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PREDICTING ACADEMIC DISHONESTY: YOUR CHEATIN' HEART WILL TELL ON YOU

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ABSTRACT

Crib notes, paper mills, cell phones, copying and pasting from the Internet, hand signals during exams, copying homework—the ways in which students engage in academically dishonest behavior are numerous, and research suggests that most students cheat at some point in their college careers. In addition, some studies indicate that business students are more likely to cheat than are students in other disciplines.

Much research has been conducted to determine the prevalence of academic dishonesty and to discover characteristics of those who engage in academic dishonesty. Less research has been conducted that attempts to develop a general model for understanding underlying motives or predispositions for engaging in this behavior. Such a model may assist faculty with efforts to reduce or eliminate academic dishonesty.

Our study tests a model of student cheating that is derived from a model of dishonest behavior in business: the fraud triangle. Participants in this study were 476 business students. The study showed that each of the elements of the fraud triangle—incentive, rationalization and opportunity—is a significant determinant of student cheating. We also tested the results for impact from student GPA, student gender, hours spent working per week, student age and frequency of partying behavior. Results show that frequency of partying and age were also significant determinants of student cheating. Implications for faculty are discussed.

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ABSTRACT

Recent financial scandals such as Enron, Sunbeam and Kmart have painted the accounting profession in a very unfavorable light. The 2004 Gallup Poll of the public's rating of honesty and ethics reports accountants' ratings at historical lows, reflecting a widespread perception that accountants and auditors have relaxed their ethical standards and foster a climate of financial misdeeds.

There are strong parallels between student ethics and ethics in corporate America. The act of cheating to receive better grades may be similar to the act of perpetrating financial fraud to improve a company's financial results. Academic misconduct, specifically cheating, may be a precursor for corporate misconduct

There is evidence that cheating among college students is rampant. Student attitudes about cheating behaviors may be strong predictors of cheating behavior. This study uses an Academic Dishonesty Scale to investigate student attitudes about cheating behaviors. Survey participants were undergraduate students at a public Midwestern university. On average, students rated the cheating behaviors more acceptable than one might hope. The mean ratings by all students were all significantly above the scale minimum.

The study results support a conclusion that accounting students are not less ethical than other college students when it comes to attitudes about student cheating. However, the mean ratings of cheating behaviors imply that college courses in ethics for all majors may need to place additional focus on ethical sensitivity issues, ethical reasoning, and the identification of ethical courses of action in personal and professional decision making.

RESPONDING TO ALLEGATIONS OF 3RD PARTY SEXUAL HARASSMENT: POLICY AND PRACTICE ISSUES

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ABSTRACT

Employee allegations of sexual harassment by supervisors and co-workers continue to be a complex human resource management problem for employers. Equal Employment Opportunity Commission regulations have long held that employers may also be responsible for the acts of non-employees with respect to sexual harassment of employees in the workplace, and in recent years more U.S. courts have relied on these regulations in recognizing the existence of a cause of action for harassment by third parties. The purpose of this paper is to examine recent court decisions dealing with allegations of sexual harassment involving third parties and the potential legal and employee relations consequences associated with sexual harassment of employees by third parties. The paper will also explore what organizations can do to minimize the negative consequences associated with third party sexual harassment and reduce exposure to litigation.

INTRODUCTION

Doing "whatever it takes" to satisfy a customer or client is often deemed critical to business survival. While the often repeated phrase "the customer is always right" may be valid in many situations, when a complaint alleging hostile or harassing behavior on the part of a customer is voiced by an employee it is critical for managers to remember the customer is never right.

There is a great deal of literature and case law dealing with co-worker and supervisor harassment. With respect to third-party sexual harassment, there have been relatively few court cases, and academic and practitioner publications have been limited. What has been published in recent years seems to indicate that the problem of sexual harassment by third parties is real and much more pervasive than previously thought. In addition, as the composition of the workforce continues to evolve and as more judicial attention is given to the issue, the potential that third-party sexual harassment "might be the next tide of sexual harassment litigation" is a distinct possibility (Vaughn, 2002).

Early litigation involving third-party harassment was associated with employer policies requiring female employees to wear sexually provocative uniforms (Ream, 2000). Subsequently, a number of cases involving casinos, restaurants and strip clubs have addressed third-party harassment (Folkerson v. Circus Circus Entertainment, Inc. 1998, Lockard v. Pizza hut, Inc. 1998, and McDonald v. B.E. Windows Corp. 2003). More recent cases involving allegations of third-party harassment have involved a health and human service provider and a patient (Van Horn v. Specialized Support Services, Inc., 2003), a relocation consultant and client (Little v. Windermere Relocation, 2001), a store manager and a safety inspector (Weiland v. El Kram, Inc., 2002).

In exploring the prevalence of third-party sexual harassment, Lea Vaughn cites evidence from a number of sources indicating that third-party sexual harassment is much more wide spread than the volume of litigation and academic literature on the subject indicates. For example, Vaughn cites survey research on female attorneys' experience with sexual harassment reporting that 61.5% of the respondents reported being sexually harassed by clients in the last five years. Vaughn also

cites a recent ABA Journal article reporting on the continued prevalence of the behavior (Vaughn, 2002, citing Stevens 1994, and Baker 2000).

Ream reported on Safeway supermarkets customer service policy that led to allegations of third-party sexual harassment in 1998. Employees claimed that Safeway's customer service policies exposed them to harassment by customers creating a hostile working environment. In this environment, employees alleged that customers felt at liberty to make sexual advances and comments and in some cases assault employees (Ream, 2000).

LEGAL BACKGROUND

Employer liability for sexual harassment by third parties is different than for harassment committed by a supervisor. Employers are subject to vicarious liability for actionable sexual harassment created by a supervisor with immediate or successively higher authority over the employee. An employer may raise the affirmative defense to liability if no tangible job action was taken and it can show that they exercised reasonable care to prevent and promptly correct any sexually harassing behavior and the employee unreasonably failed to utilize any preventative or corrective opportunities provided by the employer. The standard of liability for employers with respect to harassment by a third-party is basically the same that applies to co-worker harassment. An employer may be held liable for customer harassment if they "fail to remedy or prevent a hostile or offensive work environment which management-level employees knew, or in the exercise of reasonable care should have known"(Lockard v. Pizza Hut, 1998).

In Lockard v. Pizza Hut, a manager ignored an employee's complaints that a customer verbally and physically harassed her. The physical harassment included the customer pulling the employee's hair and grabbing her breast. The manager ignored the employee's complaints and ordered the employee to continue to wait on the customer. The court held that because the manager failed to take reasonable steps to remedy or prevent the hostile environment, the employer was liable for its manager's failure to act (Lockard v. Pizza Hut, 1998).

A difference in how the co-worker sexual harassment standard is applied in third-party cases involves the employer's ability to take remedial action. For example, in a co-worker harassment situation, an employer has the ability to discipline and possibly discharge an alleged harasser while in third-party cases "an employer's options may be more limited" (Shea, 1999). In third-party cases employers are expected to take "reasonable steps" to stop harassment (Morrell, 2000).

RECENT CASES

In recent years numerous U.S. Federal Courts have issued decisions consistent with the EEOC's position that the employer's responsibility for harassment includes harassment by customers, clients, vendors, and suppliers. Controversy in California's courts with respect to employer liability for harassment by third-parties was settled in October of 2003 with the signing into law of AB 76. This statute amended California's Fair Employment and Housing Act which had been interpreted by California's appeals court to "not provide a private right of action for damages by an employee harassed by a non-employee such as a client or customer of the employer" (McKee, 2003 and Sexual Harassment Litigation Reporter, 2003).

Recent cases alleging third party sexual harassment have involved a variety of situations. Betty Van Horn, a member of Specialized Support Services (SSS) patient support staff that provided services to mentally retarded and developmentally disabled clients, was awarded \$82,000 in damages after claiming that her employer failed to protect her from sexual harassment by a 21-year old client of the company with Down syndrome (Van Horn v. Specialized Support Service Inc., 2003). Recent cases where plaintiffs have survived employer summary judgment motions involving allegations of sexual harassment involving a third-party include Little v. Windermere Relocation,

2001, *Weiland v. ElKRam, Inc*, 2002, *McDonald v. B.E. Windows Corp.* 2003, and *Watson v. Blue Circle*, 2003.

MINIMIZING EMPLOYER LIABILITY

The *Little v. Windermere* and *Van Horn v. Specialized Support Services* cases highlight the complications that can occur when a firm takes its efforts to satisfy its customers too far. The employer's problems in the *Van Horn* case start with a basic flaw for any firm looking to prevent and properly respond to allegations of sexual harassment by an employee.

Specialized Support Services (SSS) employed approximately 400 employees in Iowa and Missouri. They provided services to mentally retarded and developmentally disabled clients in group settings and in the clients' homes. Ms. Van Horn alleged that a 21 year old client in her care had engaged in increasingly severe sexual behavior toward her that included him grabbing her breasts. Ms. Van Horn had documented the behavior per company policy and properly informed her supervisors as to the nature of the behavior. She requested guidance and self-defense training on several occasions so as to properly respond to the escalating severe nature of the behavior. Van Horn was told that there was training for hitting or pinching, but that there was nothing directly available for sexually aggressive behavior. She received no training of any type in response to her reports.

The incident that eventually triggered Ms. Van Horn's termination, involved the client pinching her breast and refusing to let go. In response, Ms. Van Horn slapped the client in the face causing him to release his grip. Ms. Van Horn properly reported the incident in accordance with company policy and was subsequently terminated for violating another company policy "Respect Every Consumer's Rights" which read in part, never impose punishments on consumers. The Court concluded that Ms. Van Horn's slapping her client was reasonable self-defense against harassment and was therefore protected oppositional activity under Title VII. The Court also concluded that the company is free to maintain its zero-tolerance policy against punishment of its clients, but cannot ignore clear warning signs and then terminate an employee who resists sexual harassment and assault in the workplace. To do so, the court said, "is to deny the employee the basic protection against discrimination which Title VII affords. This the Court is not prepared to do" (*Van Horn v. Specialized Support Services*, 2003).

As courts continue to appear to be expanding liability for sexual harassment, employers should focus on two issues. First, when employers receive allegations of harassment committed by third-parties, it should treat that claim the same way it would treat any other harassment claim. The response should include a prompt and thorough investigation by qualified personnel with efforts to insure the need for confidentiality, to stop the harassing behavior, and to guard against retaliation. Most employers today have become "highly sensitized to the harassment issue" (Aron, 2002). Yet, in the *Van Horn* case, as late as 2002, a company with nearly 400 employees had no policy dealing with sexual harassment, no training for employees on how to respond to sexual harassment from clients, and no training for supervisors on how to respond to allegations from employees. In *Little v. Windermere* and *Weiland v. El Kram*, poor responses by managers, one specifically designated as a complaint-receiving manager in the company's harassment policy directly contributed to the courts finding for the plaintiffs.

The key for employers to satisfy the Court's standards rests on an employer implementing a quality training program. This conclusion has been reinforced on numerous occasions in Federal Appeals Courts decisions since *Kolstad*. In *EEOC v. Wal-Mart Stores*, the 10th Circuit held that "the extent to which an employer has adopted anti-discrimination policies and educated its employees about the requirements of Title VII is important in deciding whether it is insulated from vicarious punitive liability" (*EEOC v. Wal-Mart*, 1999). Additional appellate court decisions have admonished employers to go beyond training dealing with sexual harassment to include race

religion, national origin, and disability (Swinton v. Potomac Corp., 2001). The focus of the training should be on prevention and should include all employees. At a minimum, these efforts will demonstrate an organizations good faith effort to minimize an organizations exposure to sexual harassment litigation and the possibility that allegations of third-party sexual harassment will become the next tide of sexual harassment litigation.

REFERENCES

- Aron, Lester (2002). A New Twist to the Harassment Dilemma, *The Metropolitan Corporate Counsel*, November, <http://web.lexis-nexis.com/universe/printdoc> 10/23/03.
- Burlington Industries, Inc. v. Ellerth*, No. 97-569, (S.CT. 1998).
- Dornhecker v. Malibu Grand Prix Corp.*, No. 87-1009, 828 F. 2d. (5th Circuit 1987).
- EEOC (1999). Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors, 6/18/99, <http://www.eeoc.gov/docs/harassment.html>, (10/9/02).
- EEOC v. Wal-Mart Stores*, No. 98-2015 & 98-2030, (10th Cir. 1999).
- Faragher v. City of Boca Raton*, No. 97-282, (S.CT. 1998).
- Folkerson v. Circus Circus Enterprises, Inc.*, No. 96-16035, 107 F.3d. 754 (9th Circuit 1997)
- Kolstad v. American Dental Association*, No. 98-208, (S.CT. 1999)
- Little v. Windermere Relocation, Inc.*, No. 99-35668, 301, F.3d. 958 (9th Circuit 2001)
- Lockard v. Pizza Hut, Inc.*, No. 97-7027, 97-7078, 162 F.3d. 1062 (10th Cir. 1998).
- McDonald v. B.E. Windows Corp.*, 01 Civ. 6707 (RLC), 2003 U.S. Dist. LEXIS 7472; 91.
- McKee, Mike (2003). Corbett's Sexual Harassment Bill Catches the A-train, *The Recorder*, Vol. 10; No. 7, <http://web.lexis-nexis.com/universe/printdoc>, 12/03/2003.
- Meritor Sav. Bank v. Vinson*, 477 U.S. 57 (S. CT. 1986).
- Morrell, A.J. (2000). *Nonemployee Harassment, Legal Report*, Society for Human Resource Management, January-February 2000.
- Oncale v. Sundowner Offshore Services, Incorporated, ET AL.* No. 96-568, (S. CT. 1998).
- Ream, Sarah L. (2000). When Service With a Smile Invites More than Satisfied Customers: Third-Party Sexual Harassment and the Implications of Charges Against Safeway, *Hastings Women's Law Journal*, 11, 107, <http://web.lexis-nexis.com/universe/printdoc>, 11/24/2003.
- Rodriguez-Hernandez v. Miranda-Velez*, No. 95-2027, 96-1416, 97-1444, 97-1445, 132 F.3d.; (1st Cir. 1998).
- Rogers v. EEOC*, No. 30,651, 454 F. 2d. 234 (5th Cir. 1971).

Ryan, LeClair (2003). Recent EEOC, DOL Actions, *Virginia Employment Law Letter*, April, Vol. 15, Issue 3.

Sexual Harassment Litigation Reporter (2003). Calif. High Court to Decide if Employer Liable for Harassment by Client, October, Vol. 9; No. 10; <http://web.lexis-nexis.com/universe/printdoc>, 12/03/2003.

Swinton v. Potomac Corporation, No. 99-36147, 270 F.3d. 794 (9th Cir. 2001).

Van Horn v. Specialized Support Services, Inc. 4:01-cv-90550, 269 F. Supp. 2d 1064; 2003 U.S. Dist. LEXIS 16389.

Vaughn, Lea B (2002). The Customer is Always Right...Not! Employer Liability for Third Party Sexual Harassment, *Michigan Journal of Gender & Law*, 9, <http://web.lexis-nexis.com/universe/printdoc>, 11/17/2003.

Watson v. Blue Circle, Inc., No. 01-15432, 324 F.3d. (11th Cir. 2003).

Weiland v. EL Kram, Inc., d/b/a Pizza Hut of America Inc., No. Co1-3072-MWB, 233 F. Supp. 2d 1142 (N.D. Iowa 2002).

A PROFESSION FOCUSES ON THE ETHICAL ISSUES OF OUTSOURCING

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ABSTRACT

Outsourcing, the contracting of traditionally internally provided goods and services to outside third-party contractors, has existed on the American canvas for decades in various sectors of the economy including manufacturing, technology, health care, and business services. The benefits in terms of cost savings and the ability of companies to concentrate on core competencies while transferring non-core business processes, thereby providing more effective goods and services elsewhere, have been lauded. Of late, however, there has been increased public attention on and controversy surrounding the practice as outsourcing has become "off-shoring," that is, sending an increasing number of American jobs overseas.

While there are a number of industries impacted and a number of issues involved, this paper will focus on the ethical issues surrounding the outsourcing of accounting services overseas with specific attention to the outsourcing of tax returns. Following a discussion of ethics in general and an overview of outsourcing, the paper will list the benefits and costs of outsourcing, discuss the American Institute of Certified Public Accountants (AICPA) response to the issue, and briefly explore the future implications for the accounting profession.

CONFLICT OF INTEREST AND THE PUBLIC INTEREST

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ABSTRACT

Where conflicts of interest exist for professionals, difficult decisions must be made regarding when conflicts of interest should be monitored and managed (but allowed), and when they should simply be avoided. Current trends in practice tend towards the latter, partly as a response to some clearly questionable recent practices. In many instances the public interest is best served when conflicts of interest are clearly avoided, and there is not even the appearance of impropriety. Yet at times conflicts of interest are better managed than avoided.

INTRODUCTION

During the Spring of 2004, the U.S. Congress held hearings on whether certain high level scientists in the National Institutes of Health (NIH) had violated federal ethics statutes as a result of paid consultancy (or advisory) services to firms that were recipients of NIH grants. A blue ribbon task force looked into this matter, as well as whether activities that may have been legal, were, however, unethical and created the appearance of impropriety (NIH, 2004). In one situation, a NIH scientist received a prestigious prize (with monetary value) from an organization that was under consideration to receive NIH funding. In another case, a scientist was working in an official NIH capacity with one biotech firm, while moonlighting as paid consultant to one of its competitors (Willman, 2003). Nevertheless, the initial reactions by the NIH suggested that allowing scientists to have regular contact with private industry helped promote the flow of knowledge and the development of science (NIH, 2003). As a result of these inquiries, since February 2005 senior level NIH scientists are now largely prohibited from engaging in any outside consulting or serving on firms' scientific advisory boards (Brainard, 2005). While these actions may help eliminate potential conflicts of interest, it is less clear that they are unambiguously in the public interest, or help promote efficient flows of scientific information. Morgan and Reynolds (2002) argued that many inappropriate and poorly conceived decisions get made in an attempt to avoid even the appearance of impropriety.

CONFLICT OF INTEREST IN THE PROFESSIONS

Over the past few decades there has been increasing concern over how professionals deal with real and perceived conflicts of interest: the situation at the NIH is just one example. In medicine, doctors have seen several changes in the law, and the practices of medical boards that scrutinize actions, regarding their ability to profit from services to which they refer their patients. In accounting, the auditing firms have moved to separate their consulting services into separate firms to help assure the independence of their audit opinions. And in the legal profession, the frequency with which judges' and attorneys' impartiality has been questioned over appearances of impropriety has increased substantially. Investment banking firms have had to erect "Chinese Walls" to make certain that investment banking, advisory, and analyst functions do not unduly influence the actions of the others (Nanda, 2004)

These situations raise legitimate concerns over potential conflicts of interest. An accountant with a significant financial stake in an audit client may be reluctant to provide an adverse or

qualified opinion that could cause the value of the stock to fall. A doctor may regularly suggest an array of largely useless tests if the financial health of a laboratory he or she owns is at stake. Likewise, a judge or attorney might manipulate proceedings and selectively introduce evidence in a trial if their personal financial wealth could be affected by the outcome. A board member could influence a firm to acquire (or purchase goods from) a firm in which they have a financial stake. At the Centers for Disease Control and Prevention, it was recently decided to separate the functions of its national immunization program (which advocates immunization), and its vaccine safety program (which monitors risks of vaccines). This was done as a result of pressure from those who "have argued that the agency's dual role in promoting vaccines and overseeing their safety is a serious conflict of interest" (O'Conner and Harris, 2005). Lastly, as was suggested in congressional hearings, a NIH scientist could direct federal funds towards firms that also retain the scientist as a paid advisor. Certainly, true conflicts of interest provide parties with opportunity to take actions that have the potential to harm individuals, waste public (and private) resources, erode public trust, and cause undue benefits to flow to some people at the expense of others.

In many professions there are clear conflict of interest guidelines. The legal profession requires all officers of the court to inform each other, and their clients, when a potential conflict may arise. It is then up to the parties involved to determine if the conflict is one that might lead to inappropriate decisions or actions. Most professions also have codes of conduct, or ethical codes, that prescribe certain behavior, and/or prohibit certain kinds of behavior (Nanda, 2003). One example of this is the Hippocratic oath required of most doctors, where they pledge duty to the profession and the patient above their personal interest. The federal government of the U.S.A. has extensive legislation, pamphlets, and directives describing what constitutes a conflict of interest, and what employees must do to avoid situations with the potential for a conflict of interest (USOGE, 2002).

MANAGING CONFLICTS OF INTEREST

In most situations, however, removal of real or perceived conflicts of interest may not be the only factor relevant when considering how issues should be handled. The following factors may also contribute to the development of appropriate guidelines for handling conflicts of interest.

Materiality: The absolute prohibition on certain activities due to their very nature ignores the question as to whether these activities are likely to have any material impact on the decision maker, or on the public good. For example, a family doctor who owns a hundred shares of Merck stock will not meaningfully impact his wealth, or the value of Merck stock, through his prescription writing decisions. Nor will the accountant, whose child has one share of mouse-eared Disney stock framed on their wall, likely let that share influence the quality of the audit performed. Concern over the "potential" for conflict should be mitigated by practical materiality considerations. The federal government has regulations that allow employees to receive small gifts from outside firms without any need to report the gift. This practice also presumes that such gifts would not constitute a potential conflict of interest.

Informational Efficiency: In many situations an individual may have knowledge that should be shared with others to promote overall economic efficiency. The CEO of a retail firm may have advanced knowledge of trends in consumer buying and growth in certain segments of the market. To the extent that this CEO can provide knowledge to a supplier as a member of the supplier's board, they can help the supplier prepare for changes in the market (even if these changes are ones the retailer's firm is unlikely to take advantage of). Likewise a NIH scientist may have ideas or inklings that indirectly arise from existing research, but which are outside the realm of current NIH projects to adequately explore or address. If the scientist can discuss these ideas with other scientists at firms that may be in a better position to investigate the idea, it is more likely that the idea will be thoroughly vetted. While such an interaction could take place without the scientist having any

formal ties to private firms, if the scientist does have regular meetings with other firms (as would occur as consultant or member of a scientific advisory board), it is more likely that the issue will come out for discussion. Thus, prohibitions on any situations that may involve conflicts of interest could prevent individuals with relevant knowledge from sharing it with others that would benefit from the knowledge.

Efficacy of Disclosure: In some instances, full disclosure of potential conflicts of interest can be an effective control for assuring that individuals do not act inappropriately. In the legal profession, there are very few outright prohibitions on activities where conflict of interest could arise. Instead, attorneys are required to fully disclose all potential conflicts, and failure to do so has severe penalties. Thus, clients and other parties to the proceedings can ask that attorneys (or judges) recuse themselves or remove the conflict by divesting ownership in the potentially conflicting interest. The attorney with the conflict also knows that any actions taken will be even more carefully scrutinized because of the potential conflict. Members of boards frequently recuse themselves from certain decisions that may affect another company in which they have an interest, and professors are expected to recuse themselves from assigning grades to students who may be family members or with whom they have a close personal relationship (or in some institutions, have these grades reviewed by an independent evaluator). The federal government has clear guidelines requiring employees to disclose outside income. Under some circumstances only internal disclosure is required, while in other cases income must be publicly disclosed. At the NIH, however, deliberate actions were taken to circumvent public disclosure. Public disclosure, when properly implemented and when reasonable levels of materiality are observed, may provide sufficient information to all parties, and serve to constrain potentially unethical behavior. Under these conditions individuals can continue to participate in decisions where a potential conflict of interest arises. (In other situations, however, disclosure may have less relevance, as a sick patient is unlikely to look at a physician's financial disclosures before agreeing to a particular test or procedure.)

Public Interest: The public interest may be best served when each individual, firm, and government entity has all the relevant information to make well-informed decisions. If individuals with relevant information are prohibited from participating in the process due to potential conflicts of interest, those left to make the decisions may not have sufficient information to make decisions that are in the best interest of all parties. Should a county economic development board contain no members who might benefit from further economic development (e.g., other business persons), even though these individuals are the ones who locally have experience in economic development? Should a board of directors of a public firm have no members who are quite familiar with the industry or the firm, just to ensure that there are no potential conflicts of interest? In neither of these situations would the public interest likely be served if those participating on the relevant boards had little relevant knowledge on which they could make decisions. NIH scientists have a duty to both disseminate knowledge and protect those who hold intellectual property rights. The public interest may not be fully served if their contact with scientists in private industry is severely constrained.

Personal Freedom: One of the unalienable rights in the United States, and in many other countries, is liberty. Individuals have liberty to make certain choices, and influence their own wealth and happiness. When individuals are constrained from influencing some decisions because of previous decisions they have made, some personal freedom is lost. In many situations this is normal and appropriate – when we choose to be employed by one firm, we generally cannot moonlight as a paid consultant to a competitor. In other situations, however, when the potential for real conflicts of interest are low, personal freedom is unnecessarily constrained if the simple appearance of potential impropriety is the basis for prohibiting certain actions or decisions.

CONCLUSION

There is no doubt that individuals confronted with true conflicts of interest are in a difficult position, and their decisions have the potential to lead to poor decisions by others, personal harm to some, erosion of public trust, and may be counter to public interest. But some good can also come from conflicts of interest, and an outright ban on situations where the potential for conflict of interest may arise can also create harm and likewise be counter to the public interest. When government and businesses choose to regulate situations where conflicts of interest may arise, as has happened recently at the NIH, it is appropriate that other alternatives are explored in addition to outright bans. Materiality, information efficiency, disclosure, public interest, and personal freedom should all be considered when designing appropriate controls on potential conflicts of interest.

REFERENCES

- Brainard, Jeffrey (2005). New NIH Rules Ban Some Payments from Universities. *The Chronicle of Higher Education*, February 11, Page A29.
- Morgan, Peter and Glenn Reynolds (2002). *The Appearance of Impropriety*. New York: The Free Press.
- Nanda, Ashish (2003). *The Essence of Professionalism: Managing Conflict of Interest*. Harvard Business School Publishing, Note #9-903-120.
- Nanda, Ashish (2004). *Managing Client Conflicts*. Harvard Business School Publishing, Note #9-904-059.
- NIH (2003). NIH Statement About Outside Consulting Arrangements. NIH News - National Institutes of Health. www.nih.gov/news/pr/dec2003/od-10.htm
- NIH (2004). Report of the National Institutes of Health Blue Ribbon Panel on Conflict of Interest Policies, Draft: May 5, 2004.
- O'Conner, Anahad and Gardiner Harris (2005). Health Agency Splits Program Amid Vaccination Dispute. *The New York Times*, February 25, 2005.
- USOGE (2002). *Standards of Ethical Conduct for Employees of the Executive Branch*. U.S. Office of Government Ethics.
- Willman, David (2003). Stealth Merger: Drug Companies and Government Medical Research, *The Los Angeles Times*, December 7, Page 1.

OBSTACLES TO ARBITRATION AWARD CONFIRMATION UNDER THE INTER-AMERICAN CONVENTION ON INTERNATIONAL COMMERCIAL ARBITRATION

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ABSTRACT

The Inter-American Convention on International Commercial Arbitration was promulgated by nations of the Organization of American States to provide enforceability of international arbitration awards. Eighteen OAS member nations, including the United States, have ratified this Convention. The Inter-American Convention is controlling law in the United States. The Convention mandates that arbitral awards shall have the force of judicial final judgments. The laws of the United States support this policy and provide a method for award confirmation and enforcement. However, the Convention and the laws of the United States also provide obstacles to award confirmation. Recent United States court cases interpreting the Inter-American Convention have recognized many grounds for denial of arbitration award confirmation. The purpose for this paper is to identify the grounds that may be asserted in United States courts to thwart confirmation of arbitral awards governed by the Convention.

INTRODUCTION

Businesses that engage in global commerce rely on the enforceability of international arbitration awards (Slate 2002). In theory, award confirmation is a summary proceeding (American Life Insurance Company v. Parra 2003). Unfortunately, many times the proceeding is derailed by objections to the arbitration process and to the award. Objections may result in vacatur or mire the process in litigation. An awareness of the barriers to confirmation of arbitral awards governed by the Inter-American Convention in United States courts may reduce the exposure for confirmation refusal.

