An Analysis of the Lehman Brothers Code of Ethics and the Role It Played in the Firm

Betsy Stevens
Elon University

Scott Buechler
Elon University

Effective corporate ethical codes must be communicated in organizations and assimilated into their cultures. When they exist as separate entities outside the culture or are communicated ineffectively, they can fail to function as key strategic documents. The ethical code from Lehman Brothers investment bank was analyzed using two different methodologies. Results showed the code was clear in communicating facts and information, but was not strong in transformational and visionary aspects that might assist company during a crisis. The study revealed that the culture at Lehman was not tied to the code and it did not play a significant role in the organization.

INTRODUCTION

Corporate ethical codes are documents designed for internal and external audiences which state the major philosophical values embraced by an organization. Effective codes define the responsibilities of the organization to stakeholders, outline expected conduct for employees and set the ethical parameters of the organization by articulating what is acceptable and what is not ((Kaptein & Wempe, 2002; Stevens, 1996). Codes can have significant impact as key strategic documents in organizations or they can be created as artifacts to simply make the organization appear more ethical to its stakeholders. Some firms write codes to create a positive public image while others genuinely attempt to guide and instruct employees on ethical behaviors appropriate to their organizations. Companies with codes may receive a break under Federal Sentencing Guidelines, so there is some incentive to create one for that purpose alone. Codes have emerged as one of the major CSR (corporate social responsibility) instruments by which companies align their actions and values with those of their customers, enacting a concept known as ethical consumerism (Castaldo, Perrini, Misani & Tencati, 2009). They have the ability to transform organizational cultures and function best when communicated effectively and culturally embedded in the organization; otherwise they remain as separate documents that are often seen as external to the company's mission and purpose.

This paper analyzes the corporate code of ethics from Lehman Brothers, the investment bank that failed during the financial crisis of 2008. The code is examined in terms of its role as a strategic document to see if it impacted, influenced, or guided the executives during the financial crisis and is also analyzed for its rhetorical structures. Lehman Brothers failed to navigate the severe recession and eventually went bankrupt. This study sought to explore whether the code might have played a significant role in the organization as it spiraled out of control or if it was a standard corporate document. Was it efficacious, deleterious, or did it have no effect whatsoever on the organization? The study examines the code in light of the company's demise to better understand how it may or may not have influenced company decisions in the final days.

THE SCOPE OF ETHICAL CODES

Ethical codes, also called codes of conduct, business principles, codes of ethics and corporate ethics statements, typically have open guidelines describing desirable behavior and restrictive language prohibiting other behaviors such as bribery and conflict of interest (Nijhof, Cludts, Fisscher, & Laan, 2003). They range in length from one paragraph to more than fifty pages and are intended to affect employee behavior. Corporations attempt to shape employee actions and effect change through these explicit statements of conduct. Codes differ from mission statements by articulating a value system and addressing the question--with what ethical standards and values should the mission be pursued? In contrast, mission statements articulate the objectives of a company and the organizational goals in ways that affect its strategy.

Effective codes have visionary and transformational aspects which provide guidance in difficult circumstances (Stevens, 2008). Codes can add value when they address internal and external stakeholders, articulate the norms and values the organization seeks to uphold, and enhance social responsibility. They establish the tone in an organization and, if carefully constructed, can function as key corporate strategic documents upon which major decisions are based. Kaptein and Wempe describe them as policies which define the organizational responsibilities to stakeholders and address the conduct expected of employees (2002). Additionally, codes clarify the corporate norms and values in areas of social responsibility (Kaptein, 2004). Adherence to the code during ethical dilemmas is a commitment an organization can undertake to ensure a strong ethical climate.

CODES AROUND THE WORLD

Today ethical codes are widespread in the U.S. (Chonko et al, 2003; Trevino et al, 1999) and found in about fifty-three percent of the largest companies worldwide (Kaptein, 2004); They are becoming more common globally as an increasing number of companies choose to adopt them (Carasco & Singh, 2003; O'Dwyer & Madden, 2006). Scholars have observed that code content differs across countries and continents. Langlois and Schelgelmilch's study of codes from England, France, Germany and the U.S. showed that British and European codes addressed government and customer relations less frequently than American ones (1990). Kaptein also identified content differences among European, Asian and North American codes. He found that European codes focused more on the environment than American codes and discussions of honesty were more prevalent in American codes (2004). Indeed, sixty-four percent of American codes addressed honesty compared with forty-five percent of European codes and thirty-eight percent of Asian codes. The concept of fairness was found more frequently in European and Asian codes than American ones. Cultural beliefs, values, and political norms are likely to have influenced these international differences in code content.

Mathews' content analysis of 202 Fortune 500 company codes revealed that firms mostly emphasized illegal activities and employee misconduct and paid little attention to the environment, product quality or safety (1987). Stevens' study several years later showed that codes were used to protect and defend organizations against egregious behavior by employees and lacked statements providing ethical guidance and vision (1996). Snell and Herndon agreed, concluding that codes were mainly focused on corporate self-defense (2000). A recent work reveals that codes from the Global 500 are primarily focused on investors, profits, and abiding by the law, but are beginning to reflect an increased, albeit slight, focus on corporate social responsibility (Stohl, Stohl & Popov, 2009). Seventy-five percent of codes in their study of 157 global codes mentioned social responsibility, although the researchers found the language minimal. Kaptein and Schwartz' study also showed that codes are moving in the direction of showing greater interest in social responsibility (2008) which is important as DeTienne and Lewis revealed that a high number of American investors consider CSR before making investment decisions (2005).

THE ROLE OF CODES IN ORGANIZATIONS

Codes can enhance a company's reputation and discourage government intervention, allowing companies to manage themselves with less regulation. European companies have increasingly used codes to reduce government intervention and regulate labor relations (Sobczak, 2003). They can ameliorate the work climate, help employees feel more positive about the company (Manley, 1991) and affect employee behavior, positively influencing ethical decision-making in organizations (Trevino and Weaver, 2003, p.258). Codes can improve the companies' reputations and garner favors with regulators if transgressions occur (Kaptein & Schwartz, 2008). Additionally, open discussions about ethics in the organizations have fostered an increase in ethical behavior and strong leaders who shared their values with others positively affected both the organization and its code (Trevino et al, p. 8). Empirical studies examining the relationship between codes of ethics and ethical behavior is mixed; however, recent studies show that codes can be effective if certain parameters exist.

