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“Because That's Where the Money Is”: A Theory of Corporate Legal Compliance

William C. Bradford

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**“BECAUSE THAT’S WHERE THE MONEY IS”: A
THEORY OF CORPORATE LEGAL
COMPLIANCE**

WILLIAM C. BRADFORD

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I. INTRODUCTION

Upon his capture in 1934, legendary bank robber Willie Sutton was asked by FBI agents, “Why do you rob banks, Willie?” Sutton, regarding the question

as rhetorical, replied, dryly, “Because that’s where the money is.”¹ In other words, Sutton understood the inquiry to be why he robbed *banks* rather than homes, or gas stations, or church offering plates. Had he understood it as intended—what was it about *Willie Sutton* that impelled *Willie Sutton* to crime when others, struggling to survive the Great Depression, were not?—Sutton could not have offered so pithy a response. This Article poses a similar question—“Why do *you* rob corporations?”—to ten chief executive officers (CEOs) ensnared in circumstances analogous to Sutton’s in the hope of generating answers more useful to the explanation, prediction, and suppression of corporate crime than “because that’s where the money is.”

In the last dozen years, scandals involving insider trading, accounting fraud, fictional business entities, bribery, lavish perquisites, and outright theft destroyed over \$1 trillion in shareholder value, eliminated millions of jobs, and felled corporate giants. Outrage at these breaches of the public trust prompted prosecutors to imprison many executives and Congress to impose yet stricter obligations upon public firms and the individuals who run them. The Sarbanes-Oxley Act (SOX), enacted in 2002, enhanced civil and criminal penalties for a wide array of corporate misdeeds and imposed duties of transparency, honesty, and accountability upon key firm personnel. Each CEO and chief financial officer (CFO) must certify the truthfulness of each financial report on pain of perjury and disclose on a “rapid and current basis such additional information . . . [as] is necessary or useful for the protection of investors[,] and in the public interest,” in-house counsels must now report to CEOs and boards of directors any evidence of a material violation of any Securities and Exchange Commission (SEC) law or regulation as well as any breach of a fiduciary duty to shareholders, and public accounting firms must certify the accuracy of financial reports.²

Although SOX is associated with a sordid parade of handcuffed executives “perp walking” to prison, it may come to be better remembered as the machine that privatized public firms. As much as a quarter of every dollar a public firm earns is consumed complying with a panoply of laws and regulations. SOX has cost firms \$4 trillion, driven capital away from riskier firms, deterred mergers and acquisitions, and increased the compliance burden fivefold.³ While some hail SOX as a significant weapon in the battle against corporate crime, others believe its price for reducing managerial malfeasance is far too dear.

Other tools have been tried. Many post-“Enron Era” firms tout their

¹ See WILLIE SUTTON, *WHERE THE MONEY WAS* (1970).

² Sarbanes-Oxley Act of 2002 (SOX), PUB. L. 107-24, 116 Stat. 745 (July 30, 2002), at §§ 302, 309, 404(b).

³ David Henry, *Will Directors Morph Into Corporate Constables?*, BUSINESS WEEK, June 14, 2004, at 38.

compliance management programs (CMPs), which consist of written codes of ethics, protections for whistleblowers, and employee training, as proof against future criminality. Regulators have encouraged this trend, reducing liability for firms that implement CMPs.⁴ Still, many view CMPs as cynical attempts to pose firms as corporate good citizens and reduce regulatory oversight without requiring behavioral transformation. Indeed, many of the more egregious offenders had robust CMPs in place. Other reform proposals, including enhanced balance sheet transparency, ethics classes, and more independent boards of directors, have been hastened into the breach, yet corporate crime endures. This should come as scant surprise: over the centuries, commentators have complained that “laws are like spider webs, which may catch small flies but let the wasps and hornets break through.” Inducing compliance with the legal regimes they craft has long been the thorniest problem facing legal architects, as:

The mere existence of a rule, a law, a moral standard, a social norm, or any other behavioral prescription does not guarantee that those subject to it will actually comply with it . . . [and] [e]ven those who acknowledge the authoritative nature and generally favor the existence of [laws] frequently find it advantageous to violate them in practice.⁵

Indeed, noncompliance can be profitable. Corporate executives experience tremendous financial incentives to cheat. Managers feeling pressure to produce results are perfectly positioned to cook the books and audits, thus boards of directors and government regulators cannot hope to amass enough timely information to identify and address every incidence of noncompliance. Executives of U.S. firms operating overseas feel pressure to pay bribes lest they lose business to non-U.S. rivals who are not prohibited from doing so. One would be naïve to believe SOX or any other legislation could relieve these pressures. One might conclude corporate criminality is eternal and recent exemplars are remarkable only insofar as one beholds their magnitude.

Still, noncompliance is an ethical cancer that drives away investment, destroys firms, and compromises sustained domestic growth. Simply put, noncompliance is bad for business, for the firm, and for the nation. Yet, as injurious as noncompliance is, and despite all the measures instituted to combat it, the phenomenon is ubiquitous. At least two-thirds of public firms have engaged in serious illegal conduct in the past decade.⁶ Is law simply

⁴ Ellen S. Podgor, *Educating Compliance*, 46 AM. CRIM. L. REV. 1523, 1534 (2009).

⁵ ORAN R. YOUNG, COMPLIANCE AND PUBLIC AUTHORITY, 1 (1979). “Compliance” refers to adherence to and conformance by relevant actors with the prescriptions and proscriptions of the behavioral regime established by the state in respect to a particular issue-area. *Id.* at 3.

⁶ Saul W. Gellerman, *Why Good Managers Make Bad Ethical Choices*, in LEADERSHIP AND

epiphenomenal to firm behavior? Is illegality part of the business of business? Or, can a well-designed legal regime induce a degree of corporate compliance sufficient to protect the integrity of the market and the state? Why, and under what conditions, will firms comply with the legal regimes governing corporate conduct, particularly when rules run contrary to parochial interests? These are among the most pressing questions in public governance.

Unfortunately, in subjecting these questions to empirical analysis, and in redesigning legal regimes to enhance compliance, epistemological and methodological problems abound. First, a paucity of empirical studies testing general propositions regarding relationships between legal rules and firm behaviors hampers investigation. The few existing studies of firm compliance are insufficiently rigorous to offer deep insights. The field is a young, largely descriptive discipline that has treated the firm itself as the level of analysis; few testable hypotheses or nomothetic propositions are offered in the literature. As such, compliance with the legal regime governing public firms remains a largely idiopathic phenomenon. Second, compliance is not typically an “on-off switch,” and a particular issue-area within a broader regime may present no clear demarcation. Compliance may be a matter of interpretation, negotiation, and contestation between firms, regulators, and prosecutors. Therefore, any theory must operationalize compliance by specifying objective criteria for rendering a determination of the obligations created by complex and ambiguous sources of law. Third, firm misconduct occurs clandestinely, and firms have incentives to self-report better compliance records than they in fact earn. Investigators must, therefore, pre-establish protocols to guide interpretation of partial or unintentional compliance and give direction when reliable information is unavailable.

Even more crucially, the study and regulation of firms *per se* as agents of compliance may be misguided. Firms are abstractions that exist only in the legal, and not the natural, sense, and, as such, utterly lack decisional capacity. Firms do not decide whether to comply with law; people, specifically officers who exercise decisional authority on their behalf, do. Any theory that would explain or predict firm compliance must account for the individual level of analysis. However, most corporate legal compliance research minimizes the salience of personality.⁷ Accordingly, Part II traces associations between personalities of CEOs and firm compliance with obligations arising under corporate law.⁸ Part III presents historical data to test heuristically the proffered theory and offer explanations and predictions of firm behaviors regarding

GOVERNANCE FROM THE INSIDE OUT 79 (Robert Gandossy & Jeffrey Sonnenfeld eds. 2004).

⁷ Donald C. Langevoort, *Monitoring: The Behavioral Economics of Corporate Compliance with Law*, 17 COLUM. BUS. L. REV. 71, 73 (2002).

⁸ See *infra* Part II and accompanying notes 11–98.

corporate legal compliance (CLC).⁹ Part IV, followed by a Conclusion, anticipates criticisms and suggests future research to build upon evidence that selection of CEOs on the basis of CLC propensities bears on firm survivability and prosperity, as well as on the orderly and legitimate function of the political economy.¹⁰

II. TOWARD A THEORY OF CLC

A. *Personality Theory*

Personality theory (PT) posits the individual as not merely causally significant but central to explanations and predictions of the “external” behavior of collective entities. Individuals are not prisoners of fell circumstances, but rather are capable of exerting positive influence on the world. Although variables drawn from other levels of analysis factor into explanations of the behavior of the sociolegal abstractions called firms, because individual corporate elites, and not firms, develop and implement the policies that shape the business universe, PT regards all firm behavior as subject to the influence of the complex interaction of psychological phenomena in the minds of the individuals responsible for those behaviors. Thus, the psychology of individual decision-makers is the orienting focus for the study of CLC. Because the psychologies of decision-makers have decisional correlates, and because each individual is endowed with a unique personal psychology, PT explains how “who” the decision-maker is translates into decisions he or she has made and will make. Thus, a personality theorist models the causal relationship between relevant psychological variables, decisions, and outcomes, and accounts for variance across a range of decision-makers.

1. *General Premises and Assumptions*

“Personality” refers to all aspects of an individual *qua* individual that influence his or her behavior. Within PT, each individual is an aggregate of a unique complex of constructs that drive a constant process of selection from among decisional alternatives. Choices are made to satisfy motivational, evaluative, or attitudinal dispositions and preferences and to shape the environment, and the decision-maker’s personality dictates the substance and process of these choices and yields behavioral and consequential effects.¹¹

⁹ See *infra* Part III and accompanying notes 99–607.

¹⁰ See *infra* Part IV, V, and accompanying notes 608–611.

¹¹ DAVID O. SEARS & ROBERT JERVIS, EDS. OXFORD HANDBOOK OF POLITICAL PSYCHOLOGY 21 (2003).

Although PT regards decisions as deliberate and conscious, it emphatically does not presume rationality. In making decisions, individuals perform a series of complex tasks, including the search for information, the ordering of preferences, the development of alternatives, and the making of choices, and most are incapable of absorbing sufficient information and undertaking adequate evaluation to reach decisions that consistently maximize their welfare.¹² The human mind is a limited instrument; under conditions of uncertainty and complexity, individuals simplify the decision-making process to avoid cognitive overload and reach closure.¹³

To lighten their burdens, decision-makers unconsciously resort to heuristics. Certain mechanisms—beliefs, images, values, motivations, attitudes, perceptions, and traits—represent the basic constituents of personality and the primary determinants of decisions. Identifying the relevant set of mechanisms, or constructs, operative in the decision-making context facilitates explanation and prediction of behavior. Establishing the process whereby these constructs determine decisions generates testable propositions.

2. *Personality Constructs*

a. Beliefs

“Beliefs” are internalized scripts about reality and about expected or preferred future outcomes that shape the manner in which incoming information is processed and interpreted. Individuals acquire a systematic tendency to see what they expect to see on the basis of the content of beliefs acquired early in life. Beliefs exert great influence upon the individual’s interpretation of events, and, thus, the individual’s identification of when there is a need or opportunity for making a choice, the individual’s choice and use of information, the individual’s definition of what constitutes realistic alternative courses of action, and what values are considered in a choice between alternatives. Beliefs “influence the actor’s definition of both the objectives and alternative courses of action available to his [or her] opponent, and the actor’s perception of the likely consequences of his [or her] own and his [or her] opponent’s actions.”¹⁴

Individuals are systematically more receptive to information consistent with their beliefs than to information that contradicts them and prone to process

¹² YAACOV Y.I. VERTZBERGER, *THE WORLD IN THEIR MINDS: INFORMATION, COGNITION, AND PERCEPTION* 21 (1990).

¹³ ERIC SINGER & VALERIE HUDSON, EDs., *POLITICAL PSYCHOLOGY AND FOREIGN POLICY* 96 (1992).

¹⁴ DANIEL HERADSTVEIT, *THE ARAB-ISRAELI CONFLICT: PSYCHOLOGICAL OBSTACLES TO PEACE* 11–20 (1979).

information selectively so as to support their belief systems, particularly under conditions of complexity, uncertainty, time pressure, and stress. Decision-makers selectively ignore or fail to integrate information, building bias into their decision-making.¹⁵ When confronted with repeated inconsistencies between belief systems and the empirical world, individuals, to avoid cognitive dissonance, must either modify their beliefs or disconfirm the validity of inconsistent information. However, so powerful are beliefs in dictating perceptions that individuals tend to resist adaptation and structure their interactions with others consistent with the content of their beliefs regardless of contrary empirical evidence.

b. Images

“Images” are the accumulated understandings about him- or herself and the world an individual organizes into an affective and evaluative structure to simplify decision-making. Although images may reflect empirical reality, they are subjective: individuals “respon[d] not only to the ‘objective’ characteristics of a situation, but also to the meaning the situation has for [the]m.”¹⁶

Perhaps the most relevant image is the stereotype, defined as:

[A] simplistic, unsophisticated belief about an individual or group that can be used to determine the proper way to think about individuals or groups and to enable decision[-]makers to fit a broad range of events into well-defined, narrow categories, allowing speed and economy of mental effort . . . and justif[cation of] particular patterns of behavior and thinking.¹⁷

Stereotypes artificially rationalize decisions by attributing admirable qualities to allies and venality to opponents, thus introducing bias and increasing the likelihood of decisional failure.¹⁸ Patterns of behavior directed toward a given individual or entity are congruent with images held by the decision-maker about the individual or entity: a positive image corresponds with friendly, cooperative behavior, whereas a negative image corresponds with hostile, conflictual behavior.¹⁹

¹⁵ RICHARD E. NISBETT & LEE ROSS, HUMAN INFERENCE: STRATEGIES AND SHORTCOMINGS OF SOCIAL JUDGMENT (1980).

¹⁶ JOHN C. FARRELL & ASA P. SMITH, EDS., IMAGE AND REALITY IN WORLD POLITICS 16 (1967).

¹⁷ VERTZBERGER, *supra* note 12, at 127.

¹⁸ IRVING L. JANIS, GROUPTHINK 112 (1982).

¹⁹ WILLIAM O. CHITTICK, THE ANALYSIS OF FOREIGN POLICY OUTPUTS 52 (1975).

c. Values

“Values” are normative statements about behaviors, objects, and situations that are situated along a continuum, superimposed upon information, and used to evaluate information.²⁰

d. Attitudes

“Attitudes,” defined as ideational formations having affective and cognitive dimensions that create a disposition for a particular pattern of behavior toward categories of objects and social situations, are intimately connected to images and beliefs.²¹ Individuals tend to discard information incongruent with their attitudes and search for information that supports attitudinal proclivities, particularly predispositions to feel or act positively or negatively toward peers.²²

e. Traits

“Traits” are the observable consistencies of style that form first perceptions, as well as the adjectives and adverbs of everyday language used to describe an individual. Traits such as energy level, self-confidence, organizational capacity, impulsivity, sociability, emotional expressiveness, intelligence, and sensitivity²³ exert latent influence upon individual choices and behaviors.²⁴

f. Motives

“Motives” are latent dispositions that direct decision-makers to define situations, make judgments, mobilize resources, and selectively pursue ends.²⁵

g. Summary

Beliefs, images, values, attitudes, traits, motives, and other attributes create mechanisms in the mind of an individual faced with uncertainty and time constraints that filter, order, simplify, and explain the decisional universe while

²⁰ VERTZBERGER, *supra* note 12, at 124.

²¹ ALAN C. ELMS, PERSONALITY IN POLITICS 11–14 (1976).

²² *Id.*

²³ JERROLD M. POST, THE PSYCHOLOGICAL MEASUREMENT OF POLITICAL LEADERS 31 (2003).

²⁴ DAVID MAGNUSSON, PERSONALITY AT THE CROSSROADS 13 (1977).

²⁵ JAMES N. ROSENAU, COMPARING FOREIGN POLICIES 248 (1972).

facilitating identification, evaluation, and selection of alternatives. For simplicity, the term “personality construct” references each of these elements of personality individually and collectively.

3. *Measuring Personality*

Problems with data access hamper development and testing of PT models of decision-making. An attempt to specify the manner in which personality translates into CLC decisions requires opening the black box of the firm to ascertain precisely what senior decision-makers think, say, and do during decision-making, yet this is possible only *post-hoc*. Moreover, firms tend to zealously guard corporate secrets—particularly when facing legal exposure—and what data does leak into media, public trials, memoirs, biographies, and other secondary sources tends to be less than completely reliable.²⁶ Similarly, assessments of the link between personality and CLC decision-making that rely on literature reviews, insider interviews, and biographies are subject to validity problems due to temporal and spatial distance from the subject, deception, faulty interview designs, and human fallibility. For these reasons, available data may not perfectly reveal the true beliefs, images, values, traits, or motives of decision-makers, and may thus fail to offer an unimpeachable accounting of their personalities.²⁷

Establishing the role of personality in decision-making requires a measurement protocol. Direct measurement is possible through interviews, observation, and psychometric testing, but otherwise personality must be inferred from behavior. The psychobiographical approach gathers all available sources, including letters, speeches, interviews, newspapers, autobiographies, anecdotal evidence, and observation, to generate an explicit, valid, and reliable assessment of personality.²⁸ Psychobiographers engage in an iterative process of data collection, aggregation, and testing, comparing sources to judge reliability and validity.²⁹ Psychobiographical data are used to “score” decision-makers on personality constructs hypothesized to give rise to variance in the decisions under analysis, with the ultimate objective the explanation of how particular combinations of personality constructs, or “personality profiles,” cause specific decisions and consequent outcomes.

²⁶ SINGER & HUDSON, *supra* note 13, at 220.

²⁷ LAWRENCE FALKNOWSKI, *PSYCHOLOGICAL MODELS IN INTERNATIONAL POLITICS* 8 (1979).

²⁸ Dean K. Simonton, *Presidential Style: Personality, Biography, and Performance*, 55 J. PERS. & SOC. PSYCHOL. 928 (1988).

²⁹ JEANNE N. KNUTSON, ED. *HANDBOOK OF POLITICAL PSYCHOLOGY* 307–18 (1973).

4. Conditionality and Contingency: Other Levels of Analysis

The relationship between personality and firm behavior is one of contingency: assertions of causality are couched as true only in some cases and under certain conditions, and caution must be exercised in generalizing from their findings. Individuals are constrained and influenced by political, economic, and social realities, as well as by the culture of relevant constituencies and by public opinion. No firm, *ergo* no decision-maker, is omnipotent. Still, the influence of exogenous constraints upon CLC decision-making is bounded. The role occupied by the individual is relevant to assessing the weight attributable to personality. The closer the individual is to the apex of the corporate hierarchy the more he or she is invested with the decisional autonomy in selecting goals, committing resources, and ordering firm actions. The most senior decision-makers (SDs)—CEOs, CFOs, and CLOs—are invested with the greatest quantum of power relative to other employees, and, as decisional freedom increases, exogenous constraints diminish.

Furthermore, situational context is crucial. During situations of ambiguity, instability, and uncertainty, PT accords greater causal weight to personality than to other variables, and an absence of precedent, increased time constraints, and emotional stress further diminish the theoretical significance of other factors.³⁰ Responsibility follows power, and SDs tend to rely less upon external guidance when their firm is subject to threat or opportunity. Because the role of firm constituencies and the influence of public opinion contracts during conditions of ambiguity and uncertainty, and because determinations of whether to comply with ambiguous laws that hamper the immediate pursuit of material self-interest and specify serious civil and criminal sanctions for their violation implicate the highest of stakes and trigger great stress, the salience of exogenous constraints is at a nadir and the role of SD personality in the chain of causation resulting in firm behaviors is at a zenith in the issue-area of CLC.

Although PT does not advance the naïve view of decisions as the mere projection of personalities, neither does it accept the simplistic view that personalities have no effect. While the relationship between personality and decision-making is contingent and conditional, it is positive, and firm behaviors, including CLC, reflect the personality of the SDs at the helm.

³⁰ JOAN OFFERMAN-ZUCKERBERG, ED., POLITICS AND PSYCHOLOGY 141 (1979).

B. A Theory of CLC

1. Introduction

Personality theories treat empirical behaviors as the *explanandum*—the things to be explained—and one or more personality constructs as the *explanans*—the explanatory variables. In other words, firm behaviors are dependent variables (DVs) that are the end result of a chain of causation running through the personality of the individuals who set the course the firm will follow, and the personality constructs that constitute this unique personality are independent variables (IVs). A theoretical model that allows for psychobiographical measurement of policy-relevant personality constructs may enable enriched explanations of CLC decisions while retaining parsimony. In developing this model, efforts will be made to enumerate and define the personality constructs operant in the personalities of CEOs responsible, via CLC decisions, for particular outcomes; next, a set of preliminary hypotheses based upon associative linkages between personality constructs and outcomes shall be offered and heuristically tested.

2. Independent Variables: Personality Constructs

The proposed pre-theory of CLC hypothesizes that the presence or absence of four constructs in the personalities of CEOs are responsible for firm compliance with or violation of the legal regimes governing corporate behavior; these personality constructs, which serve as IVs, are “militarism,” “anomism,” “hostility,” and “adventurism.”

a. Militarism

“Militarism” is a global construct that taps a set of beliefs, values, images, and attitudes. The militarist is more likely to consider forceful or anti-social alternatives than his or her non-militarist counterpart, more prone to escalate conflictual situations, and more likely to lead the firm to violate the law in pursuit of his or her objectives.³¹ Nationalism and a favorable attitude toward power have been identified as most predictive of the level of conflict associated with decision-makers; nonetheless, all ten sub-constructs that typify the militarist, specifically nationalism, a favorable attitude toward power, aggression, authoritarianism, competitiveness, dogmatism, introversion, isolationism, ambitiousness, and low self-esteem, are incorporated in the

³¹ FOREIGN POLICY DECISION MAKING 108–09 (Donald Sylvan & Steve Chan, Eds. 1984).

theoretical model. The ideal-typic³² militarist scores high, indicating the presence of the sub-construct in his or her personality profile to an extent significantly greater than the average person, on each sub-construct. “Militarism” does not imply a decision-maker who embodies these traits is enamored of or has served in the military, nor does it necessarily imply he or she believes imposing military solutions on problems is always desirable; rather, it is an apt term for the global personality construct that captures the aforementioned dimensions of personality.

i. Sub-constructs of Militarism

“Nationalism” is a belief that one’s nation is superior to other nations by virtue of its culture, tradition, race, ethnic composition, philosophy of government, or other characteristics,³³ as well as the motivation to “develop, protect, maintain, or refine” this culture, tradition, race, or philosophy.³⁴ Nationalists are more prone to defend fellow nationals in word and deed and more likely than non-nationalists to serve in the armed forces.³⁵ On the other hand, nationalists are less able to make subtle distinctions and gradations.³⁶ The behavioral outputs of nationalists tend to be more conflictual than those associated with their non-nationalist counterparts, and these effects are heightened by cultural dissimilarities between the nationalist and the target of the behavior.