THE INTERAMERICAN CONVENTION

The Inter-American Convention is a treaty that mandates the enforceability of written commercial arbitration agreements in the Western Hemisphere. It provides that arbitral awards shall have the force of final judgments (Federal Arbitration Act Chapter 3, 1990). The Convention was promulgated in 1975. Eighteen OAS member nations, including the United States, have ratified the Convention. The Inter-American Convention is controlling law in the United States (American Life Insurance Company v. Parra 2003). Article 5 of the Inter-American Convention provides seven grounds upon which to deny confirmation of arbitral awards (Federal Arbitration Act Chapter 3, 1990).

INTER-AMERICAN CONVENTION AND THE FEDERAL ARBITRATION ACT

The Inter-American Convention is codified at chapter 3 of the Federal Arbitration Act (“FAA”) (Federal Arbitration Act, 1947). It incorporates the FAA’s terms unless they are in conflict (Banco De Seguros Del Estado v. Mutual Marine Offices, Inc., 2002). In court proceedings

in the United States to confirm arbitral awards governed by the FAA and the Inter-American Convention, the court is required to confirm the award unless it finds grounds for refusal to do so (*Employers Insurance of Wausau v. Banco de Seguros Del Estado*, 1999). Chapter 1 of the FAA contains four additional grounds upon which to vacate or deny award confirmation (Federal Arbitration Act Chapter 1, 1947).

THE INTER-AMERICAN CONVENTION AND THE NEW YORK CONVENTION

The United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards is known as the New York Convention. It was designed to empower U.S. courts to recognize and enforce arbitration agreements between parties of signatory nations (*Energy Transport, Ltd. v. Cabot Indonesia*, 2004). In 1970, Congress implemented the New York Convention as Chapter 2 of the FAA (Federal Arbitration Act Chapter 2, 1970). Congress intended the Inter-American Convention to reach the same results as those reached under the New York Convention (*Productos Mercantiles v. Faberge USA, Inc.*, 1994). The New York Convention contains seven grounds upon which to deny arbitral award confirmation that are almost identical to the seven grounds set forth in the Inter-American Convention (Federal Arbitration Act, 1970).

BASIS UPON WHICH TO DENY ARBITRATION AWARD CONFIRMATION

First, The FAA provides that the Inter-American Convention incorporates the seven grounds to deny confirmation stated in the New York Convention (*Nicor International Corporation v. El Paso Corporation*, 2003). Second, the Inter-American Convention also incorporates the FAA's terms unless the terms of the FAA are in conflict (Federal Arbitration Act, 1990). It has been held in some jurisdictions that United States courts may employ domestic law and the four additional grounds set forth in the FAA to refuse to confirm arbitration awards governed by the Conventions (*Productos Mercantiles E Industriales, S.A. v. Faberge USA, Inc.*, 1994). Cases arising under the Inter-American Convention have been accorded this treatment. Third, two common law defenses termed "manifest disregard of the law" and denial of "fundamental fairness" have also been considered in cases governed by the Inter-American Convention.

DEFENSES TO CONFIRMATION

Stated in summary fashion, the categories permitting an attack upon an arbitral awards include: (1) incapacity of a party or invalidity of the agreement; (2) lack of due process in the arbitration proceedings; (3) exceeding the scope of arbitration; (4) improper arbitration panel; (5) a vacated or not-yet-binding award; (6) arbitral consideration of an issue prohibited under domestic law; (7) forum public policy; (8) bad faith; (9) corruption or partiality of an arbitrator; (10) arbitrator misconduct; (11) arbitrator overreaching; (12) manifest disregard of the law and; (13) denial of fundamental fairness.

GROUND FOR DENIAL OF ARBITRATION AWARD CONFIRMATION UNDER THE CONVENTIONS

- 1 The parties to the agreement were under some incapacity
or
The agreement is invalid under the law designated in the agreement or in the country where the award was made.

First, Legal incapacity means there exists some defect in the party's legal status to act (Harris v. Averick, 1960). Second, incapacity of a party can refer to incapacity to contract due to a physical or mental condition (Contracts 17A Corpus Juris Secundum, 1936-).

2. The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings;
or
The party against whom the award is invoked was unable to present a defense.

The U.S. Supreme Court has established a federal due process standard that only requires that "proper notice" is "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections" (Mullane v. Central Hanover Bank & Trust Co., 1950).

3. The award deals with matters beyond the scope of the issues submitted to arbitration.

The gravamen of this defense involves an inquiry into the authority of the arbitrator to fashion the relief complained of. The arbitral award must draw its essence from the substantive contract. (United Steelworkers of America v. Enterprise Wheel & Car Corp., 1960).

4. The composition of the arbitration panel or the arbitral procedure was not in accordance with the contract.

A party's contractual intent cannot be modified by the court (Gutfreund v. Weiner, 1995).

5. The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

A U.S. court will refuse to confirm an award where a court of another nation has previously invalidated it (Baker Marine (NIG.) Ltd. v. Chevron (NIG.) Ltd., 1999).

6. The subject matter of the difference is not capable of settlement by arbitration under the law of the country where the enforcement is sought.

Anti-trust issues are about the only bright line arbitration subject matter prohibition in the United States (Mitsubishi Motors Corporation v. Soler Chrysler-Plymouth, Inc., 1983).

7. Enforcement of the award would be contrary to the public policy of the forum nation.

International arbitration award confirmation may be denied where enforcement would violate the forum state's most basic notions of morality and justice (Parsons & Whittemore Overseas Co., Inc. v. Societe Generale De L'Industrie Du Papier, 1974).

GROUND FOR DENIAL OF ARBITRATION AWARD CONFIRMATION UNDER THE FAA

1. the award was procured by corruption, fraud or undue means.

This provision means that bad faith has been employed in the procurement of the arbitral award (Shearson Hayden Stone, Inc. v. Liang, 1980).

2. there was evident partiality or corruption in the arbitrators.

This ground in opposition to award confirmation involves the failure of a party or an arbitrator to disclose prior or ongoing business dealings between them that might create an impression of possible bias (Commonwealth Coatings Corp. v. Continental Casualty Co., 1968).

3. the arbitrators were guilty of misconduct in refusing to postpone the hearing or in refusing to hear relevant evidence or of any other misbehavior prejudicing the rights of any party.

Most of the cases invoking this provision in opposition to award confirmation assert that the arbitrators entered a ruling that resulted in rejection of relevant evidence and therefore denied the parties a full and fair hearing (Hoteles Condada Beach, La Concha and Convention Center v. Union de Tronquistas Local 910, 1985).

4. the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award was not made.

In order for an arbitration award to be final and definite it must both resolve all the issues submitted to arbitration, and determine each issue finally, so that no further litigation is necessary to finalize the obligations of the parties under the award (Konkar Maritime Enterprises, S.A. v. Compagnie Belge D'Affretement, 1987).

GROUND FOR DENIAL OF ARBITRATION AWARD CONFIRMATION UNDER THE COMMON LAW

1. the arbitrator acted in manifest disregard of the law.

Manifest disregard of the law means that (1) the arbitrators knew of a governing legal principle yet refused to apply it or ignored it altogether and (2) the law ignored by the arbitrators was well defined, explicit and clearly applicable to the case (LaPrade v. Kidder, Peabody & Co., Inc, 1997).

2. a party to the arbitration was denied fundamental fairness.

The courts of the United States hold that a fundamentally fair arbitration hearing requires notice, an opportunity to be heard and to present proper evidence together with a requirement that the arbitrator not be infected with bias (Bowles Financial Group, Inc. v. Stifel, Nicolaus & Company, Inc., 1994).

CONCLUSION

The Inter-American Convention was promulgated to assure enforcement of arbitral awards. The summary confirmation process envisioned by the Convention does not always occur. There are numerous grounds for denial of confirmation contained in the Convention itself, the FAA and the Common Law. The possible impediments to judicial confirmation of arbitral awards made under the Convention can be minimized by knowing about them beforehand and taking precautionary measures to avoid the pitfalls when negotiating the arbitration agreement and conducting the arbitration hearing.

REFERENCES

- American Life Insurance Company v. Parra, 25 F. Supp.2d 467 (D. Del. 1998).
- Banco de Seguros del Estado v. Mutual Marine Offices, Inc., 230 F. Supp.2d 362 (S.D. N.Y. 2002),
aff'd 344 F.3d 255 (2d Cir. 2003).
- Bowles Financial Grp, Inc. v. Stifel, Nicolaus & Co., Inc., 22 F.3d 1010 (10th Cir. 1994).
- Commonwealth Coatings Corp. v. Continental Casualty Co., 393 U.S. 145 (1968).
- Contracts. (1936-). In Corpus juris secundum, (Vol. 17A, §§141-146). St. Paul, Minn: West
Publishing Company.
- Baker Marine (NIG.) Ltd. v. Chevron (NIG.) Ltd., 191 F.3d 194 (2d Cir. 1999).
- Employers Ins. of Wausau v. Banco De Seguros Del Estado, 199 F.3d 937 (7th Cir. 1999).
- Energy Trans., Ltd. v. San Sebastian, 2004 U.S. Dist. LEXIS 25047 (S.D.N.Y. 2004).
- Federal Arbitration Act Chapter 1, 9 U.S.C.A. §10 (West 2004).
- Federal Arbitration Act Chapter 2, 9 U.S.C.A. §§201-208 (West 2004).
- Federal Arbitration Act Chapter 3, 9 U.S.C.A. §§ 301- 307 (West 2004).
- Federal Arbitration Act, 9 U.S.C.A. §307 (West 2004).
- Gutfreund v. Weiner, 68 F.3d 554 (2d Cir. 1995).
- Harris v. Averick, 204 N.Y.S.2d 372 (S.Ct. 1960).
- Hoteles Condada Beach v. Union de Tronquistas Local 910, 763 F.2d 34 (1st Cir. 1985).
- Konkar, S.A. v. Compagnie Belge D’Affretement, 668 F. Supp. 267 (S.D. N.Y. 1987).
- LaPrade v. Kidder, Peabody & Co., Inc, 246 F.3d 702 (D.C. Cir. 2001).
- Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc., 723 F.2d 155 (1st Cir. 1983).
- Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).
- Nicor International Corp. v. El Paso Corporation, 292 F. Supp.2d 1357 (S.D. Fla. 2003).
- Parsons & Whittemore Overseas Co., Inc. v. Societe Generale De L’Industrie Du Papier, 508 F.2d
969 (2d Cir. 1974).
- Productos Mercantiles E Indust., S.A. v. Faberge USA, Inc., 23 F.3d 41 (2d Cir. 1994).Shearson
Hayden Stone, Inc. v. Liang, 493 F. Supp. 104 (N.D. Ill. 1980).

Slate II, W.K. (2002). Why international commercial arbitration? *Vital Speeches of the Day*, 69(3), 82-85.

United Steelworkers of America v. Enterprise Wheel & Car Corp., 363 U.S. 593 (1960).

TO PAY OR NOT TO PAY? A STEP-BY-STEP MODEL FOR COMPLIANCE WITH THE NEW FLSA OVERTIME REGULATIONS

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ABSTRACT

Recently, the Department of Labor's Fairpay Overtime Initiative was enacted to revamp the previous Fair Labor Standards Act (FLSA) rules governing employee overtime benefits. This legislation is a significant departure from the past regulations in determining overtime eligibility. In an effort to clarify these new FLSA guidelines, the authors have prepared a detailed model outlining the process necessary to establish an employee's exempt/non-exempt status. Particular attention is paid to the process of correctly classifying employees by recommending the use of functional job analysis procedures in order to administer the newly created job duties test. Comments are then made about some shortcomings of the legislation and issues for managers to consider.

THE 21ST CENTURY'S VIRTUAL CORPORATION

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ABSTRACT

The purpose of this paper is to discuss a workflow process model that can be used as a guide or prototype in order to implement or market a virtual corporation. A virtual corporation has an electronic infrastructure that allows employees the use of computers and electronics in order to perform tasks from any location at any time. This workflow process will focus on employees, technology, and employer roles in a virtual corporation.

INTRODUCTION

The atmosphere in which some corporations conduct business should change from a slow-paced, manual, physical environment to a fast-paced, electronic commerce environment. Manual processes must change in order for businesses and customers to maximize investment and spending opportunities on a global scale. With the precision and speed of technology, a business can operate virtually electronically, reduce overhead expenses, and offer lower prices to its customers. Employees working in a virtual corporation will perform job tasks with the use of technology, such as cell phones, laptop computers, pagers, and fax machines. An employer may have employees located throughout the U.S. and share information via online resources such as e-mail and the Internet. Technology will be the focal point in connecting employees, vendors, and customers together in order to inter-operate with one another. Thus, the Internet has enabled employers to establish virtual work and virtual customer relationships.

EXAMPLE OF THE OLD PROCESS

Prior to illustrating the workflow process, an illustration of a typical non-virtual (manual) process and how this process was reengineered to a partial virtual or electronic process is given. The Merced County California welfare application process reengineered its (welfare) check application process to reduce turnaround time from three to six weeks to one to three days (Keen & Cummins, 1994). The old process took three to six weeks from the time an applicant submitted his application to the time he received an actual check. In the old process, the applicant would visit the agency and complete 15 pages of forms that were routed to several offices. The forms were processed for eligibility and returned to the agency and interviews were scheduled. The applicant would then interview and the interviewer would gather additional data. The forms would then be processed and payment initiated. The applicant would receive a welfare check in three to six weeks after the application was completed. In the new process, the applicant would visit the agency, and the interviewer would collect all of the data and process the information immediately. This information would be shared by all of the offices via LAN and file server, thereby eliminating delays in having information. The processing time for the welfare check would now be one to three days versus three to six weeks. By reengineering the old welfare check process, the Merced County welfare office cut processing time by approximately five weeks.

THE NEW SYSTEM

Managers are tasked with reengineering processes to produce more output in less time and reduce human or physical resources, as illustrated in the Merced County welfare process example. Profit opportunities persuade business leaders to operate in a lean and efficient manner. Businesses need to link companies together through technology in order to improve processes that will increase the need to interact electronically. "The ultimate goal: to build virtual corporations, in which companies work together to perform the functions previously carried out by the hierarchical corporate structure" (Caldwell, 1996, p. 50).

IBM, AT&T, and Ameritech have virtual operations. Depupi (1997) describes Ameritech as "a phone company serving much of the Midwest, providing communications services. The telecommuters work part-time schedules of 20 hours a week, communicating with the company mainframe via a terminal and ISDN and dial-up leased data lines" (p. 21). The virtual corporation workflow module can be used by a company as an initial guide to developing a virtual corporation. A virtual corporation workflow module illustrating the interaction of employees, technology, and employer is presented and explained in the following sections.

EMPLOYEES

Participating in a virtual operation work environment will have a positive effect on the way employees work in the 21st century. While this concept of working in a virtual operation or telecommuting is not new, many businesses are slow to adapt and change the way they do business. On the other hand, many businesses are transforming to a fast electronic operating environment and have begun to operate a leaner budget by having their employees telecommute instead of working in a facility. Employees telecommuting or working in a virtual operation will work from remote locations, with company-provided equipment, and have increased skill sets.

Some employees will no longer be located in one central location, but will be working remotely with the use of telecommunications. The virtual organization's employees work in scattered sites rather than one central location. Employees would be provided PCs, pagers, printers, cell phones, and other technology to perform duties and tasks as assigned by the employer. Instead of having to house and equip 30 employees to work in a single location, an employer can operate remotely with its employees, vendors, and customers electronically and thus create a virtual working environment.

The advances in the reliability of networkable PCs, along with advances in communication capability (ISDN, T1-lines, high speed modems), has made the home office and subsequently the virtual operation a viable option compared to the traditional way of working on a 9-5 job in one location. Instead of reporting to the job, the job comes to you. Employees are telecommuting versus commuting to work.

The capability of linking disparate resources together for purposes of communicating, conferencing, data distribution, and the like has given employers increased options relative to the ways in which they intend to utilize their human resources. Additionally, capital which was held in place for expansion of facilities and real estate is now available for other purposes within the enterprise. Instead, capital may be used for retrieval and service of debt, research and development, or marketing and sales. Additionally, monies may be designated for expanding and growing the information technology and information systems departments. These departments must be developed in order to support and guide the acquisition of technical resources.

SKILLS SET

The demand for quality, high-tech employees is at a premium. Davy (1998) states, "In certain industries, such as information systems and technology, there are simply not enough workers to do the jobs" (p. 19). Caldwell (1996) agrees that there is a shortage of employees and states, "Service vendors and their clients are scrambling to hire enough skilled people to cope with evolving client-server and Internet technologies" (p. 51). For a company to start training a work force from scratch--for example, having to contract with or bring in-house the expertise to an information system-illiterate workforce for the sole purpose of migrating to a virtual business--would be a great risk, with a slim, if not negative, return.

Training and education in information tools and applications are not new. Additionally, training is not something that can be mastered in a few weeks of class. The demand for employees to already be trained to work with a company's standard or primary information systems tools is absolutely critical. Otherwise, an entity will find itself in a very tenable position and will push back the timetable for rolling out the virtual solution, if not eliminating the project altogether. The opportunity loss that would result could be potentially devastating simply because the employees might not possess the necessary skills. The savings and convenience factors that may have led to a virtual solution will most likely not be realized if employees are not knowledgeable and trained.

TECHNOLOGY

There are many tools available to enable a company to seek virtual solutions. Peterson & Davie (1996) define the Internet as "a logical network built out of a collection of physical networks." The Internet allows all persons involved in the value chain the opportunity to communicate with each other and share documents electronically. "By making it practical to transmit information at high speeds, telecommunications has transformed the basis of entire industries" (Keen & Cummins, 1994, p. 3).

One vital communication link is some form of electronic messaging, or e-mail. A robust e-mail system will provide quick exchange of information and eliminate unnecessary and unproductive phone conversations. Documents, drawings, and purchase orders can be attached to an e-mail and sent electronically. The time savings and cost savings accrued from receiving a single 10-page file could pay for the use of the entire system for a single user for a month, compared with overnight shipping costs. Having compatible databases and desktop tools is also vital. Microsoft Office software offers word processing, database, spreadsheet, and presentation packages. Additionally, there must be compatibility with operating systems, software, and hardware.

In order to manage a virtual corporation, operating systems, software, and hardware standards must be established and utilized across the board. The Capability Maturity Module (CMM) could be used to ensure software standards are met. The CMM identifies the characteristics of an effective software process, but the mature organization addresses all issues essential to a successful project, including people and technology, as well as process (Addison, 1997). All desktops should look virtually the same. It is important to coordinate the purchase of standard tools with customers in order to ensure and maintain compatibility and maintainability. The choice between a "thick" client solution and a "thin" client solution should be considered. The thin solution offers promise of being a cost-effective means of managing a remote multi-user environment. Unfortunately, not all applications will work using a thin solution, if in fact you have special accounting or management packages (People Soft or SAP). Not all modules will run using a thin solution. The alternative, either PC or server, was once considered unmanageable (in the case of PCs) or costly (in the case of server). A business survives and thrives on information--information within the organization and information exchanged with suppliers, customers, and regulators.

Moreover, the information needs to be consistent, accessible, and at the right location (Stallings & Slyke, 1994).

EMPLOYER'S ROLE

The technical knowledge of a manager is crucial to the success of a virtual corporation. Without knowledge in information technology or information systems, a manager will not understand how to make business decisions or the impact of technology. In addition to understanding technology, the responsibility of the manager's job will include employee issues, in-house management issues, and customer/supplier issues.

While many employees will enjoy working at home or in a virtual workplace, some employees may have mixed feeling regarding the concept of working in an electronic virtual corporation. It is important for management to help employees make the adjustment from being in a dedicated facility with stationary equipment to a remote location with mobile electronic equipment. Without a dedicated workplace, employees might feel isolated and out-of-touch. The traditional lunch and breakroom interactions will be for the most part replaced with videoconferencing and virtual meetings. Commuting to work will be replaced with telecommuting. Cohen (1997) states that "Employees and managers will probably view this new way to work as frustrating, promising, scary, or a combination" (p. 30). It is important for managers to help employees adjust.

Since the vast majority of employees will in fact be working from home, one issue that many managers wrestle with in connection with shifting from an on-site command and control workplace to a virtual corporation is the insecurity concerning the productivity of employees. The customary command and control model will not be viable. There will be no time clocks or arrival time. The mundane interplay within groups may be less casual and indirect, and in fact, discussions will be taking place across communication links such as video conferencing or teleconferencing. The productivity issue must take into account trust and professionalism.

CONCLUSION

Businesses and employees must think about how the impact of technology will effect work habits and work environment. Companies must change their inefficient manual work processes in order to compete with other businesses and to stay current with technology. A virtual workflow process could serve as a prototype to market and implement a virtual corporation. A workflow moves information from person to person through a multitude of networks. Grenier & Metes (1995) describe workflow as: "Workflow technologies have long been used to manage the flow of physical objects: manufacturing parts, supplies, and documents. Here we extend that definition to include, in fact to emphasize, managing electronic or information objects" (p. 133). A virtual operation within a virtual corporation could be thought of as an interaction of employees and employers performing tasks in a computer network environment. The virtual workflow process gives the employees of a company an insight as to how employees, employers, and technology will interface in a virtual corporation.

REFERENCES

- Addison, W. (1997). The capability maturity model. Boston: Addison Wesley Longman, Inc.
- Caldwell, B. (1996, May). The new outsourcing partnership, *Information Week*, (585), 50-56.
- Caldwell, B. & R. Gambon (1996). The virtual office, *Information Week*, (563), 34.

Cohen, S. (1997). On becoming virtual. *Training & Development*, (51), 30.

Davy, J. (1998). Managing power in the new millennium. *Managing Office Technology*, 43(2), 19-20.

Depupi, T. (1997). Telecommuting: Making the commitment work. *Managing Office Technology*, 42(2), 18-21.

Grenier, R. & G. Metes (1995). *Going virtual*. Upper Saddle River, NJ: Prentice Hall Publishers.

Keen, P. & J. Cummins (1994). *Networks in action*. Cambridge, MA: International Thomson Publishing Company.

Peterson, L. & B. Davie (1996). *Computer networks: A systems approach*. San Francisco: Morgan Kaufmann Publishers.

Stallings, W. & R. Slyke (1994). *Business data communications*. Upper Saddle River, NJ: Prentice Hall Publishers.

MARKETING FOR THE 21ST CENTURY: THE INTERNET AND THE REAL ESTATE INDUSTRY

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ABSTRACT

Corporations and the self-employed utilize the Internet to communicate, advertise, and sell real estate. From real estate firms to the individuals (in many cases independent contractors) employed within the firm, the Internet expands the communication, advertising, and sales paradigms that are oftentimes firmly entrenched. Access to a complete list of available properties had been limited to agents until the late 1990s in the real estate industry. Consumers knew that they would need to make calls to agents to get detailed information on what was available--calls that sometimes went unanswered. Now, not only is the information being shared with the public, it is available on the consumer's timetable.

INTRODUCTION

With all the information available on the Internet, how does real estate rank? Kersnar (1997) and Antoniak (1997) state that real estate is the sixth most requested term in Internet searches. Based on this statistic, it is obvious that there is an interested public waiting to be informed.

If the needs of the information-seeking consumer are to be met, a Web surfer's interest should be satiated when the search engine returns the results of the search for real estate. Haight (1997) states that the number of sites dealing with real estate amounts to approximately 10,000. Among these 10,000 sites, the Internet user will find both the individuals (agents and For Sale By Owners) and the firms that have decided to conduct business on the Web.

The most documented disaster in the real estate industry's adventures on the Internet was the near collapse of the Realtors Information Network, also known as RIN (www.realtor.com). RIN's financial backing comes from the National Association of Realtors (NAR), who through August of 1996 had spent in excess of \$13 million in its development. RIN originally aimed to "provide real estate listings nationwide on the Web to consumers and would act as something of a proprietary America Online for real estate agents" (Blumenthal, 1996). RIN's plans were to charge agents for the system as well as \$2 for each listing on the web site. To its disadvantage, while RIN was being developed, other lower-cost substitutes--strictly utilizing the Internet while performing RIN-like functions--were also being developed. These substitute sites, in some cases, garnered the real estate business that RIN could not. In other cases, real estate agents and real estate firms waited for the dust to settle before making a decision on whether and how to enter the Internet.

INTERNET AND THE REAL ESTATE INDUSTRY

In August 1996, the NM Board authorized the RIN Board of Directors to revamp RIN from a private network using a proprietary desktop system to a national on-line, Internet-based system. In December, RIN enlisted RealSelect to manage, promote, and expand the RIN site for the general public. The new version of RIN will provide free property ads for Realtors®, a national email address for Realtors at realtor.com, home pages for Realtors®, revenue sharing for content providers (for example, local Multiple Listing Services), and no additional funding from NAR (Salvant, 1997). Having real estate information available on the Web for consumers has been compared with allowing the consumer a few minutes on the car lot without a salesperson. The consumer can kick

the tires, study the features, study the condition, and do a little comparison shopping before they get the salesperson to write up the deal. Similarly, the Web user, searching for a house, can do a great deal of research while sitting in front of the computer instead of riding miles in the seat of an agent's car.

As the Internet is still a new frontier, real estate agents and firms have found several niches in the market. Among these niches is the identification of the "For Sale By Owner" (FSBO) through Web searches. FSBO signs are all over the Internet. In some cases, mall sites are setting aside space specifically for FSBO's. The International Real Estate Directory has set aside space on its site for persons wishing to sell their homes without the help of a real estate agent (<http://www.ired.com/ired/dir/refsbo>) (Eagar, 1997). Once identified, via a mall or individuals' web pages, agents are contacting the homeowners in an attempt to list the property. There is no evidence to support that this way of contacting homeowners is more productive than responding to the FSBO sign in their yard; however, shared interest in the Internet could be the start of finding "common ground" to obtain the listing agreement with the seller.

Additional niches are found merely in the ability to say you have an Internet presence. For example, the real estate agent can use it as leverage in a listing presentation to show they have an interest in doing everything possible in order to produce a sale for the seller. Similarly, by advertising email accessibility (via business cards and other promotions) and effectively utilizing it as a normal communications medium, the agent shows they are willing to communicate in a means that may be seen as more convenient to the customer. Although some agents have added these approaches to their repertoire, their numbers remain low, thereby creating the niche.

At this point, the Internet's presence in the real estate industry has been one of supplementation rather than substitution. Not everyone is connected to the Web, so why would a person solely market therein? Even if everyone was connected, would they each like to search for an agent on the Internet, or will they choose based on the referral of a friend? If a customer wants to talk with a real estate agent immediately, will they pick up their keyboard or pick up their phone? The supplemental presence of the Internet does not necessarily bring the dread that the electric lamp brings to the oil-maker. As a benefit, it has the potential for increased business for its partakers with its flexible framework.

IMPACT OF THE INTERNET'S SHORTCOMINGS & BENEFITS--TRENDS IN THE REAL ESTATE INDUSTRY

In the real estate industry, computers, as a source of entering and retrieving real estate listing information, have been available for several years. Terminal-accessed online systems have improved the efficiency of many operations. Newer software products sporting the Windows format and operating system have produced easier search mechanisms and dressed-up reporting. Nevertheless, a large number of real estate professionals still shun their use. A segment of real estate professionals still rely on printed books (such as the Multiple Listing Service books) to conduct their business. Others, more advanced but still below potential, use the computer but do not exploit the full capabilities that it brings. As customers gain access to real estate information via the Internet, real estate professional computerphobia will increase the technological and professional gap between real estate professionals and their customers.

The failure of real estate professionals to know up-to-the-minute property information or to possess the ability to communicate with their customers via email, will weaken the individual and the firm that is involved. When the customer knows more than the supplier, professionalism fades. When professionalism fades, the entire industry suffers. Individuals and firms that do not address computerphobia will end up the losers in the new operating environment.

There are numerous sites featuring real estate information on the Web--approximately 10,000. Some of these sites feature firms; some of these sites feature individuals; some feature both.

Obviously, with 10,000 sites present, if your site cannot be found, you have wasted your time and your money investing in the Internet.

Internet technology is relatively new. The software, hardware, and design principles are still evolving. What works today may not work as well (relatively) tomorrow. Investments of time and dollars in creating a web site for the individual or corporation can result in frustration when technological targets are constantly moving. Frustration can lead firms and individuals to abandon what was once seen as a golden opportunity. Excluding telecommunications problems or maintenance downtime of a user's Internet service provider, the Internet affords the individual or corporation a 24 hour-a-day virtual storefront. No longer is your customer's entry tied directly to the lock on your front door.