When employees' and managers' behaviors are in line with codes, their behavior positively influences others in the organization, showing that consistency is important (Laufer and Robinson, 1997). One study revealed that management accountants perceived less wrongdoing in organizations with corporate codes while respondents in organizations without formal codes reported more wrongdoing (Somers, 2001). Valentine and Barnett (2002) observed a positive effect with sales professionals' perceptions of their organizations when they had a code. Additionally codes of ethics were found to create patterns of trust amongst employees (Scalet, 2006). These studies point to codes encouraging employees and managers to act with integrity. After reviewing sixty-seven code studies, Kaptein and Schwartz concluded that codes positively affected behavior in organizations (2008). These studies add to the growing body of work supporting the use of codes and provide additional evidence that codes can be effective in promoting better corporate behavior.

WHAT MAKES CODES EFFECTIVE?

Codes can serve as core foundational documents that give organizational members a sense of shared values and commitment to ethical purposes (Stevens, 2008). A number of studies have yielded evidence that they work in deterring unscrupulous behavior, but there are two prerequisites to code success. First, they must be communicated effectively in the organizations and supported by the management team. Second, they must be embedded in the culture in an integral way.

Communicating codes and code content is central to effectiveness; members must be aware of the code and why it exists. Both Weeks and Nantel (1992) and Adam and Rachman-Moore (2004) noted that codes were effective if they were well communicated in organizations using the right channels. How codes are communicated contributes directly to their success or failure. Schwartz discovered they are most effective when they are readable, relevant and written with a positive rather than negative tone (2004). In organizations where communication is either stifled or discouraged, the result can be paralysis and corruption. Silence can be deadly. For example, Enron's ethical failure, which cost investors around $11 billion, reflected a controlled organization where individuals felt they could not communicate openly about wrongdoing they were observing (Perlow and Williams, 2003). Enron had an ethical code, but it also had multiple sets of books and the board of directors had the authority to suspend the code (which they did more than once) when they wanted to act against it (Sims & Brinkman, 2003). Numerous other examples of companies with ethical codes acting unethically abound and have noted in the media.

Codes fail when poorly communicated. While strong evidence exists that codes are effective under the right conditions, they sometimes fail to prevent unethical behavior. They are not effective when communicated weakly or paid little heed. Lehman Brothers had an ethical code, but as this paper will show, it was not written to play a significant role in the organization nor to occupy a central role in the Lehman's strategy.

Communicating an ethical code from levels of upper management downward to employees often leads to the code being ignored. In highly centralized organizations, mandated codes were found to be ineffective because employees rejected the attempts at top-down control (Trevino & Weaver, 2003). Creating a code does not ensure that ethical behavior will occur; rather, ethical decision-making and the code must be a part of the corporate culture and not mandated from the executive suite. One study examined whether ethical compliance programs of ethical codes, training and communication would result in fewer OSHA violations. Researchers found no positive correlations linking the two, leading them to conclude that forced code compliance fails because codes communicated downward by management to employees are viewed as edicts and ignored (McKendall, DeMarr & Jones-Rikkers, 2002).

The second factor necessary for a code's success is that it be an integrated part of the corporate culture. Codes work when employees see organizational actions which are in line with the code. They become organizationally embedded when leaders create and manage the organization's culture using the code. Discussions about values and debates help members realize that taking the right action often requires dialogue with others (Adam & Rachman-Moore, 2004). Petersen and Krings found that codes of conduct reduced employer discrimination, but only when the codes were integrated into the practices of the organization and backed up by sanctions; otherwise, they were ineffective (2009). When coupled with the right ethical behavior from managers, codes are more effective than formal ethical training (Adam & Rachman-Moore, 2004). Code effectiveness is also identified with corporate boards setting the right tone in organizations at the top (Schwartz, Dunfee & Kline, 2005).

Organizational members react to transparent and visible justice, so when managers' or employees' behaviors violate the code and no consequences are observed, the code will fail. Nitsch, Baetz & Hughes observed that frustration, cynicism, and anger develop when code violations go unpunished (2005). Perceived unfairness or unequal treatment also causes low trust in organizations and weakens members' commitment to the code (Kickup, 2005). Distributive justice is an important construct for organizations; leaders who build trust by ensuring justice occurs will strengthen members' affiliation with the code (Greenberg, 1990). The quality of a code, reflecting the human and capital resource investments to ensure the code is consistent with corporate values, plays an important role in the organization's culture. Erwin found that corporations with high quality codes appeared more frequently on top CSR rating lists for ethical behavior, corporate citizenship, sustainable achievement and public perception than codes rated that were rated lower quality in his study (2011).

Codes fail if rejected by the culture of an organization. Healey and Isles studied London IT firms attempting to govern information and use of technology; they found that using codes to achieve governance and compliance was ineffective and the behavior of IT end users in organizations was not changed (2002). A study involving Norwegian businesses with codes measured the attitudes of engineers and economists and found that the presence of a code was not enough to influence the ethical attitudes of respondents (Marnburg, 2000). He observed that organizational members need to acknowledge and accept the code as part of their culture, which, in this case, they did not. A study of Chinese organizations showed this same phenomenon. Pseudo-support was given, but companies did not adhere to the code. They failed to adopt best practices of a code even when it would benefit their situation (Snell & Herndon, 2000). The authors believe that cultural factors such as power distance caused the behavior since Chinese subordinates are required to publically support their superiors even when they disagree with a decision. Their study illustrates the interplay between culture and codes; codes which are mandated by external agents are ineffective. Simply put, goals are not achieved when managers impose legal controls on employees and order them to act ethically; codes attempting to regulate ethics simply do not work.

