# Changes in Ethics and Governance

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## BACKGROUND

In the late 1990s, when ethical dilemmas arose in the workplace at UJA-Federation of New York, such issues were resolved on an ad hoc basis. In 1997, it had adopted a set of practices for the organization, its Ethical Guidelines and Practices, but there was no formalized ethics committee structure in place. In this UJA-Federation was not alone: particularly in the nonprofit community, codes of conduct and ethics committees were few and far between at that time.

Thus, when John Ruskay became executive vice president and CEO in 1999, ethical compliance and governance were not on his list of priorities or organizational concerns. Ethical guidelines were in place, and there were numerous other challenges facing UJA-Federation: mapping out a new strategic direction, meeting agency needs, addressing donor concerns and expectations, and moving the organization into the 21st century.

But fast forward just a few years, and the ethical and governance landscape was quite different, as pervasive business corruption on a massive scale in corporate America became public. In response to extensive financial fraud at Enron, WorldCom, and Adelphia, among other corporate scandals, Congress enacted the Sarbanes-Oxley Act of 2002 to spur reform in business enterprises through mandatory disclosure methods and enforced codes of corporate conduct.

Corporate practice in UJA-Federation also changed in dramatic ways between 2001 and 2003, and a new and more rigorous framework was introduced that has carried forward. This article considers that new structure, based on a written code of ethics and overseen by a lay–professional committee, and its impact on good governance and best practices at UJA-Federation. It also describes a process reflecting strong leadership and a continuing commitment to principles of integrity in the workplace.

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In 2001, John Ruskay asked several top professionals and lay leaders to plan for the establishment of an ethics committee and map out its responsibilities. The boldness of this effort becomes apparent when viewed in the context of that era; as noted earlier, this committee was created before the full extent of corporate corruption became a matter of public knowledge, before the enactment of Sarbanes-Oxley, and before transparency became a priority of good governance in the nonprofit world. Ruskay understood that staying out of trouble was a more desirable management policy than finding a way out of trouble.

The subsequent Standards & Conflicts Committee, which first met in early 2002, has since become a standing committee central to UJA-Federation's governance and fiduciary responsibilities. Each chair has been a recognized philanthropic leader, with deep commitments to ethical practice. (The current chair is the Hon. Robert Abrams, the former Attorney General of the State of New York.) The committee has tackled a wide variety of issues, from ensuring the propriety

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of financial investments of the organization to investigating allegations of inappropriate and improper conduct by employees of a network agency. Comprised mostly of experienced lay leaders along with a few professional staff, the committee reports to the Board of Directors of UJA-Federation and meets on an as-needed basis, when organizational issues require its collective expertise and judgment.

One of the Standards & Conflicts Committee's most important roles has been to establish and oversee UJA-Federation's whistleblower policy, formalized in 2003. The continued development of the whistleblower process and the emphasis on a system of confidentiality and nonreprisal by management have put UJA-Federation at the forefront of emerging trends in good governance within the federation system and among nonprofit organizations nationwide. The policy notes that its purpose is "to encourage employees and volunteers to make good faith reports of possible violations of law or infractions of rules or organizational policies by any UJA-Federation personnel, and to raise any concerns they may have about such matters, confidentially and without fear of retaliation."

## THE IMPACT

The Standards & Conflicts Committee monitors UJA-Federation's Ethical Guidelines, thereby fostering and promoting a culture of fiduciary responsibility throughout the organization. In the following ways, this corporate innovation has had a profound impact on the way UJA-Federation undertakes its mission.

1. Tone at the top: None of these policies or procedures could have become embedded in organizational culture without the support of the top leadership (Trone, 2006). Thanks to the efforts and dedication of the partnership of its lay and professional leaders, UJA-Federation never wavered in carrying out the standards articulated in the Ethical Guidelines.
2. A new process of disclosure: The new process demonstrated UJA-Federation's willingness to disclose and discuss potential issues of serious concern to lay leaders on the committee and to correct and address the issues head-on. UJA-Federation trusted that the process carried out by the committee would result in appropriate ethical resolution, a stronger organization, and the kind of transparency to which its donors are entitled, regardless of the outcome. It was understood that this fresh approach risked difficult conversations, but that the integrity of the organization demanded it.
3. Cultural sensitivity: UJA-Federation has engendered a culture of sensitivity to issues that might be of questionable integrity. It is reflected in the training given to new board members; in the appointment of a Chief Compliance Officer, who reports to the executive vice president/CEO and Board of Directors; and in the ethics compliance training given every 12 to 18 months to the entire staff of UJA-Federation.
4. Vigilant enforcement: UJA-Federation has a strong, consistent commitment to awareness and enforcement of the principles articulated in the Ethical Guidelines. The ethical rules are carried out despite the occasional clash with some who question the application of the policies to their situations. It is a mark of UJA-Federation's integrity that it is willing to absorb challenges from influential or outspoken donors rather than compromise its principles. The organization understands that its reputation is its most valuable asset and it will go to any lengths to protect it.