“Favorable attitude toward power” is a composite sub-construct, which refers to beliefs regarding the desirability and utility of possessing and employing force or coercion in the pursuit of objectives. “Throughout history, [decision-makers] who attain legendary status often tend to be those who have conquered other nations, won major wars, forcibly transformed their societies, and imposed their own beliefs on their subjects[;]”³⁷ decision-makers seeking this status tend to have positive attitudes toward the military, nuclear weapons,

³² “Ideal types” are theoretical constructs that model selected aspects of the empirical world and permit comparative assessment of the extent to which those aspects exist in a particular, real case. Max Weber, “Objectivity” in *Social Science and Social Policy*, in *THE METHODOLOGY OF THE SOCIAL SCIENCES* 49 (Edward A. Shils & Henry A Finch trans. & eds. 1949).

³³ Paul C. Stern, *Why do People Sacrifice for their Nations?*, 16 *POL. PSYCHOL.* 217 (1995).

³⁴ VAMIK VOLKAN, *THE NEED TO HAVE ENEMIES AND ALLIES* 88, 94–95 (1988).

³⁵ Hank Denker, Darina Malova & Sander Hoogendorn, *Nationalism and Its Explanations*, 24 *POL. PSYCHOL.* 345, 350 (2003).

³⁶ David Winter, Margaret G. Hermann, Walter Weibtraub & Stephen G. Walker, *The Personalities of Bush and Gorbachev Measured at a Distance: Procedures, Portraits, and Policy*, 12 *POL. PSYCHOL.* 215, 231 (1991).

³⁷ A. LUDWIG, *KING OF THE MOUNTAIN: THE NATURE OF POLITICAL LEADERSHIP* 3–4 (2002).

war, and control over others—the instrumentalities that achieve status.³⁸ The decision-maker with a favorable attitude toward power believes power, rather than reason, is essential to preserving order.

“Aggression” is the trait that directs an individual to engage in self-assertive, self-protective, domineering, hostile, and/or violent interactions with others.³⁹

“Authoritarianism” is the belief that unquestioning obedience to authority is superior to freedom of judgment and that credibility of information is a function of the authority of the source, rather than its factual reliability.⁴⁰ Authoritarians rigidly adhere to conventional values, condemn violators of social tradition as threats, and preoccupy themselves with hierarchies and social cohesion.⁴¹

“Competitiveness” is the drive to struggle against others for satisfaction of wants and needs.⁴²

“Dogmatism” is the degree to which an individual cannot identify or use conceptual linkages, tolerate and assimilate contrary beliefs, analyze contingencies, adapt to ambiguity, generate alternatives, perceive shades of grey, and think abstractly.⁴³

“Introversion” describes an attitude and trait in which an individual directs attention inward to his or her own thoughts and experiences rather than toward objects or people.⁴⁴

“Isolationism” is the negative value attached to establishing and maintaining emotional relationships with others. Isolationists lack a predisposition to seek approval and to limit the type or degree of conflict, and they tend to be overly self-reliant.⁴⁵

“Ambitiousness” is the value attached to personal accomplishment, and ambitious individuals are predisposed to strive for success in tasks involving leadership and the demonstration of intelligence.⁴⁶

“Low self-esteem” is the absence of a belief in one’s own capability,

³⁸ DENNIS J.D. SANDOLE, CAPTURING THE COMPLEXITY OF CONFLICT: DEALING WITH VIOLENT ETHNIC CONFLICTS OF THE POST-COLD WAR ERA 24 (1999).

³⁹ MAGNUSSON, *supra* note 24, at 165.

⁴⁰ VERTZBERGER, *supra* note 12, at 172.

⁴¹ See T. ADORNO, E. FRANKEL-BRUNSWICK, D.J. LEVINSON & R. NEVITT SANFORD, THE AUTHORITARIAN PERSONALITY (1950).

⁴² Joseph Badaracco, Jr., *We Don’t Need Another Hero*, Harv. Bus. Rev., Sept. 1, 2001, at 1–12.

⁴³ MILTON ROKEACH, THE OPEN AND CLOSED MIND 62 (1960).

⁴⁴ VERTZBERGER, *supra* note 12, at 173.

⁴⁵ DAVID DOTLICH & PETER CAIRO, WHY CEOs FAIL: THE 11 BEHAVIORS THAT CAN DERAIL YOUR CLIMB TO THE TOP AND HOW TO MANAGE THEM 64–65 (2003).

⁴⁶ MAGNUSSON, *supra* note 24, at 412.

worth, and entitlement to respect; individuals with low self-esteem are not self-confident, patient, or likely to perceive themselves as competent and well-regarded by peers,⁴⁷ but are more prone to violent behavior than those with high self-esteem and more likely to suppress constructive conflict.⁴⁸

ii. Summary and Operationalization: Militarism

The ideal-typic militarist is a nationalist with prior military service who views the use of power favorably, is an aggressive competitor and keenly ambitious, and is authoritarian and dogmatic yet introverted, isolated, and beset with low self-esteem. While the pure ideal-typic militarist may exist only in theory, militarists score high, indicating the presence of the sub-construct in his or her personality profile to an extent significantly greater than the average person, on a majority of the sub-constructs.

b. Anomism

“Anomism” consists of five sub-constructs—disregard for law, disregard for legal authorities, amoralism, ignorance of law, and ignorance of corporate law—that tap a set of intercorrelated beliefs, values, images, and attitudes regarding the rule of law. The anomist has little regard for law or legal authorities, lacks moral or ethical qualms about violating law, and knows little of the substance of law generally and less about corporate law. In brief, the anomist is a serial and unrepentant lawbreaker who holds dear no superordinate moral principles. The ideal-typic anomist scores high on each sub-construct.

i. Disregard for Law

Although “[e]veryone breaks the law sometimes, and some people break it often[,]”⁴⁹ for many individuals law is an object of reverence and obedience a quasi-religious duty.⁵⁰ Many, and perhaps most, people quite simply believe law must be obeyed for the simple reason that it is law.⁵¹ The anomist, in

⁴⁷ LINDA O. VALENTY & OFFER FELDMAN, *POLITICAL LEADERSHIP FOR THE NEW CENTURY: PERSONALITY AND BEHAVIOR AMONG AMERICAN LEADERS* 73 (1999).

⁴⁸ DOTLICH & CAIRO, *supra* note 45, at 128–30.

⁴⁹ TOM R. TYLER, ROBERT J. BOECKMANN, HEATHER J. SMITH & YUEN J. HUO, *SOCIAL JUSTICE IN A DIVERSE SOCIETY* 3 (1997).

⁵⁰ Kenneth G. Dau-Schmidt, *An Economic Analysis of the Criminal Law as a Preference-Shaping Policy*, 1990 *DUKE L.J.* 1, 1 (1990).

⁵¹ H.R. Rodgers Jr. & E.B. Lewis, *Political Support and Compliance Attitudes*, 2 *AM. POL. Q.* 61 (1974).

contrast, accords no independent normative value to legal obligations and regards legal obedience in purely instrumental terms: if obeying the law suits his self-interest, he or she does so, but, if obedience thwarts the pursuit of his or her ends, law is but another objective impediment that must be overcome or negotiated away.⁵²

ii. Disregard for Legal Authorities

Regard and respect for legal authority is widely diffused across demographic, cultural, and geographic domains. Most people accord legal authorities, including the police and the judiciary, the presumption of integrity, competence, and legitimacy, and as a consequence cooperate and comply with them in their official capacities.⁵³ By contrast, anomists treat legal authorities as inherently unworthy of respect or obedience and as constraints to be factored into calculations of how best to pursue self-interest.

iii. Amoralism

“Amoralism” refers to an absence of absolutism in the evaluation and judgment of character, conduct, ethics, and values. Most people “d[o] not simply act in pursuit of gains[;] rather, their own personal sense of right and wrong influence[s] their behavior. . . [and] [t]hey . . . engage in the behavior that they think is morally right.”⁵⁴ Such people consider non-compliance morally unjustifiable, and many consider the moral evil occasioned by noncompliance to be greater than the evil of obeying a law with which they disagree.⁵⁵ The amoralist, however, accords no moral virtue to compliance and is agnostic, and thus amoral, regarding right and wrong. Moral judgments are less consequential to the anomist than the perceived certainty or threat of punishment.

iv. Ignorance of Law

“Ignorance of law” is the absence of formal legal education—not the absence of legal knowledge. Those with legal training may be more likely to regard legal obligations as binding. Although legal training “does not assure

⁵² ABRAM CHAYES & ANTONIOA CHAYERS, *THE NEW SOVEREIGNTY: COMPLIANCE WITH INTERNATIONAL REGULATORY AGREEMENTS* 117 (1995).

⁵³ TYLER, ET. AL., *supra* note 45, at 38–39, 45.

⁵⁴ *Id.* at 116.

⁵⁵ IRVING JANIS & LEO MANN, *DECISION MAKING: A PSYCHOLOGICAL ANALYSIS OF CONFLICT, CHOICE, AND COMMITMENT* 28 (1977).

that [decision-makers] will cast their votes for law observance, . . . some knowledge of the law, some appreciation of its significance, and some attitudes and habits of respect for the law find a place in the process of decision.”⁵⁶ Although most decision-makers may know little about law, it stands to reason that the less ignorant a decision-maker is as to legal obligations the more likely he or she will be to comply with them.

v. Ignorance of Corporate Law

“Ignorance of corporate law” references the absence of training in the legal regime governing corporations. Knowledge of corporate law is a determinant of CLC: the less a decision-maker knows about corporate law the less likely he or she will comply with it.

vi. Summary and Operationalization: Anomism

The ideal-typic anomist is ignorant of the law, regards compliance with legal rules and authorities in purely instrumental terms, and complies only where it serves self-interests; morality does not factor into the analysis.

c. Hostility

“Hostility” consists of nine sub-constructs that tap a set of intercorrelated beliefs, values, images, and attitudes regarding human relationships. The ideal-typic hostile scores high, indicating the presence of the sub-construct in his or her personality profile to an extent significantly greater than the average person, on each sub-construct.

i. Distrust

“Distrust” refers to a belief in the inherent badness of human beings.⁵⁷ Individuals with a high degree of distrust are more likely than those who are less distrusting, or more idealistic, to over-perceive, and overreact, to threats.⁵⁸ The most distrustful decision-makers can be termed “paranoid,” defined as intensely suspicious of others, convinced that others are scheming to cause them harm,

⁵⁶ LOUIS HENKIN, *HOW NATIONS BEHAVE* 65–66 (1979).

⁵⁷ JOHN D. STEINBRUNER, *CYBERNETIC THEORY OF DECISION: NEW DIMENSIONS OF POLITICAL ANALYSIS* 47 (1973).

⁵⁸ Michele G. Alexander, Marilyn B. Brewer, & Richard K. Hermann, *Images and Affect: A Functional Analysis of Out-Group Stereotypes*, 77 *J. PERS. SOC. PSYCHOL.* 78, 80 (1999).

and prone to see enemies in everyone.⁵⁹ Paranoids resort unnecessarily to forceful responses to perceived threats.⁶⁰

ii. Narcissism

“Narcissism” is the belief one is endowed with great power, physical appeal, and the right to exploit and dominate others.⁶¹ Narcissists crave attention and need to be perceived as powerful, appealing, and worthy of love and admiration; they are preoccupied with pathologically grandiose fantasies of wealth and fame, devoid of conscience or remorse, envious, spiteful, greedy, vindictive, and willing to use force to achieve goals.⁶² Malignant narcissists, or “antisocial personalities,” are reckless, sadistic, suicidal, and prone to depression.⁶³ Narcissists are not possessed of deeply-held beliefs about the external world: their images of others are flexible, and other actors are of value only to the extent they enhance self-interest or present them in a good light. For the narcissist, what is good for him or her is good for his or her firm and nation, and decisions are reducible to considerations of how results advance his or her concept of self. Because they are detached from reality to the extent of their self-absorption, narcissists are systematically inclined to overestimate their capabilities and underestimate external constraints.⁶⁴

iii. Cynicism

“Cynicism” is the belief others are self-interested, insincere, and motivated primarily by material considerations, and the corresponding negative general image of humanity.⁶⁵ Cynics expect the worst of others, and consequently are more likely to perceive threats than are individuals who view others as inherently cooperative, sincere, and motivated by ideals.⁶⁶

⁵⁹ ROBERT ROBINS & JERROLD POST, *POLITICAL PARANOIA: PSYCHOPOLITICS OF HATRED* 7–12 (1997).

⁶⁰ J. DAVIS, *THREATS AND PROMISES: THE PURSUIT OF INTERNATIONAL INFLUENCE* 41 (2000).

⁶¹ VERTZBERGER, *supra* note 12, at 174.

⁶² ROBINS & POST, *supra* note 59, at 83–84.

⁶³ See THE DIAGNOSTIC AND STATISTICAL MANUAL IV-REVISED 117 (W. John Livesley Ed., 1995).

⁶⁴ DOTLICH & CAIRO, *supra* note 45, at 2–12.

⁶⁵ R.E. Agger, M.N. Goldstein & S.A. Pearl, *Political Cynicism: Measurement and Meaning*, 23 J. POL. 477 (1961).

⁶⁶ JERROLD M. POST, *THE PSYCHOLOGICAL MEASUREMENT OF POLITICAL LEADERS* 339 (2003).

iv. Misanthropy

“Misanthropy” is a generalized dislike, and even hatred, of human beings. Simply put, misanthropes are antisocial, do not seek or enjoy the company of others, and actively seek to avoid or, in the alternative, to cause harm to other persons.

v. Ethnocentrism

“Ethnocentrism” is the belief one’s ethnic, racial, or cultural group is superior to others and association with persons of one’s ethnic, racial, or cultural group is preferable to association with other groups. Ethnocentrics project their preference outward, and the degree of their cooperation and positive interaction with others is, to some extent, determined by the degree of ethnic, racial, or cultural similarity.⁶⁷ Accordingly, justification for hostility is available to the ethnocentric who identifies dissimilarities between his or her own group and the target of his or her decision-making and attributes hostile intent on this basis; greater vigilance is required to protect against this threat. Taken to extremes, ethnocentrism creates a culture of fear that rationalizes infliction of harm on out-groups.⁶⁸

vi. Hostility

“Hostility” is the perception others hold highly negative images of—and have strongly negative intentions toward—one’s self or group. It is an assessment of the degree of distrust operant in the calculus of external actors. The greater the perception of hostility, the less likely a decision-maker will be to recognize disconfirming information and the more likely to perceive external actors as aggressive, to escalate threats, and to meet perceived aggression with force.⁶⁹ Although heightened perceptions of hostility may correspond to empirical realities, most individuals can distinguish immediate and genuinely hostile out-groups without detecting hostility from the entire world. Clinically hostile individuals are caught in a “siege mentality” that persists independently of reason.⁷⁰

⁶⁷ CHITTICK, *supra* note 19, at 52.

⁶⁸ SANDOLE, *supra* note 38, at 111.

⁶⁹ SEARS & JERVIS, *supra* note 11, at 265.

⁷⁰ PATRICK J. MCGOWAN & HOWARD B. SHAPIRO, *THE COMPARATIVE STUDY OF FOREIGN POLICY: A SURVEY OF SCIENTIFIC FINDINGS* 53–60 (1971).

vii. Machiavellianism

“Machiavellianism” is a set of values that denies the relevance of morality and embraces deception, stealth, and manipulation in the pursuit of power.⁷¹ The Machiavellian is ruthless, devious, and amoral, and neither norms nor laws stand in his or her way.

viii. Lack of Empathy

Empathy is the capacity to project one’s own personality into that of another to understand him or her better and share in another’s emotions or feelings. Empathy disposes an individual to seek out the views, interests, and values of others, ameliorate self-interest, and consider the consequences of his or her decisions for others. “Lack of empathy” is the incapacity to form accurate perceptions and judgments of others and give regard to the concerns and interests of others.⁷²

ix. Selfishness

Altruism is the value placed upon aiding others despite risks and costs and without expectation of external reward.⁷³ The paradigmatic example is the self-sacrifice of the soldier who saves his or her comrades from certain death by throwing him- or herself upon a grenade in their midst, absorbing the blow but ensuring his or her own demise. “Selfishness” is the antithesis of altruism.

x. Summary and Operationalization: Hostility

The ideal-typic hostile is a self-absorbed, delusional, amoral individual who is deeply distrustful and suspicious of others and sees threats lurking everywhere. He or she bears an animus toward humanity mitigated only in regard to in-group persons and is prepared to do anything and everything to defeat the omnipresent threats posed by out-groups about whom he or she knows and cares little.

⁷¹ See generally NICCOLO MACHIAVELLI, *THE PRINCE* (W.K. Marriott trans. 1916).

⁷² VOLKAN, *supra* note 34, at 121.

⁷³ HOWARD MARGOLIS, *SELFISHNESS, ALTRUISM, AND RATIONALITY: A THEORY OF SOCIAL CHOICE* (1984).

d. Adventurism

“Adventurism” consists of seven sub-constructs—risk tolerance, internal locus of control, impulsivity, anxiety, optimism, stress, and maleness—that tap intercorrelated beliefs, values, images, attitudes, and traits regarding tolerance of uncertainty. The ideal-typic adventurist scores high on each sub-construct.

i. Tolerance of Risk

Risk is an immutable characteristic of the universe, and certain individuals are cognitively disposed to greater tolerance of it than others.⁷⁴ “Tolerance of risk” is a measurement of the degree to which an individual will choose courses of action that, while they may offer the prospect of gains, carry with them significant possibilities of injury, damage, or loss. Risk-tolerant individuals are more likely to expose themselves and their firms to danger than are risk-averse individuals, who seek the decision that satisfies minimal policy objectives with the least possibility for loss.⁷⁵

ii. Internal Locus of Control

“Internal locus of control” is the belief one can exert positive influence over the world to bring about a future favorable result. For individuals whose locus of control is external, the belief their destiny is preordained leads to decisional paralysis. Individuals with an internal locus of control attribute causality of their behavior to themselves (Will) rather than the external world (Fate) and are more likely to challenge environmental constraints and less likely to remain passive or compromise.

iii. Impulsivity

“Impulsivity” is the trait characterized by the inability to self-modulate sensory input, inhibit sensation-seeking behavior, or consider the consequences of actions.⁷⁶ Impulsives frequently make suboptimal decisions because they do not allow themselves time to think clearly and deliberately, seek advice, or

⁷⁴ Yaacov Vertzberger, *Rethinking and Reconceptualizing Risk in Foreign Policy Decision-making*, 16 POL. PSYCHOL. 347, 368-69 (1995).

⁷⁵ HARVARD BUSINESS REVIEW ON CORPORATE ETHICS 63 (2003).

⁷⁶ HANS J. EYSENCK & SYBIL B.G. EYSENCK, PERSONALITY STRUCTURE AND MEASUREMENT (1967).

employ moral reasoning.⁷⁷

iv. Anxiety

“Anxiety” is the trait that makes an individual prone to evaluate stimuli as dangerous and to experience concomitant feelings of worry, distress, and panic. Anxious individuals are more likely than non-anxious individuals to perceive and react to threats.⁷⁸

v. Optimism

“Optimism” is the belief the future will produce preferred outcomes regarding people and events.

vi. Stress

“Stress” is the aggregate response produced in unconscious adaptation to environmental stimuli. Individuals vary in their ability to preserve cognitive functioning as stressors mount, yet all experience degradation in their ability to generate alternatives and choose optimal courses of action under threats to core values and interests.⁷⁹

vii. Male Sex

Although sex-role differences may be socially constructed in part, rather than biologically determined by testosterone,⁸⁰ men are more likely to be competitive, aggressive, ethnocentric, Machiavellian, distrustful, ambitious, and lack empathy.⁸¹

viii. Summary and Operationalization: Adventurism

The ideal-typic adventurer is an impulsive gambler so optimistic he or she can assert his or her will that he or she risks all for the sheer thrill of pursuing

⁷⁷ Badaracco, *supra* note 42, at 1–3.

⁷⁸ See generally C.D. SPEILBERGER, ANXIETY AND BEHAVIOR (1966).

⁷⁹ O. SVENSON & A.J. MAULE, TIME PRESSURE AND STRESS IN HUMAN JUDGMENT AND DECISION MAKING 1–2 (2003).

⁸⁰ Sabina Nielsen & Morten Huse, *The Contributions of Women on Boards of Directors: Going Beyond the Surface*, 18 CORP. GOVERNANCE 136 (2010).

⁸¹ CHRISTOPHER M. BYRON, TESTOSTERONE, INC.: TAKES OF CEOs GONE WILD 135 (2005).

victory no matter how small or unlikely. He or she resolves tremendous anxiety and stress by trusting blindly and rolling the dice.

3. *Dependent Variables: Decisions and Outcomes Regarding CLC*

a. Introduction: Corporate Law and Major Sub-regimes

The current pretheory of CLC regards the presence or absence of the personality constructs of militarism, anomism, hostility, and adventurism in the personalities of CEOs as IVs that determine firm compliance with corporate law. The theory treats these decisions and the resulting consequences as dependent variables.