Top down attempts to control fail, which explains why Marnburg, McKendall et al, Healey and Isles and Snell and Herndon all reported codes were unsuccessful in regulating behavior. Schwartz (2000) also observed that codes are not good compliance control systems; Trevino and Weaver agreed stating that forced legal compliance moves codes outside the climate and culture boundaries where employees have no ownership (2003, p. 194). Culture and cooperation create the climate where codes can be effective tools rather than mandated attempts at compliance.

THE COLLAPSE OF LEHMAN BROTHERS

During the summer of 2008, the price of Lehman's shares dropped precipitously following a $2.8 billion loss. Then in September 2008, Lehman Brothers was bankrupt and closed their doors after 158 years of business as financial institution and investment bank. They had invested heavily in subprime mortgages and the U.S. government decided not to rescue the bank deciding, perhaps incorrectly, that the economy could absorb the loss. Like several other large banks, they did not consider the risks of defaulted subprime loans or a downturn in the economy, yet both occurred simultaneously. Ernst and Young audited the company and they also failed to accurately weigh the risks (Richard, 2008). Although its assets exceeded $600 billion, Lehman Brothers collapsed, largely due to their deep involvement with derivatives, a way of allowing investment banks to shift money from firm to firm. Other Investment banks were also hit hard. Shares of Bear Stearns sold for five to ten percent of their original value, and Lehman shares became worthless. Several other U.S. banks also folded. Bank of America bought Merrill Lynch for $50 billion; JP Morgan Chase purchased Washington Mutual Bank, whose collapse represented the largest bank failure in U.S. history. It is appropriate, then, to question the value-based statements in the Lehman Brothers code and inquire as to why this company failed.

Why was excessive risk-taking acceptable at Lehman? Were the values of this institution based on building wealth with diligence, care and reason or based on acquiring wealth in any possible way, regardless of risk to shareholders? Was the bank concerned about taking care of employees and shareholders and long-term growth or had they thrown fiduciary caution to the wind? Most importantly, what lessons can be learned about their principles, culture and values from its ethical code and corporate culture?

The Study

This study set out to determine whether the Lehman code was a sufficiently robust example of management discourse that it could have functioned as a strategic document within their organization. Was the code capable of playing a significant role in corporate decision-making or was it simply an artifact? Did the code have rhetorical strengths and weaknesses and how might those be identified? The authors analyzed the Lehman code using two different methodologies—the Competing Values Framework (Quinn, Hildebrandt, Rogers, & Thompson, 1991) and the eight–point Ethisphere benchmark analysis developed by Erwin (2011). It was subjected to these assessment instruments, then analyzed rhetorically. Research questions addressed what the Competing Values Framework (CVF) could reveal about relational, transformational, instructional and informational aspects of the code and what scores the code might receive using the Erwin system, which focused on tone, readability and style. Researchers then used rhetorical analyses to parse the subtle language aspects of the code.

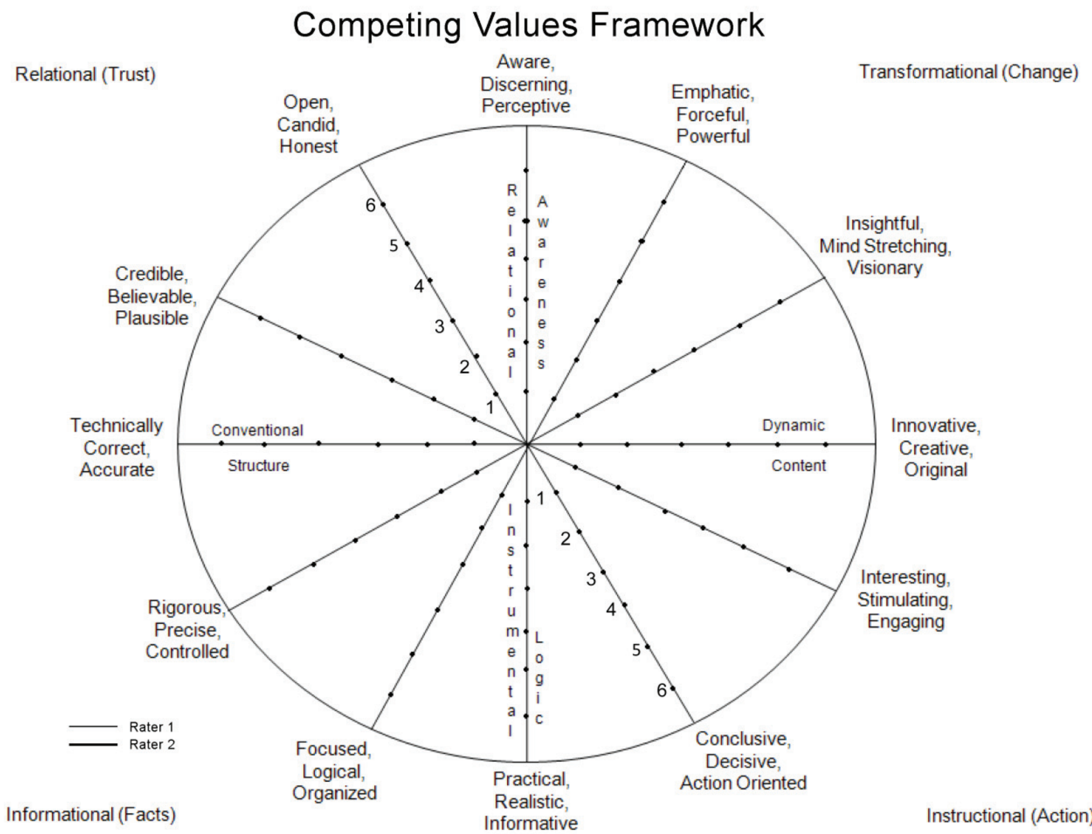
Methodology

The CVF, developed to capture discourse interaction, is useful for assessing documents such as ethical codes as it reveals the rhetorical elements of the message. Although it is sufficiently intuitive and yields consistent results, the raters first practiced on two corporate codes outside of this study to ensure codes were being assessed consistently. Each code was scored on the 12 dimensions of the CVF worksheet which indicates the degree to which the document contains characteristics of each of the twelve rays on the framework. Raters used the model's seven point grading scale ranging from 1 (not at all) to 7 (very much so) to assess the Lehman code. Using Pearson r, an inter-rater reliability of .694 was achieved on one practice code and .842 on the other, demonstrating moderate to high correlations and strong inter-rater reliability (Pearson, 1966). After analyzing these results, the Lehman code was scored using the CVF worksheets. The correlations scores for Lehman Brothers were .784, and .973, reflecting a high degree of inter-rater reliability between the evaluations. Then the code was scored on the eight dimensions using the system developed by Erwin (2011).