Sometimes removing the human interaction can actually improve the relationship. Fewer interactions with busy receptionists, fewer disappointments from a slowly resumed call, and simply providing a person what they want (when they want it) can oftentimes satisfy the customer. A happy customer that is one step closer to signing a sales contract is a great customer to have.

There is strength to be gained from the ever-increasing number of Internet users. The ability to make industry-wide changes in quality of service was mentioned previously. Additionally, there is strength to be gathered in lessons learned.

Anyone entering the Internet arena in the early 21st century does not necessarily do so as a trailblazer. Especially in the real estate industry, there are at least 10,000 other pioneering experiences in place. Who has succeeded? Who has failed? Why have they done so? These are just a few of the questions that any new entrant should consider. The new entrant may not have the experience-based knowledge that the long-time Internet presence has, but they do hold a competitive advantage in not repeating those mistakes.

Electronic mail creates an additional door whereby prospective customers can enter your business. It complements your 24 hour-a-day virtual storefront and allows the customer interact effectively with your firm. In the real estate industry, a customer searching for a property online finds partial satisfaction when that perfect house is located. The next step requires that access to the house be obtained. Will an agent's phone number attached to a listing suffice? Not like a quick email. Since the phone line is currently occupied by the Internet connection, hopefully the property surfer who is supplied only with a phone number is taking good notes; otherwise, you may have just lost a customer. Other email uses include communicating with closing attorneys, lenders, inspection companies, fellow agents, and anyone else with whom you conduct your daily business. Email can afford you the ability to carefully choose your wording, be as detailed as you desire, mass mail to a list of recipients, and extend your communications arsenal.

Internet users have been shown to increase their usage as their experience increases. Once an individual internally establishes that the content of the Internet is something to be relied upon, questions and needs arising from many aspects of their lives may be answered by information found therein. It could be hypothesized that as an individual's usage increases, once the need for real estate information arises, an individual will largely rely on the Internet to satisfy that need.

Push technology will give an added boost to the real estate business. The technology has previously been available in some real estate online systems. An agent would enter the client's criteria and wait for a house of that profile to enter the market. The difference is that this trend will make the same technology available to the customer via the Internet. A customer will be able to enter criteria for their dream house once, and then allow the system to notify them upon its availability. The customer will still need the access provided by the agent and ultimately the professional direction through the sales process. Nevertheless, the participative environment afforded by this trend will surely change somewhat the way agents conduct business.

The 50 percent increase in Internet access between August 1995 and April 1996 is certainly a boost for any investment. What was a reasonable investment in August 1995 basically brought a 50 percent increase in potential return in just eight months. For example, if a Web presence was

capturing four additional real estate customers a month in August, increased access could potentially secure six customers in April. Until the Internet fully saturates the market, similar returns can be seen for the future.

The trends in audience illustrated that a varied group of Internet users is emerging. Education, advanced computer literacy, and income are becoming less significant in identifying the audience. This signifies that usage is becoming mainstream. For the real estate industry, a mainstream audience fits their mainstream client base. It ensures that dollars invested in the Internet as a business asset are not focusing on a single segment of their clientele.

Based on population trends signaling a decrease in the household size in the U.S., email usage will likely increase as these geographically separated individuals communicate with family and friends. Email utilization will feed the trend of increased familiarity breeding increased usage (of which the real estate industry is sure to get a share) and bolster email as an effective communications medium.

In its infancy, every presence on the Internet was seen as an island. To get to that island, you had to know exactly what you were looking for and a good idea of how to get there. The merging (sometimes by merely "linking" sites) of areas of similar interest into a single identifiable site has facilitated the ease at which a user navigates the Web.

In the real estate industry, sites like RIN have linked the vast databases of property information nationwide into a single site at <http://www.realtor.com>. Within this site, agents will have a section accessible strictly for them (via userid and password), and customers will have at their fingertips information that they did not search to their weariness to obtain. From this single site, the customer can view properties in a specific area and identify realty firms and individuals to further transact a deal. Links to firms' or individuals' web sites allow a one-way interview to take place. The download time, ease of use, clarity, and perceived value of the information conveyed may win a customer before the first vocal communications between the parties occur. Individuals and firms that do not address the computerphobia problem will end up the losers in the new operating environment. Hanks & Duncan (1995) categorized the computerphobics as avoiders, deniers, stallers, and buck passers.

Mitigating computerphobia by various techniques does not necessarily produce the Internet-savvy real estate professional. It does, however, produce a person more comfortable with the device whereby the Internet and its benefits can be accessed. Comfort with the vehicle can lead to a comfortable experience at the destination.

If your real estate site cannot be found, you have wasted your time and your money investing in the Internet. Several opportunities converge at this point to mitigate its classification as a shortcoming. These opportunities include: 1. The presence of powerful search engines on the Web. 2. The presence of well-linked, highly-traveled sites such as RIN. 3. The presence of 10,000 experienced real estate sites. 4. The presence of an incredible number of Internet professionals and consultants.

CONCLUSION

The Internet is the perfect site on which to build the real estate industry's future. Without reconstructing all the benefits, shortcomings, and trends, it can be succinctly summarized that:

1. The Internet is growing in size, usage and flexibility.
2. The Internet is becoming mainstream as an accepted communication medium.
3. An individual's or firm's presence on the Internet can expand their communication ability, thereby strengthening their relationship with their customers.
4. The Internet's shortcomings can be mitigated.

REFERENCES

- Antoniak, M. (1997, February). Don't get ensnared in Web hype, *Today's Realtor*, 37.
- Blumenthal, K. (1996, August 2). Realtors out \$13M on Internet gamble, *The Wall Street Journal*, B6.
- Eagar, R. (1997). Nothing but net: How to make money in real estate on the Internet. NetSuccess. Retrieved April 23, 1997, from <http://www.rscouncil.com/rebl53/nothing.html>
- Haight, T. (1997, February 1). Media bias, Internet gloom, and the silent majority--by predicting doom, the media miss the big picture, *Netguide*, 188.
- Hanks, B. & J. Duncan (1995, January). Diagnosis and treat computerphobia in your office, *Real Estate Today*, 24-25.
- Kersnar, S. (1997). How real estate agents use the Internet. NetSuccess. Retrieved April 23, 1997, from www.ora.com/catalog/netsuccess/excerpt/index.html
- Salvant, L. (1997, January). RealSelect to run NAR site on Internet: Dynamic leader heads new company, *Today's Realtor*, 58-59.

A HISTORICAL VIEWPOINT CONCERNING THE FEDERAL RESERVE'S ECONOMIC POLICIES CONCERNING GOLD AND INFLATION

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ABSTRACT

This paper examines the relationships between gold, inflation, and the Federal Reserve's economic policies from a historical viewpoint. The conclusion, supported by historical evidence, will show that the price of gold is not a reliable qualitative indicator. However, the price of gold may serve as a qualitative indicator where investors' reaction to economic news is concerned.

INTRODUCTION

In the mid-1990s, the Fed Chairman told a House banking subcommittee that gold prices have become an important factor in the determination of short-term interest rates. The reference to gold as an indicator raises many questions about the validity of current economic indicators, the accuracy of the current economic models, and the consequences of possibly returning to some type of gold standard. The primary items and questions considered are:

1. Gold and several other measures that are used to guide the Fed's inflation watchers,
2. If the U.S. economy would be in a more stable condition if the dollar had remained linked to gold,
3. What measures are considered to be better predictors of economic activity than the traditional money supply growth,
4. Whether the Fed is telling the markets to watch metals (gold) for clues of how it will react to economic changes and what they will do with respect to interest rates,
5. Why the Fed has suddenly decided that gold is a good predictor when it has not used gold for so many years,
6. If rising gold prices signal the market's inflation fears.

FEDERAL RESERVE INFLATION WATCHERS

Greenspan took care to stress that gold is just one of several measures that are being used to guide the central bank's inflation watchers. Some of the other measures include: 1. Consumer Price Index (CPI), 2. Producer Price Index (PPI), 3. 30-year Treasury bonds, and 4. Commodity Price Index.

In the mid-1990s, the CPI was less than three percent and the PPI was less than one percent--the best performance since 1986, when oil prices declined dramatically. Those who are fearful of double-digit inflation believe the 30-year Treasury bonds are accurate, inflation-sensitive indicators. They point to the fact that 30-year Treasury bond prices have risen more than 150 basis points between October 1993 and late June of 1994 (Kleison, 1994). A graph during this time would show a long-term Treasury bond yield and how it has roughly paralleled the broad upward and downward movements in consumer price inflation since the 1950s. This graph identifies the ends of seven disinflations since World War II and before the 1990s. In each case inflation turned up after it had been falling for at least a year. Commodity prices, however, may be one new index by which economists may measure inflation. In a market economy, resources like labor and machinery are

distributed on the basis of supply and demand. In this system, prices serve as the mechanism by which resources are allocated to their most productive uses (Kleison, 1994). Inflation occurs when there are persistent increases in the prices of many goods and services (Carlson, 1993). As inflation rises, so does uncertainty about future inflation; this uncertainty then disrupts the functioning of the price mechanism, leading to inefficiencies in resource allocation (Gwartney & Stroup, 1990).

It appears that the Fed has not found a suitable and reliable model for predicting inflation and other economic trends. However, investors are becoming more confident in the economy due to the Fed's gradual raising of interest rates and reduced secretiveness. The Fed raised interest rates at least five times in 1994 (Collins, 1994). For example, the bond market rallied after the second interest rate increase on March 22, 1994, signaling less worry about inflation (Ullman, 1994)

SHOULD THE DOLLAR AND GOLD LINK BE REESTABLISHED?

The U.S. economy would not be better off if the dollar had remained linked to gold because the gold-based dollar standard is too restrictive. The U.S. economy is simply too large to be linked exclusively to gold.

On August 16, 1971, president Nixon cut the last link between gold and the dollar by refusing to redeem dollars for gold at \$35 an ounce, thereby destroying the post-World War II Bretton Woods International Monetary System (Nixon severs link between dollar and gold, 1971, August 16). Some believe that it was a mistake, others believe it saved our economy. Those who say that severing the dollar's tie to gold was a mistake offer the following points to support their argument:

1. interest rates have remained constant at rates rarely seen in our history. Before 1971, it was highly unusual for long-term Treasury bonds to yield above five percent or for average household mortgages to go much above six percent.
2. High interest rates threw the Savings and Loans organizations into deficits. Congress then allowed the Savings and Loans to enter into other fields which they were ill equipped to handle. How many hundreds of billions of dollars did this disaster cost us?
3. The U.S. suffered high inflation in the 1970s, which in turn made possible OPEC and the rapid rise in oil prices. During that decade, the U.S. came close twice to a 1930s-style financial collapse.
4. The U.S. banking system increasingly went haywire, making large, reckless loans to Third World nations and to real estate developers and other borrowers.
5. The dollar turned volatile, becoming a plaything of ill-informed policy-making. It was the Treasury Department's signal that it wanted a weak dollar in the fall of 1987 that helped to precipitate the great stock market crash. The zigzagging dollar distorted trade patterns, giving new political life to trade protectionism (Forbes, 1991).

According to advocates of the gold standard, gold gives policymakers a target and a compass by which to base their policies. It is a fact that the indexes used so far lack the accuracy and predictability of gold. No other compass works as well as gold. Economists have yet to devise a commodity index that, over time, successfully mimics gold as a quick, reliable indicator of inflation or deflation (Forbes, 1991).

The U.S. abandoned the gold standard in order to gain more control of the economy. Policymakers needed more control to promote high aggregate demand and employment. The key flaw in the gold standard was its restrictive nature. Under the gold standard, those in charge of the monetary policies were unable to expand the quantity of money for counter cyclical purposes in recessions or other periods in which it may have been deemed desirable to boost economic activity (Thomas, 1986). Because of the restrictive nature of the gold standard, the first 150 years of U.S. economic history were filled with severe cyclical recessions.

Proponents of the rational expectation hypothesis (REH) emphasize that in today's economy, the effort required to substantially eradicate inflation would be intolerable. Proponents of REH, who emphasize the adverse consequences of inflation, and some members of the Reagan Administration in the 1980s, go one step further and advocate the return of the gold standard in order to circumvent the ability of the monetary authorities to pursue stimulative anti-recession policies, hence eliminating the perception on the part of the public that the authorities will do so (Thomas, 1986).

WHAT MEASURES ARE GOOD PREDICTORS?

Money supply growth, the beacon of the Federal Reserve policy for most of the 1980s, is no longer considered to be a good predictor of economic activity. What measures are now considered to be good predictors? M1 is the narrowest and most widely used definition of the money supply. Recent developments in financial markets have changed the nature of M1.

Prior to the late 1970s, regulatory practices prohibited financial institutions from offering interest-earning checking accounts. During the late 1970s, M1 was almost entirely composed of currency and demand deposits, neither of which earned interest. With the financial deregulation of the 1980s, all of this changed (Gwartney & Stroup, 1990). Interest-earning checking deposits account for more than one-third of the money supply. In contrast with currency and demand deposits, these other checkable deposits are part transaction money and part savings. Therefore, because of the changing nature of M1, a given growth rate in the money supply will exert a different impact on output, employment, and prices than was true prior to 1980.

Gavin (1994) states that M1 is no longer a good indicator of present or future economic activity because of the different monetary policy adopted by policymakers in the early 1980s. Gavin explains that during the 1960s and 1970s, policymakers were less concerned about inflation. The policymakers' attitudes were due in part to relative lack of concern and lack of confidence that monetary policy could control inflation (Gavin, 1994).

Gavin's (1994) explanation of how this turn of events occurred focuses on the relationship between M1 and the Gross Domestic Product (GDP). The definition and the nature of M1 are explained above, but in order to better understand the relationship dynamics between M1 and GDP, it is necessary to understand what GDP is. GDP equals gross domestic income (the sum of domestic consumption and domestic saving).

Prior to 1980, M1 and the nominal GDP moved together. Between 1960 and 1980, the trend in nominal GDP grew 3.4 percent, on average, faster than the trend in M1. However, since 1982, the trend in M1 has grown 1.4 percent faster than the trend in nominal GDP and fluctuations in M1 no longer coincide with those in nominal GDP (Root, 1990).

FEDERAL RESERVE INDICATORS

If gold is such a great predictor, why has the Fed eschewed it for years in favor of other indicators? History shows that no single indicator is able to accurately forecast the future direction of the economy. However, several economic variables do tend to reach a high or low prior to the peak of a business expansion or the trough of an economic recession. These variables are called leading economic indicators. Each of the 10 components in the Index of Leading Economic Indicators series is standardized and weighted.

The index has forecasted each recession since 1950. Generally, the index turned down eight to 11 months prior to a recession. There has been significant variability, however, in the lead-time of the index. The downturn in the index was only three months prior to the 1982 recession and four months prior to the recession of 1957-1958.

CONCLUSION

The Fed appears to be having trouble developing models that accurately predict economic trends. Recent developments in the economies of the U.S. and other countries have rendered traditional models useless.

The Fed is using the discount rate to slow the growth of inflation by raising the discount rates slowly in small increments. The result, for the short run, is reduced inflation growth. However, our economy has shown a propensity to produce periods of inflation despite such attempts.

Some people support returning to the gold standard, citing many convincing reasons for their position. However, because of the size and complexity of our economy, it is highly unlikely that we can return to the gold standard. Historical evidence reveals some correlation between the price of gold and other economic indicators, but the behavior of these indicators can not be reliably predicted.

The Fed may be telling the markets to watch gold for indications of what it will do with the discount rate, but it is implicit rather than explicit when it refers to gold as an indicator. The evidence suggests that as the economy becomes more complex, the economic models must become more complex and comprehensive.

REFERENCES

- Bullard, J.B. (1994, February). Monetary trends. The Federal Reserve Bank of St. Louis, 1.
- Carison, K.M. (1993, December). National economic trends. Federal Reserve Bank of St. Louis, 1, 30.
- Collins, S. (1994, August 29). Greenspan has raised the interest rates, U.S. News & World Report, 45-46.
- Dewald, W.G. (1994, May). Annual U.S. economic data. The Federal Reserve Bank of St. Louis, 123.
- Forbes, M.S. (1991, August 19). The trend in M1. Forbes, 23-24. Gavin, W.T. (July, 1994). Monetary trends. The Federal Reserve Bank of St. Louis, 1.
- Gwartney, J.T. & R.L. Stroup (1990). Economics: Private and public choice (Fifth Edition). New York: Harcourt Brace Jovanovich, Inc., 282, 810.
- Klieson, K.L. (1994, July). The regional economist. The Federal Reserve Bank of St. Louis, 10.
- Koretz, G. (1991, March 8). Late July of 1994, M2 was stagnant, BusinessWeek, 18.
- Munn, G.G., F.L. Garcia & C.J. Woelfel (1991). Encyclopedia of banking and finance, volume 2. Chicago: Salem Press, Inc., 547, 551.
- Nixon severs link between dollar and gold (1971, August 16). New York Times, 1.
- Price for one ounce of gold still hovering around \$380 (Friday, August 19, 1994). USA Today, 14.
- Rockwell, L. (1994, March 8). Fed's pronouncement: Monetary policy should be anchored to gold. Journal of Commerce and Commercial, 10.
- Root, F.R. (1990). International trade and investment. Cincinnati: South-Western Publishing, 532.

Statistical abstract of the United States (113th Edition), 24.

Strand, G. (1992, September 19). Rising gold price reflects concerns about future inflation. *The Economist*, 91.

Temin, P. (1993, Spring). Depression generated financial crisis. *Journal of Economic Perspectives*, 87.

Thomas, L.B. (1986). *Money, banking, and economic activity* (Third Edition). Englewood Cliffs, NJ: Prentice Hall, 484,485.

Thornton, D.L. (1994, March). Monetary trends. *The Federal Reserve Bank of St. Louis*, 1.

Ullman, O. (1994, April 4). Bond market rallies after the second interest rate increase, *BusinessWeek*, 32, 41.

Ullman, O. (1993, August 2). Greenspan to House banking subcommittee: "We don't want surging inflationary instability," *BusinessWeek*, 22.

Williams, W. (1993, April 8). J.P. Morgan predicts temporary disruptions due to marginal dealers leaving the market. *Journal of Commerce and Commercial*, 6.

ARE PROFESSIONAL ASSOCIATIONS AND UNIONS BECOMING ONE AND THE SAME?

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ABSTRACT

Professionals traditionally are not union members, possibly due to the belief that unions are not needed in order to protect jobs. Professionals--for the most part--seek management positions, and management and unions historically do not mix. This perspective may change as more professionals are unemployed and employment prospects diminish. Once the economy is in recovery and professionals are employed, this group may take measures to protect themselves from losing their jobs in future downsizing and corporate restructuring. One method to accomplish this is through collective bargaining agreements that protect union members through economic downturns.

INTRODUCTION

Many white-collar employees encounter an emotional issue of unionism vs. professionalism; however, the security of employment could override those lingering doubts. Many professionals already belong to associations that could become the predecessor of a union. For example, competition in the airline industry has prompted management to closely examine the relationship between the pilot's professional associations and potential unionization and the effects on the industry's operating abilities and profits.

Many primary and secondary school teachers in affluent neighborhoods have observed parents attending their children's programs during the middle of the day. Many of these men and women would normally be at work during this time, but due to the downsizing of corporations and the restructuring of industries, many are unemployed. This group was made up of white-collar employees--a hard hit group during the 1990-91 recession. Middle management experienced for the first time what blue-collar workers and their unions have battled for many years--unemployment.

UNIONIZATION VS. PROFESSIONALISM

There is a continuing debate over the compatibility of unionization with professionalism. This debate has possibly aided in the growth of collective bargaining by professional employees during the past three decades. However, many professionals still believe that affiliation with a union entails the rejection of key professional values, such as participation in organizational decision-making, professional independence from hierarchical control, and expectations of performance and rewards based on individual merit (Rabban, 1991).

Many others, by contrast, claim that collective bargaining is often the most effective method of achieving and maintaining the above stated values. Leaders of traditional unions now emphasize that collective bargaining can and should address distinctively professional concerns. Therefore, professional associations are shifting from the view that collective bargaining is unprofessional to a belief that unions may help in achieving the association's professional goals. The impact of collective bargaining has been assessed thoroughly by public school teachers and college professors for key issues. These groups bargained for educational policy issues such as curriculum, class size, economic issues, and the structure of academic governance (Rabban, 1991). unions do not participate in hiring decisions and personnel issues.

Collective bargaining agreements are often similar to their counterparts in the industrial sector. Most agreements include provisions on wages, fringe benefits, the grievance-arbitration procedure, and other items usually covered in labor agreements. Distinctively professional issues, such as establishing professional standards, providing mechanisms for professional participation in organizational policy making, regulating professional work, providing training and professional development, committing organizational resources to professional goals, and elaborating the criteria for personnel decisions, are also frequently addressed. Many organizations and even some unions agree that professional values are best protected by keeping them outside of the collective bargaining relationship. On the other hand, contracts that protect professional values may be ignored and may not apply specifically to relationships at work.

Contractual protection of professional standards is often very specific. For example, a union representing physicians who recommend hospital admission of patients and the use of drugs, or unionized symphony orchestra members serving on musical advisory committees who recommend schedule and repertoire selection are very job specific. Professional participation in the development of organizational policy often occurs through joint committees of professionals and administrators rather than through councils composed entirely of professionals (Rabban, 1991).

Regulating the amount and nature of work performed by professionals combines work-interest with self-interest and contributes to professionalism as effectively as participation by professionals in the development of organizational policy. Some employees complain that unions use professionalism as a pretext to win concessions from management. For example, unions may highlight proposed provisions on maximum workloads as essential to achieving quality in the delivery of professional services, but they may be concerned only about reducing work obligations that already seem reasonable to employers.

Some collective bargaining agreements specifically link regulations limiting work with professional values. Agreements often include provisions on minimal staffing levels, restrictions on the workload and hours, and incremental responsibilities for new professionals. For many professionals, commitment to professionalism entails elimination of nonprofessional duties as well as restrictions on the amount of work. Such duties may harm both the employee and the employer. Professionals are hired because they can perform unique tasks for the organization. Asking them to perform other tasks is counterproductive. Therefore, employers frequently agree in labor contracts to reduce or abolish nonprofessional work.

From the employer's perspective, many of these contractual provisions may lead to abuse by professionals. For example, physicians negotiating a labor contract may bargain for 15 minutes of administrative time between appointments in order to improve professional services. However, they could use this accumulated time to leave work two hours early. It is difficult to develop provisions in professional labor contracts that are not subject to conflicting interpretations and are not ambiguous (Rabban, 1991).

Training and professional development are two concerns that are often expressed in contracts. Joint committees of union representatives and management often specify the nature and timing of training. Adequate supervision by designated supervisors or by professional peers may also be guaranteed by the contract. Professionals may have the right to grieve over complaints of inadequate supervision or to cite a lack of necessary training as a defense against disciplinary actions. Employers agree to initiate and provide, often in consultation or cooperation with the union, in-service programs such as courses, seminars, and conferences intended to strengthen the skills and knowledge of their professional employees (Rabban, 1991). Generally, contractual guarantees increase the quality of an organization's professional services, which contributes to overall organizational effectiveness.

Many studies indicate that collective bargaining has a mixed impact on professional values. There is debate concerning professionalism vs. self-interest. However, unionization and

professionalism are not inherently incompatible. Because of the corporate culture in the 1990s of downsizing management's ranks, unionization among professionals has prospered (Rabban, 1991).

DOWNSIZING

White-collar layoffs are contributing to several changes in employment practices that will affect the U.S. job market long after any recession. In the 1990s and beyond, the corporation's reason for layoffs was a downturn in the business cycle. Companies eliminated layers of middle management, central to the operation of many companies, in cost cutting attempts.

Recessions slice through America's managerial and professional employees-- accountants, bankers, lawyers, engineers, and especially, middle managers. Service industries, which employ approximately 55 million workers, are now facing stiff foreign competition. In the 1990s, service industry productivity was stagnant, which left U.S. companies ill prepared to meet the competition of the future (White collar layoffs in America, 1990).

Cost cutting begins with firms relying more on subcontractors and less on full-time employees, a technique known as unbundling that was introduced by the manufacturing sector. However, this process is not likely to be enough to obtain the economies of scale needed to improve America's competitive position.

White-collar underemployment emerged in the 1990s. This is a relatively new phenomenon that may explain why the official unemployment figures for managers and professionals remain low. Many of these professionals now describe themselves as self-employed consultants. In reality, they are often downsized managers who are working part-time at a fraction of their original salaries.

The majority of these managers are not affiliated with any union, and so there is no organization in place to protect them from layoffs or provide training in a new field. Downsizing can strengthen employee morale or destroy it. It can be a solution to a company's problems or a serious new problem in its own right (Train, 1991). downsizing could be instrumental in the formation of professional unions. managers and professionals may view unionization as a preventive measure to protect against this happening to them again.

ASSOCIATIONS

Collective bargaining is the principal activity of traditional unions. Associations are defined as unions that do not engage in collective bargaining. These associations place greater emphasis on social, professional, and consumer benefits and activities than bargaining unions do. Theoretically, the important distinction between the two types of unions is that bargaining unions tie non-bargaining services to the provision of collective bargaining and associations do not (Lochniowski, 1990).

The evolution of unionization, however, is a multi-period, dynamic process. Over many years, membership in an association may lead to bargaining. Nonunion workers who establish associations for purposes other than bargaining should be able to adopt collective bargaining measures if they desire. Nonunion workers who desire collective bargaining may find that the best strategy for ultimately establishing a bargaining relationship is to gradually build support for collective activity through the creation of an association. The establishment of an association accomplishes some of the tasks necessary to organize workers for collective bargaining, such as times and places for meetings. Associations may also be acceptable trial runs for workers who are uncertain about unionization. Ambivalent or antiunion workers may resist the establishment of a bargaining agent, but not object to the formation of a voluntary association. In addition, associations may reduce the effectiveness of employer opposition to unionization. Employer opposition to bargaining agents may be less effective when it is expressed after employees have already established a collective identity through an association. Favorable experiences with an employee

association may also reduce an employer's resistance to collective bargaining. However, Ichniowski (1990) states that the opposite could occur.

Two possible roles of associations in the formation of bargaining unions suggest a pattern. First, workers may form associations with the intent of maintaining that form of collective activity. Second, even if workers would initially like to establish a bargaining relationship, they may decide that they will have more success if they begin as an association, slowly build employee support, and avoid premature confrontations with a management opposed to collective bargaining.

The lower cost of organizing bargaining unions in workplaces with existing associations than in those without associations is an important consideration. The establishment of bargaining among unaffiliated associations may require organizing efforts and resources, but fewer than those required in establishing bargaining among nonunion workers.

Associations encourage the formation of bargaining unions in several ways. Associations reduce the cost of organizing and offer opportunities to introduce ideas of collective action without conforming to the legal regulations of recognition drives and to demonstrate the importance of collective action to employers (Ichniowski, 1990).

AIRLINES AND UNIONS

The airline industry in the U.S. faces challenges that result from deregulation in the 1980s, which caused setbacks and changes. Among the low points were the mass firing of air traffic controllers after the Professional Air Traffic Controllers (PATCO) strike, CEO Frank Lorenzo's unilateral elimination of negotiated contractors at Continental Airlines, the establishment of two-tier wage scales throughout the industry, and the failure of machinists, flight attendants, and pilots to control the fate of Eastern Airlines despite a strike by all three unions (Fotos, 1990, April 23). Several factors combine to increase union strength in the airline industry. Among them are the shortage of employees, growing consolidation of companies that could make the airlines more vulnerable to labor pressure, the increased sophistication of bargaining tactics, and the fact that financial markets are taking notice of union influence. Pilot shortages will be the most pressing problem, but only if airlines keep growing.

CONCLUSION

The future of professional unions is still debated. On one side, unions were unable to protect air traffic controllers and pilots from losing their jobs, and they miscalculated what a strike would cost their members. On the other side, many professionals and white-collar workers suffering from downsizing may begin looking closely at unions to protect them in the future. Many of the issues, such as professionalism vs. unionization, may become less volatile as professionals seek security.

Employers, with the higher cost of union wages, will seek to reduce the number of union employees and will encourage professionals not to join. In the global competitive market, employees and employers must be team players as opposed to a "us vs. them" mentality.

REFERENCES

- Chaison, G.N. & D.G. Dhavale (1990). A note on the severity of the decline in union organizing activity. *Industrial and Labor Relations Review*, 4, 366-372.
- Fotos, C.P. (1990, April 9). Management, unions urged to form new relationship based on demands of highly competitive global market, *Aviation Week and Space Technology*, 68.