“Corporate law” is a complex amalgam of federal and state laws, regulatory rules, and judicial and agency opinions interpreting and applying these sources to the governance of firms. Various substantive sub-regimes specify obligations in issue-areas ranging from the formation and dissolution of commercial entities; contracts; rights and duties of shareholders, managers, and directors; mergers and acquisitions; free competition and trade; securities; taxation; employment; industrial espionage; and environmental protection. Seven sub-regimes serve as the foundation for the study of CLC:

- financial accounting and reporting;
- securities regulations;
- market behavior;
- corrupt practices;
- labor law;
- environmental protection and social responsibility; and
- cooperation with regulatory authorities.

b. Dependent Variables (DVs)

Fifteen DVs are organized around and tap compliance with the seven legal sub-regimes:

(1) whether the firm violates financial regulations through fraudulent accounting practices,⁸² such as the creation of fictional business entities, failing

⁸² The Generally Accepted Accounting Principles (GAAP) prescribe rules and regulations to which public corporations must adhere in the recording and reporting of financial information. See <http://www.fasab.gov/currenttext.html>. Despite the comprehensive regulatory regime, managers have considerable latitude in the financial assumptions and accounting decisions they make. This Article does not consider good-faith interpretations of GAAP subsequently determined by regulators

to record material transactions, stating fictitious or fraudulent earnings, delaying or prepaying invoices to meet budgetary goals, booking operating expenses as capital expenses, intentional misclassification of transactions as to accounts, departments, or periods to misrepresent earnings,⁸³ treating stock options or other liabilities as undisclosed or off-balance sheet entries or footnotes rather than as expenses, misstating option vesting dates to artificially inflate value, or any other false, artificial, or intentionally misleading statements of financial condition⁸⁴ [hereinafter violate financial regulations] (sub-regime a);

(2) whether the firm engages in misconduct by undisclosed insider trading in the firm's securities or in other firms' securities, by permitting trading by firm employees in puts and calls of the firm's stock or short sales of the firm's stock,⁸⁵ or by illegally disclosing confidential information about movement in the price of the firm's shares⁸⁶ [hereinafter violate securities regulations] (sub-regime b);

(3) whether the firm lavishes senior managers with compensation, bonuses, or perquisites that are indefensible in reference to the market and unsupported by sound business judgment⁸⁷ [hereinafter inflate compensation] (sub-regime a);

(4) whether the firm engages in competition in violation of antitrust laws, including collusion with other firms to allocate territories or markets or customers or to fix price or production levels to drive competitors from the market,⁸⁸ acquiring trade secrets or other privileged information through deceit or misrepresentation or in any other way constitutive of industrial espionage,⁸⁹

to be violations of financial regulations to be examples of noncompliance; only manifestly unlawful attempts to deliberately and materially deceive investors and regulators are treated as violations of law, specifically 15 U.S.C. § 78 (2012), 18 U.S.C. §§ 2, 1351 et seq. (2012), and C.F.R. 240.13b2-2.

⁸³ The "matching principle" requires income earned and costs incurred to be recorded in the same period. See Federal Accounting Standards Board, *31—Accounting for Fiduciary Activities*, SFFAS (Oct. 24, 2006), http://www.fasab.gov/pdffiles/sffas_31.pdf.

⁸⁴ SOX, *supra* note 2, at § 409.

⁸⁵ These practices constitute illegal conflicts of interest because they enable employees to benefit, against the interests of owners, from nonpublic information about movement in the price of the firm's shares. See Securities and Exchange Act of 1934, § 240.10b5-1.2, 65 F.R. 51716, 51737, Aug. 24, 2000.

⁸⁶ These practices are criminalized under 15 U.S.C. § 78, 18 U.S.C. §§ 2, 1351 et seq., C.F.R. 240.13b2-2, and 17 Fed Reg, § 240.10b-5.

⁸⁷ The "business judgment rule" creates a strong presumption in favor of a corporation's board of directors against liability for breach of duties of care, loyalty, and good faith to the shareholders. See, e.g., *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. 1984).

⁸⁸ 15 U.S.C. § 1 (2000).

⁸⁹ The Economic Espionage Act of 1996, 18 U.S.C. §§ 1831–1839, criminalizes information theft for economic gain.

dumping,⁹⁰ rigging of bids, or in any other way manipulating the free market [hereinafter manipulate the market] (sub-regime c);

(5) whether the firm engages in corrupt business practices by accepting or offering cash, services, or gifts of greater than nominal value to customers, suppliers, or government officials to influence business decisions [hereinafter engage in bribery] (sub-regime d);⁹¹

(6) whether the firm allows funds, facilities, or services to be used to support political candidates or parties in violation of state or federal law, or requires employees to make personal contributions to candidates or PACs [hereinafter buy political influence] (sub-regime d);⁹²

(7) whether the firm is in breach of federal, state, or local employment laws, including the Civil Rights Acts, the Age Discrimination in Employment Act, Employee Retirement Income Security Act (ERISA), National Labor Relations Act (NLRA), human rights provisions, and whistleblowing statutes designed to protect employees who report noncompliance⁹³ [hereinafter violate labor law] (sub-regime e);

(8) whether the firm is deliberately noncompliant in its adherence to laws and regulations governing environmental protection⁹⁴ [hereinafter violate environmental standards] (sub-regime f);

(9) whether the firm resists regulatory authorities in the implementation and enforcement of corporate law by failing to (i) enact, implement, and train employees in a comprehensive CMP;⁹⁵ (ii) employ a dedicated corporate legal

⁹⁰ Agreement on Implementation of Article VI of General Agreement on Tariffs and Trade, Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, vol. 6 (1994), 33 I.L.M. 1125 (1994).

⁹¹ The U.S. bribery statute imposes criminal penalties for offering to or accepting from a public official any material inducement to influence the performance of any official act. 18 U.S.C. § 201(a). The Foreign Corrupt Practices Act, 105 Stat. 366 (1994), criminalizes bribery in international commerce.

⁹² Political contributions from employees are not presumptively unlawful but must be made in compliance with applicable state and federal laws. The presumption here is the most elite rule breakers are also those most likely to cultivate the rich and the powerful.

⁹³ See, e.g., Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (1964); Age Discrimination in Employment Act, Pub. L. No. 90-202, 81 Stat. 602 (Dec. 15, 1967); Employee Retirement Income Security Act, 29 U.S.C. §§ 1001–1191(c) (2012); National Labor Relations Act, 29 U.S.C. §§ 151–169 (1935).

⁹⁴ “Violate environmental standards” means the firm has, more than the national average of firms of similar size, industry, and market capitalization, been successfully sued civilly or criminally for violations of laws or regulations aimed at the protection of the natural environment against despoilment.

⁹⁵ Simply drafting a code, without subsequent implementation, can actually enhance the penalties to which a firm is subject for violations of corporate law. See 2006 *U.S. Federal Sentencing Guideline Manual*, Ch. 8, Section B2.1 UNITED STATES SENTENCING COMM’N <http://www.ussc.gov/guidelines-manual/2006/2006-federal-sentencing-guidelines-manual> (last

compliance officer with substantial independent oversight authority, (iii) subject senior management to the same obligations as other employees, (iv) enable confidential reporting of illegality by protecting whistleblowers,⁹⁶ (v) retain business records if litigation, investigation, or audit is pending or imminent, and (vi) make reasonable efforts to provide accurate and complete information to auditors, regulators, and investigators⁹⁷ [hereinafter obstruct justice] (sub-regime g);

(10) whether, prior to discovery of substantial violations of law, the firm or its CEO have a reputation with employees, investors, lenders, customers, vendors, communities, or regulators for unethical or unlawful business practices⁹⁸ [hereinafter earn bad reputation] (sub-regimes a–g);

(11) whether, as a result of having engaged in any of the practices outlined in (1)–(9), the firm has had to restate earnings [hereinafter restate earnings] (sub-regimes a–g);

(12) whether, as a result of having engaged in any of the illegal practices outlined in (1)–(10), the firm or its CEO are subpoenaed to testify before Congress [hereinafter subpoenaed by Congress] (sub-regimes a–g);

(13) whether, as a result of having engaged in any illegal practice outlined in (1)–(10), the firm or its CEO have been subjected to civil or criminal penalties [hereinafter incur legal penalty] (sub-regimes a–g);

(14) whether, as a result of having engaged in any of the illegal practices outlined in (1)–(10), the firm has had to declare bankruptcy or has otherwise been liquidated [hereinafter suffer legal death] (sub-regimes a–g);

(15) whether, after being penalized for wrongdoing, the CEO expresses the belief he or she did nothing wrong, blames others, declines to express remorse or make apologies, and neglects to offer restitution [hereinafter deny wrongdoing and blame others] sub-regimes a–g).

c. Operationalization

Many of the statutes, rules, and regulations that constitute the corporate

visited Feb. 2, 2014).

⁹⁶ Many firms retaliate against those who report legal violations, and, thus, the act of reporting such violations requires tremendous courage.

⁹⁷ The dependent variable “obstruct justice” contemplates situations where firms resist enforcement or commit perjury by providing false information to regulators and investigators examining firm compliance. See 18 U.S.C. § 1503 (2012) (criminalizing obstruction of justice); 18 U.S.C. § 1621 (2012) (criminalizing knowing misrepresentation of a material fact when under a duty to disclose the truth).

⁹⁸ See Christopher W. Morros, *What is this Thing Called Reputation?*, 9 BUS. ETHICS Q. 87 (1999) (providing a discussion on the subject of corporate reputation).

legal regime are sufficiently complex and susceptible to interpretation that the legality or illegality of any particular business decision may be difficult, even for trained legal counsel, to discern. A gray area between what is clearly permitted and what is manifestly unlawful complicates operationalization of the lawfulness of firm decisions, particularly at the margins. Consequently, CLC is almost invariably appraised in light of, and following, specific applications in practice. Moreover, many firm decisions are shielded from external scrutiny and, thus, emerge as subjects of investigation only after they are framed by self-interested parties. Operationalizing particular CLC decisions requires subjective judgments and interpretations, and it can be difficult to adjudge a particular CLC decision as illegal *ipso facto*, such as proffering a gift of relatively modest material value to a long-term customer in a culture that embraces gift-giving as part of its business identity. On the other hand, certain CLC decisions—the statement of earnings from a non-existent business entity or the shredding of documents to obstruct justice—are manifestly unlawful. Most cases fall between these polar extremes and must be judged casuistically. Subject to these caveats, it is feasible to establish associative linkages between personality profiles and CLC outcomes. Accordingly, each DV is dichotomized and scored as either “yes” for the presence of the outcome or “no” for its absence.

d. Preliminary Hypotheses and Associative Linkages

Linkages between IVs and DVs proposed at this juncture as preliminary hypotheses (PHs) are established by positing that the more each and every IV finds expression in the personality of a given decision-maker, the more likely will be the occurrence of each DV. In other words, the more militaristic the decision-maker, the more likely he or she will be to manipulate or misrepresent the financial performance of his or her firm and the more likely to violate securities regulations, accept inflated compensation and so on for each DV. The same relationship holds for each IV; thus, the more anomistic, hostile, and adventuristic the decision-maker, the more likely he or she will be to reject compliance with law as measured by each of the fifteen DVs. These sixty hypothesized relationships are expressed in the following form: “1. The more militaristic the CEO the more likely he or she will be to violate financial regulations.”

III. PERSONALITY AND CLC: HEURISTIC TESTING OF THE THEORY

A. Data

The nature of the inquiry is such that there is bias in favor of CEOs whose decision-making resulted in violations of CLC. Scandal, not successful

governance, sells. We know much less about firms that have better compliance records than Enron, WorldCom, and other certified corporate miscreants. However, at this stage, it is infeasible to attempt to do more than sample the most accessible data, which necessitates a focus upon corporate scandals and the CEOs who initiated them. While recognizing the universe of firms and CEOs is broader than what is possible to examine in this phase, and conclusions are contingent and tentative pending further research, this study employs heuristic testing to analyze available psychobiographical data concerning prominent CEOs who made verifiable CLC decisions. Availability of data restricts analysis to ten CEOs and the firms they led.

1. Enron

a. CEO Jeffrey Skilling⁹⁹

i. IVs: Scores on Personality Constructs

a. Militarism

Although shyness, loneliness, and poor self-esteem remain from an emotionally “tortured” childhood, Jeffrey Skilling (JS) is an “incandescently brilliant”¹⁰⁰ person who acted out his grand ambition to “change the world”¹⁰¹ as CEO of Enron. For JS, deregulation of the natural gas industry was a superior philosophy of government and markets that required him to institute “brutal competition” inside and outside Enron to “make the world a fairer place.”¹⁰² To achieve what was at least as much an ideological crusade as a business goal required merely the application of brains: for JS, the world has a right and wrong answer to every question,¹⁰³ and intelligence leads ineluctably to the proper solution.

However, colleagues, noting JS’s ambition and zeal, were quick to identify his enlarged self-confidence, saying privately he was “[s]ometimes wrong, but never in doubt.”¹⁰⁴ His intelligence, coupled with enormous risk

⁹⁹ Although Kenneth Lay was “Enron’s founding father,” he ceded his role as *de facto* CEO to JS as early as 1997, and “[m]ore than anyone else, [JS]...personif[ied] the Enron scandal.” BETHANY MCLEAN & PETER ELKIND, *THE SMARTEST GUYS IN THE ROOM* xix (2004).

¹⁰⁰ See *id.* at 105 (describing JS as a “nerd,” insecure about his body image and appearance); *Id.* at 28–29 (describing JS’s intelligence).

¹⁰¹ See LOREN FOX, *ENRON: THE RISE AND FALL* 35 (2003) (reporting JS “wanted... recogni[tion]...as someone...who had changed the world”).

¹⁰² MCLEAN & ELKIND, *supra* note 99, at 419.

¹⁰³ *Id.* at 58.

¹⁰⁴ *Id.* at 35.

propensity, fostered arrogance¹⁰⁵ and compromised creative dissent:

[JS] used his brainpower not just to persuade but to intimidate . . . [He] had dangerous blind spots. His management skills were appalling, in large part because he didn't really understand people. He expected people to behave according to the imperatives of pure intellectual logic, but of course nobody does that . . . [JS] also had a tendency to oversimplify, and he largely disregarded—indeed, he had an active distaste for—the messy details involved in executing a plan. What thrilled [JS], always, was the intellectual purity of an idea, not the translation of that idea into reality . . . Over time his arrogance hardened, and he became so sure that he was the smartest person in the room that anyone who disagreed with him was summarily dismissed as just not bright enough to “get it.”¹⁰⁶

Moreover, although JS presented himself as an ideological purist committed to deregulation and to creating a “well-oiled machine that generated steadily growing profits[,]” the difference between this and the Enron JS actually built and managed was vast:

[I]n reshaping Enron[,] [JS] turned it into a place where financial deception became almost inevitable . . . because there were so many other kinds of deception taking place. [JS] created a freewheeling culture that he touted as innovative—but didn't rein in the excesses that came with it. He preached the gospel of intellectual capital, claiming that it was critically important to give smart people the resources and freedom to let creativity flourish[] but looked the other way when this became a license for wastefulness and self-indulgence. He bragged about Enron's sophisticated controls but undermined them at every turn. He was openly scornful of steady, asset-based businesses that grew slowly but generated cash—then swept them away to make room for a series of ever-bigger, ever-riskier bets that brought in almost no cash at all. Worst of all, [JS] created impossible expectations and unbearable internal pressures by holding Enron out to Wall Street as something that it simply wasn't.¹⁰⁷

Whether out of cynicism or blindness, JS still clings to his idealized notion of Enron.¹⁰⁸

Furthermore, although JS was intensely loyal to his inner circle of subordinates, rewarding them with enormous cash and other perquisites, he did not foster loyalty or cooperation. Teamwork was disdained,¹⁰⁹ as were

¹⁰⁵ When asked by the Dean of the Harvard B-School whether he was smart, JS boldly replied, “I'm fucking smart!” *Id.* at 31.

¹⁰⁶ *Id.* at 28–29.

¹⁰⁷ *Id.* at 114.

¹⁰⁸ *See generally id.*

¹⁰⁹ *See id.* at 55, 57 (“[JS] could care less whether people got along with each other. . . . In many cases, he felt it was better if they didn't get along, [because] it created a level of tension that he believed was good for helping people come up with new ideas.”).

friendships, and rewards were granted solely on the basis of individual performance.¹¹⁰ JS deliberately set employees against each other and promoted internal conflict in the belief disharmony and ruthless competition fostered innovation and productivity.¹¹¹ In his relations with peers, and in particular his rival Rebecca Mark, JS demonstrated the same tendencies, fighting a “guerrilla war” and employing devious tactics to undermine her and gain at her expense¹¹² but distancing himself from others when not battling them for power and status. JS was aloof and uncomfortable, preferring his inner circle or even solitary trips to bars over the ceremonial aspects of life as a CEO.¹¹³

Although Enron “did strive for diversity” and welcome employees without regard to race, religion, or other protected statuses,¹¹⁴ it was a “boys’ club” under JS, where men earned more than female peers who performed the same jobs as well and where sexual harassment was tolerated, even encouraged.¹¹⁵ JS’s Enron was a “hard place for a woman to work. It was like a boys’ locker room.”¹¹⁶ Nothing in the literature addresses whether JS was a nationalist, yet his ideological and dogmatic commitment to deregulation and competition, favorable attitude toward the use of power, aggressive tactics in dealing with peers, authoritarian style of management, hypercompetitive and ambitious approach to business, and his natural introversion, isolationism, and low self-esteem result in a score of high on all but one of the sub-constructs of militarism. JS is thus scored a militarist.

b. Anomism

For JS, law and rules were something to manipulate, and the Enron culture he established encouraged an employee to play by his own rules. According to a former trader, “We all did it. We talked about it openly. It was the school yard we lived in. The energy markets were new, immature, unsupervised. We took

¹¹⁰ MIMI SWARTZ, *POWER FAILURE: THE INSIDE STORY OF THE COLLAPSE OF ENRON* 59 (2004).

¹¹¹ See MCLEAN & ELKIND, *supra* note 99, at 66 (suggesting JS’s managerial style stems from his experience as a consultant at McKinsey).

¹¹² *Id.* at 110.

¹¹³ SWARTZ, *supra* note 110, at 223.

¹¹⁴ FOX, *supra* note 101, at 87. Enron’s commitment to diversity was likely motivated less by a sense of moral or legal obligation than by a profit motive: “Enron cared only about performance, so it didn’t matter if an employee had a nose ring or green hair, or was homosexual.” *Id.*

¹¹⁵ See *id.* at 93 (“Despite the company’s attempts to hire a mix of men and women, Enron had within it a boys’ club...that reveled in rowdy times involving members of the opposite sex and strippers. Not surprisingly, sexual hi-jinks resulted in rumored sexual harassment complaints from some female employees.”). Pictures of female employees were posted on a “hottie board,” and women who complained found threatening notes on their cars. SWARTZ, *supra* note 110, at 79.

¹¹⁶ MCLEAN & ELKIND, *supra* note 99, at 123, 419.

pride in getting around the rules. It was a game.”¹¹⁷ For JS, law was something to be finessed if possible or outright ignored if necessary, and the successful violation of the rules was a matter of personal pride. Indeed, it was a fundamental constituent of Enron culture to be hostile to authority.¹¹⁸ Moreover, JS personally introduced the concept of mark-to-market accounting, a violation of existing laws,¹¹⁹ to facilitate earnings growth, and the massive accounting fraud perpetrated by Enron actually stirred his pride:

[I]nterpreting the [GAAP] . . . has always been more art than science, reliant in no small part on the good faith of those applying them in everyday situations. For very smart people who saw the rules as something to be gotten around, well, it wasn't all that hard to do—in fact, some former Enron employees argue that the rules themselves provided a road map. And[,] Enron, which prided itself on employing only the very smartest people, took that view further than any company that's ever existed. “We tried to aggressively use the literature to our advantage,” admits a former Enron accountant. “All the rules create all these opportunities. We got to where we did because we exploited all that weakness.” . . . And[,] there was the ultimate problem. With Enron's financial team working feverishly to exploit the rules, there was no one willing to say that the duck was still a dog. Because they could come up with plausible rationales for why a given structure was still technically valid, they believed they were on the right side of the law.¹²⁰

JS is hostile to authority as evidenced by his “harshly libertarian view of business and markets” and his belief markets, and not laws backed by government authority, were the only legitimate forms of social and moral regulation.¹²¹ Moreover, JS was “remarkably disdainful” of Enron policies, believing himself above and beyond regulation.¹²² Under JS, “We had the authority to do anything and everything we wanted to do,” recalls one [JS employee].¹²³ “We thumbed our noses at any personnel policies that the rest of Enron had.”¹²⁴ JS, in effect, wanted not only to deregulate the gas market; he wanted to “deregulate himself and his people from the rest of the company.”¹²⁵ Furthermore, JS values little but money. Harvard classmates recall him

¹¹⁷ *Id.* at 275.

¹¹⁸ SWARTZ, *supra* note 110, at 274.

¹¹⁹ MCLEAN & ELKIND, *supra* note 99, at 39 (noting JS urged mark-to-market accounting to show profits even before the underlying assets had been sold and before their costs had been recognized).

¹²⁰ *Id.* at 185.

¹²¹ See SWARTZ, *supra* note 110, at 37 (describing JS as “hostile to the established order”).

¹²² MCLEAN & ELKIND, *supra* note 99, at 57.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ SWARTZ, *supra* note 110, at 59.

expressing willingness to manufacture a product that might harm consumers on the sole ground that it was profitable, and fellow Enron employees recall JS saying on occasion, “I’ve thought about this a lot, and all that matters is money . . . This touchy-feel stuff isn’t as important as cash.”¹²⁶ Finally, JS’s lack of formal legal training did not aid his unsuccessful criminal defense.

Thus, JS scores high on all sub-constructs of anomism and is scored an anomist.

c. Hostility

To JS, potential rivals lurked in the halls of Enron, and he had to be on guard to protect his position if he was to continue “doing the Lord’s work” in creating a new kind of energy company.¹²⁷ JS believes he is a special intellect and has no patience for his intellectual inferiors. He believes human motivation is triggered strictly by material considerations and is disinterested in others unless they are instrumental in advancing his interests.¹²⁸ JS is not ethnocentric—he dislikes most people regardless of race, religion, or ethnicity—yet he tends toward sexism¹²⁹ and is decidedly hostile: in a conference call with analysts in 2000, when pressed for information by an analyst who suggested Enron was “the only financial institution that [could not] produce a balance sheet or cash-flow with their earnings,” JS lashed out and called the analyst an “asshole,”¹³⁰ a position from which he did not retreat even when implored to.¹³¹ Finally, when Enron began to implode, JS sold vast shares of stock while falsely assuring shareholders of the financial soundness of Enron.¹³² JS has expressed no concern that reliance on his deceptive assurances cost thousands of shareholders their life-savings. In sum, JS scores high on all sub-constructs of hostility save for ethnocentrism, and, thus, is scored a hostile decision-maker.