The Competing Values Framework

Underlying the model, shown in Figure I, is the concept of competing values or the notion that a document may have strengths or weaknesses in multiple areas. Four quadrants (transformational, instructional, informational, and relational) represent different rhetorical dimensions of managerial communication which are opposite or competing values.

FIGURE 1



The framework uses a multidimensional approach where strength in one area may directly cause weakness in another. Examining competing values is appropriate for ethical codes as they involve complex ideas, philosophical concepts, and sometimes conflicting ideologies. Documents are rarely transformational, instructional, informational, and relational simultaneously. Thus, code writers may design a code to reveal both transformational and instructive components, sacrificing some informational and relational constructs. The model, then, helps identify more than content; it reveals some of the philosophical underpinnings of the code itself and can help identify rhetorical strategies. When a code shows a strength or weakness in one of the quadrants, it can identify some of the key components of that code.

Code studies provide rich information about which subjects are present or absent, yet a greater understanding of code dimensions that extend beyond content analysis is needed to understand codes and how they work. For example, are they visionary? Do they instruct? Do they inspire trust? Do they motivate? Are they written in ways which encourage or discourage compliance? Content analysis usually does not discern subtexts and more subtle messages buried in text. A rhetorical analysis using the Competing Values Model can accomplish this more efficiently.

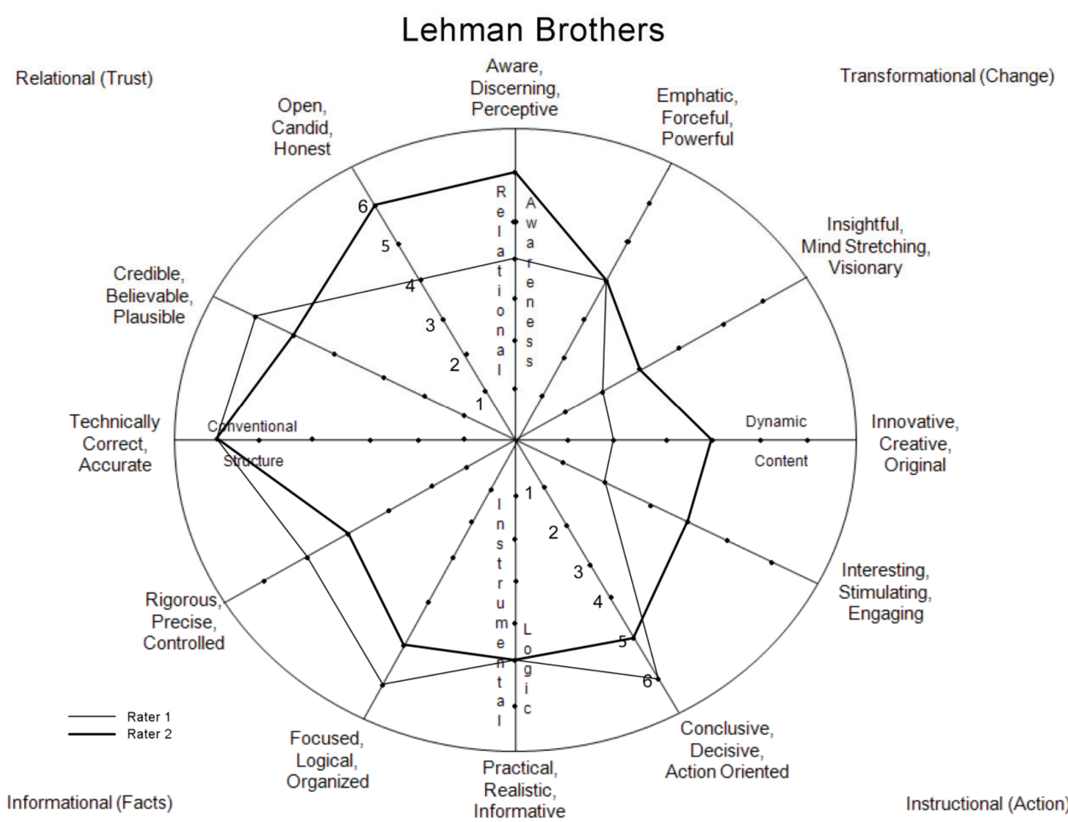
In Figure 1, the upper right quadrant reflects communication which is change oriented. Transformational communication typically talks about change, the value of change and encourages commitments to change. It is typically organized in a persuasive fashion and incorporates reason-giving messages; the tone may be inspirational and visionary (Stevens, 1996). Central descriptors of transformational communication include words such as “emphatic, powerful, forceful” and “insightful, mindstretching, visionary.” The lower right instructional quadrant described action-oriented communication which has, as central descriptors, “interesting, stimulating and engaging” and “conclusive, decisive, and action-oriented.” The lower left informational quadrant addresses communication that is primarily factual—e.g., a training manual. “Rigorous, precise and controlled” and “focus, logical, and organized” describe its central features. Finally, the upper left relational quadrant focuses on communication which seeks trust. “Credible, believable and plausible” and “open, candid and honest” describe trust-based communication.