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5. Meticulous application: The process described in UJA-Federation's Ethical Guidelines is meticulously followed on a day-to-day basis. For example, board and committee members are required to complete annual conflict-of-interest forms to ensure that there is full disclosure of other interests. Special Investment Committee rules are observed to ensure that private interests remain subordinate to those of the organization. Contracts are awarded based on merit only, to serve the best interests of UJA-Federation.

## EXAMPLES OF THE COMMITTEE AT WORK

In 2002, two employees at one of UJA-Federation's most successful investment funds pleaded guilty to charges of having engaged in financial misconduct.[1] As no charges were filed against either the investment fund or its CEO, UJA-Federation's Investment Committee decided there was no reason to reduce its investment in this very successful fund, as this was likely a case of a couple of rogue individuals acting on their own.

In early 2003, a related problem emerged when it was announced that the same fund had reached a multimillion dollar settlement with the New York State Attorney General and the Securities and Exchange Commission for engaging in other acts of misconduct. As part of that settlement, more than $100 million was paid to settle charges of abusive trading; the CEO of the fund was to pay $20 million in civil penalties.

UJA-Federation leadership requested that the Standards & Conflicts Committee analyze the situation and report its findings to a board committee. UJA-Federation had invested in this fund for years and was concerned about how donors would view the fund's $100 million settlement relating to charges of violations of various securities laws. Would UJA-Federation be taken to task for continuing its investment after two public scandals within a three-year period? On the other hand, there was no admission of guilt by the principals of the fund, the fund's investment record was brilliant, and UJA-Federation's network agencies had benefited significantly from the financial success of that fund. There was heated discussion and hours of deliberation—several members of the committee urged ending our relationship with the investment fund, whereas others believed the fund should be monitored closely but the investment left in place. As one committee member said, "No one at UJA-Federation is benefiting personally; these funds were invested in good faith by UJA-Federation, and the proceeds will only benefit the needy in our community."

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Ultimately, it was determined to keep the investment in place, but the eventual resolution of this matter is less important than the process itself. The Standards & Conflicts Committee considered all the issues in depth to determine which position was "more right." In this matter, compelling arguments were made on both sides of the table. The outcome may or may not have been correct, but the committee's decision was reasoned, transparent, and mindful of the organization's fiduciary obligations to act in the best interests of the community.

Consider another prominent recent example.

In December 2008, the world learned of the massive Ponzi scheme orchestrated by Bernard Madoff. The colossal fraud took investors by surprise and shook the Jewish philanthropic community to its core. Unfortunately, for some

[1]Some identifying facts in this case have been changed.

charities, the impact was particularly deep and devastating. Many had invested directly with Madoff; others had invested through so-called feeder funds. The New York State Attorney General and several organizations have since brought suit against the principal of several of the feeder funds, Ezra Merkin, a volunteer leader who served on a number of charities' boards and committees, including as chair of UJA-Federation's Investment Committee.

As the Madoff scandal publicly unfolded, UJA-Federation was repeatedly asked, "How much did you lose?" In fact, UJA-Federation did not lose any investment funds in the debacle, although many of its donors were adversely affected, which will have a clear and profound effect on UJA-Federation, Jewish philanthropy generally, and the Jewish community.

UJA-Federation was able to avoid any direct losses from the Madoff scandal for two principal reasons: (1) it was lucky that it had invested no funds directly with Madoff, and (2) good policies had been put in place years before. According to UJA-Federation's Ethical Guidelines, members of UJA-Federation's Investment Committee may not manage UJA-Federation's funds. Thus, UJA-Federation money could not have been invested in the feeder funds that were among the casualties of the Madoff tragedy.

This provision helped save perhaps millions of dollars earmarked for the needy—an appropriate result for a process that took many years to create and ultimately execute.

## CONCLUSION

With a decade of work led by John Ruskay, UJA-Federation's standards of ethics and good governance have strengthened the organization and become the source of great pride. They allow UJA-Federation's charitable purposes to be achieved with the highest standards of integrity.

## REFERENCE

**Trone, Donald B. (2006, November 6).** The importance of setting the fiduciary "tone at the top." *Investment News*.