¹²⁶ *Id.* at 43, 55.

¹²⁷ *Id.* at 71.

¹²⁸ *See id.* at 55 (JS . . . “used to say that he liked to hire ‘guys with spikes.’ By this, he meant that if an executive had a singular narrow talent—a spike—[JS] was willing to bring him into Enron and lavish him with money, no matter what his other shortcomings. Egomaniacs, social misfits, backstabbers, devotees of strip clubs: [JS] didn’t really care about their foibles so long as they had a skill he needed.”).

¹²⁹ When it appeared Rebecca Mark might be awarded the job as COO in 1997, JS threatened Kenneth Lay “if that bitch gets it, I’m outta here.” *Id.* at 355.

¹³⁰ *Id.* at 325–26.

¹³¹ JS, a natural misanthrope, “liked to say that he never wanted to be in any business where the customer had to like him.” SWARTZ, *supra* note 110, at 279.

¹³² *See* FOX, *supra* note 101, at 300.

d. Adventurism

For JS, “should” and “would” are “pretty much the same[,]”¹³³ and he believes that he can accomplish objectives through force of will, no matter how risky or unlikely these objectives. Perhaps his most obvious personality characteristic, evident even as a child,¹³⁴ is his appetite for large risks. “For all his analytical abilities, he was a gambler at heart and had been from an early age. He always assumed that he could beat the odds . . . [T]hat was [JS]’s most dangerous blind spot of all.”¹³⁵ Although JS claimed to have created a sophisticated risk management unit that allowed Enron to safely and profitably assume more risk than other firms, in fact, the unit and its leadership simply pressured deal makers to set “absurdly optimistic assumptions for the complex models that spat out the likelihood of various outcome for a transaction.”¹³⁶ In practice, these deals often lost money, and JS simply quit and dashed into other deals that promised excitement, believing this time he could will risk away. Each year, JS would run NCAA betting pools of over \$100,000, which he claimed to be part of an “intellectual exercise designed to teach young traders about risk and reward.”¹³⁷

Risk-seeking behavior did not come without a price: by 2001, many observers believed JS had become depressed and mentally unstable. When an employee almost struck his car in the Enron parking lot, JS gave him the finger—an act completely outside the parameters of what is expected from the CEO of one of the nation’s largest companies; others report spotting him sprawled across numerous seedy bars in bad parts of Houston, drunk.¹³⁸ During this period of time, JS was wildly optimistic the increasingly perilous position of the firm would improve, yet he was privately so anxious he could not sleep,¹³⁹ and on more than one occasion he stated that he “hated” his job and was thinking of retirement.¹⁴⁰

To summarize, JS is a highly risk tolerant, impulsive, anxious man whose overly-optimistic belief in his capacity to manage risk caused him to make poor decisions under great stress. He thus scores as an adventurer on each sub-construct of adventurism.

¹³³ SWARTZ, *supra* note 110, at 27.

¹³⁴ FOX, *supra* note 101, at 33 (noting JS performed dangerous stunts as a child and chose dangerous recreation as an adult).

¹³⁵ *Id.* at 28–29.

¹³⁶ *Id.* at 116.

¹³⁷ *Id.* at 215.

¹³⁸ *Id.* at 338.

¹³⁹ SWARTZ, *supra* note 110, at 13, 272.

¹⁴⁰ MCLEAN & ELKIND, *supra* note 99, at 338.

e. Summary of Independent Variables: Jeffrey Skilling

JS is scored as a militaristic, anomistic, hostile, and adventuristic decision-maker.

ii. DVs: CLC and Enron

By the late 1990s, Enron had become the one of the world's leading energy companies, with a market capitalization of nearly \$70 billion, yet it rose to prominence through systematic illegality perpetrated at the very highest levels of the firm.¹⁴¹ The "free-for-all" culture established by JS contributed to his decisions, as charged and proven by indictment and conviction, to commit, authorize, or approve illegal accounting measures, creation of special purpose entities designed to hide debt and inflate earnings,¹⁴² fraudulent inflation of the price of the firm's stock and other acts of securities fraud,¹⁴³ money laundering, and other financial and securities crimes.¹⁴⁴ As CEO, JS oversaw the manipulation of energy markets in California by Enron traders who were taught to use the firm's near-absolute control over information to "force" vulnerable markets and generate monopoly prices on energy contracts.¹⁴⁵ Foreign governments were bribed to facilitate deals,¹⁴⁶ and politicians and parties were very generously endowed to curry favor.¹⁴⁷

¹⁴¹ Robin Sidel & Mitchell Pacelle, *J.P. Morgan Settles Enron Lawsuit*, WALL. ST. J. (June 15, 2005, 12:01 AM), <http://www.wsj.com/articles/SB111878962274259649>.

¹⁴² Enron created over 2800 SPEs to hide its financial conduct from investors and from the SEC. NOMI PRINS, *OTHER PEOPLE'S MONEY: THE CORPORATE MUGGING OF AMERICA* (2004).

¹⁴³ Gellerman, *supra* note 6, at xv.

¹⁴⁴ See *United States v. Causey*, Cr. No. H-04-25 (S-2) (S.D. Tex., Jul. 7, 2004), Indictment. The indictment resulted in conviction in May 2006 on nineteen counts of conspiracy, fraud, and insider trading and a sentence of twenty-four years in prison. *Id.* Months earlier, CFO Andrew Fastow pled guilty to one count of conspiracy to commit wire and securities fraud and agreed to pay \$30 million in fines and cooperate with investigators, making the following admission with his plea: "I and other members of Enron's senior management fraudulently manipulated Enron's publicly reported financial results. Our purpose was to mislead investors and others about the true financial position of Enron, and...to inflate artificially the price of Enron's stock." See *United States v. Fastow*, Cr. No. H-02-0665, Plea Agreement, Jan. 14, 2004, at <http://f11.findlaw.com/news.findlaw.com/hdocs/docs/enron/usafastow11404plea.pdf>.

¹⁴⁵ FERC found in 2000 that Enron had imposed "unjust and unreasonable" interference with the market in California and that there was "clear evidence of market manipulation" on the part of Enron, increasing the price of power and resulting in rolling blackouts. MCLEAN & ELKIND, *supra* note 99, at 276. In 2000, Enron paid a fine and agreed not to "engage in substantially the same conduct" as it had previously, including market manipulation in California energy. *Id.* at 269.

¹⁴⁶ Gellerman, *supra* note 6, at xiv.

¹⁴⁷ SWARTZ, *supra* note 110, at 225 (reporting Enron donated \$300,000 to the inauguration of President George W. Bush in 2000 and this was but a small fraction of the contributions to

Moreover, rather than discipline executives whose legal transgressions violated the Enron CMP, JS lavished them with grossly excessive compensation and perquisites, including millions of shares of stock and options. In 2000, even as the financial health of the firm declined precipitously, the top 200 Enron executives earned an average base salary of \$720,000, and twenty-six earned over \$10 million each.¹⁴⁸ JS's Enron was not nearly so gracious to all employees; the firm had a decided preference for young over old, and each year the 15% it deemed least productive were terminated.¹⁴⁹ Those who remained were subjected to a vulgar environment in which sexual harassment was common. Worse, whistleblowers with the temerity to alert top management to illegality within the firm were not protected: Sherron Watkins, a senior manager whose efforts to expose violations of law earned her public acclaim for her courage, was subjected to an internal investigation, and Enron's external legal counsel suggested one possible response to her claims might be to termination to silence and discredit her.¹⁵⁰

Under JS, Enron was ideologically resistant to cooperation with regulatory authorities. Although Enron developed a robust and holistic code of ethics to which the firm ostensibly expected all of its employees to adhere, JS developed a culture of noncompliance in which employees were rewarded, albeit indirectly, in proportion to their violations of that very code.¹⁵¹ Employees received no specific training beyond the occasional public platitudes in favor of ethical conduct offered by senior executives, and the firm's own in-house legal department was at worst a co-conspirator and at best a grossly negligent party. All employees profited from lawbreaking, but senior management hatched the conspiracy and claimed the greatest rewards from noncompliance.

As evidence of its legal violations mounted and its stock price plummeted in 2000, investment banks became concerned about the "reputational risk" involved in "aid[ing and] abet[ing] Enron income st[atement] manipulation" through the use of SPEs, and rumors of the impending implosion of the firm began to circulate.¹⁵² Although JS ordered the restatement of the firm's earnings in an attempt to mitigate the loss of investor confidence and to forestall regulatory investigation,¹⁵³ once Enron's noncompliance could no longer be

politicians and parties made as a matter of course).

¹⁴⁸ MCLEAN & ELKIND, *supra* note 99, at 240.

¹⁴⁹ *Id.*

¹⁵⁰ SWARTZ, *supra* note 110, at 291.

¹⁵¹ *See id.* at 14 (stating the its rampant noncompliance has rendered the firm's name "Enron" into "shorthand for the excesses of American business.").

¹⁵² MCLEAN & ELKIND, *supra* note 99, at 208.

¹⁵³ *See* SWARTZ, *supra* note 110, at 330 (reporting Enron filed an 8K restatement of earnings in

concealed and litigation was impending, the firm ordered Arthur Anderson, its external auditor, to destroy incriminating business records.¹⁵⁴ However, in short order Enron could no longer service its debt, and the firm filed bankruptcy on December 2, 2001.¹⁵⁵ Enron executives, including JS, were subpoenaed by Congress, sued by shareholders¹⁵⁶ and employees, and prosecuted.

Upon resigning, JS denied any responsibility for the death of Enron, stating instead the following: “I deserve a break. If people come back and write the history of Enron Corporation, they’ll look at my tenure as CEO. It was not great for the stock price . . . It is what it is. I think what I would . . . hope people would look at, is what earnings did.”¹⁵⁷

In a 2001 interview, JS continued to withhold contrition, adding: “In the last two months, I’ve gone through everything in my mind that was done when I was here that could have been related to this . . . After much soul searching, . . . I would not have done anything different.”¹⁵⁸ In his congressional testimony, JS claimed, as he was not an accountant, he could not have known Enron had violated GAAP by using its own stock to generate a gain and avoid a loss on its income statement and the failure of Enron was simply a liquidity problem similar to that which caused bank failures in the 1930s:

Enron’s failure was due to a class run on the bank, a liquidity crisis spurred by a lack of confidence in the company. At the time of Enron’s collapse, the company was solvent, and the company was highly profitable[] but apparently not liquid enough. At the time I left the company, I . . . did not believe that the company was in any imminent financial peril.¹⁵⁹

In 2006, JS began serving a twenty-four-year sentence for conspiracy, accounting and securities fraud, and insider trading.¹⁶⁰ Enron exists only as a legal fiction to pay creditors, and yet JS continues to admit no fault, insisting that “they killed a great company.”¹⁶¹

2001).

¹⁵⁴ MCLEAN & ELKIND, *supra* note 99, at 381.

¹⁵⁵ See *In re Enron Corp.*, No. 01-16034 (AJG), 2006 WL 898031 (Bankr. S.D.N.Y. Mar. 29, 2006).

¹⁵⁶ See *In re Enron Corp. Sec. Litig.*, Civil Action No. H-03-3624 (S.D. Tex. 2003).

¹⁵⁷ MCLEAN & ELKIND, *supra* note 99, at 350.

¹⁵⁸ Richard A. Oppel, Jr., *Former Head of Enron Denies Wrongdoing*, N.Y. TIMES, Dec. 22, 2001.

¹⁵⁹ SWARTZ, *supra* note 110, at 351.

¹⁶⁰ David Teather, *Skilling to Report to Prison*, GUARDIAN (Dec. 13, 2006), <http://www.theguardian.com/business/2006/dec/13/corporatefraud.usnews>.

¹⁶¹ MCLEAN & ELKIND, *supra* note 99, at 419.

2. *WorldCom*

a. CEO Bernard Ebbers

i. IVs: Scores on Personality Constructs

a. Militarism

WorldCom (WC) founder and CEO Bernard Ebbers (BE) is a hypercompetitive¹⁶² former athlete who hails from humble origins in rural Canada¹⁶³ yet leveraged his work ethic and ambition to build one of the world's largest and most profitable telecom firms.¹⁶⁴

While not of an academic or formal disposition, and despite a tendency toward shyness, BE cultivated a congenial public persona that motivated his employees to want to work hard for him in spite of the seemingly decentralized environment he inspired.¹⁶⁵ As a result, employees and outsiders alike all wanted to be an “FOB—a friend of Bernie.”¹⁶⁶ BE embraced one and all, with friendship and with money, and WC's color-blind generosity extended far and wide across Mississippi.

Despite his public image, however, BE had a strong need to accumulate and use power, and WC was not nearly the unstructured, unsupervised environment it appeared. “Power was the drug of choice for [BE],”¹⁶⁷ and his constant deal-making kept him supplied with control over the telecommunications industry. With his taste for power came a tendency to authoritarianism. WC was a hierarchical organization, and employees did the bidding of the boss. One former employee compares WC culture under BE to her experience with that of a competitor as follows:

MCI was much more open and willing to take chances, to let people propose an idea and move forward with it, or as we used to call it, the Catholic way of doing business—do something and then ask for forgiveness later—but at WC, it was not that way . . . If the idea didn't come down from the top or one of the favored

¹⁶² AMY JETER, *DISCONNECTED* 61–62 (2004) (“In competition, he is fierce and . . . he'll cut your heart out.”).

¹⁶³ *Id.* BE, a Canadian by birth, did not acquire U.S. citizenship and does not evince particular patriotism in regard to his land of origin or his adopted country. *Id.*

¹⁶⁴ *Id.* at 3–10.

¹⁶⁵ *Id.* at 47.

¹⁶⁶ *Id.* at 147.

¹⁶⁷ *Id.* at 154.

people, it didn't happen. Thinking was not encouraged.¹⁶⁸

Nothing suggests BE was aggressive, dogmatic, or low in self-esteem, and his social adroitness indicates he overcame childhood introversion. Even after his resignation from WC, he remained engaged in the civic life of Mississippi, rather than slipping into isolation as do many fallen CEOs. BE thus scores high on four sub-constructs of militarism and is scored a non-militarist.

b. Anomism

BE came from a devoutly religious family and, as WC CEO, liked to preach that “doing the morally right thing happens to be good economics.”¹⁶⁹ He opened every WC meeting with a prayer, worshipped at area churches, and publicly testified on many occasions to his deep Christian faith.¹⁷⁰ Despite these affirmations of commitment to a moral code as the foundation for his life and work, however, BE spent many nights drinking and often attended board meetings under the influence, and he took his marriage vows rather lightly, engaging in numerous and publicized extramarital affairs.¹⁷¹

BE extended a general pattern of nonconforming behavior to his and his firm's relationship to law. BE had no legal training and no specific knowledge of corporate law, but neither would have attenuated his willingness to permit employees, particularly his accounting and financial teams, to blur legal lines to serve his material objectives. As a WC insider recalls, BE tacitly approved noncompliance as a “remedy” to unfavorable business information: “When everything was going well, which it did for a very long time, Bernie was happy . . . When it didn't, Bernie didn't want to hear about it.”¹⁷² When the Justice Department intervened to block the proposed WC-Sprint merger, BE's vicious lambasting of FCC Chairman William Kennard and the Assistant Attorney General earned him no favors, and, when the SEC and other agencies later focused their attention on corporate illegality at WC, BE's disregard for legal authorities manifested yet again in harsh public commentary.¹⁷³

In sum, although it is difficult to score him high on amorality, BE scores high on disregard for law and legal authorities, ignorance of law, and ignorance of corporate law and, thus, is scored an anomist.

¹⁶⁸ *Id.* at 87.

¹⁶⁹ *Id.* at 98.

¹⁷⁰ *Id.* at 91.

¹⁷¹ *Id.* at 37, 91.

¹⁷² *Id.* at 94.

¹⁷³ *Id.* at 120–24.

c. Hostility

BE is a study in contrasts and in the duality of personality. Beneath the easygoing, God-fearing cowboy facade, he is a deeply moody and distrustful person who demands extreme loyalty from his employees and flies into fits of rage if he does not receive that loyalty or is otherwise denied his desires.¹⁷⁴ He fired executives who sold WC stock, whatever their motivations, yet he would go out of his way to help troubled but loyal employees.¹⁷⁵ Although he presented himself as a simple man who did not “put on airs” to impress others,¹⁷⁶ he hobnobbed with celebrities and grew jealous of fellow executives who earned accolades or friends in high places, believing they were scheming against him.¹⁷⁷ He had many “friends” yet kept an enemies list to remember petty slights that required redress and “was always somewhat confrontational, and in-your-face, compared to most . . . in the Deep South.”¹⁷⁸ Although not ethnocentric or racist—he is comfortable with African Americans and Hispanics and spent time living on a Native American reservation¹⁷⁹—he imagined enemies where none existed and enjoyed using power to intimidate those who were not useful to him.¹⁸⁰

Moreover, although BE fancied himself a master puppeteer in total control of a corporate giant, he vastly overestimated his ability to run WC; as one observer notes:

Bernie was out of his league . . . He wasn't qualified to be the CEO of a global telecom company. You can try to spin it any way you want, but the bottom line is that he's a peddler. He likes to peddle and make deals. But[,] when it came to actually organizing, operating, and managing a major corporation, he didn't do very well.¹⁸¹

When his power was challenged, as when the Justice Department denied his planned WC-Sprint merger, he could not temper his anger as good strategy

¹⁷⁴ See *id.* at 92 (“At least a dozen people who dealt closely with [BE] mentioned that he seemed to have a dual personality.”).

¹⁷⁵ *Id.* at 40, 104. BE treated others according to a “pecking order” measured by how useful they were or could be to him and WC. *Id.* at 92.

¹⁷⁶ See *id.* at 46 (recounting an episode when BE was mistaken for a “fax salesman” due to his unassuming manner and dress).

¹⁷⁷ *Id.* at 98.

¹⁷⁸ *Id.* at 60–62.

¹⁷⁹ *Id.* at 92 (“[BE] wasn't prejudiced against race [or] religion,” said a former employee. “It simply depended on how important you were to his agenda.”).

¹⁸⁰ See, e.g., *id.* at 61 (reporting, when a colleague mentioned a favorable article about BE written by a *Newsweek* reporter, “before I even finished the sentence, [BE] cut me off. He said, ‘Never met the son-of-a-bitch in my life.’”); *id.* at 98 (reporting his intimidation of others).

¹⁸¹ *Id.* at 161.

dictated, and, when WC collapsed under the weight of the illegality he permitted during his tenure, his reaction was to ensure his own financial future, rather than preserve the value of the firm for its shareholders. He continues to show no remorse.¹⁸² Beneath the veneer of sociability and compassion, BE is a distrustful, narcissistic, cynical Machiavellian lacking in empathy who scores high on eight sub-constructs and is scored as hostile.

d. Adventurism

BE took great risks in starting WC, and he never missed an opportunity to buy an asset, whether hindsight determined that decision to be sound or not. His business character is best described as wildly optimistic and impulsive, and this combination led WC to wealth and then into bankruptcy. In the words of U.S. Bankruptcy Court examiner Dick Thornburgh:

Few companies in the annals of American business have grown so large and so fast in such an intensely competitive marketplace. WC did not achieve its growth by following a predefined strategic plan, but rather by opportunistic and rapid acquisitions of other companies. The unrelenting pace of these acquisitions caused the company constantly to redefine itself and its focus. The company's unceasing growth and metamorphosis made integration . . . much more difficult.¹⁸³

In essence, BE was overly optimistic about his ability to exert positive control of external events, and his optimism and preference for risk simply lacked an objective foundation in business reality. This overconfidence, coupled with impulsivity that even in his late fifties reportedly impelled him to engage in fistfights in bars,¹⁸⁴ led him and his firm astray. Although the available evidence does not compel the conclusion BE made decisions during periods of heightened anxiety, at the very least BE scores high on every other sub-construct of adventurism and, thus, is scored an adventurer.

e. Summary of Independent Variables: Bernard Ebbers

BE is a non-militaristic, anomistic, hostile, and adventuristic decision-maker.

¹⁸² BE drove his Mercedes to self-report to Oakdale (Louisian) Federal Correctional Institution on September 26, 2006. CLARION LEDGER, Sept. 26, 2006.

¹⁸³ JETER, *supra* note 162, at 27, 202.

¹⁸⁴ *Id.* at 147.

ii. DVs: CLC and WorldCom

Prior to its demise in bankruptcy in 2002,¹⁸⁵ WC was the largest U.S. long distance telephonic service provider and the world's largest Internet carrier, providing a ten-year annual rate of return on equity of 53% and enjoying a reputation as a friendly, clean, good employer and neighbor.¹⁸⁶ BE denied unwarranted perquisites to WC executives and further restricted them after the failed merger with Sprint.¹⁸⁷ Although WC, a major contributor to both political parties and to candidates for the Public Service Commission charged with its regulation,¹⁸⁸ forestalled official scrutiny for a decade, a planned merger with Sprint, blocked by the Justice Department Antitrust Division on the claim the merger would “undermine the competitive gains achieved since the department challenged AT&T’s monopoly of the telecommunications industry [twenty-five] years ago[,]”¹⁸⁹ opened the doors to a more thorough examination of WC’s legal compliance. With WC stock price falling on news of the failed merger, a chastened BE stated as follows:

We recognize that we, as a company, have let you down . . . We certainly don’t look at this as the best day of our life. [The attempt to acquire Sprint] ended up a mistake—and I am certainly accountable for that mistake . . . I’m sure with the recent performance of this stock, people have a legitimate right to ask if I have a right to lead this company.¹⁹⁰

If the statement implied contrition on the part of a firm caught attempting to manipulate the market by achieving monopolistic power, BE’s and WC’s subsequent strategies belied this conclusion. BE began borrowing what would amount to more than \$408 million from WC to avoid selling his personal shares to meet margin calls—a decision that upon disclosure would lead to his resignation¹⁹¹—and, lacking sufficient cash reserves, WC began to engage in a

¹⁸⁵ WC declared bankruptcy under Chapter 11 on July 21, 2002. Luisa Beltran, *WorldCom Files Largest Bankruptcy Ever*, CNN MONEY (July 22, 2002, 10:35AM), http://www.money.cnn.com/2002/07/19/news/worldcom_bankruptcy/.