Fotos, C.P. (1990, April 23). Union poised to play greater role in shaping airline strategies for 1990s, *Aviation Week and Space Technology*, 81-85.

Fotos, C.P. (1990, December 24). Labor relations putting U.S. airlines at crossroads, *Aviation Week and Space Technology*, 56-57.

Hyde, C. (1991). Jobs in the 1990s. *Management Accounting*, 5, 32-33.

Ichniowski, C. & J.S. Zax (1990). Today's associations, tomorrow's unions. *Industrial and Labor Relations Review*, 1, 191-206.

Ott, J. (1990, August 6). U.S. ATC system still suffering effects of PATCO Strike, *Aviation Week and Space Technology*, 16-19.

Rabban, D.M. (1991). Is unionization compatible with professionalism? *Industrial and Labor Relations Review*, 10, 97-104.

Train, A.S. (1991). The case of the downsizing decision. *Harvard Business Review*, 3-4, 14-30.

Useem, M. & M.M. Gottlieb (1990). Corporate restructuring ownership--Discipline alignment, and the reorganization of management. *Human Resource Management*, (3), 285-306.

White collar layoffs in America (1991, February 2). *The Economist*, 66-67.

Workers of the world disunite (1990, August 18). *The Economist*, 57.

JOB-CONTENT SALARY SURVEYS--ARE THEY USEFUL IN MEASURING COMPENSATION?

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ABSTRACT

This paper reviews job-content salary surveys and their advantages in measuring true job compensation. The pitfalls of salary surveys and how to avoid them are outlined, and choosing the best survey criteria is discussed. The importance of salary surveys and their relevance to the compensation of professionals are reviewed. Various resources are provided for obtaining survey information.

INTRODUCTION

In today's labor market, it is becoming increasingly difficult for employers to retain their current employees. People normally content with their present jobs are beginning to explore other opportunities with higher compensation. How does the employer determine that it is time to raise pay? Salary surveys are the most important tool utilized not only in determining that increases are justified, but also in determining overall pay structure. They are put out on a regional and national basis and the research must be up-to-date (Mulling, 1998). Regular salary surveys should be done within an industry. If an individual is unaware of a position's worth, then that individual will most likely not assess the position accurately. A precise survey covers not only salary but other benefits and forms of compensation as well (Anonymous, 1998, November).

JOB-CONTENT AS OPPOSED TO JOB TITLE AS A GAUGE FOR COMPARISON

In order for a surveyor to make an efficient salary survey, a good comparison must be made between positions. Titles alone do not always provide this comparison. The title "human resources manager" is a good example. In some firms the human resources manager is the overall head of human resources. In other firms the manager might serve the same role as vice-president of human resources, with as many as 5-10 human resources managers employed. In other firms everyone above the level of secretary may be termed a manager. Also, certain specialized terms such as "engineer" may not be laterally transferable between companies even in the same industry. Often the number of titles by a specific employee may be too cumbersome to classify in a particular group of workers. The only plausible resolution is a job-content survey, which makes job categories more uniform. This method is not new, but according to the data used in this paper, it is only used in about one-third of current salary surveys. The main problem with this brand of survey is the system itself. It is often difficult to organize job functions into categories. However, it is possible to come up with such a simplified system. Comparing job criteria is often the proverbial cliché of comparing apples and oranges. The simplified approach used in this research uses a lesser number of criteria to organize positions. The study used in this paper proposed the four following factors:

1. Education, or what degree of formal education or its equivalent is needed to perform a given job.
2. Experience, or what degree of job-related experience is needed for a job.
3. Management role, or what the job does in terms of achieving management objectives company-wide, by unit, or functionally.

4. Impact, or what segment of the organization this position affects and what influence it has on overall objectives (Sahl, 1991).

Salary surveys should also seek to provide an explanation of why different companies pay different wages. Differing types of company structures must be incorporated into the study in order to truly represent the compensation differentials. Company size, industry, and locality are the major variables to consider in dealing with company structures. Company size is probably the most important variable, and sales volume and number of employees factor into it. Company size between industries is relative, and salary surveys that fail to recognize this may often be poorly represented. Industry-specific surveys usually represent more comparable companies and give a better representation of true competitors. These industry-specific surveys tend to give more corresponding occupations because of their like-production processes. They usually group comparable jobs with comparable qualifications, such as education or training. Location-of-the-firm surveys are exceedingly valuable to firms entering a specific labor market. They usually have less and less effect as an employee moves up the company hierarchy and becomes more mobile. These surveys are usually not industry-specific and are often useful to secondary employees who are also mobile but only within the same geographic area.

When conducting a salary survey, it is imperative to consider all compensation and not salary alone. Commissions in addition to benefits such as insurance and stock options should be contemplated. Tax-free savings accounts offered by the company, such as the popular 401(k) plan, should also be included. Salary surveys that reveal these benefits give firms an opportunity to compare how their benefit plans compare with the trends in their industry.

The niche that a specific firm seeks to establish in its industry may also factor into different compensation plans. For instance, a cutting-edge company like Microsoft that favors innovation over resting on an established market share, as IBM does, may be willing to pay more for quality engineers because of the emphasis that they place on the human capital portion of their workforce. Also, which segment of the organization is perceived as the most important might also affect pay. As with the previous example, if research and development obtains a premium in a certain organization, then the R & D director may receive a comparable compensation premium over the directors of other departments. This example would most likely cause a trickle-down effect as managers at each level of the hierarchy in research and development would probably receive higher degrees of pay than comparable-level managers in other company divisions would.

SELECTING THE TOP SALARY SURVEYS

Salary surveys can be an integral part of the firm. Relevant managers must be consulted in order for your data and comparison to be truly effective. These managers are always the most objective in determining the optimum job skills for a particular job. It is also important for the human resources staff to get feedback in order to get these managers' support for a specific hire. A good way to get this input is to allow the manager to read candidates' resumes in order to help determine which one would be the best applicant to fill a certain need. In this context, relevant job skills as well as experience might be critical to the job's performance.

There are numerous national surveys published for accounting, finance, legal, human resources, and data processing professionals, as well as for data processing management. Consultants, trade associations, and competitors may also be a good source for firms that are new to an industry. Finally, local surveys are probably the best fit for lower-level, hourly-wage jobs. On the whole, the best type of survey is a third party survey. A consulting firm or industry group usually subsidizes these. The legitimate survey of this type usually:

1. Gives clear concise job descriptions with thorough written instructions to participants.

2. Covers many participating organizations, with company names identified.
3. Has a consistent group of participants from year to year.
4. Screens data for consistency and accuracy and specifically excludes part time, temporary, or contract employees.
5. Provides salary, bonus, and total compensation information.
6. Provides 25th, 50th, and 75th percentile data for both salary and total compensation.
7. Gives breaks in scope for management jobs and/or geographic summaries for lower-level jobs.
8. Includes benefits information.
9. Reports numbers of incumbents and companies for each job.
10. Is completed by HR professionals and is reviewed/screened/compiled by experienced survey professionals (Pavlovic, 1994).

The percentage of company dominance has also been known to skew a survey. For example, if a single company contributes 30% or more of the data for a survey, that survey could be viewed as invalid. With a substantial survey in place, a firm will be able to validly analyze its employees' compensation data with the surveyed jobs. For lower-level and entry-level jobs, a local survey is a firm's best alternative because these particular positions will most likely be recruited from the local geographic area. For non-management, industry-specific jobs, a survey will need to include industry as well as local area information. An example of this type of job would be engineer or computer programmer. Management position surveys need to be national in scope and may also require a company-size and industry-specific comparison. The industry data will be most useful in determining base salary. For company executives the survey needs to be similar to the type used for management, but it should also include incentive packages (for example, stock options or other perks). This data may not be available on most surveys, but the data can easily be found on company annual and quarterly reports. According to SEC regulations, the past three years of any executive-level employee's salary must be disclosed.

To get the most beneficial analysis from company survey data, it is usually advantageous to use two or even three surveys that complement each other. It is important to average the surveys if you do use a number of them in order to get a true image. If the survey that you use is not up-to-date, it is important to age the data. Salaries tend to move rapidly in some industries, and in order to compete for top employees, it is important to get the latest information. Many consulting firms will do year-to-year projections. The major approach for aging data is called the lead-lag approach. This approach utilizes a method that prices salaries by paying average compensation for what would be July when the month that you are setting the price might be January or February. For human resources professionals who change industries, it is extremely helpful to study salary surveys in order to get a feel for the new industry even though most human resources skills are transferable. Surveys give a picture of the levels found in an industry and trends of that industry. If a human resources staffer changes firms within the same industry, it is important to compare the new company's jobs with the industry specifications.

For the human resources professional, filling out questionnaires is often a time-consuming ordeal. It is important to start early. Rushing through a survey in order to meet a deadline frequently leads to erroneous reporting. It is also helpful to keep survey data and questionnaires for future reference. The human resources professional should also be cautious about selecting job matches. If duties do not match at least 60% of survey data, a job should probably be left off a job match list. As far as the actual physical aspect of filling out a survey is concerned, it should be noted that handwritten or computerized surveys are typically the easiest to complete. Often a rough draft is necessary. Depending on what form the survey is sent in, it may often be required to manipulate the survey to make it easily readable and able to be finished.

REASONS FOR CONSIDERING SALARY SURVEYS

Why are salary surveys still used? With the various methods of downsizing and training procedures, are salary surveys still necessary? Companies still want to be able to attract top-notch talent. Additionally, with the recent emphasis on cost cutting across all industries, firms do not want to overpay new hires. Contract legality is also an issue. Many HR professionals stated that their interest in salary surveys occurred after a major downsizing at their firm that resulted in significant duties not being completed even though the majority of employees who remained became overworked. The term broadbanding is used to describe this process. Under this system, employees will often move from one position to another within the same band as a way of developing specific skills for upper-level positions. Many firms used the system as an overall human resources system instead of simply a pay system. The common term job has not vanished. Although most positions have become more all encompassing, certain duties continue to remain exclusively tied to certain professions. Salary surveys will begin to have a narrower range of categories (for example, entry-level, professional, and senior-professional) instead of the wide range of types that currently exists. As employees' capabilities will always be categorized and measured, the need for fitting salaries to compensate for these traits will also be required. However, the way that these measurements are taken will be changed. As with every industry, computer technology will also change the way surveys are done. The biggest changes are fewer job levels and the broadbanding discussed earlier. The information that is now available on bonuses and incentives has been the biggest improvement.

CONCLUSION

In corporate society, salary information has become almost sacred. Some firms have firing policies for those who choose to reveal such information. Because humans are curious creatures, the secrecy surrounding this topic has made it even more interesting. Additionally, because the information technology industry is undergoing the meteoric rise that it is, salary surveys have become more and more focused on it. Unfortunately, as has been described, the similarity of salary surveys is virtually negligible as to job titles or techniques of gathering data. Reed (1999) offers these tips for professionals involved in analyzing information technology salary surveys:

1. Be completely aware of the subject matter. Some studies utilize random samples. Some are particularly selected. Know what aspects of total compensation the survey includes, bonuses, such as base salary. Reed (1999) notes that the best way to resolve these questions is to observe footnotes and any other explanations provided in the survey.
2. Do your best to disregard the titles of the survey. Your focus may be totally different than what the authors find important.
3. Observe tendencies across surveys. As with solving most problems, multiple resources should be utilized.
4. The surveyed companies should compare favorably to your firm.

Reed (1999) concludes that despite their imperfections, salary surveys remain functional tools for estimating compensation. Reed (1999) states that until complete compensation information becomes available, these surveys remain the most useful tool available for human resources professionals.

REFERENCES

- Anonymous (1998, November). Use these techniques to reduce turnover, *Manager's Intelligence Report*, 4.
- Hansen, F. (1998). Guide to salary survey data on the web. *Compensation and Benefits Review*, 30(2), 16-20.
- Kennedy J. (1999). Jobstar is a treasure trove for salary surveys, *San Diego Business Journal*, 20 (14), 37.
- Mays, J. (1997). Why we haven't seen "the end of jobs" or the end of pay surveys. *Compensation and Benefits Review*, 29(4), 25-27.
- Mort, M.E. (1998, November). An information industry survival guide, *Information Today*, 15 (12), 62-65.
- Mulling, E. (1998, November 6). Take steps to decide whether a pay raise in order for staff, *Business First--Columbus*, 15(11), 19.
- Pavlovic, E. (1994). Choosing the best salary surveys, *HR Magazine*, 39(4), 44-48.
- Ramsey, S. (1993). Avoiding salary survey "pitfalls": what to look for to get meaningful comparable results. *Compensation and Benefits Review*, 25(5), 70-73.
- Reed, S. (1999). Cutting through the hype: finding the real value of IT compensation surveys, *InfoWorld*, 1(25), 65.
- Sahl, R. (1991). Job-content salary surveys: survey design and selection features. *Compensation and Benefits Review*, 23(3), 14-22.

THE EFFECTS OF THE TREND TO INCREASE PROFITS AND STOCK PRICES: DOWNSIZING IN THE 1990s

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ABSTRACT

This paper studies the effects of the trend to increase profits and stock prices by downsizing corporations. The effects on corporations, employees surviving the downsizing, and employees terminated from their employment due to downsizing will be discussed. The trend to increase corporate profit and stock price by reducing corporate head count appears positioned to continue in the foreseeable future. The future effects the corporate changes taking place today will have on the lives of Americans are not yet understood. As with past cultural and social upheavals, only time will allow for an appreciation of the changes.

INTRODUCTION

Corporations continue to bow to pressure from Wall Street to increase profits and stock prices by reducing the number of employees working for the company. The relationship between the company and its workers continues to evolve. While executives expect this reduction in employee expense to solve many of the corporation's problems, experience shows that most corporations do not find the needed answers. Survivors of downsizing experience a myriad of feelings just before, during, and after the downsizing process. Grief and the loss of security are the most commonly described feelings. It takes two to three years for most workers to process all of the emotional effects. The employees terminated because of downsizing show the greatest effects from the process. While some former employees recover quickly, most suffer emotionally and financially. The emotional recovery takes two to three years, but the financial loss and common reduction in income in succeeding jobs last many years.

THE NEED FOR CHANGE

Capitalistic businesses have always operated within the confines of cycles. Economic cycles cause businesses to add workers as the economy expands, then reduce the number of workers as it contracts. Companies add new workers in the product cycle as the demand for new products drives increased production, then release or reassign the workers as the products mature. Seasonal workers are added for a part of a year to be released after the season ends. Society looks for ways to reduce the effects of cycles but accepts that cycles will always exist.

The lower paid workers are more severely affected during most business cycles. While some white-collar workers lose their jobs during an economic downturn, production and line workers are the first to be terminated. The government reacts to this effect of cycles by maintaining funds for unemployment insurance to provide for the basic needs of the laid off workers. Historically, most workers believed that once the cycle completed, their jobs would again be available. In the current economy, workers have abandoned this belief.

While businesses continually terminate and rehire employees, the trend labeled "downsizing" is different from previous cycles. For the first time in the 1990s, white-collar management and staff workers felt the effects. According to the American Management Association, 66% of all workers

laid off in 1994 were college educated, salaried employees (Downs, 1995). Also, unlike the past cyclical workforce reductions, forced reductions caused by downsizing occurred during an economic growth period.

THE EFFECTS ON THE CORPORATION

Organizational downsizing is typically begun for economic reasons. The process of downsizing a corporation's workforce provides many benefits to the corporation but also has many costs. Recent research suggests that some companies may be overdoing the reduction in their workforce and putting the future of the corporation in jeopardy. When companies reduce the number of employees, they must do so carefully, keeping in mind the long-term effects.

The Wyatt Company conducted a survey of 1,005 corporations that had participated in a downsizing program (Downs, 1995). The survey found that: only one-third of the respondents said that profits increased as much as they expected after the layoffs; fewer than half said that their cuts had reduced expenses as much as expected over time; four out of five respondents reported rehiring for the positions that were laid off within two years; and only a small minority reported a satisfactory increase in shareholders' return on investment as a result of the layoff. Acknowledging that downsizing always affects corporations both long-term and short-term, the following discussion examines the benefits and the costs to the corporation.

BENEFITS

Executive officers found that an announcement of major layoffs, when accompanied by plans for reorganization, resulted in an immediate increase in the corporation's stock price. However, they also discovered that this increase was temporary (Downs, 1995). Since many executives have their compensation tied to the company's stock performance, they announce downsizing plans to push the stock price, and thus their pay, higher.

Downsizing directly affects the profitability of the company. After having exhausted the traditional cost-cutting methods, many corporations began to investigate employee expenses as a source of savings. Reducing the per-employee expenses did not provide the required savings, so corporations found ways to reduce the number of employees. Looking for innovative ways to reduce the number of employees without reducing production, corporations redesigned or reengineered processes to accomplish the required tasks with the least effort.

Reengineering and process improvement efforts are closely aligned with corporate downsizing. After a downsizing program, the remaining workers could not continue to do things the same way and maintain production levels. As a result, companies analyzed each process to eliminate unnecessary steps and to develop new processes and procedures to accommodate a reduced workforce.

Much attention has been focused on the large corporations that have eliminated jobs. However, these corporations, as well as the economy, benefited from the many new companies started by the skilled workers and managers displaced because of the downsizing process..

COSTS

According to Campbell (1997), few companies are paying attention to the potential dangerous effects downsizing can have on a company's ability to respond to or prevent a disaster or business interruption. Campbell (1997) notes that stress caused by uncertainty in the workplace causes employees to be more accident-prone. Changing employee job functions and reporting structures can significantly affect the loss prevention and control programs as well as safety and disaster recovery plans. Managers assigned to oversee new groups may not understand the critical

nature of certain functions performed. Workers may be unaware of dangers inherent to a new work assignment. The loss of control when safety and housekeeping responsibilities are outsourced can expose businesses to a number of new risks. When surviving workers feel that their coworkers were treated unjustly, they may try to avenge the wrong, increasing the corporation's risk of losses through sabotage and embezzlement.

The downsizing trend has communicated to the corporate employee that lifetime employment is a thing of the past. This costs the corporation through loss of loyalty by its present and future employees. College graduates today expect to work for five to six companies during their careers (Katz-Stone, 1996). The best workers jump from one company to another looking for what is best for themselves, with no commitment to the corporation.

Downsizing of an organization is a cure that can kill. The corporation that approaches downsizing by looking for ways to improve processes and streamline the organization before deciding how many people to lay off has the best chance of succeeding. By satisfying employee issues during downsizing, the corporation can raise profits, increase stock prices, and maintain production while keeping customers satisfied. However, if the corporation fails in these areas, the chance of long-term success is minimal.

THE EFFECTS ON THE SURVIVOR

The survivors of corporate downsizing, those who retain their jobs, lose the feeling of security that most shared prior to the announcement of layoffs. In a survey by The New York Times in December 1996, 49% of those polled said that they were somewhat worried or very worried that someone in their household might be laid off within two to three years. Seventy percent of those polled said that they thought layoffs were not just a temporary problem in the U.S., but a feature of the modern economy that would continue permanently (Lohr, 1996). The director of management studies for the American Management Association stated "People worry about their own job, not jobs as a whole" (Lohr, 1996). "Also keep in mind that an efficient business satisfies customers who seek more value for less cost, so what the worker loses in security, the consumer gains in a higher standard of living" (McCarthy, 1996).

Employees respond in several ways to the reality that their employer has downsized and fellow workers are gone. One group of survivors becomes demoralized and lives in fear that their job will be eliminated next. Another group of survivors, reacting in fear, becomes more dedicated and works harder to increase the chances that they will be retained if additional layoffs take place. Corporate management intimidates the survivors to belong to the second category.

Noer (1993) described a study he conducted using survivors of corporate downsizing. He categorized the feelings of these employees into several themes. While not all employees identified with each theme, the general themes were: job insecurity, unfairness, depression, stress, fatigue, reduction in risk-taking and motivation, distrust and betrayal, optimism, continuing commitment, lack of reciprocal commitment, wanting it to be over, dissatisfaction with the planning and communication, anger over the layoff process, lack of strategic direction, lack of management credibility, short-term profit orientation, and sense of permanent change. Although other researchers have not been as explicit in categorizing the feelings of survivors, the same feelings are identified repeatedly in writings on the topic.

THE EFFECTS ON THE TERMINATED EMPLOYEE

People touched by downsizing are changed forever. While some workers bounce back without long-term effects, most workers must examine their inner selves and reevaluate what is really important to them. Many of the workers use the situation to redefine themselves both professionally and personally as they process through the grief of losing their job. Since close to

75% of Americans dislike their jobs, life after downsizing can be an improvement over what existed before (O'Brien, 1996).

There is no one answer to the question of how the terminated employees are doing today. The successful survivors of job loss caused by downsizing develop the realization that they, not some company, are responsible for their future. Many have found new jobs making as much as or more than before being downsized. Others are working multiple jobs to maintain a desired lifestyle. Still others have accepted a lower standard of living. Few are the same as they were before downsizing.

The terminated employee must deal with a myriad of feelings. The feeling most frequently described in research about the downsized employees is the loss of the feeling of security. After investing years working for a company, identifying with the company and expecting the company to provide lifelong employment, the terminated employee's whole world is shaken. Many workers develop a new belief system as a result of the trauma associated with losing their job. O'Brien (1996) quotes a downsized employee: "The old stability is gone and any sense of security [that I may have felt] from the employer [is gone]." Even after finding a new job, the feeling of security is frequently gone.

Noer (1995) states that terminated employees, those who lose their jobs through downsizing, as well as the survivors and those who retain their jobs must go through a grieving process. The feelings of loss of a job or career can produce just as much grief as the death of a loved one or a catastrophe. The majority of employees terminated through downsizing are older, established employees who have built a career with the company. With a lifetime invested with a company, the feelings of loss are tremendous.

Reinforcing the statement that the employee alone is responsible for his or her future, the Census Bureau states that less than five percent of the population can afford to retire at age sixty-five (Neff, 1996). The average person in the American workforce changes jobs every four years. Employers are hiring workers as independent contractors with no health insurance, disability insurance, or pension benefits. Wieffering (1995) predicts that one in four workers will be contract employees in the near future.

O'Brien (1992) states that "the only security an employee has is with their ability to market themselves." The experience and knowledge they gain in their careers are marketable. With these conditions, today's workers look for jobs that offer the opportunity to stay employable, not the illusion of security. Instead of panic, victims of layoffs should take a deep breath and assess the best course of action (O'Brien, 1992). O'Brien (1992) urges the victims to search for the right position in the right calling, one that will allow them to use their talents and grow.

CONCLUSION

The trend to increase corporate profit and stock price by reducing corporate head count appears positioned to continue in the foreseeable future. As more employees are terminated because of this trend, the corporation, surviving employees, terminated employees, and the economy will continue to be affected. The future effects the corporate changes taking place today will have on the lives of Americans are not yet understood. As with past cultural and social upheavals, only time will allow an appreciation of the changes. However, when corporations and employees pay more attention to the effects, the effects will be reduced.

The most severely affected participants in the downsizing process are those who lose their jobs. Many corporations provide a severance package to help these employees through the transition of unemployment. However, most of the employees are worse off financially after two years. Statistics show that most terminated employees are unemployed for several months and then accept jobs making significantly less than they were making in their previous jobs. The psychological and

emotional damage caused by the termination is long-lasting. As with the survivor, the successful person takes responsibility for their future and moves forward.

The long-term effects of downsizing will not be known for years. Questions that are left unanswered include:

What happens to the corporation when the economy stalls?

How long can corporations put the stockholder first before other stakeholders and the government force changes?

How is the relationship between the corporation and its employees affected long-term?

Can the average employee manage their career and be prepared for retirement?

This paper has examined the effects that downsizing has had to this point. Downsizing had both good and bad results. A study two years in the future should find many of the same effects, but time will change many of the effects and introduce new results.

REFERENCES

Campbell, T. (1997, February). Decreased workforce increases risk, *Contingency Planning Management*.

Downs, A. (1995). The truth about layoffs. *Management Review*, (10).

Katz-Stone, A. (1996, October 25). Belief in the point: Survivors of downsizing call on inner reserves, *Baltimore Jewish Times*.

Lohr, S. (1996, December 29). Though upbeat on the economy, people still fear for their jobs, *The New York Times*.

McCarthy, J.L. (1996, June). Society's reengineered future, *Chief Executive (U.S.)*.

Neff, R. (n.d.). The next paradigm shift. Retrieved October 10, 1997, from <http://www.home1.gte.net/dm19/index.htm>

Noer, D.M. (1993). *Healing the wounds*. San Francisco: Jossey-Bass, Inc.

O'Brien, G. (1996, April 1). Down but not out, *BusinessWeek*.

THE U.S.- JAPANESE TRADE IMBALANCE PRE-1990

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ABSTRACT

The U.S. trade deficit and the Japanese surplus became prominent issues of discussion concerning the world economy during the late 1980s. Globally, these two economic powers affected trade affairs. Therefore, measurements were needed to generate peaceful trade between the U.S. and Japan and narrow the deficit-surplus gap. The topics that will be reviewed in this paper are the size of the U.S.-Japan trade imbalance in the late 1980s, the reasons for the imbalance, responses to the trade imbalance problem, and how the future economies of these two nations could lower the imbalance.

INTRODUCTION

For the years 1981 and 1983-1985, the largest deficits in the U.S. bilateral trade balances with its 15 major trading partners were with Japan, Canada, Taiwan, and West Germany. Of the 15 countries, the U.S. had surplus balances with only four nations--the Netherlands, Saudi Arabia, Australia, and the Soviet Union. The surplus balances that the U.S. had in 1981 with Mexico, Italy, Brazil, and South Korea turned into deficit balances in 1983 that continued to increase in 1984 and 1985. The deficit balance with Saudi Arabia in 1981 became a surplus in 1983-1985. Forecasted projections at the time predicted that in total, the 1988 U.S. deficit would be approximately \$140 billion, and the 1989 deficit would be some \$125 billion (Brownstein, 1988, October).

There was usually no mention of the U.S. trade deficit without an accompanying discussion of the Japanese surplus with the U.S. in the 1980s. The reason for this intense discussion was that one-half of the U.S. manufacturing trade deficit and one-third of the merchandise trade gap were attributed to Japanese commerce. The dramatic rise in Japan's export balance paralleled the shrinkage in the U.S. export balance. Japanese exports bound for the U.S. were 24 percent in 1981. The same exports were 37 percent in 1985 (Carvounis, 1987).

TRADE IMBALANCES

The U.S.-Japanese trade balance of the 1980s played an important role in each nation's trade situation with respect to the future. This was based in part on three factors. First, even though the yen's rise against the U.S. dollar was predicted to narrow the gap between the two nations, the initial 1986 figures showed that it further widened the gap. In fact, it was 38 percent higher in the first three months of 1986 than for the same period in 1985 (Carvounis, 1987). Second, trade negotiations between the U.S. and Japan were expected to eliminate some of the disequilibrium problems, but it was felt that negative impacts would be brought about by a liberalization program (Carvounis, 1987). Third, the U.S. was the dominating force in the high-tech sector, but it soon became Japan's fastest growing export component.

The deficit with Canada was known as the "quiet deficit" because it was overshadowed by other U.S. trade imbalances, but in fact, between 1980 and 1985, it grew at a faster pace than the U.S.-Japanese imbalance (Carvounis, 1987). The U.S. suffered its most noteworthy trade imbalance with Western Europe in the 1980s. In 1980, the U.S. had a \$20 billion surplus, but by 1985, Western Europe had a \$21 billion surplus against the U.S. (Carvounis, 1987). Because the U.S.-Japan trade

relations played such a prominent role in the future of their economic growth, further discussions in this paper deal specifically with trade relations between these two nations.

SOME REASONS FOR THE TRADE DEFICIT

There are two positions concerning the trade deficit with respect to its origins and meanings--the monetarist position and the structuralist position. Monetarists felt that the overvaluation of the dollar and the high growth rate in the U.S. economy were the major factors that caused the trade imbalance. As a country's currency appreciated in value, the price of exports increased and the volume demanded decreased. The importance of the overvalued dollar as a cause for the trade deficit was reinforced by this statement: "Overall, the most powerful force in determining America's laggard competitiveness performance in recent years has been the increase in the value of the dollar against other world currencies" (Carvounis, 1987). A study cited by the Federal Reserve Board stated that 87 percent of the U.S. trade deficit increase between 1980 and 1984 was attributed to the superdollar (Carvounis, 1987).