The Erwin methodology

Erwin’s system was also used to assign a grade to the code. His methodology, based upon Ethisphere Institute criteria, allows raters to grade codes based on eight different dimensions using the traditional academic 4.0 scale. Derived from 43 elements identified by the Ethisphere Council, it assesses public availability, executive tone, readability and tone, non-retaliation and reporting, commitment and values, risk, comprehension, and style and provides an overall grade (Erwin, 2011). Both raters independently graded the Lehman code using this scheme.

Results

FIGURE 2



Discussion—The Competing Values Framework

Figure 2 shows the plot for the Lehman Brothers code of conduct. Both raters scored the code high on the informational dimension of the plot (lower left quadrant) and lower on the relational and transformational dimensions of the plot (upper left and upper right quadrants). The diagram shown in Figure 2 reveals that the Lehman code has strengths in the relational and informational quadrants (left side) and weaknesses on the transformational and instructional side (right side). Raters found the code was strong in areas of being technically correct and accurate and agreed that it also showed strengths in being open, candid and honest. Weaknesses included not being insightful, mind stretching or visionary, innovative, creative or original, or interesting, stimulating and engaging. Figure 2, which plots the weighting of the Lehman code on the CV Framework, reflects that the Lehman code is more technically accurate than innovative, weighs practicality over perceptiveness, and emphasizes control over vision. This might well send to employees within the organization the message that it is better to toe the line and comply with company policy than innovate in constructive ways and create an organization with a culture that stimulates creativity or open communication.

Lehman scored high on the dimensions of practicality, logic, preciseness, and accuracy, decisiveness, and credibility. However, much lower scores were given on the dimensions as engaging, creative, visionary, perceptive, or open. The Lehman Brothers code appears to be more balanced, although its strengths clearly lie on the left half (relational and informational) and its weakness on the right half (transformational and instructional).

In effect, the Lehman Brothers code begins with a transformational and relational emphasis, but shifts to the instructional and informational after the opening page, which explains the variation in scores across the two raters. Despite the variations in scores, the Lehman Brothers code is more heavily weighted toward the instructional and informational than toward the transformational and relational dimensions.

The Lehman code of ethics and internal code of conduct do not offer much vision or guidance to the reader. Absent are principles, cultural norms and forward- looking statements that might define Lehman as an organization. The code shows few of the transformational aspects on the CVF. While it lays out the basic rules expected of all Lehman employees, executives missed the opportunity to create a unique code expressing strong ethical principles. A more transformational code might have identified their unique strengths and values, but this would have to be coupled with transformational leadership and a culture of strong communication. The Lehman code did a basic job of protecting the organization against illegal actions by employees, but it did little to advance an ethical culture that might have sustained them. Perhaps that culture did not exist; a code cannot create a culture that is not present or change the organization by itself.

The Lehman Brothers Code of Ethics is a five-page document outlining the behaviors expected of employees. Page one comprises of an introduction stating that all employees must comply with the code. It indicates the code is intended to be read along with Lehman's Internal Code of Conduct, also discussed in this paper. These two documents together represent the Lehman Brothers position on its corporate ethical values.

Paragraphs three and four in the introduction make strong statements about trust (p. 1, Lehman Brothers Code of Ethics). This section emphasizes that strong client relations have been established over the years saying, "The lynchpins of that trust are our ethical standards and behavior. We must always do business in a manner that protects and promotes the interest of our clients" (p. 1). Paragraph four assumes a stronger position stating that "Ethical business practices are the product of more than a fear of legal ramifications" and "Ethical business practices entail a clear understanding of right and wrong, and a motivation on the part of our directors and employees to act at all times in a manner of which they can be proud" (p. 1). These sentences are transformational in nature as they can be described as insightful, mind stretching and visionary. They reflect descriptors on the upper right (transformational) quadrant of the framework and are opposites of the characteristics in the informational quadrant (rigorous, precise and controlled.) So here one finds value-based, transformational language in the Lehman code. The Lehman code introduction (p. 1) shows more characteristics of the transformational quadrant, which partially explains the score in the transformational quadrant.

However, the next four pages communicate in a very different way using a legalistic tone and language that is not conversational or commonplace. For example, on page two, one finds "The Firm has established procedures for submitting concerns regarding accounting, internal auditing controls or auditing matters to the Audit Committee of the Board and for submitting other concerns to the non-management members of the Board" (p. 2, paragraph 3). Here language is more dense and this style continues as the code unfolds. The section on full and fair disclosure (p.5) is comprised of only three sentences, but the first has 32 words, the second 69, and the third 56. These are extremely complex sentences, considering the average business document is comprised of sentences ranging in length from 16 to 24 words (Guffey, 2008; Ober, 2006). Many other sentences in the document exceed 50 words, showing a dense and complex style. This is reflective of the informational quadrant rays of "technically correct, accurate" and "rigorous, precise, controlled."

Lehman Brothers' code addresses the basic issues found in most corporate codes such as conflict of interest, retaliation, stealing, use of proprietary information, non-retaliation, and compliance with laws, EEO issues and fairness (Mathews, 1987). As a code, it lacks unique features and appears to be written by legal experts to protect the firm against egregious behavior, a typical approach used in corporate codes in the US (Stevens, 1996). The vast majority of language and information fits the central descriptors in informational quadrant "rigorous, precise controlled" and "focused, logical, organized." Many of the sentences are commands phrased in passive voice, as in "Employees and directors are not permitted to remove, sell, loan, convey, or dispose of any record, voucher, money, or things of value belonging to the Firm without the Firm's consent" (p. 3, para. 4). In stressing informational fact-based material, the writers sacrificed the transformational aspects on the opposite side of the CVF. While culture is discussed on page one saying the code will "help maintain a culture of honesty and accountability" (p. 1, para 1), the topic never comes up again and no statements exist to help employees understand Lehman's unique culture or what differentiates it from other investment banks. An understanding of right and wrong beyond violating laws is not articulated. So questions are left unanswered, such as --What does Lehman value most and how does an employee come to understand Lehman's ethical values? The answers are not found in the code. Instead, the remaining four pages stress legal responsibilities, cautioning against outside employment and affiliations, theft, acting on proprietary information, or violating any laws. Lehman's code asserts that it follows EEO laws, believes in fairness and full disclosure and ends saying the Board of Directors may waive the code at their discretion. Because of its legalistic focus, this code would be useful to Lehman attorneys wanting to separate from the organization an employee breaking the law.