¹⁸⁶ JETER, *supra* note 162, at xx, 70.

¹⁸⁷ *See id.* at 51 (writing executive perquisites were contrary to BE’s philosophy, which stressed cost-cutting to support the stock price); *id.* at 96–97, 127 (reporting, after the failed Sprint merger, BE eliminated perquisites such as first-class airplane seats, limousine service, four-star hotels, and high per diems).

¹⁸⁸ WC—in its corporate capacity—was convicted of a felony for illegal contributions to the Public Service Commission in 1995. *Id.* at 57. There is no information to suggest WC engaged in direct bribery.

¹⁸⁹ *See United States v. WorldCom, Inc.*, No. 1:00CV02789 (RWR) (D.D.C., filed Nov. 17, 2000), at Complaint.

¹⁹⁰ JETER, *supra* note 162, at 182.

¹⁹¹ *See id.* at 127. This practice is now prohibited under SOX. *See SOX supra* note 2, at 1.

series of fraudulent accounting and securities-related practices, including double bookings of revenue; failure to report over \$600 million in uncollectible accounts receivables; delayed payments to vendors; recording of capital expenses where operating expenses were required by law; and deliberate understatement of costs—all designed to illegally boost earnings and profits to compensate for the loss of the benefit of the merger.¹⁹² In 2002 the SEC, Justice Department, and the Mississippi Attorney General began investigating and eventually uncovered the world's largest accounting and securities scandal.¹⁹³ Although WC hastened to restate and reduce past earnings by \$7.8 billion,¹⁹⁴ it was too late to stem the investigative tide. The House Financial Services Committee issued subpoenas to top executives, including BE, even as the financial collapse of the firm destroyed the retirement plans of thousands of employees and investors.

WC's reputation—sterling prior to its slide into bankruptcy—suffered damage, leading some to brand it “WorldCon,” yet many held the view that it was a time to “circle the wagons, because Bernie's a local guy.”¹⁹⁵ During congressional testimony, BE disclaimed any knowledge of or responsibility for illegality at WC with the following statement:

When all of the activities at WC are fully aired and when I get the opportunity . . . to explain my actions in a setting that will not compromise my ability to defend myself in the legal proceedings arising out of the recent events, I believe that no one will conclude that I engaged in any criminal or fraudulent conduct during my tenure at WC.¹⁹⁶

Indeed, many industry experts, analysts, and observers supported BE's contention that he had been a “hands-off” CEO who lacked knowledge of the illegality that transpired at WC.¹⁹⁷

However, as the government succeeded in wrangling plea bargains and convictions against top WC executives on charges of conspiracy to boost earnings reports, securities fraud, and filing false statements, the myth of BE as wildly successful but out-of-the-loop corporate cheerleader crumbled, and he was convicted in March 2005 of securities fraud, conspiracy, and filing false

¹⁹² See generally J. Randel Kuhn, Jr. & Steve G. Sutton, *Learning from WorldCom: Implications for Fraud Detection through Continuous Assurance*, 3 J. EMERGING TECH. ACCT. 61–80 (2006).

¹⁹³ Simon Romero, *Turmoil at WorldCom: The Overview; WorldCom Facing Charges of Fraud; Inquiries Expand*, N.Y. TIMES, June 27, 2002, <http://www.nytimes.com/2002/06/27/business/turmoil-worldcom-overview-worldcom-facing-charges-fraud-inquiries-expand.html>.

¹⁹⁴ JETER, *supra* note 162, at 203.

¹⁹⁵ *Id.* at 176.

¹⁹⁶ *Id.* at 183.

¹⁹⁷ *Id.* at 190.

documents with the SEC.¹⁹⁸ He continues to deny any wrongdoing.

3. *ImClone Systems*

a. CEO Sam Waksal

i. IVs: Scores on Personality Constructs

a. Militarism

Although CEO Sam Waksal (SW) possesses a powerful and creative mind that inspired him into an academic medical career before his turn to business, he is a “nebbish—a nerd—whose desperation to be part of the fast crowd” was so apparent it became a running joke.¹⁹⁹ His poor self-esteem magnified his ambition to the point that he “is prepared to do whatever it takes, at whatever cost, to become a ‘player.’”²⁰⁰ To wit, he has always felt the need to “improve on the facts” by telling “half-truths or untruths”;²⁰¹ out of self-consciousness over his status as the child of immigrants, he told neighborhood playmates that he had an older brother at the U.S. Naval Academy to appear more “middle-American.”²⁰² The sense he lacked status, and the burning drive to achieve admiration and respect, have motivated SW’s behavior since childhood.²⁰³

The need to match the accomplishments of his father, who escaped Nazi death camps and spent World War II as a resistance fighter, triggered strong ambition and competitiveness; in SW’s own words,

My father is such an incredible hero. I feel there is nothing I could ever do that could match the things he did. My parents’ experience affects me every single

¹⁹⁸ Press Release, U.S. Dep’t of Justice, U.S. Charges Ex-WorldCom CEO Bernard Ebbers; Former WorldCom CFO Scott Sullivan Pleads Guilty (Mar. 2, 2004), *available at* <http://www.usdoj.gov/usao/nys/pressreleases/March04/ebbersindict2pr.pdf>; Krysten Crawford, *Ex-WorldCom CEO Ebbers Guilty*, CNN MONEY (Mar. 15, 2005, 4:26 PM), <http://money.cnn.com/2005/03/15/news/newsmakers/ebbers/> (reporting his conviction).

¹⁹⁹ ALEX PRUD’HOMME, *THE CELL GAME* 156 (Harper Business 2004).

²⁰⁰ *Id.*

²⁰¹ *Id.* at 26.

²⁰² *Id.* His desire to seem more “American” cannot be conflated with “nationalism” as it manifests a desire to belong but is lacking any other markers for nationalism. *See supra* note 35 and accompanying text. The same is true of his pride in his Jewish heritage. Denker et al., *supra* note 35, at 352.

²⁰³ *See PRUD’HOMME, supra* note 199, at 65 (“Others say that while attaining wealth was certainly important . . . [t]he primary motivator for Sam . . . was status.”); *see also id.* at 323 (“Sam . . . was hideously superficial. . . . He wanted to be one of the boys so badly. . . . People would joke about it—the nerd trying to be fast.”).

day of my life. It drives me. When you grow up in a home where the parents survived a very terrible ordeal in world history, and a lot of other people didn't, then you look at the world from day one in a very different way . . . I look at the world that way, too—in making sure one builds and creates. It's a driving force.²⁰⁴

This drive—which SW tasked toward the reaping of a vast fortune—unleashed an authoritarian form of leadership. At ImClone, employees knew to “play by his rules or else,” and those who remained with the firm toed the line.²⁰⁵ A volcanic temper²⁰⁶ coexists uneasily with abundant personal charm and extroversion that, when SW deployed them to convince investors to back his work, was persuasive.²⁰⁷ The literature does not support the finding that SW was a nationalist or a dogmatist, nor an introvert or an isolationist, but SW is a competitive, aggressive, authoritarian figure with low self-esteem who manipulates facts and uses power to control others in the service of his ambitions. SW thus scores high on six of ten sub-constructs of militarism and is scored as a militarist.

b. Anomism

SW, the classic scofflaw, had “a sense of urgency about life,” an old friend observed.²⁰⁸ “[His parents'] survival had been so miraculous that they had a different sense of how to live. The rules of society didn't really apply.”²⁰⁹ Despite his pride in his Jewish heritage, the morality and ethics of Judaism escaped him, and a sense of personal entitlement so strong it relieved him from the obligations that bound lesser people has manifested in SW's life.²¹⁰ His dissertation was reportedly written by his mistress—also his graduate assistant—with whom he began consorting the first year of his marriage.²¹¹ He actively seeks out opportunities to challenge public legal authority, perhaps to fulfill a neurochemical need for conflict.²¹²

²⁰⁴ *Id.* at 27.

²⁰⁵ *Id.* at 54.

²⁰⁶ *Id.* at 54, 358.

²⁰⁷ *See id.* at xvi (reporting SW's persuasiveness convinced world-famous oncologists to join ImClone's drug development).

²⁰⁸ *Id.* at 26–27.

²⁰⁹ *Id.*

²¹⁰ *See id.* at 342 (noting SW's college roommate stated “[t]he stuff [SW] did was so not Jewish . . . He missed the part that could have saved him.”).

²¹¹ *Id.* at 30–31.

²¹² *See id.* at 28 (quoting a friend of SW) (“He loves to pull a rabbit out of a hat. He needs that adrenaline rush.”).

Once . . . he had been stopped from entering Egypt from Israel because he didn't have the proper visa. But[,] with a gale of protest and sweet talk[,] he managed to wear down the guards and make his way across the border—an achievement he was especially proud of . . . because he had used his quick mind and quick tongue to “get away” with something forbidden.²¹³

SW's recurring refusal to respect legal rules and authorities and a deficient moral foundation has caused him lifelong pain; a mistress used the phrase “Tall Poppy Syndrome” to explain the pattern:

Sam is his own, special, unique human being . . . He doesn't sit back and wait, he plows straight through things. He breaks norms. And[,] society always bashes down people who break rules. People love to hate him, and always have. Like the tall poppy that stands above the rest, they always want to mow Sammy down.²¹⁴

SW has no specialized training in law and is a deeply amoral person who lacks respect for law and for legal authorities. He scores high on all sub-constructs of anomism and is scored as an anomist.

c. Hostility

SW did not trust others, nor did they trust him. He told lies “so well, and so often, he actually started to believe them himself,” his college roommate recalls.²¹⁵ SW inflated his GPA, proclaimed the results of experiments he never completed, and made unfulfilled promises to help others:

To gain social favor, [SW would] promise to help friends or sorority girls with their term papers or class notes; sometimes he'd do what he promised, but often he wouldn't. He didn't seem to understand, or care, about the anguish it caused people who had counted on him. “He became known as a flake and a liar,” said [his college roommate]. “A ‘star-fucker’—always trying to be near the [pretty] people. In the end[,] he wasn't a very popular guy. He burned through people.”²¹⁶

This burning through people, as well as SW's public proclamations that he would “win the Nobel Prize,” that the grand purpose behind ImClone was to “make the world better,” and that those who interfered with him were “allow[ing] evil to win,”²¹⁷ are typical behaviors of narcissists and

²¹³ *Id.*

²¹⁴ *Id.* at 31.

²¹⁵ *Id.* at 29.

²¹⁶ *Id.*

²¹⁷ *Id.* at 23–24, 157.

Machiavellians, as are SW's arrogance, abrasiveness, and rudeness. Moreover, narcissism is evident in SW's statement in a 2002 interview, that he believed he "was the most honest CEO that ever lived . . . [and that consequently he] could glibly do something illegal and rationalize it."²¹⁸

SW's cynicism and, to a lesser extent, misanthropy, is evident in his appeal to his sentencing judge for leniency on the grounds that he had demonstrated good citizenship over the years through his charitable contributions and had always shown "empathy for the underdog."²¹⁹ The judge, while noting SW had indeed donated nearly \$750,000 to charity in the preceding three years, noted further in sentencing SW to the maximum term in prison that SW's contributions totaled less than one-half of one percent of his income over the period of \$132 million and that much of his ill-gotten gains had been expropriated from underdog investors.²²⁰ Certainly, the argument could be made that SW had labored hard over the decades to help humanity, yet a former ImClone senior manager dispenses with this, stating SW was motivated solely by greed devoid of any empathic impulse for the victims of the cancer he pretended to care about curing: "I don't think Sam gave a hoot what the company did. He didn't give a hoot about making 'great scientific advances,' or 'saving people's lives.' . . . You know what Sam's goal was? To build a company, with himself as CEO, and get rich. Period."²²¹

Thus, SW scores high on all nine sub-constructs of hostility and is thus scored as a hostile decision-maker.

d. Adventurism

SW was an "ideas man," and a quick, rather than deep, thinker. His impulsivity would lead him to "make messes" that his dutiful younger brother would clean up.²²² He was a "notorious spendthrift" and "always in financial trouble,"²²³ and his impulsivity and indiscipline invited financial pain:

Sam would show up for class late and there'd be no parking places left, so he'd just leave his car sitting in the middle of the street; he accumulated so many tickets he set a new OSU record and the police hauled him in. But[,] "his father always bailed him out," said [his roommate]. He never worked. Never had discipline. It's really ironic—his parents tried to give him this great life, and

²¹⁸ *Id.* at 352.

²¹⁹ *Id.* at 347.

²²⁰ *Id.* at 350.

²²¹ *Id.* at 65.

²²² *Id.* at 22.

²²³ *Id.* at 26.

they unwittingly created a monster.²²⁴

SW was wildly optimistic. Although his grades were far below Ivy League expectations, his college roommate recalls, “He applied to only one medical school—Harvard. I warned him he didn’t have the grades, and he ought to look around more. But[,] I think he’d convinced himself he’d get in.”²²⁵ Not only was SW not accepted by Harvard Medical School, but also, in his subsequent academic career, he established a pattern of promising paradigm-rattling results only to fail—often dramatically—to deliver. SW continued, despite contrary evidence, to believe he could impose his will upon the world.²²⁶

To make matters worse, SW was a risk-taker: he had a string of extramarital liaisons with lab technicians; he raced motorcycles; he falsified data; and he started a private biotech firm despite the great probability of failure.²²⁷ The only path to reward was through risk, and because SW sought the greatest possible rewards he took the greatest risks. Nonetheless, risk was something that did not stress SW or cause him anxiety: he, after all, was SW, and the normal rules—and normal probabilities—did not apply.²²⁸

In sum, SW is a risk-tolerant, impulsive, optimistic decision-maker who believed, despite risky and impulsive decisions, he would achieve the wealth and fame he coveted. He is high on five of seven sub-constructs of adventurism and is scored an adventurer.

e. Summary of IVs: Sam Waksal

Sam Waksal is a militaristic, anomistic, hostile, and adventuristic decision-maker.

ii. DVs: CLC and ImClone

In the late 1990s, ImClone, having failed to make good on SW’s outlandish promises, was in financial and reputational decline, yet SW continued to travel first-class, use limousines, and frequent the best hotels and restaurants. ²²⁹ Favored ImClone employees enjoyed open bars and restaurants at firm expense, but employees who did not enjoy a close relationship with the CEO

²²⁴ *Id.* at 29.

²²⁵ *Id.*

²²⁶ *Id.* at 34.

²²⁷ *Id.* at 35.

²²⁸ *Id.* at 50.

²²⁹ *Id.* at 52, 89.

were bullied, and sexism and xenophobia were a distinct part of firm culture.²³⁰ Somehow, ImClone not only survived but by mid-2001 had become the “undisputed star of biotech,” armed with a license to produce and market “the [biological] equivalent of ‘smart bombs’” against cancer.²³¹ Erbitux was expected to be worth \$1 billion in annual profit if one could believe SW, who promised investors that the cancer drug was a “miracle compound” that would “save the lives of thousands of dying cancer patients, . . . change the very nature of science[.]. . .[and] bring [] not only gold but glory[!]”²³² All that remained was to acquire the approval of the Food and Drug Administration (FDA), and SW promised investors that the FDA had placed Erbitux on the “fast-track” to approval.²³³

However, SW’s claims about the efficacy of Erbitux and its regulatory status were wildly exaggerated. The precursor drug, C225, had been successful in only 20% of test cancer patients, and major pharmaceutical firms were leery of SW’s claims.²³⁴ According to a former ImClone employee:

It was all lies . . . I felt something important had been betrayed. . . . I asked myself: What am I doing here? . . . Some people at ImClone thought I was crazy to feel that way. They’d say, “What’s the big deal that the science wasn’t right?”. . . The science didn’t matter there. What mattered was how fast Sam . . . could make a buck.²³⁵

When ImClone refused to make C225 available through a compassionate-use program—a humanitarian method of helping suffering patients while generating additional data that requires only a brief *pro forma* FDA examination for approval—some observers took pause.²³⁶ Bristol Meyers Squibb (BMS), however, banking on SW’s promises, negotiated a tender offer of \$70 per share that granted marketing rights to BMS and earned SW nearly \$130 million.²³⁷ Although some BMS executives were concerned the valuable asset was actually C225 and not ImClone, the BMS audit of ImClone’s data was executed with too large a measure of faith in SW.²³⁸

²³⁰ See *id.* at 55–56 (writing cronies who bullied others were protected, female employees were treated poorly, and crude sexual jokes were tolerated).

²³¹ *Id.* at xv.

²³² *Id.* at xv.

²³³ *Id.* at xviii.

²³⁴ *Id.* at 91, 101.

²³⁵ *Id.* at 75.

²³⁶ *Id.* at 111–15.

²³⁷ *Id.* at 135–36.

²³⁸ *Id.* at 134–39. “[A]t least one prominent Bristol scientist raised a red flag after the audit of ImClone’s clinical trial data and plainly stated ‘there’s a problem here’ but her objections were squashed . . . [BMS] executives . . . didn’t want to hear any bad news. They just wanted to make the

Immediately after the BMS-ImClone deal to market the C225 derivative drug known as Erbitux, ImClone made risk-free “sweetheart loans” to SW to allow him to purchase additional shares of ImClone at market price for sale at the tender price.²³⁹ Wall Street questioned the timing and propriety of the deal, suggesting there was “something questionable about these guys cashing out before we even know if this drug is going to get approved.”²⁴⁰ Wall Street jitters caused BMS to look more closely at ImClone’s clinical data, and BMS discovered fundamental flaws—including omitted negative data, fudged efficacy statistics, and an inadequate sample size—that would, when discovered by the FDA, make approval for general use highly unlikely.²⁴¹ ImClone and SW began losing credibility, and the FDA asked ImClone’s regulatory affairs executives to withdraw the application or amend its data.²⁴²

Yet, SW chose to believe the FDA would approve Erbitux because “[t]he alternative was unimaginable.”²⁴³ Predictably, the FDA issued a Refusal to File letter—a statement received in response to only 4% of applications, generally those that are “‘scientifically incomplete’ and ‘filled with deficiencies’”—on December 27, 2001.²⁴⁴ When news of the “RTF” letter leaked, SW lashed out at the FDA and attempted to convince investors that data problems would be easily remedied, but investors concluded ImClone was systemically flawed, SW had intentionally misled them into believing Erbitux had been “green-lighted,” and nothing now would prevent its disapproval by the FDA.²⁴⁵ What investors did not know was that on December 26, 2001, anticipating the RTF letter and owing \$65 million on margin secured by ImClone stock, SW sold his ImClone shares and advised family and friends²⁴⁶ to do the same before news became public.²⁴⁷ Although SW knew the SEC monitors insider stock trades:

deal happen.” *Id.* at 139.

²³⁹ *Id.* at 159.

²⁴⁰ *Id.* at 139.

²⁴¹ *Id.* at 161.

²⁴² *Id.* at 172.

²⁴³ *Id.* at 175.

²⁴⁴ *Id.* at 182.

²⁴⁵ *Id.* at 187, 194.

²⁴⁶ *See id.* at xviii (reporting, as a result of SW’s call to her, Martha Stewart executed the sale of all 3,928 shares of her ImClone stock for \$228,000, earning her a profit of \$64,000). Martha Stewart was later found guilty of making false statements to SEC officials investigating her insider trading. *United States v. Stewart & Bacanovic*, 433 F.3d 273, 285 (2d Cir. 2006), Superseding Indictment at xviii, available at <http://f11.findlaw.com/news.findlaw.com/hdocs/docs/mstewart/usmstpb10504sind.pdf>.

²⁴⁷ PRUD’HOMME, *supra* note 199, at xv (writing, on December 27, 2001, SW told his daughter and father to sell over \$9.5 million in ImClone stock, describing the transaction to his Merrill Lynch broker as “urgent” and “imperative”).

[H]e didn't stop to think about what he was doing; he was just acting. For years he had shuffled money offshore, or through an account he had secretly established in [his daughter's] name—he'd forged her signature—and he figured it would all work out in the wash. He was doing good for humanity; his drug was about to change cancer medicine. So what if he cut a few corners?²⁴⁸

In short order, the House Committee on Energy and Commerce issued a letter that indicated an investigation of ImClone and SW over issues arising from clinical trials of Erbitux had begun on January 18, 2002.²⁴⁹ On January 24, 2002, the SEC launched its own investigation “to determine whether there ha[d] been any violations of the federal security laws,” and the next day the Justice Department announced an investigation to determine whether ImClone misled investors.²⁵⁰ The subcommittee subpoenaed SW, who during the course of the investigation asserted his Fifth Amendment right against self-incrimination and offered only the following through counsel: “Dr. Waksal firmly believes that any allegations against him are unfounded and that he did nothing improper.”²⁵¹

Although it is doubtful that had SW been a more generous contributor to politicians he might have avoided congressional ire, SW gave a total of only \$160,000 over the years in political contributions and, thus, had few, if any, powerful friends in Congress.²⁵² Representative Billy Tauzin (D-LA) was clearly not one, and he offered a much more critical version of the events surrounding Erbitux:

It appears . . . that ImClone[,] . . . excited by preliminary response rates in very sick colon cancer patients, . . . tried to take a mediocre clinical trial and gussy it up . . . But[,] when it came to crunch time to get FDA approval, the failure of ImClone's key executives to ensure the quality of its clinical trials collided with the hype. And, all the while, ImClone's insiders were lining their own pockets with millions, as ImClone's publicly traded stock soared on false, public promises!²⁵³

Various investigations revealed SW had illegally failed to report fifty trades of ImClone from 1992–2002, destroyed documents, and made false statements to Congress.²⁵⁴ He was forced out as CEO in May 2002, and in June

²⁴⁸ *Id.* at xviii.

²⁴⁹ *Id.* at 206–07.

²⁵⁰ *Id.* at 210.

²⁵¹ *Id.* at 239–249.

²⁵² *See id.* at 287 (reporting SW donated a total of \$160,000 to Democratic politicians and \$10,000 to Republicans).

²⁵³ *Id.* at 243.