Monetarists observed positive aspects of the trade deficit. The U.S. was experiencing growth in the early 1980s while other free market economies were suffering. However, subsequent deficits caused the U.S. to be in the position of a net international debtor. This signaled that the U.S. might have to relinquish some of its national output in order to pay foreigners for the debt incurred.

Protectionism was one proposed solution for trimming the deficit. However, monetarists believed that protectionism had detrimental effects because tariff increases caused foreigners to increase production efficiency. Therefore, the gains in import quotas increased foreign producers' profit margins.

The structuralists believed that the export-import imbalance was caused by productivity inefficiencies. A problem area was the labor wage rate earned by U.S. workers. The U.S. enjoyed high production output per worker, but the cost per hour was higher than many foreign nations' costs. The wage differentials between U.S. workers and foreigners were influenced by the strength and weakness of the dollar. The dollar was overvalued against the yen (prior to September 1985), and U.S. workers made 40 percent more than Japanese workers did. In August 1986, the dollar had depreciated against the yen, and U.S. workers made about 12 percent less than comparable Japanese workers (Carvounis, 1987).

With respect to technology, Japan was ahead of the U.S. One of the contributors to Japan's level of advanced technology was the standard of research and development established in the U.S. A contributor to the decline in U.S. technology was in the area of patents. The number of patents issued to U.S. inventors declined in 1972 and 1978, whereas the number of Japanese patents were two-thirds greater than that of the U.S. (Carvounis, 1987).

Structuralists believed that the trade imbalance had a negative connotation. Monetarists felt that foreign competition could lead to deindustrialization of the U.S. The capital-intensive industries could be dismantled due to the low-cost capitalization from abroad. This was already apparent in the steel and textile industries, where workers were accustomed to plant closings and layoffs. Many American corporations transferred a large part of their operations offshore. Therefore, structuralists felt that most of this lost activity was gone forever (Carvounis, 1987). Something had to take the place of manufacturing in the U.S. economy to fill the void left by the decrease in manufactured goods. The consensus was that U.S. economic activity became more service-oriented in the 1980s. However, it could be difficult for the U.S. to improve the trade balance problem with the expansion of service exports.

The structuralists agreed with the monetarists that protectionism was not the answer to the trade problem. They felt that it would invite retaliation from some U.S. trading partners by raising the cost of goods available to the domestic market. According to the structuralists, the only benefit perceived from the trade deficit was that the U.S. producers were aware of the fact that they lagged

behind foreign producers in the mobilization and management of production factors. If foreign competition were not present in order to force U.S. producers to become more productive, the U.S. manufacturers would probably still be producing inefficiently with the result of increased costs to the consumer.

THE U.S. RESPONSE TO THE PRE-1990s PROBLEM

Trade policies pursued by the U.S. government in the 1980s were three-dimensional. First, there were actions taken which were purely unilateral in nature. Second, a multilateral basis was evidenced by the U.S. participation in joint efforts among the major trading partners. Third, a bilateral phase existed between the U.S. and its individual trading nations (Carvounis, 1987). Three points were evident with respect to the unilateral dimension. Due to the ongoing conflict in the government, there was no consensus on how the U.S. should handle its declining trade performance. However, U.S. trade policy leaned toward protectionism. Also, the 1980s farm bill was a very expensive piece of legislation with uncertain (at the time) effectiveness. This caused disequilibrium internally that overflowed externally.

The multinational dimension of U.S. trade policy was generated by U.S. participation in GATT (now WTO). This participation took the form of negotiation sessions that lasted from five to six years. Even though good proposals came from these meetings, GATT sessions proved somewhat unsuccessful for several reasons. First, GATT was extremely weak and lacked effective enforcement powers as well as the necessary resources to force nations to change procedures. Second, substituting non-tariff barriers for tariff barriers became widespread, but the parties involved were confronted with discriminatory schemes against some of the foreign goods. Third, GATT dealt primarily with manufactured goods; therefore, commerce in agriculture and services did not get the proper coverage. Finally, the membership grew from 25 to almost 100 nations, which caused frigid blocs within the group. The most serious friction was between the industrial countries and the Third World developing countries. While GATT focused on a broad range of matters involving trade policies, it did not focus on the macroeconomic forces that exerted such strong pressures on international trade, such as currency values and growth rate differentials.

Finally, bilateral dimensions resulted from negotiations between the U.S. and others. During the 1980s, the bulk of these negotiations were with Japan. The U.S. asked the Japanese to open their nation's markets to U.S. exports and to eliminate policies that gave Japan an unfair advantage in the import markets of most nations. At first, results were evident on both requests. However, the Japanese eventually stopped contributing favorably to the trade problems between Japan and the U.S.

In March 1985, the U.S. Senate passed a nonbinding resolution that directed President Reagan to enforce existing treaty obligations with Japan and to threaten retaliatory action against the unfair Japanese trade policies (Carvounis, 1987). President Reagan did indeed have talks with Japanese Prime Minister Yasuhiro Nakasone, but even though he did not threaten trade reprisals, he focused on four product groups for action: lumber, pharmaceuticals/medical equipment, electronics, and telecommunications. Reagan stated that the U.S. had a competitive edge over Japan in these areas, but they held only a small share of the Japanese markets. Nakasone responded by "exhorting his countrymen to 'buy American,' announcing tariff reductions on 1800 items, and proclaiming that the U.S. access to Japanese markets should be free, with any restrictions as exceptions" (Carvounis, 1987).

In 1986, two more disputes were added to the list of U.S.-Japanese conflicts. The first was that sales of U.S. manufactured computer chips were restricted due to Japanese non-tariff barriers. The second dispute evolved when Japanese Kansai International Airport Company would not allow U.S. construction firms to bid on a new \$8 billion airport.

THE TOKYO ROUND TRADE AGREEMENTS

GATT negotiations that were fully completed in the 1980s included the Tokyo Round Trade Agreements (Whalley, 1985). The major participants in the session were the U.S., the European Economic Community (EEC), and Japan. The nations stated that this was the most ambitious and wide-ranging of agreements negotiated that had been negotiated to date.

The first area was tariff cuts, which the participants agreed to phase in over an eight-year period that began in 1980. The cuts averaged 30 percent and were largely restricted to non-textile, non-petroleum, and manufactured goods.

The second major area dealt with non-tariff barrier codes. Changes were proposed in the valuation of customs. There were inconsistencies in customs valuation that led to some unfairness in trade policies. A transaction price would be set and countries would now use the same basis for valuation. The U.S. opposed this by stating that they would abandon their old way of valuation. However, the U.S. would raise tariffs on the affected items in order to compensate for the change. The next area was government procurement practices. The agreement called for all government procurement practices to be opened to the public in order for competitive bidding on government contract work to be done by both domestic and foreign firms. The U.S. felt they were more liberal in this area and should benefit from the change.

Finally, with respect to subsidies and countervailing duties, countries were expected to adhere to general principles so that their use of subsidies and countervailing duties would not unjustifiably impede trade. Also, standards for health, safety, and consumer/environmental protection would be followed internationally in an effort to avoid trade impediments.

The probable effects of the measures taken are briefly summarized. The aggregate effects of the tariff cuts were likely to be small, and the EEC would gain more than Japan or the U.S. The U.S. would fare poorly because they exported more agricultural products than either the EEC or Japan and fewer manufactured goods. The tariff cuts were aimed at manufactured goods.

ECONOMIC CONVERGENCE WILL BRIDGE THE GAP BETWEEN THE U.S.-JAPANESE

According to Wachtel (1988, Winter), economic convergence will happen between the U.S. and Japan, and this will aid in narrowing the trade gap between these two industrial powers. There was data that substantiated his idea of economic convergence. First, GDP per capita was diminished among some of the major economic powers. The gap narrowed somewhat between 1974 and 1982 in countries such as Japan, France, and Germany. It is felt that more catching up would take place over the next few years.

Second, similarities existed in the structure of GDP in the major industrial economies. A point of interest was the fact that both the U.S. and Japan had a 7 percent increase in the service sector. The capital-labor substitution and levels of investment was one area where Wachtel (1988, Winter) took a different position than others. In both 1960 and 1979, gross fixed investment was about 30 percent of GDP in Japan and about 20 percent in the other eight major economies. Because the propensity to save was high in Japan, this meant that the amount of capital per worker could reach that of the U.S. worker eventually. This signaled that if Japan's standard of living increased, Japanese producers might consider moving some of their manufacturing abroad to lower-wage locations. The same development pattern which affected the U.S. could similarly affect Japan. As Japanese businesses moved abroad, the barriers around the financial markets were removed in order to direct their business activities.

CONCLUSION

In a Wall Street Journal article, it was reported that the U.S. trade deficit would stall out at about \$110 billion in 1989. Stout (1989, October) stated, "That's still an improvement over last year, but it leads one to conclude that basically we've gotten all the mileage we can out of past dollar depreciation and past marginal cuts in the federal budget deficit." It should be apparent that the U.S. cannot continually import more than it exports. The U.S. should not be regarded as the "largest debtor nation ever known to mankind" (Bergsten, 1987, Spring).

REFERENCES

- Bergsten, C.F. (1987, Spring). Economic imbalances and world politics. *Foreign Affairs*, 770-794.
- Brownstein, V. (1988). Foreign trade is the key to the next round of growth, *Fortune*, 10(10), 21.
- Carvounis, C.C. (1987). *The United States trade deficits of the 1980s*. Westport, CT: Greenwood Press, Inc.
- Stout, H. (1989, October). Trade deficit widens to \$10.77 billion, adding to tension in financial markets, *The Wall Street Journal*, 10-18.
- Wachtel, P. (1988, Winter). A look at the world economy of the next generation: A comparison of the United States and Japan. *Journal of Accounting, Auditing and Finance*, 52-61.
- Whalley, J. (1985). *Trade liberalization among world trading areas*. Cambridge, MA: MIT Press.

A MID-1990s HISTORICAL ANALYSIS OF COMPUSERVE

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ABSTRACT

The online services industry is as fluid and turbulent as any modern service industry due to the dynamics that affect its marketplace almost weekly. From sweeping changes in its telecommunications supply market to radical software advances such as Java, the online services industry is under constant surveillance by industry analysts and Wall Street analysts as changes threaten swings in the direction of its financial outlook. Likewise, internally, such robust conditions must be carefully watched, analyzed, and then agreed on as to a strategic intent, which must also be constantly monitored and reviewed for long-term viability.

INTRODUCTION

CompuServe, an H&R Block owned company, is second in the online services market with approximately \$582 million in revenues in 1995 and three million customers. It has a number of core competencies that have allowed it to successfully compete in the industry. CompuServe is divided into information services, network services, and commercial services. It has historically catered to businesses and professionals and, as the leader in the global arena, serves 150 countries. It has a strong balance sheet and an accelerating growth rate according to its annual report. One of its most significant challenges is managing that growth and preparing for the future.

CompuServe's aggressive strategy includes pursuing avenues to develop its businesses and increase its market share while facing the current pricing pressures of its competitors and new market entrants. From its acquisition of Spry, the Internet service provider, to the market release of its value-added service, CompuServe is continually positioning itself and then repositioning itself as its strategy is constantly realigned. Not only is constant strategic focus and redirection imperative for improving position in the industry, it is vital to the very survival capacity of the firms who choose to operate in such an arena.

MACROECONOMIC ENVIRONMENT

Considering the role that the external environment plays in any industry, a keen awareness and increasing knowledge is necessary to understand the economic variables which impact any industry. Among the most important economic indicators which comprise the state of the economy are the growth rate of the economy, the interest rates, currency exchange rates, and inflation rates (Hill & Jones, 1995). These factors are especially important to small businesses and start-up organizations with little capital leverage.

The macroeconomic environment for small technology companies is favorable. The economy is growing in 1995, albeit modestly, with the fourth quarter GDP growth at 2% annually and inflation tame at approximately 3%. Additionally, among small companies, capital spending is at approximately 70% of surveyed companies that reported making capital expenditures last year according to BusinessWeek. This is the most in the 23-year history of the survey, which is administered by the National Federation of Independent Business (Cortese, 1996, January).

The macroeconomic environment and its variables are important to the online services industry for two primary reasons. First, the industry is currently consolidated, but with the advent

of deregulation and technological and economic shifts, more Internet service providers will enter the industry, increasing the level of competition and augmenting the structure. One of the variables enabling this industry structure to change is a macroeconomic environment conducive to small businesses and capital investment. Secondly, because of the rapid change in the industry, a sudden or rapid deterioration of the macroeconomic environment will certainly impact an industry which is so heavily dependent on venture capital.

TECHNOLOGICAL ENVIRONMENT

The technological environment is of paramount consideration for the online computer services market. Similar to the rapid changes in hardware, as evidenced by the fact that processing power doubles every 18 months, technology is continuing to significantly impact this dynamic industry.

A good example of the impact technology can have on an industry's products and services is that of Microsoft's recent backpedaling on its approach to the Internet. With the rapid changes in popularity and perceived capabilities of the Internet, Microsoft became evidently nervous of its ability to ignore this rapidly advancing technology and continued to pursue its own proprietary standard in Microsoft Network. It was not until Microsoft was awakened by the industry's rush to the Internet that it decided to take a different course of action. This course is continuing as the company implements organizational changes necessary to pursue opportunities (or avoid risks) associated with the Internet.

One of the most important impacts of technological change is how it can affect barriers to entry (Hill & Jones, 1995). Technology does not only affect this industry; technology is this industry. The rapid pace of growth and technological transition in this industry can render obsolete many of the services almost overnight, forcing such players to relentlessly focus on their strategy and their responsiveness to the external technological changes.

THE DEMOGRAPHIC ENVIRONMENT

The online computer services market is greatly impacted by changing demographics. As baby boomers approach retirement, the demand for value-added financial planning, investment services, and estate planning becomes important. This trend drives the demand for such offerings over that of computer systems. Demographic trends support the demand in this industry.

COMPETITIVE BEHAVIOR

The competitive behavior in this industry is strong in this stage of the life cycle. The level of competition in this growth stage is escalating as the firms attempt to establish themselves in the industry and attract customers in a market that has generated unequalled hype.

The industry structure consists of CompuServe, America Online (AOL), Microsoft Network, and Prodigy. In this industry, the firms are spending extra effort and time educating consumers. CompuServe has 4.3 million subscribers while America Online has five million (Sandberg, 1996, March). The industry is considered to be consolidated with only four major firms providing the majority of service to millions of consumers. Because the industry is consolidated, the actions of one firm significantly affect the actions and profitability of others. This industry condition (interdependence) necessarily leads to lively price competition with price wars a likely possibility. Demand trends are a major factor in this industry as the market grows at a fast pace. During H&R Block's (CompuServe's owner) third quarter, which ended January 31, the service added 490,000 new members to its subscriber list of more than 4.3 million and 65 new corporate accounts for a total of 928 (Aguilar, 1996). This increasing demand trend scenario in the online computer services

market affords industry competitors an opportunity to expand operations. Nonetheless, this market is predicted to experience a softening of demand.

Some analysts are predicting a different disposition for the online service providers. They indicate that the Internet is gaining in importance and that the online business will go through a “shake-out” period, but that there will be several survivors who will continue to be value-added providers of online services.

Exit barriers are economic, strategic, and emotional factors that keep companies competing in an industry even when returns are low (Hill & Jones, 1995). Hill and Jones (1995) state that if exit barriers are high in a given industry, companies can become trapped in an industry environment that is economically unfavorable. This unfavorable economic climate is one in which there is shortage of demand and industry competitors compete relentlessly, cutting prices to low levels. While the online services industry does have certain exit barriers, they are not high compared to many traditional capital-intensive companies such as those in the steel industry.

Exit barriers and demand conditions result in different opportunities and threats for firms in a consolidated industry. The online computer services industry, which is a consolidated industry, is no exception. CompuServe is functioning in the lower right hand quadrant (low exit, high demand), but as the industry rapidly changes, the firm will move into the lower left-hand quadrant (low exit, demand decline). It can raise price through price leadership in order to expand operations as the level of new customers grows exponentially. However, if demand declines due to the to the Internet, price wars in the industry will ensue. This movement is due to the threat of technology enabling consumers to have their needs provided for through direct access to the Internet. Levy (1996) states that “[the] viability of the online servers depends on not blending so thoroughly into the Internet that they lose their identities, and maybe their reason for existing. It won’t be easy and may not be possible.”

Bargaining power of suppliers is the next of the important competitive forces impacting industries. Bargaining power can influence prices, quality, and the level of competition in an industry. For the online computer services industry, there are two main types of suppliers: those firms that provide telecommunications, and those that provide content. In both cases, suppliers do not have a forceful bargaining position for a number of reasons. First, there are many content suppliers for the few buyers (online providers) of content. The online service providers have low switching costs between content suppliers--entertainment companies, government, academics, business, and educators. In this industry, the importance of the buyers of content is increasing as the demand for online services increases. This trend is moving toward a propensity for consumers to prefer content delivered via online media to a hard copy. Such a trend infers that the future of content suppliers will result in computers as a distribution medium. Prior to deregulation, suppliers of telecommunication services had power in that they were a natural monopoly. Pre-deregulation, telecommunications firms were allowed to have supplier power, as there was no competition. As deregulation commences, online service providers have more opportunity of telecommunications choices, resulting in decreased power.

SPECIAL COMPETENCIES

A firm with distinctive competencies can charge a premium price for its products or achieve substantially lower costs than its rivals (Hill & Jones, 1995). In the case of CompuServe, its special competencies reside in its extensive network architecture and unparalleled customer responsiveness. However, as the phone companies enter into the online services industry, network competency will become less of a factor. Therefore, CompuServe must relentlessly promote and improve its customer service and other value-added services.

The striking fact about the four largest online services, CompuServe, Prodigy, Microsoft Network, and AOL, is how much they have come to resemble each other in recent years. Although

each began with a highly distinct strategy and target audience, the common market environment in which they operated inevitably led them toward increasing convergence and direct competition in areas as diverse as content, pricing, and interface design (Levy, 1996). The following is a brief history of CompuServe's past strategies, which illustrate the company's attempts at cost leadership, differentiation, and focus/niche. A recap of CompuServe's past strategy provides the background necessary to outline its current business strategy.

The first two online services in existence, CompuServe and Prodigy, experienced many difficulties in drafting pricing structures for their online services. In the mid-1980s, two pricing scenarios existed: a fixed charge per minute and a flat monthly fee. Neither one of the scenarios worked. The first scenario lost customers, and the second lost money. Other pricing schedules were composed by both companies but were far too complicated for customer buy-in. CompuServe adopted the fixed charge per minute pricing, and by doing so allowed Prodigy to pull neck and neck with them in the race for new members (Levy, 1996).

CURRENT STRATEGY

CompuServe's strategy is aimed at increasing its market share, which is critical in the growth stage of the industry life cycle. In the online services industry, there is not a cost leader; therefore, CompuServe will continue to focus on differentiating its product and service. In order to maximize all three components--content, marketing, and brand, CompuServe has pursued several strategic alliances. Strategic alliances are necessary for CompuServe to market its product and to expand internationally. In 1997, CompuServe signed an agreement with the Netscape Corporation to provide Netscape's Navigator product for CompuServe's users to browse the web. Netscape, which holds approximately 85% of the web browser market, adds brand recognition to CompuServe's suite of services. With the signing of the 1996 Telecommunications Bill, future alliances with the interexchange carriers and the regional bell operation companies (RBOCs) are evident. "Under a plan now being discussed with online companies, AT&T's users would be able to click a button and enter one of the commercial online services for an additional fee that would be reduced from the \$9.95 that AOL, CompuServe, and others typically charge their existing customers monthly" (Sandberg, 1996, March). Signing up with well-known partners such as AT&T and Netscape strengthens CompuServe's brand recognition worldwide. In addition to the strategic alliances, CompuServe will continue to upgrade its network infrastructure. CompuServe operates the most comprehensive online network in the world, providing services to nearly 900 corporate accounts and more than 3.8 million users in over 140 countries (Metz, 1996). CompuServe and the online services industry are facing fierce competition from each other and newcomers like AT&T and the "Baby Bells." To minimize the eventual consequences of this trend, CompuServe's strategy is to increase its point-of-presence to customers worldwide. Infrastructure expansion and strategic alliances are two key elements.

CONCLUSION

Based on the number of user subscriptions, CompuServe ranks second to AOL. In order to maintain its current position and overtake AOL, and in preparation for the upcoming shake-out in the online industry, CompuServe must accomplish two goals. First, it must continue to invest in its intellectual capital. By doing so, it can avoid the risk of losing its key personnel to competitors. Second, it must continue to actively pursue strategic alliances in order to maintain a competitive advantage through the introduction of new products and services.

There have been various opinions on the current and future fate of the online services industry. Agular (1996) predicts that the major online services will peak after five years of meteoric growth. In two years, users will simply connect directly to the Internet and ignore proprietary

services like CompuServe (Aguilar, 1996). Several other individuals offer a different perspective in terms of the fate of the online service industry. Time and technology will determine who is right in their predictions.

REFERENCES

- Aguilar, R. (1996, February 20). CompuServe goes public, C'Net News.
- Clough, M. (1996, February 18). Will global war erupt along Internet? The Commercial Appeal, p. B5.
- Hill, C. & G.R. Jones (1995). Strategic management theory (Third Edition). New York: Houghton Mifflin Company, p. 132.
- Levy, S. (1996, January 22). Dead men walking? Newsweek, p. 66.
- Metz, Cade (1996, January). Internet and online, PC Magazine, (15), p. 114.
- Sandberg, J. (1996, March 7). Microsoft seeking to derail AOL talks with Netscape, The Wall Street Journal, p. A3.
- Sandberg, J. (1996, March 8). AT&T seeks online links for net service, The Wall Street Journal.

FACTORS THAT CHANGE THE SCOPE OF U.S. LABOR

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ABSTRACT

Downsizing, discrimination against minorities and women, employment opportunities for Americans, international trade, and the many facets of labor-management relations are among the most current and puzzling problems facing companies today. The multitude of cultural differences, languages, and various work ethics are all factors that change the scope of labor as the U.S. prepares for the work force of the future.

INTRODUCTION

The global market impact on the work force is a frequent topic of reporting. The 21st century will see a technologically advanced work force that is capable of moving quickly from one country to another. Education will continue to be a prevalent factor for all members of the labor force. The global impact of women as well as the aging of the work force in Japan, Canada, the U.S., and other first world countries will force countries to change their perspectives in managing their labor force for continued growth and productivity. Consideration of all factors of labor and changing demographics of the labor force on all continents will require vision from management for many years in order to meet the needs of industry.

COMPLEX WORK FORCE

In the 1980s, global markets for products were an often-reported news item. Today, a primary topic for discussion is the global labor force. Immigration is an increasingly important component of demographic change in the U.S. labor market (Borjas, 1991). The boundaries between countries have already narrowed, and political events such as the collapse of Communism in the former Soviet Union indicate that globalization of labor will continue. Some nations will have a surplus of human capital, while others will seek skilled workers from foreign sources (Johnston, 1991).

Men in tomorrow's labor force will face competition from women, minorities, and immigrants with greater skills and access to jobs than they have experienced in the past. Men as a group, and Caucasians in particular, have historically held a preferred position in the labor market. This dominance is shifting as the U.S. performs as a service economy instead of an industrial economy. Men's total labor force participation is declining, with the largest drop occurring in those aged 55 and older. This is the result of a significant growth in early retirements and poor health. Many more employees are covered under social security benefits and other pension plans that make an early exit from the work force possible (Wilkie, 1991).

The political upheaval in the former Soviet Union resulted in a brain drain, with many physicists, biologists, and engineers relocating to the U.S. Former Soviet scientists and technical workers found the U.S. labor market receptive to their skills. Their level of expertise, ability to think abstractly, innovation in overcoming obstacles, and ability to make systems work make Russians attractive workers to many companies (Barnathan, 1991).

PARTICIPATION

Women are entering the work force in industrialized countries, but slowly in less developed countries. This slow growth will change markedly in the coming decades. Although women make up one-third of the world's work force, they are an untapped source of labor in developing countries. This source of labor is especially important to the service sector. The degree of female labor force participation has important implications for the economy. Although a large expansion of the work force cannot guarantee economic growth, in many cases rapid work force growth stimulates and reinforces economic growth (Johnston, 1991). Women will also continue to make gains in management ranks and close salary gaps between males and females.

MINORITY LABOR FORCE PARTICIPATION

Another important component in the makeup of the labor force is the increased employment of minorities in skilled and professional jobs. Booker T. Washington espoused the philosophy that education is the path to economic and social equality for people of African ancestry. Strong enforcement of civil rights legislation has made education more attainable for African-Americans and has also increased employment opportunities (Meisenheimer, 1990). However, there are still disparities in the employment between African-Americans and Caucasians. These disparities are more prevalent among men than among women. African-American and Caucasian females have approximately equal rates of employment in professional jobs, while African-American males lag behind Caucasian males.

IMMIGRATION

Immigration has always been a factor of the labor force in the U.S. Early immigrants from Ireland and England helped build much of the U.S. with their skills as bricklayers and stonemasons. The immigrants in the future will come from Asia, Mexico, Russia, and the less developed countries as those countries begin to catch up educationally.

The total labor supply for the coming decades is expected to increase at a slower rate, with a trend toward a more mature work force (Weidenbaum, 1992). The birth rate has dropped markedly in developed countries. Educational distinctions will attract workers to supply service sector industries in the developed countries. Women will also enter the labor market in record numbers. The developed countries will be able to redeploy women to more productive jobs. Countries that promote and maintain low employment of women will have a difficult time progressing economically (Johnston, 1991).

EDUCATION

Education of the work force will play a vital role in the labor market in the coming decades. By 2010, workers in most developing nations will be young, relatively recently educated, and possibly more adaptable compared with those in the industrialized world. The value of education is becoming increasingly recognized as high school and college enrollments in most developed countries are at high levels. The less developed countries are not only increasing their enrollments, but also surpassing countries like the U.S. in science and mathematical scores.

What makes rising levels of education in developing countries significant is the link between education and economic growth. The link between the education levels of the work force and economic performance shows that some well-educated, middle-income nations may be poised for rapid growth in the 21st century (Johnston, 1991).

During the early years of the 21st century, workers who have acquired technical skills in schools and colleges will be sought after in the world labor markets. If job opportunities are lacking in their native countries, better jobs may be only a day's journey away. If countries cannot stimulate growth in their economies, they may become exporters of people. First world countries are particularly vulnerable to the combination of slow work force growth, fewer women left to enter the work force, earlier retirements, and a shrinking share of high school and college graduates. This virtually guarantee that many industrialized nations could face serious labor shortages during the early years of the 21st century (Johnston, 1991).

OUTSOURCING

Outsourcing abroad, particularly the shifting of work to China and India so much in the news, is one reason hiring in the U.S. has been sparse; another is rising productivity, squeezing more work from existing staff and other efficiencies (Uchitelle, 2004). For example, over the last decade, gaining technology advances, India's engineers and English-speaking college graduates have taken on more work--from credit-card complaints to software programming to research for American companies half a world away (Waldman, 2004). Many Americans are bitter about outsourcing, but it could be a source of strength. Rosenman (2004) states: "I see a silver lining for outsourcing. Within a decade, knowledge workers around the globe will have unlimited access to desktop video-conferencing. With daily in-person contact, to the extent of becoming familiar with the family pictures on each other's desk, these workers will be able to build deeper trust and better judgment than is possible today. As a result, global teams will collaborate on higher value-added work. Given the appeal around the world of the informal, American style of communication, who better to lead this next phase of globalization?"

On a more negative note, as of January 2004, approximately 2.3 million payroll jobs have been lost in the U.S. If these jobs are not regained by January 2005, President Bush will be the first president since Herbert Hoover to see the number of payroll jobs decline during his four-year term (Gross, 2004).

As labor markets tighten, employers will expand their efforts geographically in order to obtain the skills needed to fill those jobs. The competition will be global, as workers from every country become more educated and increasingly willing to relocate for jobs that offer the greatest opportunity.

BENEFITS FROM TRADE

When countries trade, each benefits from the other. When the two countries are different, the exchange benefits to an even greater extent. How is this possible when neither country has more resources as a whole? The productivity of the country lies where the benefits are evident, using products that will maximize all efforts. A study by Flaherty (1999) explains the benefits of exchange in simple terms. Using the universal theories of opportunity costs and utility curves, Flaherty proves that trade improves individual countries' technologies, and therefore their productivity levels. Flaherty (1999) states that this trade also only affects employment composition and not the employment level. The jobs available after trade will be more efficient, with an increase in those necessary to prosper and a decrease in those that can be carried out elsewhere. Average incomes will increase and the standard of living will increase through the greater specialization of jobs after trade. Prices will decline and choice and quality will increase when trade is abundant in U.S. foreign relations.