What is lacking? The code is weaker in transformational aspects giving little guidance in gray areas. It does not help the employee who is wrestling with a difficult decision; rather it almost exclusively discusses behaviors that violate federal laws and warns against breaking them. Values the corporation holds beyond adhering to laws are not discussed. Issues like managing risk responsibly are not found in the Lehman code nor does one find a statement telling employees to safeguard the company's assets so the company will endure in times of financial stress. The code does not explain what it means to "protect the firm's assets."(p.1) and the duty an employee has to "advance the Firm's legitimate interests when the opportunity arises" (p 2). It does not discuss cautionary areas, how much risk is acceptable and the circumstances under which one should exercise restraint in advancing the firm's interests. Hence, the code's lack of strength on the right side of the framework reflects weaknesses in the visionary and action-oriented concepts of the document

Instead, an opposite message is conveyed in the sentence "Employees and directors have a duty to the firm to advance its legitimate interests whenever the opportunity arises." (p. 3, para 2). The next sentence admonishes the employees not to take anything for themselves or their friends. On the fourth page the employee is urged to "compete aggressively in furthering the interests of the firm" -- a perfectly valid position for Lehman, but it lacks elaboration about ethical considerations, so questions remain. When should the employee compete aggressively and under what conditions should more restraint be exercised? What are Lehman ethics and values in those circumstances where it may not be the right thing to compete aggressively? These are not addressed in the Lehman code.

The rhetorical analysis shows that Lehman's ethical code and code of conduct have an absence of transformational language. No visionary ideas are present nor is the document inspirational or thought-provoking. Generic in nature since it addresses the topic common in most codes (Mathews, 1986; Stevens, 1994), the code could be utilized by any bank, or financial institution, or insurance company. It focuses only on actions that could hurt the firm. Lehman's code also says nothing about protecting the environment, committing to the community in which they live, or adding value to the world community.
When codes like Lehman's focus too narrowly on prescribing or dictating behavior, they miss opportunities for transformational communication. Visionary thoughts, guidance and supportive language are absent. One study showed codes were generally framed from a defensive position to protect the organization against egregious behavior and could benefit by being more instructional and transformational (Stevens, 1996). Too much focus on prescriptive behavior means the transformational and instructional elements have been compromised.

The Lehman Brothers Code of Conduct, accompanying the ethical code, governs the relationship between Lehman and external parties such as suppliers and government regulators. Seven pages in length, it focuses almost exclusively upon legal compliance. It states that strict compliance with laws and regulations is mandatory and senior management is responsible for this outcome. Protection of "reputation, image and intellectual property" is stressed (p. 3, Code of Conduct), along with competitive purchasing, based on the nature and quality of the services. Managers are also warned not to become overly dependent on a supplier.

In the following section concerning auditors and controllers, employees are cautioned to use the "highest standards of fairness, transparency, and cooperation" and to provide full and truthful documentation (p. 5). Finally the code of conduct discusses the importance of confidential data, including insider information, and reminds employees to follow the law. Gifts of a material nature are forbidden if they might influence the recipient, leaving that decision open to interpretation. The remaining two sections address reporting violations and warn that termination from the firm could occur.

The Erwin Framework

FIGURE 3
ERWIN FRAMEWORK
LEHMAN BROTHERS

Criteria	Rater 1	Rater 2	Average score
Public availability (5)	4	5	4.5
Tone from the top (15)	11	13	12
Readability and tone (20)	14	16	15
Non-retaliation and reporting (10)	9	9	9
Commitment and values (10)	7	9	8
Risk topics (20)	12	15	13.5
Comprehension Aids (5)	3	3	3
Presentation and style (15)	12	13	12.5
Total	73	83	77.50

Scores from the Erwin analysis shown in Figures indicate the code received a grade in the “C” range, specifically a C+ from the two raters. Highest possible scores for each of the eight categories are shown in parenthesis on the left. These grades mirror some of the same strengths and weaknesses revealed by the CVF. The lowest scores were on readability and tone, risk topics and comprehension aids. Raters found the documents had a commanding tone and a low readability style. Highest scores were received on public availability as raters were influenced by the code’s accessibility via the Internet. The overall “C +” grade (77.50) given the code reflects the legalistic language used to protect and distance the organization against egregious behavior by an employee who might break the law. This is not a code that inspires, motivates, leads or provide ethical guidance outside of the legal requirements.

The Culture at Lehman

What role did the ethical code play in the Lehman culture? A number of books have been written about Lehman Brothers since its demise, including some by former Lehman executives. One author, a former vice-president of convertible securities and distressed debt trading at Lehman, places the blame for its downfall squarely at the feet of former CEO Richard Fuld (McDonald, 2009). He describes a culture where Fuld ruled the organization with a heavy-handed fist and became isolated as the firm grew larger. McDonald notes that Lehman hired a group of extremely bright, well educated people, but they were afraid to communicate with the executives sequestered on the 31st floor decision-making center. Criticism of Lehman policies was not tolerated and those who questioned the aggressive growth policies of the bank were quickly put down. Lehman Brothers was extremely overleveraged, yet managers who noticed the problem were not allowed to speak out (McDonough-Taub, 2009). The insulation described by people inside Lehman reveals a culture where communication was stifled and the code was a side issue.

According to a former managing director and talent officer, Lehman’s strong culture as a tough underdog, and one that had successfully weathered near-meltdowns, kept managers from seeing the risk in Lehman’s overleveraged position until it was too late (Greenfield, 2009). The organization became increasingly dysfunctional as the executive committee (a handful of people selected by Richard Fuld) made all of the decisions and effectively shut out input from others in the organization. Indeed Fuld later testified to Congress to that Lehman’s collapse was a big misunderstanding (Maich, 2010).