²⁵⁴ *Id.* at 224.

was arrested by the FBI on a charge of insider trading.²⁵⁵ In August 2002, SW was indicted for destruction of evidence, perjury, obstruction of justice, bank fraud, filing a false SEC report, and financial fraud;²⁵⁶ he pled guilty to six of thirteen charges in October 2002 and was incarcerated.²⁵⁷ He has apologized, accepted blame, and expressed remorse for betraying investors.²⁵⁸ ImClone remains in operation, and the FDA has approved Erbitux for treating head and neck cancer.²⁵⁹

4. *AIG*

a. CEO Hank Greenberg

i. IVs: Scores on Personality Constructs

a. Militarism

At seventeen, Maurice “Hank” Greenberg (HG) lied about his age to join the U.S. Army, and on D-Day, June 6, 1944, he landed with his Ranger battalion on Omaha Beach.²⁶⁰ The next spring, his unit battled the Nazis to liberate the Dachau extermination camp.²⁶¹ HG is “notoriously impatient and short-tempered” and aggressive,²⁶² and at the American International Group (AIG), the insurance firm he served as CEO for thirty-seven years, a “cult of Greenberg” arose from his “force of personality” and “fierce determination to get his way.”²⁶³ HG is a demanding and explosive man, and an “archetypal autocrat, one who knew every detail of [AIG’s] operations and, incredible as it seems, persisted in trying to micromanage the business even as it grew to nearly \$100 billion in annual revenues.”²⁶⁴ As CEO of AIG, HG was a driven man, determined to defeat competitors and lead AIG to preeminence in the global

²⁵⁵ *Id.* at 232, 242.

²⁵⁶ *See* United States v. Waksal, 02 Cr. (S.D.N.Y. 2002), Indictment, *available at* <http://f1.findlaw.com/news.findlaw.com/hdocs/docs/imclone/usvwaksal080702ind.pdf>.

²⁵⁷ *Id.* at 307, 350.

²⁵⁸ PRUD’HOMME, *supra* note 199, at 349.

²⁵⁹ *See* Press Release, FDA, FDA Approves Erbitux to Treat Late-stage Head and Neck Cancer (Nov. 7, 2011), *available at* <http://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm278894.htm>.

²⁶⁰ RON SHELPEL, *FALLEN GIANT: THE AMAZING STORY OF HANK GREENBERG AND AIG* 100 (2009).

²⁶¹ *Id.*

²⁶² *Id.* at 5–6.

²⁶³ *Id.* at 33.

²⁶⁴ *Id.* at 6.

insurance industry. When presented with obstacles by foreign governments, he drew upon extensive connections in Washington to “threaten trade sanctions, cut off aid, and take whatever other dire actions it could find.”²⁶⁵

HG had great self-confidence as AIG CEO but has a “chip on his shoulder” and has low self-esteem consequent to not having been accepted by “the WASP establishment” or “upper-class Jewish circles.”²⁶⁶ He is neither an introvert nor isolationist, and, although his leadership of AIG was oriented solely towards profitability, no evidence suggests dogmatism. However, HG is a nationalistic, competitive, ambitious, aggressive, authoritarian figure with a favorable attitude toward power, and scores high on seven of ten sub-constructs of militarism. Thus, HG is scored as a militarist.

b. Anomism

After World War II, HG earned a law degree and served in Korea as a JAG prosecutor and defense counsel and, in the course of his training and practice, was exposed broadly to an array of legal regimes, including corporate law.²⁶⁷ Despite his significant legal training, however, HG, perhaps as a consequence of AIG’s “intense political involvement, and of having to live in a world defined by myriad rules,”²⁶⁸ developed cynicism with regard to law. According to a biographer:

AIG shaped the rules to its interests; when not, it bent them to its purposes . . . In many cases, it operated as close to the edge as it had [] to achieve its business goals . . . [HG] may have pushed the envelope on finite insurance contracts or stretched accounting principles to report the earnings he wanted. If someone did object, the company could defend, rationalize, or explain away just about any action. Greenberg would make his stock reply to just about every criticism (“You just don’t understand insurance”), and then the lawyers and lobbyists would make the problem go away.²⁶⁹

Indeed, over the years, HG taught his executives to “approach government and regulatory problems in the same aggressive way they attack business issues in general,”—to “persuade, cajole, or . . . intimidate officials at all levels anywhere in the world.”²⁷⁰

Still, although he did not adhere as scrupulously to the letter of the law as

²⁶⁵ *Id.* at 133. HG is an extrovert, and, through AIG’s worldwide portfolio, he developed affiliations with business and political leaders around the world. *Id.* at 120–31.

²⁶⁶ *Id.* at 137.

²⁶⁷ *Id.* at 100.

²⁶⁸ *Id.* at 11.

²⁶⁹ *Id.*

²⁷⁰ *Id.* at 120.

regulators believed necessary, it is perhaps easier to cast HG as a director of creative, albeit self-interested, legal interpretation than it is to brand him a scofflaw disrespectful of law and legal authorities. That this is so is particularly apparent when one compares HG's stewardship to that of other CEOs:

[HG's] actions were nothing like those of the other boardroom bad guys, who tried to fool investors by grossly distorting their numbers. Instead, if Greenberg did anything, he was simply injecting a little Botox into the balance sheet and fine-tuning the earnings reports to maintain the kind of image he found so supremely important. Not so long ago, that kind of earnings "management" rarely brought more than a modest reprimand. The rules changed after Enron, of course, but Hank must have assumed that the changes, like so many other regulatory annoyances, weren't really relevant, or[,] if they did apply to him, he could bluff his way through them as he had so often in the past.²⁷¹

Thus, while it may be fair to conclude HG scores high on amorality, and perhaps on disregard for legal authorities, it is less clear that he should be regarded as disrespectful of law, and HG is a trained lawyer. HG thus scores high on two of five sub-constructs of anomism and is scored as a non-anomist.

c. Hostility

HG was a celebrity CEO at a firm where the standing joke was that "AIG" is an acronym for "All Is Greenberg."²⁷² He is a selfish master manipulator with a "Jekyll and Hyde" personality²⁷³ and has a misanthrope's touch for making others feel ill at ease.

[W]hen you are with Hank, you are on edge. Even in a room full of people where you are across the room talking to others, you can never quite forget he is there. The force of his personality and the fear people have of him is always present. . . . While it is mainly employees who are scared or at least tense, it can also be directors, clients, officials[,] or casual acquaintances. . . . Whether he could change his personality enough to put others at ease, I do not know. Whether he would want to, well, that I doubt.²⁷⁴

Under HG, executives joked that, while they liked to hold AIG stock, they would never own a policy. AIG's underwriting philosophy was, very simply, to charge high premiums and pay as few claims as possible—a theory and practice very profitable to shareholders but unfavorable to customers.²⁷⁵ Other

²⁷¹ *Id.* at 14.

²⁷² *Id.* at 1, 111.

²⁷³ *Id.* at 131–32.

²⁷⁴ *Id.* at 133.

²⁷⁵ *Id.* at 5.

stakeholders were subordinated to shareholders as well. Employees were afraid of HG and his appalling temper, and few felt empowered to venture their own opinions;²⁷⁶ furthermore, while AIG had a long history of hiring, training, and promoting local nationals to managerial positions, “[t]here is simply not a history of significant black participation in the company. A retired senior personnel executive told me that in his experience insurance had never been one of the industries where African-Americans saw opportunities. And[,] clearly in AIG there was not an aggressive policy of recruiting them.”²⁷⁷

Only after HG resigned did AIG seriously begin to promote diversity in hiring to U.S.-based positions. Although it is difficult on the basis of available information to conclude HG is generally distrustful or ethnocentric—particularly in light of his deep passion for China and its people and his friendships across the globe²⁷⁸—there is reason to believe he lacks the capacity or the desire to express an empathic understanding of and appreciation for other people. In sum, HG scores high on seven of nine sub-constructs of hostility and, thus, is scored as a hostile decision-maker.

d. Adventurism

Insurance is the applied study and management of risk, and the ultimate financial risks—loan defaults and policy claims—cannot be perfectly predicted. HG gets bored easily and likes to take risks, believing—usually quite correctly—he can beat the odds.²⁷⁹ He calmly seeks and achieves unfair advantage by rationally evaluating risk, and, although he has a temper, it is one he controls and manipulates to suit his purposes.²⁸⁰ He manages stress well and is described by many as unflappable.

HG scores high on only three of seven sub-constructs of adventurism—risk tolerance, internal locus of control, and maleness—and, thus, is scored as a non-adventuristic decision-maker.

e. Summary of IVs: Hank Greenberg

HG is a militaristic, non-anomistic, hostile, and non-adventuristic decision-maker.

²⁷⁶ *Id.* at 33.

²⁷⁷ *Id.* at 30.

²⁷⁸ *Id.* at 109.

²⁷⁹ *Id.* at 142.

²⁸⁰ *Id.* at 146.

ii. DVs: CLC and AIG

Under HG's leadership, AIG grew to become the fourth largest firm on the Forbes 500 list and the largest insurer in the world.²⁸¹ In his thirty-seven years as CEO of a global business, HG developed a "highly evolved culture of . . . exploitation" that rested on cultivating relationships with political leaders and regulators and, ostensibly, leveraging those relationships to gain favors for AIG.²⁸² While the ultimate leverage might well have been bribery, and, although U.S. firms operating overseas "have no choice but to adapt to the customs of the countries where they operate,"²⁸³ no allegation of political corruption has been made against AIG. Rather, AIG was successful under HG . . . because it "reward[ed] success, reward[ed] profit, ignore[d] background, creed, nationality, and put[] up with a lot of individual idiosyncrasies as long as [the performers] produce[d]." ²⁸⁴ Although AIG rewarded performers with salary and perquisites,²⁸⁵ these were limited by HG's frugality. HG lives modestly, although he enjoys a daily massage and comfortable travel arrangements,²⁸⁶ and one of the greatest employee incentives might have been the loyalty HG exercised in the company's time of need: in the event of employee abduction or arrest, "[n]o stone was left unturned, and money was never an object" in securing their release and safe return.²⁸⁷ Although profits were his lodestar, for HG the security and safety of his employees, if not their enrichment, was his "first priority."²⁸⁸

However, despite all its political capital and its concern for its employees, cracks in the AIG armor began to appear in 2003, when AIG was forced to pay \$10 million as sanction for refusing to cooperate, under subpoena, with authorities investigating accounting fraud involving illegal exchanges of cash with Brightpoint, a cellphone manufacturer.²⁸⁹ In 2004, New York Attorney General Eliot Spitzer brought bid rigging charges against AIG and a number of executives, accusing the firm of issuing artificially high bids on one piece of

²⁸¹ Jim Puzzanghera, *Why the World's Biggest Insurance Company Is Still Getting Taxpayer Funds*, L.A. TIMES, Mar. 9, 2009, <http://www.articles.latimes.com/2009/mar/09/business/finofail9>; Duc Dang, *AIG*, DUC DANG'S BLOG (Nov. 30, 2014, 1:15PM), <http://www.ducdang1992.blogspot.ae/2014/11/aig-since-first-establishment-in-1919.html>.

²⁸² *Id.* at 9.

²⁸³ *Id.* at 126.

²⁸⁴ *Id.* at 34.

²⁸⁵ *Id.* at 109.

²⁸⁶ *Id.* at 134.

²⁸⁷ *Id.* at 81.

²⁸⁸ *Id.* at 116.

²⁸⁹ *Id.* at 162–64.

business to cause its award to another insurer only to have the other insurer reciprocate the benefit on future business.²⁹⁰ Four AIG executives pled guilty, and, although no evidence implicated him, HG found a prime place on Spitzer's investigative agenda.²⁹¹ The year 2004 brought more bad news when it was revealed AIG had been forming SPEs to absorb \$762 million in non-performing assets and create a healthier balance sheet than the firm had earned.²⁹² At the eleventh hour, during the summer of 2004, HG rejected an agreement with the Justice Department and SEC that would have settled the case and issued press releases decrying these agencies' investigations as unethical.²⁹³ However, when, in October of 2004, the board of directors learned HG's gambit had failed to dissuade federal investigators and had instead increased the price of the settlement from \$20 million to \$126 million, it called for his resignation, which he tendered in 2005.²⁹⁴

In February 2005, AIG received subpoenas in an SEC accounting fraud investigation, and two AIG executives negotiated guilty pleas.²⁹⁵ In March, Spitzer subpoenaed AIG documents involving manipulation of financial transactions to falsely add \$500 million to AIG's reserves while using Caribbean subsidiaries as SPEs to keep debt off AIG's balance sheet and understate the leverage of its operations as well as the magnitude of the risks it had insured.²⁹⁶ When Spitzer discovered AIG executives were planning to move documents out of U.S. jurisdiction, he threatened obstruction of justice charges.²⁹⁷ AIG fired executives who planned to invoke the Fifth Amendment right against self-incrimination before the SEC, an invocation HG made on April 12.²⁹⁸ AIG announced accounting errors stretching back fourteen years, and, on May 2, it restated earnings for the 2000–2004 period.²⁹⁹ In May 2005, Spitzer, alleging AIG executives had routinely engaged in financial and securities fraud from the mid-1980s on,³⁰⁰ substituted civil for criminal charges against AIG and top executives, including HG. More than \$2.7 billion in income was removed from

²⁹⁰ Theo Francis, *Spitzer Charges Bid Rigging in Insurance*, WALL ST. J., Oct. 15, 2004, <http://www.wsj.com/articles/SB109776602911545402>.

²⁹¹ *Id.* at 162.

²⁹² *Id.* at 163–64.

²⁹³ Devin Leonard, "All I Want in Life Is an Unfair Advantage," FORTUNE (Aug. 8, 2005), http://www.archive.fortune.com/magazines/fortune/fortune_archive/2005/08/08/8267642/index.htm.

²⁹⁴ *Id.* at ix.

²⁹⁵ *Id.* at 170.

²⁹⁶ *Id.* at 2.

²⁹⁷ *Id.* at 166.

²⁹⁸ Daniel Hays, *Spitzer: Taking the Fifth Is a Problem for AIG*, FBIC (Mar. 23, 2005), <http://www.badfaithinsurance.org/reference/General/0141a.htm>.

²⁹⁹ *Id.* at 170–74.

³⁰⁰ *Id.*

AIG's books after improper accounting entries were reversed.³⁰¹

HG denied the merits of all civil charges against him,³⁰² although, in 2008, he settled shareholder claims for \$115 million,³⁰³ and, in 2009, he accepted a \$15 million fine in exchange for dismissal of SEC litigation.³⁰⁴ Although he remains free, his reputation has been damaged, and "few executives have fallen so far so fast."³⁰⁵ AIG has fared even worse, although arguably because the firm took risks against which HG repeatedly issued warnings.³⁰⁶

5. HealthSouth

a. CEO Richard Scrushy

i. IVs: Scores on Personality Constructs

a. Militarism

Richard Scrushy (RS) is a self-described "good old boy" from Alabama who began adulthood as a high-school dropout bricklayer living in a trailer with his pregnant girlfriend.³⁰⁷ He was a loner who had few friends and participated in few school activities, but, motivated by the addition to his family and the desire for a better life, RS returned to school to earn a certificate in respiratory therapy. Friends and co-workers describe him as a man with an abundance of energy and "chutzpah," and when new federal legislation passed in 1983, changing the system of Medicare and Medicaid billing and resulting in greatly reduced profits to hospitals, RS formed a company, which became HealthSouth

³⁰¹ *Id.* at 12.

³⁰² *Id.* at 175.

³⁰³ Brian Baxter, *Hank Greenberg and Former AIG Execs to Pay \$115 Million to Settle Chancery Court Suit*, AM. LAWYER (Sept. 11, 2008), <http://amlawdaily.typepad.com/amlawdaily/2008/09/hank-greenberg.html>.

³⁰⁴ Lawrence Delvigne, *Hank Greenberg Swats Away SEC Suit with \$15 Million Settlement*, BUS. INSIDER (Aug. 6, 2009), <http://www.businessinsider.com/greenberg-smith-sec-2009-8>.

³⁰⁵ SHELP, *supra* note 260, at 2.

³⁰⁶ AIG suffered near-death in Fall 2008 when the collapse of housing, stock, and labor markets led to the failure of its mortgage-backed securities and insurance lines-of-business. See ANDREW SPENDER, TOWER OF THIEVES: AIG, 234–36 (Bricktower 2009). Interestingly, HG had warned years earlier that AIG Financial Products Division was assuming too much risk through these "credit default swaps," but AIG did not stop selling them until 2007. *Id.* In September 2008, with AIG nearing bankruptcy, the U.S. government issued an \$85 billion loan and took 79.9% ownership on the ground AIG was "too big to fail." *Id.* Within a year AIG received \$85 billion more in taxpayer funds, yet it still saw fit to pay senior executives \$450 million in bonuses. *Id.* New AIG CEO Edward Liddy responded to widespread outrage by noting AIG had contractual obligations to pay these bonuses. *Id.* As of April 2013, AIG had repaid the U.S. Treasury. *Id.*

³⁰⁷ BYRON, *supra* note 81, at 315.

(HS).³⁰⁸ By 2001, HS was the largest national operator of rehabilitation facilities and outpatient surgery centers, treating 100,000 patients per day and producing annual revenue of \$4.3 billion.³⁰⁹

As CEO, RS's monumental ambitions were set toward creating the "biggest provider of surgery in the world,"³¹⁰ and, to accomplish this, a good old boy from Alabama morphed into an autocrat. HS surgeons were told that to make the business "lean," all their purchasing and recordkeeping would be performed by headquarters, and HS would require conformity in all surgical supplies, even if this meant surgeons would use unfamiliar equipment—a condition that enhances risk to patients.³¹¹ RS was a "consummate micromanager" who ruled lower-status employees with an equally iron-first: his rules dictated everything from artwork—approved company posters and a portrait of Richard Scrushy in every waiting room—to mandating that Coca-Cola be the only beverage allowed in the facility—and requiring all financial records to be relocated from facilities to firm headquarters.³¹²

Although he made passing attempts to elicit feedback from employees and involve them in decision-making,³¹³ RS's micromanagement took bizarre twists reminiscent of Captain Queeg:³¹⁴

While he was lying in bed one night, [RS] decided that he must come up with a plan to ensure that all HS facilities were pristine. He put together a [fifty]-point checklist ([twenty-five] points on each page so that it would be easy to read) and called in his top people. "We're going to design [fifty] points," [RS] told them. "And[,] it's going to start with picking up trash in the parking lot." . . . [RS] called it a "pristine audit" and hired an outside firm, Ernst and Young, to make unannounced visits to evaluate facilities from the patient's perspective . . . The auditors measured everything, from the cleanliness of and neatness of the parking lots, restrooms, carpets, walls, and equipment to the attitudes of the receptionists and the taste of the food. If the auditors found anything amiss, they reported to HS, and the company required that the facility immediately correct

³⁰⁸ *Id.*

³⁰⁹ WILLIAM CAST, GOING SOUTH: AN INSIDE LOOK AT CORRUPTION AND GREE, AND THE POWER OF THE HEALTHSOUTH MESSAGE BOARD 5, 249 (2005).

³¹⁰ *Id.* at 3.

³¹¹ CAST, *supra* note 309, at 21.

³¹² *Id.* at vi.

³¹³ JEFFREY L. RODENGEN, THE STORY OF HEALTHSOUTH 51 (2002) (referencing meetings where RS allowed employees to tell others what they did the previous week and what they hoped to accomplish in the coming week).

³¹⁴ In the 1951 Pulitzer Prize-winning novel by Herman Wouk entitled *The Caine Mutiny*, an idiosyncratic martinet named Philip Francis Queeg captains a World War II minesweeper into a mutiny after his desperate sailors rebel against his nonsensical make-work projects and strange ravings. HERMAN WOUK, THE CAINE MUTINY: A NOVEL (1951).

the problem.³¹⁵

Apologists for RS suggested HS was fortunate to have a “person driving this company who, to this day, outworks people with his intensity and schedule,” and RS reassured shareholders by telling them HS was not merely interested in becoming profitable or simply “America’s best-performing healthcare company,” but rather “the nation’s best-performing company of any kind. Period.”³¹⁶

Nothing in the literature describes RS as a nationalist, and he is neither aggressive nor beset with low self-esteem nor an isolationist, but he is plainly a natural introvert who sees the world in black and white and an authoritarian who relishes bending employees and rivals to his whims. As such, RS scores high on six of ten sub-constructs of militarism and is thus scored a militarist.

b. Anomism

RS is a relatively uneducated man; he lacks formal legal training, even if he clearly knew he was engaged in illegal conduct: at his trial on financial and securities charges, the Justice Department alleged that RS told other co-conspirators, “Ever get caught, you’re on your own.”³¹⁷ The data suggest RS is an amoral person motivated by money and power and not by superordinate norms or principles. In response to employee concerns that a business strategy RS had proposed—adjusting HS’s financial statements in light of earnings shortfalls—would not pass legal muster, RS “simply said, ‘Fix it.’”³¹⁸

When dealing with legal authorities, his response was identical. To build a private rehabilitation facility in New Mexico required the approval of a state board, and, when a board member asked RS whether HS had ever built such a facility before, RS, who had only recently applied for a certificate of need to convert a nursing home into a rehabilitation hospital, stated, “Sort of. We’ve got one in South Carolina.”³¹⁹ RS’s falsehood did not escape the attention of the board member, who announced the HS gambit was “the biggest smoke-and-mirror presentation I’ve ever heard, but you know what? I’m going to vote for these guys because I like them.”³²⁰ In another instance, RS spent political capital to allow HS to bypass state certificate-of-need laws and begin uncertified operations. In sum, RS lies without qualms to regulatory authorities, even if he

³¹⁵ RODENGEN, *supra* note 313, at 96–97.

³¹⁶ *Id.* at 51.

³¹⁷ CAST, *supra* note 309, at 182.

³¹⁸ *Id.* at 23.

³¹⁹ See CAST, *supra* note 309, at 28–29.

³²⁰ *Id.* at 29.

does so charmingly.