The U.S. has experienced growth over the last 10 years that has raised the average American's wealth. Unemployment and inflation are lower than in many previous periods, and during the last decade, millions of new jobs were created in the U.S. Without trade barriers, these

jobs grew in areas vital to the prosperity of the American people--medical, pharmaceutical, agricultural, information technology, and electric and gas power (Sweeny, 1999).

CONCLUSION

The globalization of labor is as inevitable as the globalization of markets have become. The economic benefits from applying human resources to their most productive use are simply too great to ignore. Some countries will make this process easier than others will. Developing countries that have educated their young will have advanced faster than those who have not. Accepting foreign workers will make industrialized countries stronger.

The world will change as a result. Needs and concerns will become more universal; the standardization of policies and practices will be important. With so many women in the workplace, childcare and conveniences will spur growth in the service sector.

The aging of the population will continue to affect the labor market, both in creating service sector jobs and adapting policies to deal with older workers. The workplace could suffer from the lack of experience in some professions, such as medicine, law, and education (O'Hare & DeVita, 1990). The age distribution of a country's work force affects its mobility, flexibility, and energy. Older workers are less likely to relocate and learn new skills. Companies staffed with older workers may have greater difficulty adapting to new technologies or changes in markets. Therefore, the profile of the 21st century worker is a well-educated, technically sophisticated worker who does not mind relocating for the right opportunity and will possibly be recruited on a global basis.

REFERENCES

- Barnathan, J. (1991, November 4). The Soviet brain drain is the U.S. brain gain, *BusinessWeek*, 94-100.
- Becker, G.S. (1991, December 2). Working women's staunchest allies: Supply and demand, *BusinessWeek*, 18.
- Borjas, G.J. (1991). Immigrants in the U.S. labor market: 1940-80. *American Economic Review*, 5, 287-291.
- Doleful in Europe (1991, July 20). *The Economist*, 18-19.
- Flaherty, E. (1999). Obliterating the Buchanan theory of international trade. (n.d.) Retrieved August 17, 1999 from <http://www.cofc.edu/~flahert/fear.html>
- Greenhouse, S. (2004, March 7). If you're a waiter, the future is rosy, *The New York Times*, Section 4, p. 5.
- Gross, D. (2004, march 7). Productivity and jobs: The political vagaries, *The New York Times*, B4.
- Home, W.J. (1990). Labor market dynamics and trends in the male and female unemployment. *Monthly Labor Review*, 3-12.
- Johnston, W.B. (1991). Global work force 2000: The new world labor market. *Harvard Business Review*, 3, 115-127.
- Labich, K. (1992, January 27). What our kids must learn, *Fortune*, 64-66.

- Meisenheimer, J.R. II (1990). Black college graduates in the labor market, 1979 and 1989. *Monthly Labor Review*, 11, 13-19.
- Nelton, S. (1991). Women in business. *Nation's Business*, 10, 41-44.
- New work force requires new priorities (1992). *Management Review*, 1, 13.
- O'Hare, W.P. & C.J. DeVita (1990). America in the 21st century: Governance and politics. *Population Reference Bureau, Inc.*, 3.
- Overman, S. (1991). Moving labor into the 21st century, *HR Magazine*, 12, 36-39.
- Rosenman, M. (2004, March 7). Global gains and losses, *The New York times*, Section 4, p. 12.
- Sweeny, J. (1999). International trade: Creating wealth and jobs for Americans. (n.d.) Retrieved August 17, 1999 from <http://www.heritage.org/issues/chapt18.html>
- Uchitelle, L. (2004, March 6). New patterns restrict hiring: Companies holding off until demand increases, *The Wall Street Journal*, A1.
- Weidenbaum, M. (1992). Economic roundtable: 1992. *Management Reviews*, 1, 38-45.
- Wilkie, J.R. (1991). The decline in men's labor force participation and income and the changing structure of family economic support. *Journal of Marriage and the Family*, 2, 111-122.
- Yang, X. & J. Borland (1991). A microeconomic mechanism for economic growth. *Journal of Political Economy*, 460-463.

THE EFFECTS OF ADJUNCT INSTRUCTION ON FINAL GRADES IN THE PRINCIPLES OF ACCOUNTING COURSE

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ABSTRACT

This paper studies the effect that adjunct instruction has on students' final grades in the principles of Accounting course at a comprehensive IIA university in the Mid-South. We find adjunct faculty members assign grades 0.38 points higher than those assigned by full-time faculty members. Using a multiple linear regression, in which the response variable is students' grades, the explanatory variable instructor status--i.e., full-time or adjunct--is statistically significant at less than a 0.01 level of confidence (p-value approaches zero). Additionally, the explanatory variables GPA and Major are also significant at an alpha level less than 0.01 with p-values approaching zero. The model yielded an adjusted R2 value of 0.346, indicating that 34.6 percent of students' grades are accounted for by the explanatory variables included in the model.

INTRODUCTION

Colleges and universities struggle to provide adequate instruction within the confines of limited budgets. With increasing frequency, community colleges and universities are supplementing full-time faculty with adjunct faculty (Leatherman, 1997; Leslie, 1998; Sonner, 2000). adjunct instruction appears to be a creative solution.

A new development in teaching is the power of student assessment. Teaching quality is now largely defined by student feedback. The empowerment of students to rank their instructors allows for a tenuous relationship between students and faculty. If an institution uses the students' feedback to determine how effective an adjunct faculty member is, the adjunct must walk a fine line between grading fairly and appeasing students. students are in a unique position to use their ranking power to influence the grading practices of the adjunct faculty member.

Student demographics are changing. Many faculty members find that today's students are different from previous generations. Students are practical about the application of the education in the work environment and demand a learning forum that is verbally entertaining and physically interactive. Generations X and Y tend not to regard the faculty member as an immediate expert. Instead, today's students place more value on whether or not they like the faculty member.

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in the work environment and demand a learning forum that is verbally entertaining and physically interactive. Generations X and Y tend not to regard the faculty member as an immediate expert. Instead, today's students place more value on whether or not they like the faculty member.

This research focuses on accounting because it is typically regarded as a highly disciplined field. Professional accounting has rigorous accreditation standards. College and university curricula must support the changes in the professional arena as they occur so that students are adequately prepared to enter the workforce. The accounting discipline has recently faced declining enrollments and external pressure to update the curricula. The current job market does not reward accountants because students majoring in other business disciplines are able to earn equal or better pay with less academic effort (Barksy, Catanach & Kozlowski, 2003). If the professional arena is not demonstrating a need for qualified accountants, then the pressure to keep existing students enrolled could place undue pressure on the faculty member. Students may not be willing to work as hard to earn grades, yet faculty members may need to continue to populate accounting classes to justify the department overhead. The demands of the accounting profession combined with the increase in employment of adjunct faculty members may contribute to potential grade inflation.

METHODOLOGY AND RESULTS

Data were collected from all sections of the principles of Accounting course taught at a private comprehensive IIA university in the Mid-South. Seven full-time and five adjunct faculty members were employed to teach the course. Adjunct instructors were classified as adjunct faculty members. For the sample of 1,126 students, the following data, which we believe to include explanatory factors for student grades, were obtained:

- 1) The dependent variable, grade in the principles of Accounting course (A, B, C, D, F)
- 2) The independent variable, status of the faculty member (full-time or adjunct)
- 3) The independent variable, status of the student (day or evening student)
- 4) The independent variable, students' major
- 5) The independent variable, students' gender
- 6) The independent variable, students' age
- 7) The independent variable, students' class standing (freshman, sophomore, junior, senior)
- 8) The independent variable, students' GPA

The dependent variable, grade, which is recorded on the students' record as an alpha character, was numerically represented in the model as: A = 4.0, B = 3.0, C = 2.0, D = 1.0, and F = 0.0. Although the dependent variable, grade, is ordinal data, because the interval between the grades can be estimated as being ten point intervals (except for the F category), the data is considered to closely approximate interval level data. The use of the values 4, 3, 2, 1, and 0 for the letter grades of A, B, C, D, and F is similar to using the midpoint of a class to estimate descriptive statistics for a frequency distribution. Students who withdrew from the course were deleted from the sample data. Since student withdrawal data was omitted, the results of the study are subjected to survival bias. The lack of control for such bias is recognized as a limitation of the study.

Table 1 examines and compares the sample variances of the grades given by adjunct and full-time faculty members. Since the F-test value of 31.805 is greater than the F-critical value of less than 1.16, it cannot be assumed that the population variances are equal. thus a two-sample hypothesis test for the equality of population means would employ the t-test, assuming unequal population variances (see Table 2).

	Full-time	Adjunct
Mean	2.55	2.93
Variance	1.43	1.01
Observations	490	636
df	489	635
F	31.805	
P(F > f) one-tail	~0	
F-Critical one-tail	<1.16	

Table 2 analyzes the relationship between the status of the faculty member, i.e., adjunct or full-time, and the grade received in the principles of Accounting course. The hypothesis tested was one of no difference in the average grades awarded by adjunct vs. full-time faculty members (in the population). The p-value, which approaches zero, represents the probability that both populations, i.e., adjunct faculty and full-time faculty, award grades equally. This contention is rejected at any reasonable level of alpha.

	Full-time	Adjunct
Mean	2.55	2.93
Variance	1.43	1.01
Observations	490	636
Hypothesized Mean Difference	-0.38	
df	948.494	
t-Stat	-5.678	
t-Critical one-tail	1.645	
P(Tt) two-tail	~0	
t-Critical two-tail	1.96	

Chan, Shum and Wright (1997) have analyzed relationships between student grades and various student characteristics such as age, gender, class standing, attendance on a full-time or part-time basis, and academic major. We decided to include these variables, along with our variable of main concern, i.e., whether an adjunct or full-time faculty member taught the course and measure their relationships with a multiple linear regression model. In this way, we can analyze the relationship between student grades and the employment status of the faculty member (adjunct or full-time) while controlling for the various student demographic characteristics mentioned above. Although an ordered probit analysis (Van Ness, Van Ness & Kamery, 1999) or a multinomial logit model (Glasure, 2002) may be more appropriate for analyzing the dependent variable, coded grades and their relationship with the various student characteristics only the multiple regression approach will be utilized here (Kamery, Williams & Kugele, 2004). Using the coding method of A = 4 (or 95), B = 3 (or 85), etc., is similar to estimating the mean or standard deviation of data that has been summarized into a frequency distribution. Table 3 presents the results of a multiple regression analysis.

Multiple R	0.592						
R2	0.35						
Adjusted R2	0.346						
Standard Error	0.896						
Observations	1232						
ANOVA							
	df	SS	MS	F	Significance F		
Regression	481.21	7	68.744	85.576	~0		
Residual	894.087	1113	0.803				
Total	1375.297	1120					
Correlations							
	Coefficients	Std. Error	Zero-t Stat	Sig.	order	Partial	Part
(Constant)	0.34	0.186	1.829	0.068			
Day or Evening	-0.171	0.105	-1.624	0.105	0.09	-0.049	-0.039
Age	0.007	0.006	1.057	0.291	0.094	0.032	0.026
Gender	-0.122	0.055	-2.218	0.027	0.055	-0.066	-0.054
Major	-0.016	0.003	-5.942	0	-0.203	-0.175	-0.144
Student Class	-0.066	0.035	-1.909	0.056	0.033	-0.057	-0.046
Cumulative GPA	0.932	0.043	21.766	0	0.555	0.546	0.526
Instructor	0.316	0.057	5.543	0	0.169	0.164	0.134

Student major, class standing, whether a day or evening student, and student gender were included as indicator variables. None of these indicator variables were significantly related to the grade received. A graphical analysis of the residuals did not indicate serious violations of the model's assumptions. There are no extreme points (outliers); at each grade level, residual variance does not indicate the presence of homoscedasticity; the residuals approximate a normal distribution. The adjusted coefficient of multiple determination shown in Table 3 is equal to 0.346, indicating that 34.6 percent of the change in the dependent variable, grade, is explained by the set of independent variables (which are student characteristics, except for the faculty member status variable). The F-statistic's high value of 85.576 corroborates the existence of a significant relationship between student grades and the set of independent variables.

Independent variables that would be significant at a 0.01 level of confidence include the following:

- 1) Faculty member status (full-time or adjunct) t-stat value = 5.543
- 2) Grade point average (GPA) t-stat value = 21.766
- 3) Major t-stat value = -5.942

None of the other independent variables showed a significant relationship to the course grade.

During the analysis, several issues of interest were identified for possible future research. There was insufficient information derived from this study to explore those issues in this paper. Those issues include the following:

- 1) Do adjunct and full-time faculty members employ similar methods of teaching?
- 2) Do adjunct and full-time faculty members use similar methods of testing and grading?

- 3) Is there coverage by adjunct and full-time faculty members that is consistent with the prescribed courses of study?
- 4) Is the performance of students in courses that have a quantitative component different for those students taught by adjunct vs. full-time faculty members?

CONCLUSION

The primary objective of this paper was to examine the relationship between student grades in the principles of Accounting course and the employment status of the faculty member, i.e., whether adjunct or full-time. A multiple regression model, which allowed for the inclusion of many student characteristics, did report a significant relationship between the two factors. We find that a student's cumulative GPA was the strongest predictor of success in the principles of Accounting course. Next in importance was the employment status of the faculty member, i.e., whether adjunct or full-time. It is recognized that our sample may include selection bias since adjunct faculty may teach predominantly at times and places where non-traditional students are enrolled. Our data was collected at a single university; thus, our results may lack universal application.

REFERENCES

- Barksy, N.P., A.H. Catanach & B.M. Kozlowski (2003). Creating strategic responses to critical risks facing accounting education. *Issues in Accounting Education*, 18(4), 445-462.
- Chan, K., C. Shum & D. Wright (1997). Class attendance and student performance in principles of finance. *Financial Practice and Education (Fall/Winter)*, 58-65.
- Glasure, Y. (2002). Does absenteeism matter in course performance? *Journal of the Academy of Business Education*, 3, 32-42.
- Kamery, R.H., R.H. Williams & L.P. Kugele (2004). The relationship between part-time instructors and final grades in the principles of statistics course. *Academy of Educational Leadership Journal*, 8(1), 1-9.
- Leatherman, C. (1997, December 5). Leader of scholarly groups outline response to growth in use of part-time faculty, *The Chronicle of Higher Education*, A18.
- Leslie, B. (1998). Part-time, adjunct, and temporary faculty: The new majority? Report of the Sloan conference on part-time and adjunct faculty. ERIC Document Reproduction Service. ED 422, 771.
- Sonner, B. (2000). A is for 'adjunct': Examining grade inflation in higher education. *Journal of Education for Business*, 76(1), 4-5.
- Van Ness, B.F., R.A. Van Ness & R.H. Kamery (1999). The effect of part-time instruction on grades in principles of finance. *Financial Practice and Education (Fall/Winter)*, 9(2), 105-110.

CULTURAL ORIENTATIONS AND BUSINESS ETHICS

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ABSTRACT

To enhance our understanding of cultural impacts on individuals' ethical perception and behavior, the present study compares different views of business ethics between collectivists and individualists. The comparison reveals that collectivists and individualists differ in their ethical values, behavioral norms, moral philosophy, sensitivity to ethics, and perceived ethical responsibility. These differences further lead to different behavioral standards and prescriptive judgment, thus affecting ethical behavior. Implications for international or global marketers are discussed.

INTRODUCTION

The cultural dimension of business ethics has drawn considerable attention from marketers, especially marketers in multinational and transnational firms. Recent voices call for transnationals to develop global codes of ethics that would transcend the bounds of any singular cultural referent point (Desai and Ritteburg, 1997; Thorne and Saunders, 2002). However, differences in cultural and socioeconomic environments may place constraints on such global codes (e.g., Cohen, Pant, and Sharp, 1992). First of all, cultural values could impact what is deemed to be ethical/unethical behaviors. Consequently, the interpretation and implementation of the ethics codes could vary in different cultures. Therefore, a thorough understanding of how culture affects a person's ethical perception, ethical judgment, and moral philosophy is of significance to both academicians and practitioners. The literature lacks research in this area, and the current study represents an initial step toward filling this gap.

This paper explores how individualism/collectivism, an important cultural dimension, impact one's ethical perception and behavior. Individualism/collectivism (I/C) focuses on how each individual perceives the relationship of self, others, and society. Given the importance of these issues, I/C is often considered as the cultural dimension revealing fundamental cultural differences (Trandis1995; Triandis and Gelfand, 1998). The I/C dimension thus provides the first and most important step toward a better understanding of the impact of culture on ethics..

VALUES, NORMS, AND SENSITIVITY TO ETHICS

Research reveals sharp contrast between value systems in individualistic and collectivistic cultures. In general, collectivists value personalized relationships, family security, harmonious social relationships, group cohesion, social order, and respect for tradition. In contrast, individualists emphasize autonomy, independence, freedom, self-direction, self-reliance, self-improvement, hedonism, competition, and the desire to be distinguished and to have emotional distance from others. Individualists desire to be curious, broadminded, creative, and to pursue an exciting and varied life (for a complete review, please see Trandis, 1995; Fukuyama, 1995).

Differences in value systems imply different attitudes toward behavioral norms. Prioritizing conformity, collectivists encourage restraint of actions as well as inclinations, or impulses that could

upset or harm others and violate social expectations or norms. They are more likely to behave according to social norms and show little tolerance to even slight deviations from the norms. In addition, they tend to agree on what constitutes appropriate or inappropriate actions (Trandis, 1995; Hofstede, 1991). Collectivists respect such traditional values as being humble, devout, obedient, and self-control. Unlike individualists who focus on one's internal needs and personal feelings and attitude, collectivists pay close attention to how one is perceived by others. For example, Chinese are concerned about "saving face", which implies that one should always try to behave in a socially appropriate manner (Ho, 1976).

Individualistic cultures, in contrast, often have multiple, sometimes conflicting, behavior norms. People are encouraged to be unique and different, and they get rewarded for being independent and creative. Those who deviate from norms are not necessarily punished. Individualistic cultures are generally looser than collectivist culture: deviance could be tolerated; norms are expressed in many ways; group solidarity is not particularly fostered. In individualistic cultures, it is internal needs and one's attitude rather than concern for group harmony or social norms that drives a person's behavior. Consequently, in an individualistic culture, cognitive consistency leads to a stronger attitude-behavior link than collectivistic culture, whose emphasis is on appropriate behavior.

MORAL PRINCIPLES AND PRAGMATIC ETHICS

For individualists, the ultimate moral principle is the supreme and intrinsic value of the individual human being. Ethics as well as legal systems should provide protection for each individual's inalienable rights by prescribing privacy and proscribing invasions of body, property, and other extensions of the self (Kim et al, 1994). Individualists' moral judgment is primarily based on the intrinsic worth of the individual and their inalienable rights. Individualists emphasize such principles/rules as privacy, honesty, equality, fairness, and equity. An action or decision would be regarded as unethical if it violates universal rights of individuals or fail to do the greatest good to the greatest number. For instance, individualists see lying as breaking the moral principles of honesty and, thus, a serious offense.

In contrast, collectivistic cultures assume the supremacy of the group or collective. Their moral principles emphasize that the value or survival of the collective takes precedence over that of the individual. The most important question is "What is good for the larger in-group and how can one contribute to that?" Collectivists value honesty, but they value even more group cohesion and maintenance of important relationship. If telling the truth means damaging a relationship, they would rather tell a white lie. Collectivistic societies have strong institutional norms and structures that reinforce each individual's consideration of others and the needs of society when making a choice among alternative courses of actions and formulating the ethical judgment. Ultimately, relationships and circumstances determine morality: As De Mente (1998) argues, "the Korean criteria for sin are not based as much on universal absolutes as on the effect actions have on individuals, on the family, on co-workers and friends, and on society at large" (p44-45).

It follows that collectivists are more likely to endorse a teleological view of moral philosophy and make ethical judgment in view of the consequences that a behavior has on the parties involved and on the entire group. However, collectivists do not particularly concern the consequences of actions on the majority of individuals, which is different from the view of utilitarianism. Also, a stronger emphasis on outcomes over principles does not imply a relatively lack of ethical standards. Lee and Sirgy (1999) found that Korean managers are more morally idealistic than American managers, and suggest that ethical perceptions may be more stringent in Korea than that in the U.S., at least on some aspects.

UNIVERSALISM AND PARTICULARISM

Morality among collectivists is more contextual than among individualists, who tend to believe that there exist universal moral standards. Viewing individuals as universal entities, individualists promote the understanding, appreciation, tolerance, and protection over the welfare of all people and over the nature. Consequently, individualists propose social justice, equality, and protection of the environment. For example, according to Kohlberg's (1979) (an individualistic perspective), universalism with great emphasis on abstract principles and rights characterizes the most mature stage of moral development. However, Confucius' perspective (a collectivistic perspective) focuses more on social cohesion. Based on Confucius' philosophy, concern for others starts with concern for the family and gradually extends to the wider circles. Viewing individuals' behaviors as concrete, relational, and bounded in behavioral contexts, collectivists de-emphasize abstract principles and allow moral judgment to vary according to different circumstances. Abstract principles have little validity in this framework. Depending on the specific situation, lying could be an acceptable or even desirable behavior in collectivistic cultures, especially if it helps save face or benefit the in-group.

Individualists hold that the moral principles and social norms are equally applicable to all individuals and their behaviors. Comparatively, as collectivists emphasize relationships, they base an ethical judgment on specific context and such situational factors as who are the parties involved. In interpersonal relationships, the norms and values for in-group members are different from and sometimes opposite to what are for outsiders. Equality or need is the basis for allocating resources among in-group members. The members are expected to cooperate, reciprocate, make sacrifices, and protect each other's interests. Behaviors are regulated in such ways as to promote group conformity or social norms. It is suggested that emphasis on collective welfare, harmony, and duties typically applies only to the in-group and usually does not extend to the out-groups (Trandis, 1995). But when dealing with out-group members, collectivists--just like individualists--primarily use the equity norm (evaluate each person based on his/her contribution).

CLOSING COMMENTS

The differences between individualists and collectivists in their ethical values, moral philosophy, and ethical reasoning process may make it difficult to arrive at a unanimous agreement on a global code of business ethics. Even if a unanimous agreement is reached and such a universal code could be established, this global code does not help multinationals to ensure uniform ethical behavior across countries. For one thing, cultural differences might limit the interpretation of an international code. In addition, the diversity of interpretation of the code may impede its implementation, as the code may not be equally meaningful as a guide to action in different cultures. Apparently, the mere existence of standards of behavior is not sufficient to ensure an individual's compliance.

It is imperative that today's businesses, especially transnational and multinational companies, pay close attention to the differences in ethical values, moral philosophy, and ethical reasoning process across cultures. In doing so, the code of ethics would be more reasonable and applicable to local cultural norms and business practices and are more likely to ensure the obedience of the local employees.

REFERENCES

- Cohen, J. R., L. W. Pant, and D. J. Sharp. (1992). Cultural and socioeconomic constraints on international codes of ethics: lessons from accounting. *Journal of Business Ethics* 11 (9), 687-700.

- De Mente, B. L. (1998), *NTC's Cultural Dictionary of Korea's Business and Cultural Code Words*. Lincolnwood, IL: NTC Publishing Group.
- Desai, A. and T. Ritteburg. (1997). *Global Ethics: An Integrative Framework for MNEs*. *Journal of Business Ethics* 16, 791-800.
- Fukuyama, Francis. (1995). *Trust: The Social Virtues and Creation of Prosperity*. New York: Free Press.
- Ho, D. (1976). *On the Concept of Face*. *American Journal of Sociology*, 81, 867-884.
- Hofstede, G. (1991), *Culture and Organization: Software of the Mind*. London: McGraw Hill.
- Kim, U., H. C. Triandis, C. Kagitcibasi, S. C. Choi, and G. Yoon. (1994). Introduction. In Uichol Kim, Harry C. Triandis, Cigdem Kagitcibasi, Sang C. Choi and Gene Yoon (Eds.). *Individualism and Collectivism: Theory, Method, and Applications*. Thousand Oaks, CA: Sage.
- Koehn, D. (1999). *What Can Eastern Philosophy Teach Us About Business Ethics?* *Journal of Business Ethics*, 19 (10), 71-79.
- Kohlberg, L. (1979), *The Meaning and Measurement of Moral Development*. Clark University Press. Lee, D.-J. and M. J. Sirgy. (1999). *The Effects of Moral Philosophy and Ethnocentrism on Quality-of-Life Orientation in International Marketing: a Cross-Cultural Comparison*. *Journal of Business Ethics*, 18 (January), 73-89.
- Thorne, L. and S. B. Saunders. (2002). *The Socio-Cultural Embeddedness of Individuals' Ethical Reasoning in Organizations (Cross-Cultural Ethics)*. *Journal of Business Ethics*, 35 (1), 1-14.
- Triandis, H. C. (1995), *Individualism and Collectivism*, Boulder, CO: Westview Press.
- Triandis, H. C. and M. J. Gelfand. (1998). *Converging Measurement of Horizontal and Vertical Individualism and Collectivism*. *Journal of Personality and Social Psychology*, 74 (1), 118-128.

OUTSOURCING IN THE ACCOUNTING PROFESSION: DISCLOSURE AND ETHICAL ISSUES?

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ABSTRACT

Consider the following scenario. John Fairfax and his wife founded a heating and air conditioning business many years ago. Together they sacrificed their time and poured all of their resources saved over many years into the business. Their investment of time, money, and energy paid off and now the business is successful and employs family members as well as others. For years the local CPA, a sole practitioner, provided all of the professional services the business needed. However, the local CPA has announced his retirement. John engaged another local firm with several partners and professional staff to prepare the current years returns, W-2s, 1099s, as well as any other forms. John took the information to the new partner, completed the interview, and left the records and information for use in preparation of required returns and forms. The partner had a staff member submit the information to a 'middleman' who sent the information to a tax preparer in India. The returns and forms came back to the middleman who sent them to the partner in the local CPA firm. The partner made an appointment with John, went over the return, filed the return, provided John with a copy, and returned the records.

The scenario presented above is happening in ever-greater numbers in the United States. The purposes of this paper are to review the data on the outsourcing of tax preparation services by CPA firms, to detail the reasons given for and against the outsourcing of tax preparation services, to explore the ethical issues posed by this practice, and to present the current and proposed disclosure requirements promulgated by the AICPA when CPAs outsource their clients' tax preparation. The last part of the paper raises questions relating to the implications outsourcing of tax preparation services may have on accounting education and the profession.

THE STARS OF MORNINGSTAR: WHY THEY MAY NOT SHINE VERY BRIGHT

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ABSTRACT

Morningstar star ratings are a well known third party provider of information on mutual funds used by fund companies, advisors and investors. The star ratings oversimplify a complex choice by seizing on an individual's limited ability to process information (Simon, 1957) and a need to reduce complexity (Kahneman, 2000). Rating methodologies may contain ambiguities that discount the value of the ratings, and at a minimum argue for the use of more than one method to select investments. Regulators would benefit from understanding the problems that have been identified with Morningstar. More importantly, regulators should understand how investors make choices and how Morningstar may influence those choices. The powerful image created by Morningstar star ratings may contribute to a degradation in the quality of investor choice. Morningstar simplifies the investors search for information and reduces complicated quantitative performance data to simple images and symbols. The fund companies use Morningstar's rating system extensively in their advertising and this further reinforces the simplification of a complex choice.

A HISTORICAL REVIEW OF THE NEED FOR DENTAL INSURANCE

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ABSTRACT

The individual and group need for dental insurance, an ever-increasing matter of importance to consumers, unions, and insurance companies alike, is a peculiar form of insurance. Most insurance policies protect the holder from the unlikely events of automobile accidents, fire, burglary, and disability of the policyholder. Insurance companies realize that these events do happen to their policyholders, but there is also a possibility that they will not happen. In the course of a lifetime, many policyholders escape these tragedies and therefore the need for that particular form of insurance is deemed to be unnecessary. This paper outlines just how important and necessary individual and group dental insurance is and also how it can be made readily available to most consumers. The second part of the paper explains how marketers should promote the attractiveness and availability of individual dental insurance.

