Values" in Small Business: Compliance and Ethics Programs for "the Rest of Us"*, Paul Fiorelli and Ann Marie Tracey discuss the creation of effective compliance and ethics programs for small businesses⁸ and the importance of these programs in the event of wrongdoing.⁹ The authors report that many small businesses are unaware of the reduced penalties that they can receive under Chapter 8 of the Federal Sentencing Guidelines for Organizations if they have a compliance and

² Jonathan D. Glater, *Training Law Students for Real-Life Careers*, 157 N.Y. Times B9 (Oct. 31, 2007) (discussing the University of Dayton School of Law's innovative "Lawyer as Problem Solver" curriculum).

³ See University of Dayton School of Law, *Project for Law and Business Ethics*, <http://law.udayton.edu/ProjectForLawAndBusinessEthics>; *select Symposium* (accessed Feb. 15, 2008) (providing a complete list of speakers and schedule for the event).

⁴ *Id.*

⁵ See Ridge & Baird, *supra* n. 1, at 188-90 (discussing the origins and dangers of corporate criminal liability).

⁶ See *id.* at 190-95 (reporting on the various memoranda that have been issued by the Department of Justice to give federal prosecutors guidance on the criminal prosecution of corporations).

⁷ See *id.* at 197 ("Although [Deferred Prosecution Agreements] have been used in cases involving individual defendants since the late 1960s, and the first corporate [Deferred Prosecution Agreement] dates back to 1994, the popularity of the [Deferred Prosecution Agreement] has skyrocketed in recent years, resulting in a record number of agreements in 2007.")

⁸ See Fiorelli & Tracey, *supra* n. 1, at 212-23 (providing an outline of how to create an ethics and compliance program for a small business).

⁹ See *id.* at 205-12 (describing the reduction in penalty that small businesses receive under Chapter 8 of the Federal Sentencing Guidelines for Organizations if they had a compliance and ethics program in place at the time of the wrongdoing).

ethics program in place when wrongdoing occurs.¹⁰ Fiorelli and Tracey then outline the steps that a small business needs to take to develop and maintain an effective compliance and ethics program.¹¹

Finally, in *HP Ethics from the Top Down . . . and the Bottom Up*, Jon Hoak provides a case study of Hewlett-Packard's commitment to maintaining a corporate culture of integrity.¹² Hoak discusses management's focus on ethics,¹³ HP's ethical compliance and monitoring systems,¹⁴ and HP's efforts to measure whether the company's ethical goals are being achieved.¹⁵ The essay provides an inside view of how laws, regulations, and ethics are integrated into a business entity.

All of the authors provide cutting-edge insights on how ethical practices within businesses should be regulated. Each of the essays explores the role of law and lawyers in promoting the ethical operation of business entities and discusses issues that the business world is facing today. The Project for Law and Business Ethics was designed to create a dialogue between the legal profession and business community. As the October 25, 2007 symposium and the essays that follow evidence, this dialogue has begun.

¹⁰ See *id.* at 206-07 (reporting that many members of the small business community are unaware of the Federal Sentencing Guidelines).

¹¹ See *id.* at 212-23.

¹² See Hoak, *supra* n. 1, at 225 ("The HP Way' . . . includes always conducting business with uncompromising integrity.").

¹³ See *id.* at 225-6 (discussing HP's commitment to ethics "from the top down").

¹⁴ See *id.* at 226-8 (providing an overview of the ethical compliance and monitoring systems at HP).

¹⁵ See *id.* at 228-9 (reporting on HP's methods of measuring whether its ethical standards are being achieved).