RS is an amoral decision-maker with no legal training who evinces disregard for law and for legal authorities. He scores high on all five sub-constructs and is thus scored an anomist.

c. Hostility

Although RS had a close relationship with the Birmingham African-American community,³²¹ and while he claimed to read every patient's letter personally to provide the best possible service,³²² in reality RS viewed HS customers and employees as "little people."³²³ Willingness to create public perceptions deeply at odds with reality typifies RS, and this cynical approach to people and business did not escape all observers: Aaron Beam, an early recruit by RS to his management team, reported that after his interview with RS "[he] went home and told [his] wife that [he] just interviewed with the biggest con artist [he had] ever met or the most brilliant young man [he had] ever met."³²⁴

RS is clearly a narcissist who wildly pontificated to investors HS would "get to where Coke [was] quicker than they did," and claimed to have "visions" at night when he would "close [his] eyes, and . . . see more HS facilities than [he] could count, with people and patients walking in and out and being treated . . . a sort of . . . spiritual thing."³²⁵ *Fortune* magazine recognized at least a part of his grandiosity, dubbing RS "The Insatiable King Richard" for his opulence and his "seemingly paranoid behavior that would alternately alarm and annoy many who worked at headquarters."³²⁶ By the 1990s, RS traveled in a chauffeured armored BMW complete with bodyguards and began building "vacation mansions" in Florida and Alabama.³²⁷ Employees began to suspect—correctly—RS had bugged their phone lines to ensure nothing was being said against their "King."³²⁸

³²¹ *Id.* at 206.

³²² RODENGEN, *supra* note 313, at 41.

³²³ CAST, *supra* note 309, at 44.

³²⁴ RODENGEN, *supra* note 313, at 22.

³²⁵ CAST, *supra* note 309, at 55, 89.

³²⁶ *Id.* at 14, 24.

³²⁷ *Id.* at 29.

³²⁸ Section 37 of the 2003 federal indictment against RS charged as follows:

Richard Scrusby would and did seek to control his co-conspirators, HealthSouth employees and Board of Directors by (a) threats, (b) intimidation, and (c) taking various steps to monitor the activity of said persons, including obtaining and reading their emails, placing them under surveillance, and installing equipment that permitted him to eavesdrop on electronic and telephonic communications.

In fact, a sense HS's financial house was not in order began to worry investors in the early 1990s, when analysts suggested HS was too highly leveraged as a result of its aggressive acquisitions policy.³²⁹ RS's protestations to the contrary, coupled with increasingly cozy relationships with political cronies—board member Governor Richard Celeste of Ohio was chosen by President Bill Clinton to serve as his congressional health care lobbyist, and RS was part of House Speaker Newt Gingrich's corporate kitchen cabinet, which developed an alternative to the Clinton health plan³³⁰—assured investors for a time. However, when HS shares fell on discovery of a train of illegalities, rather than concede problems RS stated the shares were worth “north of \$20” to assure investors only to sell \$70 million of his own shares to “diversify” before the price dipped to \$7.³³¹

Although nothing suggests he is an ethnocentrist, and despite his professions of concern for the wellbeing of people, RS is a deeply distrustful, narcissistic, cynical, Machiavellian, and hostile misanthrope who lacks empathy and is committed to personal aggrandizement. Thus, he scores high on eight of nine sub-constructs of hostility and is scored a hostile decision-maker.

d. Adventurism

RS had enough business acumen to recognize opportunity in the transformation of the federal Medicare reimbursement regime, and, as a risk-taking entrepreneur, he capitalized upon an absence of outpatient rehabilitation options.³³² Still, RS is not highly risk tolerant: he thinks and studies before acting³³³ and was as cautious in hiring as he was in acquiring new businesses.³³⁴

See *United States v. Scrusby*, No. CR-03-BE-0530-S, 2003 WL 22794503 (N.D. Ala. Oct. 29, 2003).

³²⁹ RODENGEN, *supra* note 313, at 56.

³³⁰ *Id.* at 65, 76. In the 2002 foreword to the book *The Story of Health South*, Senator Orrin Hatch lauded RS as “way ahead of us on [the subject of rehabilitation for disabled people]” and pronounced him “a man who truly cares about people . . . [who] has spent a lifetime trying to bring better healthcare to this country.” *Id.* at vii. When Senator Hatch was reminded of his earlier statement, he offered only this: “Yeah, there were some people at HealthSouth who did some rotten things. I just don't think he was one of them.” CAST, *supra* note 309, at 224.

³³¹ CAST, *supra* note 309, at 224.

³³² RODENGEN, *supra* note 313, at 19.

³³³ See *id.* at 41 (“I've seen some of the major mistakes CEOs have made in their business strategies, the way they ran their operations, and the way they financed their companies. Some of them did some dumb things . . . We didn't make the mistakes others made.”) (quoting RS).

³³⁴ See *id.* (“If I can't find the person I'm looking for, I won't hire anybody. I just won't do it. I'll wait as long as I have to.”) (quoting RS); *id.* at 40 (“I like what they do. They've learned not to grow too fast. They do a little bit at a time. They're not free spenders and they've probably had a lot of proposals [for more expansions] that they've turned down. I like to see people working with strict parameters like that.”) (quoting an industry analyst).

Although he might be considered high in optimism, he must also then be adjudged low in stress and high in internal locus of control, for, in his words, “I always knew it would work . . . Some people thought I was crazy, but some in the business knew I wasn’t.”³³⁵ In summary, RS is a deliberate, if optimistic, decision-maker with an internal locus of control who is neither particularly anxious nor stressed during decision-making. Moreover, he does not have a particularly high-risk propensity. He thus scores as high on only three of seven sub-constructs of adventurism and is thus scored as a non-adventurist.

e. Summary of IVs: Richard Scrusby

Richard Scrusby is a militarist and anomist who is hostile but not adventuristic.

ii. DVs: CLC and HealthSouth

The first handwriting on the proverbial wall suggesting RS and HS were manipulating financial data was scrawled in 1998, one year after RS collected \$111 million in salary, when HS first restated earnings.³³⁶ Articles critical of HS and RS appeared, and, in 2001, RS found his firm paying a large sum to settle a civil suit brought by the Justice Department alleging violation of Medicare regulations governing patient billing for physical therapy services.³³⁷ Undaunted, RS accepted a \$6.5 million bonus in 2002 and exercised stock options worth \$56 million even as earnings per share dropped 28%.³³⁸

However, the undoing of RS came in 2003, when the SEC began investigating whether HS had illegally delayed disclosing to the public the negative financial effects of new Medicaid and Medicare billing regulations on its financial statements.³³⁹ A Federal Bureau of Investigation (FBI) raid on corporate headquarters led to formal charges on March 19, alleging HS had artificially inflated \$2.7 billion in profits over a five-year period through fraudulent accounting.³⁴⁰ Ten top HS officers, caught internally referencing fraudulent accounting and financial manipulations as “pixie dust” and filling “the hole,” pled guilty to fraud, and HS stock was delisted and devalued.³⁴¹

³³⁵ *Id.* at 51.

³³⁶ CAST, *supra* note 309, at 41, 45.

³³⁷ *See id.* at 85 (reporting RS authorized HealthSouth to pay \$325 million in fines to settle the suit).

³³⁸ *Id.* at 92.

³³⁹ The new regulations triggered an earnings shortfall of more than \$175 million. *Id.* at 110.

³⁴⁰ *Id.* at 24.

³⁴¹ *Id.* at vi, 71, 171. Only one HS executive received prison time—a total of five months. *Id.* at

Nevertheless, RS became the first corporate executive to be tried under SOX.³⁴² RS, denying any legal knowledge of changes to Medicare regulations and disputing that he or other executives had committed any illegal acts, pled not guilty to conspiracy to commit mail fraud, wire fraud, securities fraud, money laundering, aiding and abetting, false SOX certification, and false statements to the SEC.³⁴³

In other words, RS rested his fate on the “blame the other guy” defense: he had not ordered anything illegal and did not have actual knowledge that others had done anything illegal, and, thus, although he was CEO, he did not bear legal responsibility for the actions of others. RS leveled blame for the fall of HS at the feet of auditors, his own CFO, and the corporate compliance committee, and, in a surprise verdict, was acquitted in June 2005, when jurors determined there was a “lack of substantial evidence and witness credibility,” as well as insufficient criminal intent, to convict.³⁴⁴ RS, fired from HS, remains a party in civil litigation brought by shareholders and regulatory agencies.³⁴⁵ HS remains in operation under a new executive team.

6. *Sunbeam*

a. CEO Albert Dunlap

i. IVs: Scores on Personality Constructs

a. Militarism

Albert Dunlap (AD), former CEO of Sunbeam, was a quiet, lonely child who grew up poor in Hoboken, New Jersey.³⁴⁶ He had few friends and spent his time playing alone in his room.³⁴⁷ For AD, his self-described unhappy childhood could only be overcome by “brute struggle of which he was uniquely capable,” and this lesson left AD—“Chainsaw Al”—an angry man, “defiant and raging at all that came his way.”³⁴⁸ Anger became entrenched as AD’s dominant emotion and aggression his default trait at an early age. As a business

171.

³⁴² *Id.* at vi.

³⁴³ Carrick Mollenkamp, *Scrushy Indicted on Fraud Charges*, WALL ST. J., Nov. 5, 2003, <http://www.wsj.com/articles/SB106795409556152100>.

³⁴⁴ *Id.* at 188–89, 219.

³⁴⁵ For the most updated information about the litigation, see <http://www.richardmscrushy.com>.

³⁴⁶ Byron, *supra* note 81, at 20.

³⁴⁷ *Id.*

³⁴⁸ *Id.* at 18.

acquaintance recalls, “[h]e was the most unpleasant, personally repulsive businessman I ever met in my life. Every conversation began in a normal tone of voice and ended with the man yelling, red-faced and furious, at whoever was standing in front of him. It was unbelievable.”³⁴⁹

At West Point and in his brief Army career, AD maintained his rage and a record of academic underachievement,³⁵⁰ and he carried both forward into a first marriage that ended in divorce from Gwyn Dunlap on grounds of extreme cruelty.³⁵¹ During the brief relationship, he would “erupt in tantrums and storm about the apartment inspecting the furniture for fingerprints,” and even during periods of “normalcy” AD related to his family more as commander than as husband and father.³⁵² The worst is revealed in the petition for divorce, which AD did not contest. That document notes AD denied Gwyn food and maternity clothes, brandished a Bowie knife at her while expressing his interest in discovering the taste of human flesh, threatened her with guns, and expressed his hope that she would die so he might collect her insurance death benefit.³⁵³

AD’s aggressive authoritarianism and his delight in the abuse of power found expression in the workplace as well. His shift superintendent “enjoyed snarling at his subordinates,” a behavior AD found endearing and deemed worthy of emulation.³⁵⁴ Throughout his career, AD inspired fear and loathing in his subordinates³⁵⁵ and strong dislike in his colleagues, and few doubted he would abstain from any action necessary to achieve his ambitions. AD has underdeveloped personal affiliations, generally and within his immediate family. He liked to insult his wife’s parents and thought it fun to give the middle finger to her mother at church services.³⁵⁶ When his parents died, he chose not to attend their funerals, and in his autobiography neither merits more than a few lines.³⁵⁷ It would be a stretch to conclude from the available information that AD had any genuine friends.

AD scores high on all ten sub-constructs of militarism and, thus, is scored as a militarist.

³⁴⁹ *Id.*

³⁵⁰ *See id.* at 23 (reporting AD graduated near the bottom of his class at West Point).

³⁵¹ *Id.* at 24–26.

³⁵² *Id.* at 67, 73.

³⁵³ *Id.* at 24–26.

³⁵⁴ *Id.* at 69.

³⁵⁵ JOHN A. BYRNE, CHAINSAW: THE NOTORIOUS CAREER OF AL DUNLAP IN THE ERA OF PROFIT AT ANY PRICE 3 (2003).

³⁵⁶ BYRON, *supra* note 81, at 26.

³⁵⁷ *Id.* at 23.

b. Anomism

AD is a breaker of rules, norms, and principles *par excellence*. Even though his wealth and status gained him membership to prestigious clubs, no one would play tennis with him because he “cheated so outrageously—and got so abusive of opponents who questioned him.”³⁵⁸ Upholding even the most trivial and symbolic of social norms, such as keeping Christmas gifts secret until Christmas, were too much to expect of AD, as his wife discovered when she returned early from a trip to find him carefully rewrapping presents he had unwrapped earlier.³⁵⁹ More strenuous legal obligations stood no chance: no sooner did AD join the Nitec Paper Corporation than he established secret offshore accounts in Switzerland and Bermuda to bank profits from illegal transactions, labeling them as “consulting fees.”³⁶⁰ Similarly, from the moment he joined Sunbeam, he treated his position of trust as an opportunity to violate almost the entire canon of corporate law governing finance and securities to raid the wealth of its investors. In short, AD is the archetypal anomist—disrespectful of law and legal authorities, formally untrained in law, and devoid of moral strictures.

c. Hostility

Even in his youth, AD was a “hostile and arrogant” jock with an “ego the size of the United States,” and, as he entered adulthood, AD remained “oblivious to how he was viewed by those all around him.”³⁶¹ Those who knew him in business, such as a supplier for Nitec, describe the selfish man even more colorfully in terms that suggest narcissistic personality disorder: “Frankly, he was a world-class asshole. He’d stiff you for months on bills then get abusive the second you asked for payment. He was just the worst. There must have been something wrong with him.”³⁶²

To AD, people were tools to suit his purposes. He married his second wife only when told by his boss that he would go farther in business if he did so, and even then AD pressured her to marry before December 31 to reap a tax deduction; having accomplished his objectives, AS divorced her in less than a year.³⁶³ His dislike for fellow men was general and transparent: he was an equal

³⁵⁸ *Id.* at 76.

³⁵⁹ *Id.* at 72.

³⁶⁰ *See Dunlap v. Nitec Paper Corp. et al.*, 77 Civ. 3056 (S.D.N.Y. 1977).

³⁶¹ BYRON, *supra* note 81, at 19, 74.

³⁶² *Id.* at 75.

³⁶³ *Id.* at 71.

opportunity misanthrope, using and abusing people without regard to race, religion, ethnicity, or culture.³⁶⁴ Throughout his business career, AD managed to inspire the loathing of virtually all his subordinates, and, when Nitec's VPs, desperate to rid themselves of him, threatened mass resignation if he were not fired, AD saw opportunity.³⁶⁵ Aware of his supervisor's implication in illegal banking activities and other corporate fraud, AD leveraged that information to negotiate an overly generous severance package.³⁶⁶ When Nitec internal auditors soon discovered "massive falsifications and fraudulent accounting entries on the company's books" the board refused to issue the severance check, and AD's suit for breach of contract settled years later for \$50,000.³⁶⁷

AD is disinterested in and hostile to others. When he became CEO at Scott Paper and fired half the employees, an interviewer inquired as to whether it gave him pause to do what she believed was a distasteful task. AD brushed aside the suggestion. Pointing to the rising price of Scott's stock, he declared, "I created \$6.5 billion of value. And[,] for that I received less than 2[%]."³⁶⁸ Then, basking in his newly found fame as the CEO of the moment, he added, "There are only a handful of superstar executives. You've got to compare them with the other superstars. You can't compare them with the worker on the floor."³⁶⁹

Naturally, CEO AD included himself in this elite group who need not concern themselves with lesser men. AD thus scores high on all nine sub-constructs and is scored a hostile decision-maker.

d. Adventurism

AD has a penchant for diving into things before testing the waters and brought this impulsivity to bear on the turnaround of ailing companies, itself a risky enterprise. Rather than analyze, evaluate, decide, plan, and execute, AD simply cut lines of business, fired employees, reduced capacity, and shrunk costs, earning the epithet, "Chainsaw Al." He is "quick, glib, and boast[s] the attention span of a gnat," and risk seemed not to register with him.³⁷⁰ His cocksure certainty that all he touches will turn to gold belies an optimism and an internal locus of control not always supported by reason and economic reality.

³⁶⁴ See *id.* at 275 (suggesting AD was no ethnocentrist, even if he "shunned the language of political correctness," because he simply hated everyone equally).

³⁶⁵ *Id.* at 77.

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ *Id.* at 205.

³⁶⁹ *Id.*

³⁷⁰ See generally *id.*

His personal demeanor suggests stress and anxiety are frequent, if not constant, companions that goad him to rage when criticized or otherwise challenged.³⁷¹ AD thus scores high on all five sub-constructs of adventurism and is scored an adventuristic decision-maker.

e. Summary of IVs: Albert Dunlap

Albert Dunlap is a militaristic anomist who is hostile and adventuristic.

ii. DVs: CLC and Sunbeam

When AD was hired as CEO of Sunbeam in 1996, the share price had fallen from \$20 to \$12, and, in hopes of a quick turnaround, the board offered him the overly generous compensation package of \$1 million in salary, 50,000 shares of stock, 750,000 in-the-money options, and perquisites that included a full-time bodyguard and chauffeur.³⁷² Predictably, “Chainsaw Al” fired half the employees, closed two-thirds of the warehouses, eliminated most of the factories, and scrapped 87% of the product line.³⁷³ In response, Sunbeam’s share price rose to \$30 by April 1997.³⁷⁴

However, “an increasingly fishy smell had begun to emanate from Sunbeam’s financial reports,” suggesting the turnaround had come at the price of a conspiracy to defraud shareholders.³⁷⁵ Although profits were growing dramatically, little cash worked its way to the financial statements because Sunbeam had forced distributors to accept deliveries of goods, even when previously shipped goods had not sold, and then recording unsold shipments as revenue—an illegal practice known as “channel stuffing.”³⁷⁶ Thus, although recorded revenue was robust, actual revenue was nil, and accounts receivable were growing at a rate of 500%.³⁷⁷ Sunbeam “appeared to be experiencing a dramatic surge in profitability, but it was actually going broke.”³⁷⁸

In 1998, Sunbeam’s purchase of a competitor, Coleman, earned AD a revised contract of \$2 million annual salary, \$15 million in Sunbeam stock, and

³⁷¹ BYRNE, *supra* note 355, at 9.

³⁷² BYRON, *supra* note 81, at 256–57.

³⁷³ *Id.* at 257–60.

³⁷⁴ *Id.*

³⁷⁵ *Id.* at 267.

³⁷⁶ *Id.* at 267–68.

³⁷⁷ *Id.* at 268–69.

³⁷⁸ *Id.*

\$44 million in options.³⁷⁹ Within days of the merger, however, AD's ruse collapsed. Sunbeam issued a press statement describing "changes in inventory management" to remedy its failure to meet first-quarter earnings expectations and announcing an e-statement of past earnings,³⁸⁰ and investors began dumping shares. Shareholders filed lawsuits, alleging fraudulent accounting of earnings and artificial inflation of the stock price, which sent the share price into a downward spiral.³⁸¹ The SEC initiated civil proceedings against Sunbeam and AD, alleging he "was the guiding presence at Sunbeam"³⁸² when the firm committed fraud to exaggerate its earnings from 1996 to 1998 and he created "[a] false picture of a rapid turnaround in Sunbeam's financial performance."³⁸³ AD tried unsuccessfully to explain to analysts the stock would rebound, and, when asked by a PaineWebber analyst if he would return his bonus, grew furious and threatened to "come after" the questioner.³⁸⁴ Following an emergency meeting of the board of directors, in which AD alleged a shareholder conspiracy to drive down the price of Sunbeam to take over the company, the board fired AD on June 15, 1998, and surrendered control to AD rival and major Sunbeam investor, Ron Perelman, to avoid civil suit.³⁸⁵ In 2001, its equity gone, Sunbeam declared bankruptcy.³⁸⁶

The firm emerged in 2002 and now operates privately under the name American Household.³⁸⁷ AD agreed to pay \$15 million to settle shareholder suits and an additional \$500,000 to settle SEC litigation.³⁸⁸ No settlement required AD to admit any wrongdoing, although he agreed to be barred from working as an executive at a public company.³⁸⁹

³⁷⁹ *Id.* at 296.

³⁸⁰ *Id.* at 297.

³⁸¹ *Id.*

³⁸² Neil Roland and Judy Mathewson, with Robert Schmidt, *Sunbeam Ex-CEO "Chainsaw Al" Dunlap Settles SEC Case*, BLOOMBERG NEWS, Sept. 4, 2002, at A1.

³⁸³ *Id.*

³⁸⁴ BYRON, *supra* note 81, at 298.

³⁸⁵ *Id.* at 299.

³⁸⁶ *Id.* at 300.

³⁸⁷ Kelly Greene, *Dunlap Agrees to Pay \$15 Million to Settle Lawsuit Filed by Sunbeam Shareholders*, WALL. ST. J., Jan. 15, 2002, <http://www.wsj.com/articles/SB1011029024354167520>.

³⁸⁸ *Sunbeam Emerges from Chapter 11, Changes Its Name*, CHI. TRIB., Dec. 20, 2002, http://www.articles.chicagotribune.com/2002-12-20/business/0212200226_1_sunbeam-products-sunbeam-corp-jerry-w-levin.

³⁸⁹ Roland & Mathewson, *supra* note 382, at A1.

7. *Tyco*

a. CEO Dennis Kozlowski

i. IVs: Scores on Personality Constructs

a. Militarism

In his youth, Dennis Kozlowski (DK) was just another “face in the crowd[,] an easygoing, average Joe—not much more than a kid with ho-hum grades and a smile when he could make somebody laugh. . . . Many didn’t remember him at all.”³⁹⁰ Despite his obscurity[,] he yearned for adulation, which he gained to some extent by playing guitar in a band, the Hi-Tones, and by playing football and basketball, the latter well enough to earn a scholarship to Seton Hall.³⁹¹

It is unclear how he spent his immediate post-undergraduate years—a resume gap might suggest service with Air America flying helicopters in Cambodia, although no official records exist.³⁹² He began his Tyco career as an assistant controller, moving up the ranks to become CEO in 1992.³⁹³ However, attaining the top position at Tyco did not release DK from the insecurity of childhood poverty in Newark, New Jersey. Perhaps there is some ground for it: DK is described as “[c]rude, tasteless, and unencumbered by the graciousness and sense of style that a more cultured upbringing might have provided.”³⁹⁴ Moreover, he is dull and uncharismatic, so much so that his large cash donations to charities earned him nothing more than a string of polite “thank you” letters.³⁹⁵

DK resolved not to let his humble upbringing impede his social climb, and, where facts were in the way, he vaulted them, albeit clumsily. Tyco press releases claimed he had earned an MBA when in fact he only took a few evening courses,³⁹⁶ and, in describing his newly-found riches, DK referenced his wine collection by the number of bottles, rather than the quality of their vintage. Yet, even these measures could not make him popular or quench his desperate “obsession” with becoming like General Electric CEO Jack Welch, whom he

³⁹⁰ BYRON, *supra* note 81, at 31–32.

³⁹¹ *Id.* at 33.

³⁹² *Id.* at 80.

³⁹³ *Id.* at 305.