INTRODUCTION

Everyone recognizes the need for dental care within his or her lifetime. However, insurance companies in the early years were leery about offering individual dental insurance coverage because they feared that as soon as the policy went into effect, the policyholder would take advantage of the situation and collect on the policy. This would cause most companies to go broke in a short period of time.

Dental insurance is nothing new on the insurance market or to top insurance companies. In November of 1938, dentists refused to accept a government plan for compulsory dental health insurance, but many approved of a shadowy substitute (Anonymous, 1938, December). In effect, the plan was dental insurance on a voluntary basis and it only applied to children between the ages of two and seven. For a family payment of a moderate annual fee, the family would be offered dental care. This system was tested on approximately 5,000 families in upper New York State for two years. Nothing ever became of the plan (Anonymous, 1938, December). This was the genesis for individual dental insurance, but it was not until the early 1960s that it began to make progress. Although a few dozen group dental insurance policies were in effect prior to 1960, Chicago's Continental Casualty Company was the first insurance company to instigate its own individual dental care program.

Since dental decay is virtually universal, most insurance companies have shied away from individual dental coverage. Continental Casualty Company discovered that this was not the case. It ran a test for two years on 2,450 employees of a large corporation with a group dental insurance coverage program and discovered that the majority of the participants did not seek the coverage. Too many of the employees actually feared the dentist's drill (Anonymous, 1960, October). Even though the studies indicated that many people would not take advantage of the individual dental health plan, insurance companies still feared that policyholders with individual coverage would release their dental financial burden on the company. In 1965, a leading authority on dental matters from the U.S. Public Health Service estimated that each individual in the country needed

approximately \$80 of dental care a year (Greer, 1965, June). Many consumers did not take advantage of the policy in 1965. However, insurance companies remained skeptical.

EARLY STATUS OF DENTAL INSURANCE

If an individual consumer could obtain individual dental insurance in 1965 it was costly, but there was hope. The U.S. Public Health Service noted that “although the number of persons covered by dental prepayment programs does not approach more than 140 million consumers who have some form of hospital or medical insurance, the recent growth (in dental insurance) is encouraging (Anonymous, 1964, September). This “recent growth” was in 1964 and numbers climbed slowly until the 1970s, when the growth began to accelerate.

Individual dental insurance gained popularity in the early 1970s, but the cost kept it well out of reach for most consumers. Some companies based benefits on the amount of medical insurance that individuals purchased. A standard policy included a \$100 a-day coverage for a hospital room and paid out \$20 for a tooth extraction and \$26 for a surface filling. Bridgework, denture repair, and orthodontic work were considerably higher (Anonymous, 1972, January).

There were other disadvantages to the policies that insurance companies offered besides the cost of individual dental care. There was a 12-month waiting period before the dental coverage went into effect. This was complicated by the fact that the consumer’s total medical and dental expenses had to exceed \$1,000 in a 15-month period before the insurance covered the bills (Anonymous, 1972, January). The total bill could prove to be extremely expensive. A middle-income white-collar worker with a family of two children paid about \$720 a year for individual dental insurance (Anonymous, 1972, January).

Like individual dental insurance is today, group dental insurance was difficult to establish. A dentist, Dr. Palmer, headed a prepayment plan in 1954 in New York and individuals’ encountered many problems in keeping the plan alive. One was the big drain on individual’s income by other health insurance plans. Also, the operating expenses were too great to allow savings to the public (Anonymous, 1956, November).

Palmer’s idea paved the way for today’s main theme in group dental insurance of “spreading the risk.” Palmer believed that the best way for the dental plan to hold costs down was to team up with an already existing medical, surgical, or hospital insurance plan (Anonymous, 1954, June). Palmer also found that numerous management and union groups were enthusiastic about such plans, but expected them to grow rather slowly because of many problems (Anonymous, 1956, November). These problems included the costs of setting up such a non-profit plan. No organization or foundation was willing to donate the needed money to start such a plan.

If the policyholder had a family income of \$5,000 or less and used one of the participating dentists, the GHDI fees covered all the dental bills. But if the family income was over \$5,000, or if the policyholder used a non-participating dentist, the policyholder paid any difference between the GHDI fee allowances and the dentist’s charge (Anonymous, 1958, May). This plan was started in 1954 and was in full effect by 1958. Very little has changed since then as far as the way the plan was put into effect. The Public Health Service believed that when three or four million people are covered by prepaid dental plans, the idea would blossom in full (Anonymous, 1960, June). The outlook for group dental insurance policies had a direct effect on individual insurance policies. As sales of group dental policies increased, the cost to the individual policy-holder decreased, assuming that the dentist’s bills remained stable (Anonymous, 1970, September). There was a need and demand for dental insurance (Anonymous, 1970, September).

A successful push toward nationwide dental insurance occurred in the 1970s when the UAW won an acceptance by Chrysler Corporation of a dental care provision in a new contract. This included prepaid, comprehensive dental insurance for all workers with one or more years of work experience. Coverage of this plan started October 1, 1974 (Anonymous, 1973, September).

The Chrysler plan was expected to work similarly to the GHDI plan of the late 1950s and early 1960s. Under the Chrysler agreement, it was expected that the union would provide a list of dentists who agreed to a fixed scale of fees approved by the UAW. The individual union member could select any dentist from the list of those who participated in the overall insurance plan (Anonymous, 1973, September). It was hoped that by the time the Chrysler program took effect, Ford, General Motors, and others would agree to include dental coverage in their collective-bargaining contracts.

The question may be asked why was prepaid dental care was suddenly so widely discussed in management-labor negotiations. The trend could probably be attributed to an overall change in the mood of the consumer and of blue-collar workers. Laborers were demanding better healthcare and individual consumers are still demanding this. "The labor movement believes that the right to good health has become an intrinsic part of the American value system...(and) dental care is an integral part of good health care" (Joseph, 1970, March).

The Chrysler plan, much like many of the other plans that gained popularity in the 1970s, covered nearly all phases of dental treatment. Some programs that excluded orthodontic work could be included in the pact (Anonymous, 1973, November).

Dental plans generally covered the cost of conditions that existed before the insurance was issued. The average program incorporated a deductible or co-payment factor, where the patient and the carrier shared a percentage of charges for these treatments. For example, most labor-management plans had a \$25 deductible clause, where the patient paid the first \$25 of the total, and a co-insurance factor, "80-20," in which the program paid 80% of the dentist's charges for the covered services (Joseph, 1970, March). Most plans have varied little from this method of putting the plan into effect.

MARKETING DENTAL INSURANCE

With this question in mind, the second phase of the paper begins. It is readily apparent that many organizations were involved in promoting group dental insurance. Studies proved that the main reason for dental insurance's existence was that laborers united for a common cause, that of better health protection in the form of dental insurance.

Individual dental insurance, like group insurance, must be established by a trial and error method. Marketers have long recognized this fact. Consumers were at first both wary and apathetic about group dental insurance, but by the mid-1970s, 20 million workers held group dental insurance policies. It took over 20 years for labor unions to obtain group dental insurance. Marketers worked almost ten years promoting a workable plan for individual dental insurance, and there was very little success until the 1970s. Since the 1970s, marketers have promoted individual dental insurance for all ages. Marketers realized that the initial emphasis should be on children. As far back as 1938, a voluntary plan for dental coverage was set up for children between the ages of two and seven (Anonymous, 1966, June). This plan was never carried out due to lack of interest.

Very little research was done in this area until 1966. The Johnson Administration drew up a basic blueprint that provided individual dental care/insurance for children in elementary school (Anonymous, 1966, June). A more elaborate plan took into consideration some of the following ideas.

1. The neediest school children should get top priority under an individual dental care/insurance government program. By doing this, dentists would be expected to prevent dental problems or rectify them in their early stages of development.
2. The plan should be spread out over several years to avoid straining both the government and the participating insurance companies. Thus, only first graders should be introduced into the program in its first year of operation. These pupils would continue this proposed

program the following year as second graders, while a new group of first graders would be introduced into the program.

3. At the conclusion of six years, all elementary school pupils would be covered. After this, government protection should cease while private individual dental insurance will then take up where the government program has left off.

The government's plan included both restoration and conditioning maintenance. Individual dental insurance would then be for preventive dentistry. Under this proposed dual plan, both the government and the individual insurance companies would not be drained financially. The government would begin restoration and conditioning maintenance of children's teeth before permanent expensive damage set in. When the individual insurance company took over after the six years, they would be concerned with preventive dentistry and dental emergencies. Such emergencies would be accidental tooth loss, chipped teeth, or some other trauma (Anonymous, 1966, June).

The idea behind this plan was to help ease the financial load that the government believed was a major cause of widespread dental disease in the U.S. (Anonymous, 1966, June). This plan that covered children was only the beginning; next, the government's plan was broadened to include the needy, regardless of age.

For families whose income provided their children with dental care, the government provided a free checkup and then reported its findings to the respective parents. This is still another angle that marketers can take. For families that could pay for their children's dental care, marketers could choose these consumers as their target market and direct promotions toward them. It appeared realistic to advertise individual dental insurance policies in business and professional journals because most professional people read such magazines in order to keep abreast of current issues concerning their profession. Also, unfortunately, the Public Health Services' Division of Dental Health stated: "dental care is associated with income more than any other health service" (Anonymous, 1966, June). This was the reason why marketers concentrated on consumers with upper-middle and higher incomes in promoting and advertising individual dental insurance. These consumers could afford it, whereas the government took care of the children and needy people who could not afford it.

CONCLUSION

In retrospect, the outlook for private dental insurance proved to be promising. Dental plans have been repeating the trial and error approach used by medical plans over the years. There is a vast difference in the dental field as opposed to the medical field, and that is the positive interest of the Division of Dental Health in encouraging the growth of voluntary and private dental insurance and in enthusiastic estimates for future gains.

Just how rapidly such gains will occur could not be precisely predicted. It was apparent in the mid-1970s that voluntary dental coverage would never achieve the popularity of hospitalization and surgical protection, but that it should be almost totally accepted in the years to come. It is also encouraging to finally note that some of the public apathy and initial fears have been replaced by interest and actions of the majority of consumers, which in turn should increase as experience produces a clearer picture of the benefits and some risks of dental insurance.

REFERENCES

Anonymous (1938, December 19). New York plan is a shadowy substitute for compulsory insurance, *Newsweek*, p. 20.

Anonymous (1954, June 21). Dental insurance, *Newsweek*, p. 84.

- Anonymous (1956, November 24). Money is the major problem in starting dental plan, *Science News Letter*, p. 327.
- Anonymous (1958, May). A 'share the bills' plan for dental patients, *Good Housekeeping*, pps. 180-181.
- Anonymous (1960, June). Progress report on dental insurance, *Changing Times*, pps. 43-44.
- Anonymous (1960, October 24). Insurance-coverage for teeth, *Time*, p. 94.
- Anonymous (1964, September). What about insurance for dental care? *Today's Health*, pps. 52-53.
- Anonymous (1966, June 13). When denticare comes-here's how it will look, *U.S. News & World Report*, pps. 53-55.
- Anonymous (1970, September 21). A new way to pay dental costs, *U.S. News & World Report*, pps. 92-93.
- Anonymous (1972, January 29). Personal business, *BusinessWeek*, p. 66.
- Anonymous (1973, November 5). Dental insurance on the way for just about everybody, *U.S. News & World Report*, pps. 49-50.
- Greer, Gordon (1965, June). Coming next: Dental insurance, *Better Homes and Gardens*, p. 17.
- Joseph, Lou (1970, March). Dental insurance: A developing success story, *Today's Health*, pps. 49-51.

DIGITAL PRODUCT SALES TAXES IN THE EUROPEAN UNION

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ABSTRACT

The European Union has enacted new legislation concerning the application of value-added tax (VAT) to sales of digital goods. This legislation became effective in mid-2003. Although the legislation is European Union, it has attracted the attention of companies based outside of the European Union that sell digital goods to consumers based in one or more European Union countries. Non-European Union companies that sell into the European Union must now register with European Union tax authorities and levy, collect and remit VAT if their sales include digital goods delivered into the European Union. This paper outlines the European Union rules, compares them to current sales tax rules on interstate transactions within the United States, and examines the implications for future international legislation. The European Union legislation has important implications for all companies making online sales across national borders, not only for those companies who fall under the aegis of the new law, but those companies that might face similar legislation enacted in the future by other countries and organized international markets.

INTRODUCTION

Collection of transaction taxes, such as the sales tax levied by most U.S. states or the VATs levied by many other countries throughout the world, has always been relatively easy and straightforward. Because the taxes occur at the point of transaction, tracking the occurrences of the economic events that trigger these taxes can be much easier than calculating and collecting income-based taxes (Yang and Poon, 2002).

A taxable transaction that involves a physical good typically results in a fairly clear and visible event. Some form of product is moved from one location to another. In the case of services, an observable activity occurs. International transactions involving physical goods have always been particularly easy to track because a product crosses an international border and most international borders are controlled to one degree or another. Services provided across borders can also be easy to track; in most cases, a person or persons must travel across an international border to perform the service.

With the availability of the Internet as a medium for placing orders, confirming orders, and delivering digital goods and services, the visibility of cross-border transactions diminished significantly. Relevant laws and court decisions, which relied largely on the existing language of physical (as opposed to virtual) commerce, were unclear (Jones and Basu, 2002). Laws and court decisions were highly complex and often had conflicting holdings on a number of legal and fact elements. Various courts interpreted facts quite differently in seemingly similar situations. These varying interpretations have created high levels of uncertainty for companies selling goods online (McClure, 2002; Schneider, 2005).

Most transaction taxes were enacted many years ago, when it was reasonable to assume that most transactions would involve a buyer and a seller in the same jurisdiction. As mail order, telephone order, and more recently, online order businesses evolved, this assumption became less and less likely to be true. The inability of one jurisdiction to enforce collection of transaction taxes (at the point of sale) on items sold into its jurisdiction from outside its jurisdiction was, in most cases, nonexistent (Bagby and McCarty, 2003).

EUROPEAN UNION LEGISLATION

The VAT is the most significant contributor to the public coffers in most European Union countries. It is a transaction tax that is levied at each stage of production on the value added by that stage of production. Companies track and report the tax on domestic sales to their own national tax authority. The tax varies considerably from country to country within the European Union. Countries such as Luxembourg (15%) and Madeira (12%) levy the lowest rates, while Denmark and Sweden levy the highest rate (25%). In 2002, the European Union Council issued Directive 2002/38/EC (De Rato Y Figaredo, 2002) and accompanying Regulation 792/2002 that. The Directive and Regulation amended existing European Union law to add specific provisions regarding the sale of broadcasting services and electronically supplied services; that is, digital products (Hamblen, 2003; Hwang and Klosek, 2003; Tedeschi, 2003). The effective date of these new rules was July 1, 2003.

Under the new rules, companies that sell into European Union countries must register with European Union tax authorities and levy, collect, and remit VAT on digital products. The legislation includes not only digital products, but also “electronically supplied services,” which encompasses a wide array of services, including the electronic supply of cultural, artistic, sporting, scientific, distance education, entertainment and similar services (De Rato Y Figaredo, 2002).

The digital products specifically included under the new rules are software, software upgrades or updates, computer games, digital music files, rights to access information databases, Internet access provision, Web site hosting, and both subscription and pay-per-download audio and video entertainment services. The list of products and services included in the law is expressly stated to be “illustrative,” so the intent of the law is to include virtually all manner of goods and services that are delivered electronically. The only specific exclusion in the list is that the use of electronic mail for communication will not, by itself, create the existence of a digital product or service (De Rato Y Figaredo, 2002).

Thus, the list is comprehensive and it is reasonable to assume that it will be interpreted broadly in European Union courts if challenged. The legislation provides that sales of digital products and services by companies operating outside the European Union to users in the European Union will now incur VAT. Under the new rules, the location used to determine occurrence of sale will no longer be the jurisdiction in which the seller is established, but will instead be the jurisdiction in which the buyer is located. In an interesting and asymmetric tack, however, the new rules provide that European Union sellers are no longer required to levy VAT when selling digital products and services to customers outside the European Union.

Non-European Union sellers must register with an European Union country authority, but must pay the VAT rate of the country into which the digital product is shipped. European Union sellers pay the VAT rate in effect in the country from which the digital products are shipped. Since most digital products and all digital services can be provided from almost any physical location, the strategy opportunities are almost immediately obvious. These strategies are outlined in a later section of this paper.

Hwang and Klosek (2003) argue that these asymmetric changes in the application of VAT to digital sales were motivated by strong European Union desires to put European Union and non-European Union sellers on a more equal footing when they compete with each other. They state that there is a long history of concerns that European Union enterprises have been at a disadvantage compared to non-European Union businesses in the markets for digital goods and services because the European Union enterprises had to levy the VAT and their non-European Union competitors did not.

The intent of the new rules is to prevent non-European Union sellers from avoiding VAT liability on European Union sales while at the same time relieving European Union sellers of the VAT burden on sales they make outside the European Union. European Unions in favor of the new

laws argue that these two changes could help European Union suppliers of digital products and services compete against foreign companies more effectively for both European Union and non-European Union business.

European Union sellers must register with the tax authority in their home country. Since they will remit VAT to their own tax authority, this allows them to create a fairly simple system for tracking sales and calculating the tax. If an European Union seller is already conducting any sales at all, the company will have in place already a system adequate to track, report, and remit the VAT.

Non-European Union sellers must register with an European Union country tax authority. This authority can be in any European Union country, so non-European Union sellers do have some choice in the matter. However, this apparent help to non-European Union sellers is nullified by provisions in the law that require non-European Union sellers, no matter where registered, to assess the VAT at the rate in effect in the destination country.

This de facto imposes a greater burden on non-European Union companies because they must track, report, and remit VATs computed using a variety of rates, one for each country into which they ship. Unfortunately, the underlying legal concept of equal protection under the law is not as well defined in the European Union as it is in the United States. The law does provide for online registration by non-European Union companies, so at least the registration requirement itself is not particularly onerous.

A number of companies have boosted their investment in accounting systems designed to handle the calculation and reporting tasks required by the new rules, in some cases by more than a million dollars (Hamblen, 2003). Companies such as Digital River (2003) and Taxware (2003) have created Web sites designed to help companies meet the requirements of the new rules and offer VAT tracking and reporting software to help with the burden.

CONCLUSIONS

The timing of the enactment of these tax enforcement measures is open to suspicion. Tedeschi (2003) reports survey results and other data from eMarketer (2003) that show the European Union as just now having a number of Internet users that exceeds that of the United States (221 million vs. 196 million). Some industry analysts have noted that the Europeans seem to be untowardly opportunistic in their actions here. International companies based outside the European Union do have two viable strategies for dealing with the new regulations, although neither is easy or simple. Smaller companies might decide that non-compliance is a reasonable risk, although penalties can be substantial. Companies that do comply with the new rules could face costs that would easily exceed a million dollars for an average size company to bring their digital sales operations into compliance with the law. The rules are unfair by design. They discriminate against non-European Union companies that want to do business in the European market. One possibility that might arise in the future is that countries outside the European Union might consider retaliating with similarly punitive tax laws or other regulations on sellers operating out of the European Union.

REFERENCES

- Bagby, J, and F. McCarty. (2003). *The Legal and Regulatory Environment of E-Business*. Cincinnati: Thomson South-Western.
- Barlas, P. (2003). Some states seek internet sales tax law: But at least one study says imposing mandatory taxes would stifle e-commerce, *Investor's Business Daily*, June 24, A6.
- Digital River. (2003). Digital River resource center. (<http://www.digitalriver.com/>)

- De Rato Y Figaredo, R. (2002). Council Directive 2002/38/EC, Official Journal of the European Communities, May 7, L128/41-L128/44.
- Hamblen, M. (2003). Regulatory requirements place new burdens on IT: U.S. firms scramble to comply with EU tax, Computerworld, June 30, 1.
- Hwang, W. and J. Klosek. (2003). Taxing the sale of digital goods in Europe, E-Commerce Law & Strategy, 20(3), July 11, 1.
- Jones, R. and S. Basu. (2002). Taxation of electronic commerce: A developing problem, International Review of Law, Computers & Technology, 16(1), March, 35-51.
- Krebs, B. and J. Krim. (2003). Big stores to charge sales taxes online: Retailers agree to collect for states, The Washington Post, February 7, 1.
- Liptak, A. (2003). U.S. courts' role in foreign feuds is under fire, The International Herald Tribune, August 5, 1.
- McLure, C. (2002). Thinking straight about the taxation of electronic commerce: tax principles, compliance problems, and nexus. NBER/Tax Policy & the Economy, 16(1), 115-140.
- National Governors Association. (2003). The Streamlined Sales Tax Project. National Governors Association. (<http://www.nga.org/nga/salestax/1,1169,,00.html>)
- Podlas, K. (2000). Global commerce or global liability? How E-commerce can lead to suit in foreign courts, Mid-Atlantic Journal of Business, 36(2/3), June/September, 89-101.
- Schneider, G. (2005). Electronic Commerce, Sixth Edition. Boston: Course Technology.
- Tax Notes Today, (2003). Firms' voluntary collection could boost sales tax streamlining, February 10, 1.
- Taxware. (2003). EU digital sales. (<http://www.eudigitalsales.com>)
- Tedeschi, B. (2003). EU taxman sets his sights on e-commerce, The International Herald Tribune, June 23, 1.
- Yang, J. and Poon, W. (2002). Taxable base of Internet commerce, Journal of State Taxation, 20(4), Spring, 70-80.

THE SPIRIT OF THE SARBANES OXLEY ACT? IS THIS A VIOLATION?

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ABSTRACT

Much has been written in the business press and in academic journals about the Sarbanes-Oxley Act of 2002 (SOA) and how it will affect corporate governance and the practice of auditing and public accounting. Recent literature also discusses how the requirements of SOA might or might not better protect investors. This paper examines some current business practices of accounting firms and related entities that might violate the letter or the spirit of the provisions included in the SOA.

INTRODUCTION

The Sarbanes-Oxley Act of 2002 (SOA) was passed in the United States (U.S. Code, 2002) in response to a series of significant failures in corporate governance, including Enron (Schwartz, 2001) and the related failure of accounting firm Arthur Andersen (Eichenwald, 2002), HealthSouth (Day, 2003), Tyco (Sorkin, 2002), and WorldCom (Moules and Larsen, 2003). Even Europeans, many of whom were convinced that this rash of management frauds were a result of American's hyper-capitalism mania and could never happen in the refined atmosphere of the continent, found that they were not immune when Parmalat's \$15 billion in understated debt and huge overstatements of sales and earnings were exposed (Hardesty, 2004). The SOA imposes a number of requirements on companies, their managers, their directors, and their auditors. Many public accounting firms had been engaged in business practices and forms of organizations before the enactment of SOA that might be prohibited by the SOA. The issue of auditor independence plays a role in many of these possible prohibitions

AUDITOR INDEPENDENCE

The SOA includes 11 Titles (USC, 2002). Title II defines auditor independence. The SOA precludes the provision of eight specific types of non-audit services, including appraisal and valuation services, actuarial services, internal audit services, management functions, human resource consulting services, investment adviser services (including broker and dealer services), and legal services. The management functions services in particular are especially broad by design and are intended to preclude auditors of publicly-traded companies from participating in the management decisions and determinations that they might be reviewing in the course of an audit. The SOA also gives the Public Company Accounting Oversight Board (PCAOB) an open-ended right to prohibit other services in the future as it deems necessary or appropriate. Many of these now-prohibited services provided large portions of public accounting firm revenues in recent years.

A company's audit committee (a committee of the company's board of directors) must approve any services provided by the public accounting firm, including any tax work, as well as any other services. Any services the audit committee approves and the audit firm provides must be disclosed to investors. In the next section, the business model of Century Business Services, a national publicly traded business advisory service, is presented.

CENTURY BUSINESS SERVICES

Century Business Services (CBIZ) is a major provider of outsourced business services headquartered in Cleveland, Ohio. CBIZ core services include Accounting, Tax and Advisory, Benefits and Insurance, Healthcare Services, Human Resources, Information Technology, Payroll, and Wealth Management.

CBIZ ALLIANCE WITH MAYER HOFFMAN MCCANN (MHM)

CBIZ has formed an alliance with Mayer Hoffman McCann P.C (MHM) for the audit function for CBIZ clients. The CBIZ Web site (CBIZ, 2005) states that attest services can be independently provided through an alliance with MHM, a new national CPA firm. SOA includes specific rules that apply to firms that offer attest services and consulting services. Thus, we discuss the details of the MHM enterprise below.

MHM

MHM was formed in 1954 when Ernest Mayer opened an accounting practice in Kansas City, Missouri. In 1998 MHM spun off its tax and consulting practice which merged into CBIZ. In 2002 they began their national expansion by adding CPA's to the firms ownership from other CPA firms. These firms previously merged or sold their consulting and tax practices to CBIZ and specialized in Attest services.

PUBLIC COMPANY ACCOUNTING OVERSIGHT BOARD

Title I of SOA establishes the PCAOB. The PCAOB oversees the audit of public companies that are subject to the securities laws. Title I gives the PCAOB authority to establish auditing, quality control, and ethical standards. The board is required to conduct inspections of the registered public accounting firms to determine their compliance with the Act. The inspection must be annual if the firm provides audit reports for more than 100 companies. If the firm provides audit reports for fewer than 100 companies the inspections are every three years. The PCAOB has the right to impose sanctions on registered firms including suspension or permanent revocation of the firm's registration.

Title I requires the auditors of publicly traded clients maintain a data base with a list of all clients and their fees, a list of all employees and their CPA certificate numbers, states, and any criminal, civil, or administrative actions or disciplinary proceedings pending against the firm or any employees.

SARBANES OXLEY IMPLICATIONS OF THE CBIZ MHM STRUCTURE

In this section we identify areas in which the structure of the CBIZ-MHM might violate independence in fact or independence in appearance under the provisions of the SOA. The spirit of the SOA was to make the auditors independent of their clients. The act requires that the audit firm curtail the majority of their ancillary services to clients. Following are some characteristics of the CBIZ and MHM offices.

The CBIZ and MHM offices share the same space with the same entrance and a common receptionist. The managing partner will continue to oversee the CBIZ practice and the MHM practice. All one hundred employees have the same "CBIZ" business cards including the employees providing attest functions (they are not using MHM business cards). All employees receive their

paychecks from CBIZ. The attest employees are outsourced to MHM. The partners have ownership in CBIZ and MHM.

In addition, the CBIZ and MHM literature states statistics of the two firms combined. Combined CBIZ and MHM are the eighth largest CPA firm.

CBIZ provides tax services to audit clients of MHM while CBIZ personnel are outsourced to MHM to conduct the client's audit. In effect, MHM is auditing their own work.

CBIZ provides internal audit services to their clients while CBIZ personnel are outsourced to MHM to conduct the client's audit. SOA prohibits audit firms from providing internal audit services to their public audit clients.

CBIZ provides billing and accounting services to clients. MHM would be auditing CBIZ work, a company they share employees with and have a financial interest in.

CBIZ provides payroll services to clients. As with billing and accounting services, MHM would be auditing CBIZ work.

SOA prohibits audit firms from providing Human Resource services to audit clients. CBIZ and MHM share employees, CBIZ outsourcing staff to MHM. In effect, MHM might be providing Human Resource services to audit clients.

CBIZ provides insurance services to clients including insurance consulting. Prior to SOA, CPA firms were not allowed to provide insurance services to their clients. It is believed that it is difficult to receive commissions from the sale of insurance products and to audit the adequacy of the insurance.

CBIZ provides merger and acquisition services. The auditors may be in a difficult situation if they are called to attest on the financial statements of a client that was recommended for a merger. It may be awkward to reveal any negative information that is discovered.

CBIZ provides asset valuation services. One of the auditor's functions is to determine if assets are valued properly. The MHM audit valuation may not be an objective review of the initial evaluation by CBIZ.

CBIZ is a publicly traded entity that is audited by KPMG, one of the Big Four CPA firms. As CBIZ auditors, KPMG may have some responsibility to report on the relationship between CBIZ and MHM.

PUBLIC COMPANY AUDIT COMMITTEES

SOA requires the audit committee to approve any non-audit work performed by the audit firm. The CBIZ MHM relationship may place audit committees in a difficult position. As a separate company, CBIZ work would not have to be approved. However, if the relationship is known by the audit committee, the work may need to be scrutinized. Any services the audit committee approves and the audit firm provides must be disclosed to investors.

