<u>Can business ethics be legislated?</u>

By Shannon Warren, Founder, October, 2007

As Burns Hargis pointed out during his presentation at last week's Oklahoma Business Ethics Consortium meeting, the Sarbanes-Oxley Act ("SOX") has been one of the most far-reaching pieces of legislation imposed on business in several decades. And, he made another accurate observation: the dizzying pace that it was propelled into law.

While it was intended as a way to compel good behavior in the Boardroom by fighting corporate corruption, the debate still rages even five years after the Act's passage. It is now time to stop and think: *What impact did this legislation really have on the ethical behavior of Corporate America?*

While the statistics are too exhaustive to cover in this humble column, here are a few factors to consider in evaluating the SOX "experiment":

1) Dodging Bullets at the Top: According to a <u>BusinessWeek</u> article, *"CEOs Feel the Heat"*, there are a lot of "itchy trigger fingers" in the Boardroom these days. Anxious to avoid scandals, boards of public companies have leaped on the SOX bandwagon and discovered that, while they are emboldened by the Act, it is a double-edged sword. In a quote from the article that appeared last October, "Boards are newly empowered to be more active in all manner of corporate affairs, at the same time that they're being held to a higher standard of accountability by shareholders than ever before."

These changes have had a riveting effect on the corner office. According to the BusinessWeek article citing Liberum Research, the "number of CEO's that were fired outright in the first three quarters of 2006 nearly doubled that of the previous year." Several of those dismissed were the result of backdating scandals.

2) How about the average employee? As pressure mounts in the Boardroom, are the employees seeing any real changes in their quality of corporate life?

Based on the Ethics Resource Center findings, "almost 70% of employees at publicly traded U.S. companies –those under the purview of the SOX Act – gave their employers an 'A' or 'B' grade for encouraging ethical conduct." On the other side of the coin, failing grades were most likely at companies with fewer than 100 employees.

That may be because smaller organizations have fewer resources to allocate toward the shaping of employee perceptions. The ERC's surveys indicate that measures on determining if the culture is actually fostering positive behavior might not be a top priority with less sizable organizations. However, given the ramifications, it may be something to reconsider.

Worker productivity suffers when employees are not happy – and based on the survey findings, it's not unusual for workers to find their job conflicts with their personal values. Take for example, the day-to-day dilemmas that still frustrate folks.

In a survey among public, private and non-profit institutions published at the end of August, the Ethics Resource Center shows that "more than a third know co-workers who have called in sick when they were not ill and more than a quarter have seen colleagues take credit for others' achievements."

It all goes to show you that legislation may have some impact, but it's not the overall answer. As ERC's President, Dr. Patricia Harned explained, "Clearly, while Enron and other scandals have focused attention on the ethics of management, we also need to emphasize the need for more ethical behavior all the way down to the office cubicles and shop floor."

We still don’t know the full impact of SOX, but its presence has indeed been felt across corporate America. The fact is, we’re still talking about it five years later and maybe that is the point: If business can stay focused on discussions about ways to achieve higher ethical standards, then maybe there won’t be a need to pass legislation to control bad behavior in the future.