Interestingly, no mention of Lehman Brothers ethical code is found in the books written about Lehman after its demise (McDonald, 2009; Ward, 2010; Chapman, 2011) or in articles reviewed about Lehman’s bankruptcy. Although she writes extensively about Lehman’s culture, Greenfield also does not mention the code. The code apparently was an artifact; something external to the culture and existed because companies like Lehman Brothers needed a code for public relations purposes and to protect themselves from conduct against the firm, the most commonly mentioned topic in corporate codes (Mathews, 1988; Stevens, 1994).

If anyone was paying attention to the code, the phrase “compete aggressively in furthering the interests of the firm” and the sentence “We must always do business in a manner that protects and promotes the interest of our clients” were of primary importance. Unfortunately executives at Lehman stopped short of explaining what these concepts meant and did not communicate the full meaning to its managers. As the company tripled in size from 1994 to 2007, it took on more aggressive, voracious investment managers looking for large deals (Greenfield, 2009). Not only did they not protect and promote the interest of clients, they put the company out of business by pursuing risky deals. The phrase “compete aggressively in furthering the interests of the firm” is also found in the Bear Stearns code (2008), the other failed investment bank that was taken over by J.P Morgan Chase, yet is absent from the Goldman Sachs Code of Conduct and Business Principles.

While there is no indication the code was a principal document in the firm, one wonders what role it might have played if it had been embedded in the culture, communicated effectively to all employees and if the leaders had spent time explaining the ways they considered appropriate for employees to complete aggressively on behalf of Lehman. Instead the company leveraged itself into a lethal situation.

Constructing a code is an important managerial process as language and discourse create meaning; viewing management from a rhetorical perspective means to recognize that ideas and sense-making are framed by language (Eccles & Nohria, 1992). Thus finding the right words to express ideas and behaviors is a key strategic action for an organization. If codes are embedded in the organizational culture and communicated in an effective way, they can significantly affect ethical behavior. But codes themselves cannot create ethical organizations; they are part of an organizational culture and reflect the only values—good or bad—embedded in the organization.

CONCLUSION

This study uncovered some interesting aspects about the Lehman Brothers' cultures as revealed by their ethical code. Both the CVF and Erwin scheme shed some interesting light on the rhetorical aspects of the code. They yielded information that the code was fairly generic, commonplace and had few aspects of originality; it lacked transformational, guiding concepts that could help in a crisis. The code did not provide much detail about the unique ethical values of the institution and what behaviors might most desired. They forbid behaviors that violated the law, such as insider trading and those that would harm the firm's reputations, but did not discuss the company's specific ethical culture.

While the study certainly has limitations such as subjectivity and scores from only two academic raters, it nevertheless provides a unique look at the Lehman Brothers ethical code and its internal dimensions. Analysis showed ethical code was fairly commonplace and no evidence was found showing the code functioned as a strategic document to help the organization remain viable. It would be naive to claim that a different code could have saved Lehman Brothers and this paper makes no such assertion. A large number of complex factors were in play during the financial crisis of 2008. Regulators were not sufficiently aggressive with financial institutions and allowed aberrant behavior in the investment banking industry; the industry was reckless with subprime lending practices (Lewis, 2010). Lehman Brothers is now an interesting story in American business history and further studies and analysis will determine the multiple causes for its demise.

REFERENCES

Adam, MA., & D. Rachman-Moore (2004), The methods used to implement an ethical code of conduct and employee attitudes, *Journal of Business Ethics* 54, 225-244.

Anderson, D.R., D.J. Sweeney, and T.A. Williams (2003). *Modern Business Statistics*. Cincinnati: South-Western.

Bear Stearns Code of Business Conduct and Ethics. Retrieved from http://www.bearstearns.com/sitewide/our-firm/corporate governance/code-business ethics. Retrieved October 20, 2008.

Carasco, E and J. Singh, 2003). The content and focus of the codes of ethics of the world's largest transnational corporations, *Business and Society Review* 108, 71-94, doi: 10.1111/1467-8594.00007.

Castaldo, S., F. Perrini, N. Misani, and A. Tencati (2009). The missing link between corporate social responsibility and consumer trust: The case of fair trade products. , *Journal of Business Ethics*, 84, 1-5.

Chapman, P. (2010). The last of the imperious rich: Lehman Brothers 1844-2008. New York: Portfolio/Penguin.

Chonko, L.B., Wotruba, T.R. & Loe, T. (2003), Ethics codes familiarity and usefulness: Views on idealist and relativist managers under conditions of turbulence. *Journal of Business Ethics*, 42, 237-252.

DeTienne, K.B. and L.W. Lewis, (2005). The pragmatic and ethical barriers to corporate social responsibility disclosure, The Nike case. *Journal of Business Ethics*, (60, 4, 359-376.

Eccles, R.G. and Nohria, N. (1992). *Beyond the hype: Rediscovering the essence of management.* Cambridge, MA: Harvard Business School.

Erwin, P. (2011). The effects of code content and quality on ethical performance. *Journal of Business Ethics*, April, 99, (4), 535-548.

Greenberg, J. (1990). Organizational justice. Yesterday, today and tomorrow. *Journal of Management*, 29, 705-728.

Greenfield, H (2009). Culture Crash. Conference Board Review, 19465432, 46, 5.

Guffey, M.E. (2006). *Business communication: Process and product*. Mason, Oh: Thomson South-Western.

Healey, M and Isles, J. (2002). The establishment and enforcement of codes*. Journal of Business Ethics,* 39, 1, 117-124.

Kaptein M. (2004), Business Codes of Multinational Firms: What do they say? *Journal of Business Ethics,* 50, 13-31.

Kaptein, M. & Schwartz, M. (2008). The effectiveness of business codes: A critical examination of Existing studies and the development of an integrated research model. *Journal of Business Ethics*, 77, 111-127.

Kaptein, M. & Wempe, J. (2002). *The balanced company: A theory of corporate integrity.* Oxford: Oxford University Press

Kickup, J. (2005), Does trust matter? The relationship between equity sensitivity and perceived organizational justice. *Journal of Business Ethics,* 56,3, 205-218.