SUMMARY

Many observers believed that the consulting services provided by accounting firms led to a lack of independence in the audit function that resulted in a drop in quality of audits. SOA was enacted to enhance the independence (in fact and in appearance) of accounting firms and thus increase the quality of audits. This paper reviewed current business practices of an accounting firm ownership structure that might violate the letter or the spirit of the provisions included in the SOA when it becomes effective.

REFERENCES

CBIZ. (2005). "Welcome to CBIZ," Century Business Services. <<http://www.cbiz.com>>

- Day, K. (2003). SEC sues HealthSouth, CEO over earnings: Former CEO pleads guilty to fraud, *The Washington Post*, March 20, E1.
- Eichenwald, K. (2002). Andersen guilty in effort to block inquiry on Enron, *The New York Times*, June 16, 1.
- Hardesty, D. (2004). Impact of Sarbanes-Oxley: Part II, *E-commerce Tax News*, March 7. <<http://www.ecommercetax.com/doc/030704.htm>>
- MHM. (2005). "Mayer, Hoffman, McAnn, P.C." Mayer, Hoffman, McAnn, P.C. <<http://www.mhm-pc.com>>
- Moules, J. and P. Larsen (2003). Reports condemn culture of fraud at WorldCom, *Financial Times*, June 10, 1.
- Schwartz, N. (2001). Enron fallout: Wide, but not deep, *Fortune*, 144(13), December 24, 71-72.
- Sorkin, A. (2002). Tyco figure pays \$22.5 million in guilt plea, *The New York Times*, December 18, 1.
- United States Code (2002). Sarbanes-Oxley Act of 2002, Public Law No. 107-204, codified at 15 U.S.C. §7201

TRENDS IN STUDENTS' PERCEPTIONS OF THE ETHICALITY OF SELECTED COMPUTER ACTIVITIES

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ABSTRACT

To determine students' perceptions of the ethicality of selected computer activities, a survey instrument, originally developed and administered in 1994, was administered to 480 business students at a Mid-South university in 2004. Students were provided seven practices related to computer use and were asked to indicate the extent of their ethicality. To determine changes in students' perceptions a decade later, results of the 2004 survey were compared to results of the 1994 study of 450 business students. The practice most often considered unethical in both the 2004 study and the 1994 study was Making a copy of someone else's work and taking credit for the work. All the stated activities were more often perceived as unethical in the 2004 study than in the 1994 study. Statistically significant ($<.05$) differences were found between students' responses and all three demographic factors in both the 1994 and 2004 studies; gender appeared to be the strongest factor in differences in ratings in both studies.

INTRODUCTION

Ethics continues to be a concern among business educators. Evidence of this concern is shown by the formation of a task force on ethics education by the AACSB International accrediting organization. A conclusion reached by the task force was that business schools need to "renew and revitalize their commitment to teaching ethical responsibility . . ." ("A Call for Ethics Education," 2004, p. 8).

Businesses are also becoming increasingly concerned about ethical issues, including issues arising from the expanding use of computer systems. These issues include privacy of data and security and ownership of data and programs. This concern is reflected in the establishment of codes of ethics by such organizations as the Association for Computing Machinery. Their code of ethics includes such imperatives as showing respect for others' privacy, accessing computer resources only with proper authorization, honoring copyrights and patents, and assuring that credit is given when using intellectual property. Many ethical issues related to computer use are issues that are a concern regardless of the mode of activity. For example, plagiarism is defined as "The wrongful appropriation, purloining, publishing, expressing, or taking as one's own the thoughts, writings, inventions, or ideas (literary, artistic, musical, mechanical, etc.) of another" (Kock & Davison, 2003). Taking credit for someone else's work continues to be a problem for schools and businesses. The availability of wide-ranging sources of information on the Internet has made it easier than ever to obtain someone else's work. Since businesses and schools have increased their usage of computers, schools must play a major role in developing ethical awareness among students so that they will make ethical choices regarding computer use while still in school and later when they assume leadership positions in the workplace.

SURVEY PURPOSE AND PROCEDURES

Survey Purpose and Procedures To determine changes in students' perceptions of the ethicality of selected computer activities over a ten-year period, a survey instrument that was originally administered to 450 students at a Mid-South university in 1994 (Simon & Chaney, 1995) was administered to 480 students at the same university in 2004. Since today's university students are tomorrow's employees who will make decisions related to appropriate computer usage, a student population was considered appropriate. Students in both the 1994 and 2004 studies were asked to indicate whether each of the seven computer practices was "Definitely Ethical," "Possibly Unethical," or "Definitely Unethical." Students were also asked to provide their gender, age, and classification. The .05 level was used to determine statistically significant differences between students' responses and demographic factors.

FINDINGS AND DISCUSSION

Findings will be presented by demographics of the 1994 and 2004 studies, by the frequencies and percentages for the two populations, and by differences in students' responses according to demographic factors of age, classification, and gender.

In the 1994 survey slightly more than half (50.6 percent) of the respondents were female, while in the 2004 study almost half (48.1 percent) of the population was female. In both studies the largest percent of respondents (69.6 percent in the 1994 study and 53.1 percent in the 2004 study) were under the age of 25. In both studies more undergraduate students than graduate students participated.

The computer practice considered "definitely unethical" by the largest percent of students in the 2004 survey was Making a copy of someone else's work and taking credit for the work, which was also the computer practice considered "definitely unethical" by the largest percent of students in the 1994 survey. All of the seven practices were perceived as "definitely unethical" by over 50 percent of the participants in the 2004 study, compared with five of the seven practices in the 1994 study, and the percentage of students considering a practice as "definitely unethical" increased for all seven practices from 1994 to 2004.

ANOVA results in the 2004 study revealed significant differences ($<.05$) between students' responses and all three demographic factors: three showed significance by age, three showed significance by classification, and six showed significance by gender.

Means were calculated for each practice in the 2004 study based on a five-point scale, with 5 representing Definitely Ethical and 1 representing Definitely Unethical. Three practices showed significance by age in the 2004 study. Taking software you developed with you when taking a job with a competing firm was viewed as more unethical by respondents in the 25 to 39 age group (mean of 2.38 vs means of 2.63 for those under 25 and 2.50 for those aged 40 or above). Allowing others to have access to software or data without permission was viewed as more unethical by respondents aged 40 or above (mean of 1.25 vs means of 1.73 for those under 25 and 1.59 for those aged 25 to 39). Altering data in files without permission was also viewed as more unethical by respondents aged 40 or above (mean of 1.14 vs means of 1.46 for those under age 25 and 1.42 for those aged 25 to 39). Thus, older respondents viewed two of the three practices as being more unethical than did younger respondents.

In the 1994 study only one practice showed significance by age, Obtaining software purchased by your employer for office work and making a copy to take home for personal use. As in the 2004 study, more older students thought that the practice was "definitely unethical."

Other research offers support to this finding. Serwinek's (1992) study of insurance employees found that older workers had more rigid interpretations of ethical standards. Likewise, Raghunathan and Saftner (1995) found that persons in their mid-thirties and above seem to have

more stringent standards for ethical standards than younger persons. Another study by Cole and Smith (1996) found that older respondents had higher ethical standards than younger respondents and reasoned that “people’s values and standards frequently become stronger as they mature” (p. 892).

The following four practices showed significance by classification (undergraduate or graduate students): Obtaining software purchased by your employer for office work and making a copy to take home for personal use (mean of 2.02 for undergraduate students vs 2.18 for graduate students), Allowing others to have access to software or data without permission (mean of 1.60 for undergraduate students vs 1.90 for graduate students), and Obtaining access to software or data without permission (mean of 1.56 for undergraduate students vs 1.86 for graduate students). In all cases undergraduate students viewed the activity as more unethical than graduate students.

In the 1994 study the following two practices showed significance by classification: Obtaining software purchased by your employer for office work and making a copy to take home for personal use and Allowing others to have access to software or data without permission. Unlike findings in the 2004 study, respondents in graduate courses felt that both practices were “definitely unethical” more often than did undergraduate respondents.

These six practices showed significance by gender in the 2004 study: Taking software you developed with you when taking a job with a competing firm (mean of 2.34 for females vs 2.69 for males), Obtaining software purchased by your employer for office work and making a copy to take home for personal use (mean of 1.88 for females vs 2.19 for males), Allowing others to have access to software or data without permission (mean of 1.46 for females vs 1.82 for males), Obtaining access to software or data without permission (mean of 1.43 for females vs 1.77 for males), Risking damage to software in university-owned computer labs by knowingly using a disk that may contain a virus (mean of 1.25 for females vs 1.43 for males) and Making a copy of someone else’s work and taking credit for the work (mean of 1.17 for females vs 1.18 for males). In all cases females viewed the activity as more unethical than did males.

In the 1994 study the following five practices showed significance by gender: Obtaining software purchased by your employer for office work and making a copy to take home for personal use, Obtaining access to software or data without permission, Allowing others to have access to software or data without permission, Altering data in files without permission, and Taking software you developed with you when taking a job with a competing firm. A greater percentage of female respondents than male respondents felt that the activity was “definitely unethical.” This finding that females perceived the computer practices as more unethical than males agrees with numerous other studies indicating that females have greater ethical sensitivity than males in a number of ethical dilemmas (Ameen, Guffrey, & McMillan, 1996; Mason & Mudrack, 1996; Rustogi, Bonifield, & Rhey, 1994; Vorherr, Petrick, Quinn, & Brady, 1995.)

SUMMARY AND CONCLUSIONS

In both the 2004 and the 1994 studies, the practice students considered unethical most often was Making a copy of someone else’s work and taking credit for the work.

In the 2004 and 1994 studies ANOVA results revealed statistical differences between students’ responses and all three demographic factors of age, classification, and gender. In the 1994 study one practice showed significance by age while in the 2004 study three practices showed significance by age. Overall, older respondents viewed practices as being more unethical than did younger respondents. In the 1994 study two practices showed significance by classification while in the 2004 study three practices differed significantly by classification. In the 1994 study graduate students viewed the practices as more unethical than undergraduate students while in the 2004 study the reverse was true: undergraduate students viewed the activity as more unethical than graduate students. (Unlike the population in the 1994 study, the graduate student population in the 2004

study was made up largely of international students, which may account for the differences in responses between the two populations since what is considered unethical behavior is culturally relative.) In the 1994 study five practices showed significance by gender while in the 2004 study six practices showed significance at the .05 level.

Based on these findings, the conclusion can be drawn that students are becoming more discerning of unethical behavior related to computer use in light of the fact that the percentages of students in the 2004 study indicating that a practice was Definitely Unethical were higher for all seven computer practices. After examining students' responses by demographic factors, the conclusion can also be drawn that females and older students perceive certain computer activities as more unethical than males and younger students. Another interesting comparison between the two studies was that when responses were compared to demographic factors, a larger number of statistically significant differences was found in the 2004 study (12) than in the 1994 study (8).

The teaching of computer ethics is becoming increasingly important in collegiate schools of business as computer usage increases in the business world. By setting the proper example of ethical behavior, by providing students with the knowledge of what constitutes ethical and unethical conduct related to computer usage, by maintaining vigilance in the classroom and in computer labs, and by placing significant emphasis on ethical behavior as a part of course content and evaluations, business educators can assume appropriate responsibility for contributing to the ethical development of students. As Blaszczynski (2002) points out, "In their roles as citizens, consumers, and employees, students will need to cultivate the savvy to resolve the ethical dilemmas resulting from both existing and emerging technologies" (p. 83). Based on the results of this study, educators may conclude that initial efforts to provide students with increased awareness of ethical behaviors could be a factor in students' greater recognition of activities generally considered as unethical.

REFERENCES

- A call for ethics education. (2004, July/August). *BizEd*, 8.
- Ameen, E. C., Guffey, D. M., & McMillan, J. J. (1996). Gender differences in determining the ethical sensitivity of future accounting professionals. *Journal of Business Ethics*, 15, 591-597.
- Blaszczynski, C. (2002). Citizenship, business ethics, and technology. In A. M. Remp (Ed.), *Technology, methodology, and business education: National Business Education Yearbook*, No. 40 (pp. 73-85). Reston, VA: National Business Education Association.
- Cole, B. C., & Smith, D. L. (1996). Perceptions of business ethics: Students vs. businesspeople. *Journal of Business Ethics*, 15, 889-896.
- Kock, N., & Davison, R. (2003). Dealing with plagiarism in the information systems research community: A look at factors that drive plagiarism and ways to address them. *MIS Quarterly*, 27 (4), 511-532.
- Mason, E. S., & Mudrack, P. E. (1996). Gender and ethical orientation: A test of gender and occupational socialization theories. *Journal of Business Ethics*, 15, 599-604.
- Raghunathan, B., & Saftner, D. (1995). Perceptions of ethical behavior in the use of computerized information. *Business and Professional Ethics Journal*, 14(2), 47-76.

- Rustogi, H., Bonifield, S., & Rhey, W. (1994). Students' perceptions and business ethics: Differences by major and gender. *Proceedings of the Academy of Business Administration 1994 National Conference*, 379-385.
- Serwinek, P. J. (1992). Demographic and related differences in ethical views among small businesses. *Journal of Business Ethics*, 11, 555-566.
- Simon, J. S., & Chaney, L. H. (1995). Perceived ethics of selected computer activities. *Global business trends contemporary readings*. Cumberland, MD: Academy of Business Administration, 154-160.
- Vorherr, P. H., Petrick, J. A., Quinn, J. F., & Brady, T. J. (1995, Spring). The impact of gender and major on ethical perceptions of business students: Management implications for the accounting profession. *Journal of Academy of Business Administration*, 1(1), 46-66.

BINDING ARBITRATION AS AN ALTERNATIVE TO THE COURTHOUSE: IS IT BEING USED BY SMALL BUSINESSES?

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ABSTRACT

In recent years, the United States Supreme Court has recognized the validity of binding arbitration agreements pursuant to the Federal Arbitration Act, applying them to employment agreements along with other areas. This means disgruntled employees must submit their claims to binding arbitration, rather than to a jury in state or federal court. This is an intensely debated topic, and may be subject to eventual federal legislation. Large companies nevertheless are widely using these agreements. They believe arbitration along with mediation saves time and money and produces results that are fairer to industry than jury trials. What are small businesses doing? The authors surveyed a number of small businesses in Texas. Texas, along with several other states, has given substantial judicial recognition to these agreements. The results indicate that some small businesses indeed have received the message, and are using these agreements, but most have not. We conclude with suggestions to help those businesses that choose to do so to use language that will withstand judicial scrutiny.

REGULATING SPAM: IT ISN'T WORKING

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ABSTRACT

With the increasing proliferation of unwanted commercial email (spam) sent to both individual and business email addresses, there has been demand for regulation to stop this time-consuming deluge. On January 1, 2004, the Can-Spam Act of 2003 went into effect in the United States. It established a legal way to send commercial email. The government of Australia was also concerned with the proliferation of spam and enacted a law to regulate it. The Australian approach was almost an exact opposite of the United States. In the European Community the central authority called for its members to enact regulations to control spam. However, the latest reports indicate that spam continues to grow. None of the regulations have been successful in stopping the flow of spam. This paper examines the various attempts to regulate spam around the globe and cites reports of spam growth to indicate their failure.

INTRODUCTION

According to MessageLabs, Inc., nine out of ten e-mails in the United States are now considered unsolicited commercial e-mail (spam). World-wide, 76 percent of all e-mail is spam. This causes wasted time to users opening spam with misleading subject lines, wastes internet resources trying to block it, consumes storage and bandwidth, and costs money in fighting it (Gaudin, 2004). This costs yearly \$12 billion or around \$1,910 per employee in lost time (Wagner, 2004). A more recent survey conducted in November 2004 estimates that the cost of deleting spam to American businesses is \$22 billion per year. The average spam messages per day was 18.5 and the average time deleting them was 2.8 minutes (Jesdanun, 2005). A Commtouch study indicates offers for drugs accounts for 29.5 percent of all spam, followed by mortgage-refinancing at 9.7 percent, organ enlargement at 7 percent, and pornography in ninth position with 3.1 percent (Gaudin). The costs of blocking spam in 2003 were \$230 million. Jupiter Research estimates it will cost \$419 million in 2008 (Mara, 2004). Marriott International reported that in June 2003, after installing anti-spam software, it blocked nearly half of the 6.5 million e-mail messages it received. In May 2004, it received 22.2 million messages and blocked 14.5 million. U.S. Airways reported that spam accounted for 80 percent of its e-mail messages; however, filtering kept all but .5 percent from reaching its employees in-boxes (McGuire, 2004).

Although most spam has its origin in the United States, it is sent from overseas using foreign internet service providers (ISP). Whether to manage spam by law or technology is a matter of disagreement. Forty-five percent of United States businesses surveyed by Osterman Research thought technology could solve the problem. Only 25 percent of overseas firms agreed. Forty-two percent of United States firms surveyed thought there should be a single set of world-wide spam laws, while 53 percent of overseas firms agreed (Kuchinskas, 2004).

SPAM LAWS

In response to the proliferation of spam, the passage of anti-spam legislation in 37 states, and the lobbying of legitimate e-mail companies such as Yahoo and Microsoft, the United States

Congress passed the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 or the Can-Spam Act of 2003 (15 U.S.C. §7701). It became effective on January 1, 2004. One reason for the lobbying by Yahoo and Microsoft may be explained by the report from the Interactive Advertising Bureau that online ad sales approached \$2.3 billion in the first quarter of 2004 (Hines, 2004). The government of Australia enacted the Spam Act of 2003 on December 12, 2003 (Spam Act 2003), but it did not become effective until April 11, 2004, to give businesses time to adjust their practices (ZDNet, 2003). The European Union (EU) adopted laws in 2003 on electronic communications which required companies to get permission before sending spam, but some of its 25-nation members were slow to pass supporting legislation (FindLaw, 2005).

There was the issue of whether recipients of spam had to initially agree to receive it, the opt-in method, or whether they could only reject it once it first arrived, the opt-out method. The United States law chose the opt-out method (15 U.S.C. §7704 (a)(3)(A)(i) and specified that once the recipient sent a request not to receive future messages from the sender, the sender had 10 business days to comply with the receiver's request to opt-out (15 U.S.C. §7704 (a)(4)(A)(i)). The Australian law chose the opt-in method. Spam must not be sent with an Australian link (Spam Act 2003, Part 2, Section 16 (1) unless the account holder has consented to receive the message (Spam Act 2003, Part 2, Section 16 (1), Subsection (1)). The receiver may withdraw consent and the sender has 5 business days to comply (Spam Act 2003, Schedule 2, Clause 6 (1)(d)). Internet service providers (carriage service) are not liable for violating this section (Spam Act 2003, Part 2, Section 16, subsection (9)(10)).

Both the United States and Australia require the sender of spam to be identified in order that the receiver can opt-out or unsubscribe. The United States law requires the sender to include that the message is an advertisement (15 U.S.C. §7704 (a)(5)(A)(i)), notice of right to opt-out (15 U.S.C. §7704 (a)(5)(A)(ii)), and a valid physical postal address (15 U.S.C. §7704(a)(5)(A)(iii)). The Australian law requires the sender to include its name (Spam Act 2003, Part 2, Section 17 (1)(a)), how the receiver can contact the sender (Spam Act 2003, Part 2, Section 17 (1)(b)), which information will be valid for 30 days after the message is sent (Section 17 (1)(d)), and include a message that the receiver may use the sender's electronic address to send an unsubscribe message (Spam Act 2003, Part 2, Section 18(1)(c)(i)).

In terms of penalties for violating prohibitions or failure to meet requirements in their laws, the United States took a much harsher approach than Australia. While the FTC is charged with enforcing the spam law using the same authority it possesses to sanction unfair or deceptive acts under the FTC Act (15 U.S.C. §7706 (a)), it is also authorized to issue cease-and-desist orders and injunctive relief without having to show state of mind of the perpetrator (15 U.S.C. §7706 (e)). The United States Attorney General and district U.S. Attorneys are authorized to seek criminal convictions whose penalties include fines and/or jail time of up to five years in cases of fraud plus forfeiture of property traceable to gross proceeds obtained from such acts (15 U.S.C. §7703). Further, the United States Sentencing Commission (USSC) was authorized by Congress to review and amend sentencing guidelines for these offenses (28 U.S.C. 994 note). The particular offenses included obtaining e-mail addresses by harvesting, randomly generating e-mail addresses by computer, and using a domain name obtained by false registration. Also, included were offenses involving fraud, identity theft, obscenity, child pornography, and sexual exploitation of children, if such offenses involved the sending of large quantities of e-mail. In response, the USSC sent Congress sentencing guidelines for those persons convicted of sending spam using someone else's computer without permission or hiding the message's real origin. The Commission compared spam offenses to theft, fraud and property destruction (Festa, 2004). The states Attorneys-General may also bring civil action against spammers for residents of their respective states, but only in United States District Courts, to obtain injunctions and damages (15 U.S.C. §7706 (f)(1)). In Australia, only civil penalties are permitted. The ACA may commence proceedings in federal courts for recovery of monetary penalties, but criminal penalties are explicitly forbidden for disobedience of civil

penalty provisions (Spam Law, Section 24). Businesses which send spam after April 11, 2004, face penalties of up to \$1.1 million Australia (about \$811,000 U.S.) per day (ZDNet).

CONCLUSION

Michael Osterman, president of Osterman Research, believes that the best anti-spam legislation can stop only about 5 percent of spam. He favors spam-blocking software which he believes stops a minimum of 80 percent (Kuchinskas). Robert Horton, chairman of the ACA, believes a combination of international cooperation and technology could solve the problem of the growing increase in spam (Wagner).

Since the beginning of 2004, spam has increased rapidly. Commtouch Software, Ltd., an anti-spam company in California, reported that in January there were about 350,000 spam messages daily. As of June the figure had increased to 500,000. The United States sends out 55.7 percent of global spam, with South Korea second at 10.2 percent, and China third at 6.6 percent. Much of today's spam is sent through computers unknowingly like zombies (Gaudin). Some believe that by passing the Can-Spam Act and preempting state anti-spam laws, the United States has created the largest spam-friendly haven in the world (Wagner).

Because spam is global, there are calls for international treaties. The United Nations through its agency, the International Telecommunications Union (ITU) held a conference of regulators from 60 nations plus representatives from the Council of Europe and World Trade Organization. The agency proposed anti-spam legislation for nations to adopt which would make international cooperation easier (Cage). Recently, a UN panel announced plans to end a dispute for control of the internet by July 2005 and propose solutions to spam. While the International Corporation for Assigned Names and Numbers (ICANN) is the most recognized internet governing body, developing nations want an international body such as the ITU to have that control. Critics believe ICANN is too susceptible to United States political influence (Reuters, 2005). China has finally made an appearance at a conference on spam in London. China is one of the largest facilitators of spam, second only to the United States (Sturgeon, 2005).

The United States, the United Kingdom, and Australia signed a memorandum of understanding to share evidence in fighting spam. The U.K. Office of Fair Trade (OFT), the Australian Competition and Consumer Commission, and the FTC agreed to evidence sharing, information sharing to detect and investigate international spam, and enforcement coordination (Wagner).

As charged by Congress, the FTC has concluded that at this time a Do Not Spam list cannot be implemented because of the problem of verifying e-mail origins (FTC, New System, 2004). The Federal Communications Commission, as authorized by Congress in the Can-Spam Act, has forbidden the sending of spam to cell phones and personal digital assistants (PDAs). Advertisers must have explicit permission to send commercial e-mail to wireless users. The rule does not apply to services that forward existing computer e-mail to wireless devices or permit a wireless device to connect to a computer based mail account so e-mail can be read (Krim, 2004). The FCC required commercial mobile radio service providers to submit domain names associated with wireless subscriber messaging services for inclusion in a list to be made available to the public. No individual subscriber addresses will be collected or included in the list (FCC, 2004).

In the area of enforcement, action has commenced. In Detroit, four people were indicted for e-mailing fraudulent sales offers for a weight-loss product. The four were charged with selling a weight-loss patch. They were accused of sending spam to at least a million people. The FTC reported it had received more than ten thousand complaints about spam sent by the company owned by the accused four (Bridis, 2004). In Virginia, Jeremy Jaynes was convicted under state law for spamming. The evidence introduced at his trial indicates why people continue to spam. Prosecutors said he grossed up to \$750,000 per month (Barakat, 2004). Internet service providers (ISPs) were

also authorized by the Can-Spam Act to sue spammers for damages, injunctive relief, and attorneys fees. Microsoft sued a company for sending spam to the users of its MSN and Hotmail services. The company was found in violation of using deceptive e-mail and web addresses and ordered to pay \$4 million in damages, attorneys fees and to cease any activity that looks like an official message from Microsoft. Microsoft has filed over 60 lawsuits against spammers and has already won more than \$54 million in judgments. The general counsel for Microsoft said that legal suits against spammers was only part of a broader attack to stop spam; it also included improving technology to filter out spam, governmental regulation, and partnerships with other technology providers (Reuters, 2004).

When Congress passed the Can-Spam Act it did little to discourage the sending of spam. It only legalized how to spam. The result has been the tremendous increase in spamming since January 2004. Since most spam is coming from overseas, it is difficult for United States attorneys to get jurisdiction over the offenders. Some are now proposing international treaties under United Nations auspices.

REFERENCES

- Barakat, M. (2004, November 15). Trial reveals spammer's secrets. *The Advocate*, 11A.
- Bridis, T. (2004). U.S. charges four under new spam law. Retrieved April 29, 2004, from http://www.usatoday.com/tech/news/2004-04-28-spam-charges-filed_x.htm
- Cage, S. (2004). UN aims to bring spam under control within two years. Retrieved July 12, 2004, from http://www.usatoday.com/tech/news/techpolicy/2004-07-06-un-spam-effort_x.htm
- Can-Spam Act of 2003, 15 U.S.C. 7701 et seq.
- Federal Communications Commission. (2004). FCC takes action to protect wireless subscribers from spam. Retrieved August 5, 2004, from http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-250522A3.pdf
- Federal Trade Commission.(2004). FTC adopts rule that requires notice that spam contains sexually-explicit material. Retrieved August 5, 2004, from <http://www.ftc.gov/opa/2004/04/adultlabel.html>
- _____. (2004). New system to verify origins of e-mail must emerge before "Do Not Spam" list can be implemented, FTC tells congress. Retrieved August 5, 2004, from <http://www.ftc.gov/opa/2004/06/canspam2.htm>
- Festa, P. (2004). Stiff spam penalties urged. Retrieved April 15, 2004, from http://news.com.com/2102-1028_3-5191651.html
- FindLaw. (2005). EU steps up fight against spam. Retrieved February 9, 2005, from http://news.findlaw.com/ap/ht/1700/2-8-2005/20050208070007_13.html
- Gaudin, S. (2004). U.S. sending more than half of all spam. Retrieved July 5, 2004, from <http://www.internetnews.com/stats/article.php/3376331>
- Hines, M. (2004). Study: online ad sales set record-breaking pace. Retrieved May 25, 2004, from <http://news.com.com/2100-1024-5219121.html>

- Jesdanun, A. (2005). Deleting spam costs billions, study finds. Retrieved February 9, 2005, from http://news.findlaw.com/ap/ht/1700/2-2-2005/20050202183003_58.html
- Krim, J. (2004). FCC blocks spam on wireless devices. Retrieved August 5, 2004, from <http://washingtonpost.com/ac2/wp-dyn/articles/A41009-2004-Aug4>
- Kuchinskas, S. (2004). Think globally, block locally. Retrieved August 2, 2004, from <http://www.internetnews.com/ec-news/article.php/3388091>
- Mara, J. (2004). Spam blocking experts: false positives “inevitable.” Retrieved May 28, 2004, from <http://www.clickz.com/news/article.php/3315541>
- McGuire, D. (2004). Report: spam costs are rising at work. Retrieved June 8, 2004, from <http://washingtonpost.com/ac2/wp-dyn/A21657-2004Jun7>
- Reuters. (2004). Microsoft wins \$4 million judgment against spammer. Retrieved July 16, 2004, from <http://www.reuters.com/newsArticle.jhtml?storyID=5685779>
- _____. (2005). UN panel aims to end internet tug of war by July. Retrieved February 22, 2005, from <http://www.reuters.com/newsArticle.jhtml?storyID=7690529>
- Spam Act 2003, No. 129, 2003.
- Sturgeon, W. (2005). China joins forum on curbing spam. Retrieved February 28, 2005, from http://news.com.com/China+joins+forum+on+curbing+spam/2100-7348_3-5586304.html

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