Langlios, C.C. & Schlegelmilch, B.B. (1990). Do corporate codes of ethics reflect national character? Evidence from Europe and the United States. *Journal of International Business*, Fourth Quarter, 519-539.

Laufer, W & Robinson, D.C. (1997), Corporate ethics initiatives as social control. *Journal of Business Ethics*.16**,** 10, 1029-1048.

Lewis, M. (2010). *The big short: inside the doomsday machine*. New York: W.W. Norton.

Lehman Brothers code of ethics. Retrieved September 11, 2008 from www.lehman.com/shareholder/corpgov/code.

Lehman Brothers International (Europe). Annex A to the 213 Organizational Model. 231 Code of Conduct. Retrieved October 3, 2008 from www.lehman.com/shareholders/corpgiv/code.

Maich, S. (2010). Culture of denial. *Canadian Business*. 00083100, 11/23/2010, 83(20).

Manley, W. (1991), *Executive's Handbook of Model Business Conduct Codes.* New York: Prentice Hall.

Marnburg, E. (2000). The behavioural effects of corporate ethical codes: Empirical findings and discussion. *Business Ethics: A European review* 9 (3), 200-210.

Mathews*, M.C. (1987.* Codes of ethics: organizational behavior and misbehavior. *Research in corporate social performance,* 1-7-130. (9) JAI Press inc: Greenwich, CT.

McDonald, L.G. (2009). *A colossal failure of common sense: The inside story of the collapse of Lehman Brothers*. New York: Crown Business.

McDonough-Taub, G. ((2009). www.cnbc.com/id/32013423/Lehman_Brothers_A_Collosal Failure.

McKendall, M., DeMarr, B & Jones-Rikkers, C. (2002). Ethical compliance programs and corporate illegality: Testing the assumptions of the corporate sentencing guidelines. *Journal of Business Ethics*, 37, 367-383.

Miller, K. W. and T. R. Fallati (2007), A tough job for the SEC, *International Financial Law Review*, 02626969, Dec, 26, 12.

Nijhof, A, Cludts, S, Fisscher, O. & Laan, A (2003). Measuring the implementation of codes of conduct. An assessment method based on a process approach of the responsible organization. *Journal of Business Ethics*, 45, 65-78.

Nitsch, D., Baetz, M & Hughes, J.C. (2005), Why code of conduct violations go unreported: A conceptual framework to guide intervention and future research. *Journal of Business Ethics*, 57, 327-341.

Ober, S. (2006). *Contemporary business communication*. Boston: Houghton Mifflin Co.

O'Dwyer, B and G. Madden, (2006). Ethical codes of Irish companies: A survey of code content and enforcement procedures. Journal of Business Ethics, 63, 217-236.

Pearson, E. S., Ho. O. Hartley (1966). *Biometrika Tables for Statisticians, Vol. 1*. London: Cambridge University Press.

Perlow, L . & Williams, S. (2003). Is silence killing your company? *Harvard Business Review,* 81, 5, 52-59.

Petersen, L, and F. Krings (2009). Are ethical codes of conduct toothless tigers for dealing with employment discrimination? *Journal of Business Ethics*, 85:501-514.

Quinn, R.E., Hildebrandt, H.W, Rogers, P & Thomson, M.P. (1991). A competing values framework for analyzing presentational communication in management contexts. *The Journal of Business Communication, 28, 3, 213-231.*

Richard, P. J. (2008). Where were the auditors as companies collapsed? *American Banker*, 00027561, 10/10/2008, 173, 197.

Scalet, S. (2006). Prisoners' dilemmas, cooperative norms, and codes of business ethics. *Journal of Business Ethics*, 65, 309-323.

Schwartz, M. T. Dunfee, and M. Kline (2005). Tone at the top: An ethics codes for directors? *Journal of Business Ethics* 58, 79-100.

Schwartz, M. (2000). Why ethical codes constitute an unconscionable regression. *Journal of Business Ethics,* 65, 309-323.

Schwartz, M. (2004). Effective corporate codes of ethics: Perceptions of code users, *Journal of Business Ethics*, 55, 323-343.

Sims, R.R. and J. Brinkman (2003). Enron ethics (or culture matters more than codes). *Journal of Business Ethics* 45, 243-256.

Snell, R.S. & Herndon, N.C. (2000). An evaluation of Hong Kong's corporate code of ethics initiative. *Asia Pacific Journal of Management* 17, 3, 493-518.

Stevens, B (1996). Using the competing values framework to assess corporate ethical Codes, *Journal of Business Communication* 33 (1), 71-84.

Stevens, B. (2008). Corporate ethical codes: Effective instruments for influencing behavior. *Journal of Business Ethics*, 78, 601-609.

Stohl, C., M. Stohl, and L. Popova (2009). A new generation of corporate codes of ethics, *Journal of Business Ethics*, 90, 4, 607-622.

Sobszak, A.: 2003, Codes of conduct in subcontracting networks: A labour law perspective, *Journal of Business Ethics,* 44, 225-234.

Somers, M.J. (2001). Ethical codes and organizational context: A study of the relationship between codes of conduct, employee behavior and organizational values. *Journal of Business Ethics*, 30, 2, 185-195.

Trevino, L. ,G. Weaver, D. Gibson and B. Toffler (1999), Managing ethics and legal compliance" What works and what hurts. *California Management Review*, 41 131-1.

Trevino, L.K. and D. Weaver (2003), *Managing ethics in organizations.* CA: Stanford University Press.

Valentine, S and T. Barnett (2002), Ethical codes and sales professionals' perceptions of their organization's ethical values. *Journal of Business Ethics* 40, 3, 191-200.

Ward, V. (2010).*The Devil's Casino.* Hoboken, N.J. John Wiley & Sons.

Weeks, W.A. and J. Nantel (1992). Corporate codes of ethics and sales force behavior: A case study. *Journal of Business Ethics* 11**,** 753-760.