³⁹⁴ *Id.* at 308.

³⁹⁵ *Id.* at 310.

³⁹⁶ *Id.* at 80.

viewed as a “member of the Establishment” that had denied him admittance.³⁹⁷ His undoing resulted from increasingly conspicuous consumption that could no longer be hidden from investors and regulators.

Nothing in the relatively sparse literature suggests DK was a nationalist or held a favorable attitude toward power, and available sources do not make note of unusual aggression or dogmatism. His leadership style was unremarkable. He is a competitive striver who, despite social awkwardness, seeks out the company and approval of others, and it is apparent he has low self-esteem. Thus, DK scores high on only three sub-constructs of militarism—competitiveness, ambitiousness, and low self-esteem.

b. Anomism

Although DK earned a BA in accounting and began his professional career as an auditor, he has no formal legal training.³⁹⁸ He demonstrates no adherence to a strong moral code either in his public or private life: while serving as Tyco CEO, DK had affairs with a series of women—some subordinates—and appeared with them publicly to humiliate his wife.³⁹⁹ Although his extravagant abuse of authority for personal gain resulted in a long litany of criminal and civil charges—evidencing a disregard for law—it is difficult, in light of his conduct subsequent to arrest, to judge whether DK was similarly disdainful of legal authorities. He may have simply been a very adult and very wealthy version of the proverbial kid caught with his hand in a cookie jar. In sum, DK scores high on all five sub-constructs of anomism save one—disrespect for legal authorities—and is thus scored an anomist.

c. Hostility

In addition to infidelity,⁴⁰⁰ which suggests narcissism, a lack of empathy, and Machiavellianism, DK found other forums to express the dark side of his personality. After a promotion, he sponsored a dinner for Tyco executives to announce the firing of the man he judged the worst warehouse manager that year.⁴⁰¹ If there is no evidence of misanthropy *per se*, DK absorbed ethnocentrism when, as a boy, he and his anti-Semitic father frequented Polish

³⁹⁷ See *id.* at 27 (noting, upon DK’s arrest, “few business reporters had yet even heard of the company he ran . . . and fewer still had heard of his name.”); *id.* at 309 (noting DK’s obsession with Welch).

³⁹⁸ *Id.* at 78.

³⁹⁹ *Id.* at 207.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.* at 306.

American organizations where “gripping among the men about how the blacks were taking over Newark”⁴⁰² dominated the discourse. Further, DK is numb to the externalities of his personality; to wit, he often walked about Tyco headquarters, eating pizza, oblivious to the fact “grease and cheese [were] splattering onto the carpets as he passed.”⁴⁰³ Thus, DK scores high on six of nine sub-constructs of hostility and is scored as a hostile decision-maker.

d. Adventurism

Tyco appointed DK for his reputation as a cost-cutter but underestimated the degree of risk he would accept on behalf of the firm. He achieved early successes not because of, but in spite of, himself. He did no research and simply relied on intuition, wishful thinking, and an overinflated perception of his judgment, leaping to conclude deals with little real forethought. DK saw few deals he did not like, and his reaction time was so quick that normal oversight procedures stood little chance. As a top advisor recalls,

There were times when deals were flowing through at a rate of two and even three a week[,] and the board just wasn't able to keep up. A lot of times they'd have to vote on them before any due diligence was even done. Sometimes things would get so frantic that there wouldn't even be time for an actual meeting of the board, and the vote would have to take place via conference calls.⁴⁰⁴

There is no evidence DK experienced anxiety; to the contrary, his optimism and impulsivity were so great there was little time to be anxious. DK thus is an adventurist who scores high on all sub-constructs of adventurism, save anxiety.

e. Summary of IVs: Dennis Kozlowski

DK is a non-militaristic decision-maker who is anomistic, hostile, and adventuristic.

ii. DVs: CLC and Tyco

Tyco is the leading manufacturer of electronic industrial components, medical devices, and security systems.⁴⁰⁵ No later than 1995, DK began to raid

⁴⁰² *Id.* at 31.

⁴⁰³ *Id.* at 308.

⁴⁰⁴ *Id.* at 301.

⁴⁰⁵ *Profile: Tyco International PLC (TYC)*, REUTERS, <http://www.reuters.com/finance/stocks/companyProfile?symbol=TYC> (last visited Apr. 26, 2015).

Tyco to achieve an extravagant lifestyle that included the purchase of properties in Florida, Massachusetts, and New York; the collection of art masterpieces, jewels, and yachts; the throwing of lavish parties; and the donation of large sums to charities.⁴⁰⁶ Much of the wealth extracted from Tyco came pre-approved by the firm, albeit with the firm as co-conspirator: through the Key Employee Loan Program (KELP), DK received a zero-interest real estate loan of \$19 million, which Tyco forgave the next year as a “special bonus” while paying him an additional \$13 million to pay real estate taxes—and neither the loan nor the cash were disclosed, as required by law, as executive compensation.⁴⁰⁷ All told, DK received at least \$270 million such payments *gratis* through KELP, and total equity looted by DK reached approximately \$600 million by 2002.⁴⁰⁸

Ironically, what proved DK’s undoing was not his defrauding of Tyco investors but his decision to use company headquarters to drop ship art purchased with \$13 million in Tyco funds for his Fifth Avenue apartment. Manhattan District Attorney Robert Morgenthau opened a tax fraud investigation, and, in 2002, DK was arrested and charged with evading \$1 million in New York sales tax, securities fraud, and larceny.⁴⁰⁹ In turn, Tyco filed a \$600 million fraud suit against DK.⁴¹⁰

At his criminal trial, DK conceded his compensation package was “almost embarrassingly big” but denied having committed crimes.⁴¹¹ Nevertheless, DK was convicted on all charges in 2005, including twenty-two counts of grand larceny for accepting \$150 million in unauthorized bonuses.⁴¹² He was released from prison in January 2014.⁴¹³ In the civil action, he was found liable and ordered to reimburse \$400 million to shareholders.⁴¹⁴ Tyco remains in operation under new management.

⁴⁰⁶ Gellerman, *supra* note 6, at 5–6.

⁴⁰⁷ Complaint, Sec. and Exch. Comm’n v. Kozlowski, No. 2 Civ. 7312 (S.D.N.Y. Sept. 12, 2002), 2002 WL 32152253.

⁴⁰⁸ BYRON, *supra* note 81, at 63–64, 330.

⁴⁰⁹ *Id.* at 330.

⁴¹⁰ See Stephen Frothingham, *Tyco Seeks Millions From its Former CEO*, J. SENTINEL (Milwaukee), Oct. 9, 2002.

⁴¹¹ *Kozlowski, Swartz Found Guilty in Tyco Retrial*, FOXNEWS.COM, June 17, 2005, <http://www.foxnews.com/story/2005/06/17/kozlowski-swartz-found-guilty-in-tyco-retrial/>.

⁴¹² *Ex-Tyco CEO Dennis Kozlowski Found Guilty*, NBCNEWS.COM (June 17, 2005 6:24 PM), http://www.nbcnews.com/id/8258729/ns/business-corporate_scandals/t/ex-tyco-ceo-dennis-kozlowski-found-guilty/#.VTYb5v1fo5s.

⁴¹³ Shayna Jacobs & Corrine Lestch, *Ex-Tyco CEO, Convicted of Stealing \$150M from Company, Set for Release on Parole in January*, N.Y. DAILY NEWS (Dec. 4, 2013, 1:36 AM), <http://www.nydailynews.com/new-york/nyc-crime/tyco-ceo-convicted-stealing-150m-free-article-1.1536865>.

⁴¹⁴ *Id.*

8. Halliburton

a. CEO Dick Cheney

i. IVs: Scores on Personality Constructs

a. Militarism

Since boyhood, Dick Cheney (DS) has pursued “activities that allowed him either to be alone or to excel.”⁴¹⁵ After earning scholarships in football and baseball to attend Yale University,⁴¹⁶ DC eventually abandoned his doctoral studies in political science for the hypercompetitive world of politics, first as a staffer to Donald Rumsfeld and then as a member of Congress, Secretary of Defense, and, ultimately, vice president.⁴¹⁷ With the exception of a desultory period when he flunked out of Yale and labored as a “lineman for the county,”⁴¹⁸ DC has led a public life characterized by a driving ambition to acquire power and authority and great skill in wielding both.⁴¹⁹ He is a strategic thinker who “dr[ives] policy the way commanders are taught to drive operations in the field, calculating the mission, enemy, troops, terrain[,] and time available.”⁴²⁰ As a congressman, DC “never saw a defense program [he] didn’t like,”⁴²¹ including arming the Contras and deploying the Strategic Defense Initiative.⁴²² Although he believed himself too uncharismatic to win the presidency, as vice president DC structured his office to maximize power by requiring that he personally vet and “tee up” every decision for President George W. Bush.⁴²³ Further, by

⁴¹⁵ STEPHEN HAYES, CHENEY: THE UNTOLD STORY OF AMERICA’S MOST POWERFUL AND CONTROVERSIAL VICE PRESIDENT 19 (2007).

⁴¹⁶ DAN BRIODY, THE HALLIBURTON AGENDA: THE POLITICS OF OIL AND MONEY 192–93 (2005).

⁴¹⁷ CHITTICK, *supra* note 19, at 167.

⁴¹⁸ HAYES, *supra* note 415, at 28–38.

⁴¹⁹ BARTON GELLMAN, ANGLER: THE CHENEY VICE PRESIDENCY 34 (2008) (DC is “pretty damn good at accumulating power, extraordinarily effective and adept at exercising power.”) (quoting James A. Baker).

⁴²⁰ *Id.* at 67.

⁴²¹ PRATAP CHATTERJEE, HALLIBURTON’S ARMY: HOW A WELL-CONNECTED TEXAS OIL COMPANY REVOLUTIONIZED THE WAY AMERICA MAKES WAR 37 (2009). Similarly, as vice president, DC led the Administration’s successful effort to overcome objections from liberal Republican senators and block the International Criminal Court and Anti-Ballistic Missile treaties. GELLMAN, *supra* note 419, at 63–64.

⁴²² LOU DUBOSE & JAKE BERNSTEIN, VICE: DICK CHENEY AND THE HIGHJACKING OF THE AMERICAN PRESIDENCY 54 (2006).

⁴²³ HAYES, *supra* note 415, at 302–15. Foremost was DC’s decision to assume command in the absence of President Bush in the hours after the attacks of September 11, 2001, and order U.S.

creating special task forces and imposing a culture of secrecy, DC battled successfully to restore to the executive power he believed had been usurped by Congress and the judiciary.⁴²⁴

Interestingly, although he has lived in the public arena, and despite his tremendous success in exploiting a Washington insider's access to the "corridors of power," DC is an "unrelentingly secretive" introvert who is uncomfortable in the spotlight, possesses much "anti-charisma," and prefers to be either alone with his thoughts and books or the "silent strength behind a benefactor."⁴²⁵ Although he is witty and skilled in developing and maintaining relationships when they facilitate political objectives,⁴²⁶ DC is simply "not a very social person."⁴²⁷ This may be due to DC's dogmatism: while he declaims the popular tendency to create rigid dichotomies in regard to policy choices,⁴²⁸ and although there is a distinction between adherence to principles and rigid ideology, DC "seldom indulge[s] in ambivalence" and would rather lose than sacrifice principle to political expedience.⁴²⁹ DC has either friends or enemies—there is no middle ground. When the State Department took contrary positions, he described it as an "al Qaeda cell[.]" and foreign governments were either with or against the United States in the War on Terror.⁴³⁰ When events disconfirm his theories, DC remains "unyielding and unbending" and anchored to his "set of beliefs."⁴³¹ Moreover, according to a colleague, DC "doesn't believe in negotiations. He's completely rigid, states his position, and concedes nothing."⁴³²

Although DC never expresses anger publicly and is widely known for his calming, collected presence,⁴³³ he may suffer from low self-esteem. Despite his universally recognized intellectual capacity, after he flunked out of Yale for the second time he quickly accrued two arrests for driving under the influence,

military forces to shoot down hijacked civilian aircraft that might be employed as guided missiles. GELLMAN, *supra* note 419, at 119, 129–30.

⁴²⁴ GELLMAN, *supra* note 419, at 82–83 (describing DC's view of executive power as Hamiltonian in that it is "absolute within its constitutional sphere" and "supreme outside [it].").

⁴²⁵ BRIODY, *supra* note 416, at 218, 194, 197.

⁴²⁶ DUBOSE & BERNSTEIN, *supra* note 422, at 48–49 (describing DC as "calculating" in the development of relationships).

⁴²⁷ GELLMAN, *supra* note 419, at 383 (quoting former President George W. Bush).

⁴²⁸ BRIODY, *supra* note 416, at 205.

⁴²⁹ GELLMAN, *supra* note 419, at 68.

⁴³⁰ *Id.* at 171, 225.

⁴³¹ *Id.* at 336, 384.

⁴³² DUBOSE & BERNSTEIN, *supra* note 422, at 58.

⁴³³ *See, e.g.*, BRIODY, *supra* note 416, at 194 (reporting colleagues describe DC as "low key," "bland," and "calming").

worked a blue-collar job, and failed to complete graduate school.⁴³⁴ Further, although his long record of service from the Cold War through the War on Terror testifies he is a nationalist who believes in “American Exceptionalism,” he secured five deferments to avoid military service in Vietnam on the ground he “had other priorities in the 1960s.”⁴³⁵

While he is not an aggressive person, DC is an ideologue as well as a competitive, nationalistic authoritarian and introvert who holds a favorable attitude toward the use of power to achieve security and exert influence in the world on his own behalf and on behalf of the United States. Despite his influence over people and events, he is an isolated individual with a measure of low self-esteem. Accordingly, DC scores high on nine of ten sub-constructs of militarism and is thus scored a militarist.

b. Anomism

Although DC was involved in church activities as a youth, as an adult he is largely secular and, in public life, has “resolutely avoided discussions of faith.”⁴³⁶ As a young adult, DC was disciplined at Yale University for alcohol-related offenses and for disrupting campus activities, and he was arrested twice for driving under the influence.⁴³⁷ He secured deferments to avoid Vietnam service but only by gaming the draft rules and enrolling in a community college to preserve his ineligibility.⁴³⁸ Although DC has no formal legal training and, like many Westerners, is deeply skeptical of regulation and of Congress, he is profoundly aware that law is a ubiquitous and powerful instrument.⁴³⁹ While CEO of Halliburton, DC sharply differentiated legal compliance from ethical behavior and directed his subordinates and legal team to adhere scrupulously to the former while ignoring the latter.⁴⁴⁰ Upon discovering in 2000 that the Twelfth Amendment to the U.S. Constitution prohibits the election of a president and a vice president domiciled in the same state, DC took a day trip from his primary residence in Texas to register to vote in Wyoming, where he maintained a vacation home; to do legal battle in Florida during the 2000 vote

⁴³⁴ *Id.* at 193.

⁴³⁵ HAYES, *supra* note 415, at 44 (quoting DC).

⁴³⁶ GELLMAN, *supra* note 419, at 52.

⁴³⁷ See CHATTERJEE, *supra* note 421, at 31 (describing DC’s administrative troubles at Yale); BRIODY, *supra* note 416, at 193 (discussing DC’s DUI arrests).

⁴³⁸ HAYES, *supra* note 415, at 43–45.

⁴³⁹ GELLMAN, *supra* note 419, at 38 (describing DC’s hostility to regulation); *id.* at 82–83 (noting DC’s distrust of Congress).

⁴⁴⁰ See BRIODY, *supra* note 416, at 210 (citing an interview with the CEO of a Halliburton subsidiary).

recounts, he and the president-elect traveled on Halliburton corporate jets.⁴⁴¹

Moreover, when DC concludes that law poses obstacles, he evinces the capacity to reinterpret, modify, and even violate the rules at issue. When a reporter threatened to leak classified information regarding U.S. submarine espionage against the Soviet Union, DC, then Chief of Staff to President Gerald Ford, suggested authorizing a burglary to retrieve information from the reporter's home.⁴⁴² While vice president, DC understood instinctively that the exercise of power would depend upon the capacity to frame legal issues. Within minutes after the World Trade Center and the Pentagon were attacked on September 11, 2001, DC requested his legal counsel to draft "extraordinary powers" to be wielded by the White House in the coming War on Terror.⁴⁴³ DC approved and authorized a new legal framework drafted by subordinates that founded and justified a series of controversial steps, including the Authorization for the Use of Force, "enhanced interrogation" of detainees, the USA PATRIOT Act, and the claim of broad executive powers to violate treaties and domestic law.⁴⁴⁴ DC directed the National Security Agency to "forget about the law" when responding to a query as to what else, besides spying on U.S. citizens under the "Terrorist Surveillance Program," could be done, and he directed the executive branch to keep much of this new legal regime secret from the legislative and judicial branches.⁴⁴⁵ In sum, DC is an amoral decision-maker with no legal training whose conduct evinces disregard for law and legal authorities despite his deep intellectual capacity to shape the creation, interpretation, and application of law.⁴⁴⁶ He is high on all sub-constructs of anomism and is scored an anomist.

c. Hostility

To DC, the world is "an inherently dangerous place . . . populated by four-year-olds with automatic weapons."⁴⁴⁷ He is distrustful of others and believes little without independent verification.⁴⁴⁸ His exploitation of the rules regarding the draft to avoid military service, and his doubts about the sincerity and trustworthiness of not only Soviet President Mikhail Gorbachev's *glasnost*

⁴⁴¹ GELLMAN, *supra* note 419, at 17.

⁴⁴² DUBOSE & BERNSTEIN, *supra* note 422, at 34–35.

⁴⁴³ GELLMAN, *supra* note 419, at 129–30.

⁴⁴⁴ *See id.* at 132–38, 140–43 (detailing DC's development of new legal regimes for the War on Terror).

⁴⁴⁵ *Id.* at 142.

⁴⁴⁶ By all accounts, DC is "intimidatingly smart." DUBOSE & BERNSTEIN, *supra* note 423, at 95.

⁴⁴⁷ *Id.* at 52.

⁴⁴⁸ GELLMAN, *supra* note 419, at 9.

agenda but also of liberal Republicans in Congress, suggests a strong thread of cynicism.⁴⁴⁹ Nothing in the literature suggests DC is ethnocentric;⁴⁵⁰ on the contrary, he is hostile without regard to group or affiliation and is openly contemptuous of public opinion.⁴⁵¹ For DC, the world consists solely of friends and enemies: sticks are more useful than carrots, hard power is better than soft power, and war is central to human existence.⁴⁵² Moreover, particularly as his cardiac health has degenerated, DC's longstanding distrust and introversion may have trended toward misanthropy.⁴⁵³ DC is a vindictive, unempathetic person who keeps a "blacklist,"⁴⁵⁴ uses power to settle petty scores,⁴⁵⁵ and fires employees who present him with conclusions incompatible with his worldview.⁴⁵⁶ DC is neither selfish—he gratefully embraces the role of loyal sidekick to his political benefactors and extends that loyalty to a cadre of subordinate cronies⁴⁵⁷—nor is he a narcissist or a misanthrope—he is famously "low-key," self-deprecating, and quietly competent,⁴⁵⁸ and gets along well with others when it suits him. However, DC is the archetypal Machiavellian for whom politics is the continuation of war by other means. He is a nakedly amoral hypocrite who resorts to deceit,⁴⁵⁹ media manipulation and smear

⁴⁴⁹ See HAYES, *supra* note 415, at 201–03 (Gorbachev); GELLMAN, *supra* note 419, at 63–65 (Senate Republicans).

⁴⁵⁰ Although DC opposed sanctions against apartheid-era South Africa, he did so on economic, rather than racial, grounds. *Id.* at 270. Moreover, although he opposes affirmative action, he selected General Colin Powell over one hundred other officers to be his Chairman of the Joint Chiefs of Staff because he believed Powell to be the most talented option. DUBOSE & BERNSTEIN, *supra* note 422, at 92 (discussing DC's hiring of Powell).

⁴⁵¹ GELLMAN, *supra* note 419, at 390 (suggesting, for DC, public scorn is a "virtue").

⁴⁵² *Id.* at 161, 250.

⁴⁵³ See DUBOSE & BERNSTEIN, *supra* note 422, at 149 (suggesting DC's numerous cardiac events may have rendered him more hostile and less social).

⁴⁵⁴ *Id.* at x.

⁴⁵⁵ See CHATTERJEE, *supra* note 421, at 37 (reporting, as Secretary of Defense, DC cut defense programs located in the districts of prominent Democrats to harm their electoral futures).

⁴⁵⁶ See DUBOSE & BERNSTEIN, *supra* note 422, at 211 (reporting DC fired CIA intelligence briefers *seriatim* until he found those who would confirm his views on the situation in Iraq prior to U.S.-led intervention in 2003).

⁴⁵⁷ See CHATTERJEE, *supra* note 421, at 31–34 (detailing Donald Rumsfeld's and Gerald Ford's patronage of DC and DC's subordination of his own interests to theirs); BRIODY, *supra* note 416, at 212 (describing DC's extensive development of, reliance upon, and rewards to a network of friends and loyalists).

⁴⁵⁸ GELLMAN, *supra* note 419, at 2.

⁴⁵⁹ See *id.* at 219–20 (reporting, when leaving a 2002 briefing from DC on intelligence suggesting Iraq possessed weapons of mass destruction (WMD), House Majority Leader Dick Arney felt a "very deep sadness about [his] relationship with [DC]" because he "deserved better . . . than to be bullshitted by him."). When chairing the vice presidential search committee, DC solicited and received extensive personal background information from potential running mates, only to accept the nomination himself and later use information gleaned in the process against spurned

campaigns,⁴⁶⁰ stealth and misdirection, and “the dark side”⁴⁶¹ to prevail over opposition, yet rails against others who use the same strategy.

In sum, DC scores high on five of nine sub-constructs of hostility and is thus scored as hostile.

d. Adventurism

DC is a “worrier” who plans extensively to guard against the worst possible outcome of every decision.⁴⁶² He is emotionally reserved and disfavors surprises.⁴⁶³ His cardiac illness suggests he internalizes significant stress when making exigent decisions such as the order, in the absence of President George W. Bush, to authorize U.S. military aircraft to destroy hijacked civilian aircraft to prevent their use as guided missiles on September 11, 2001.⁴⁶⁴ Still, despite his pragmatism, DC is possessed of enough optimism to believe he can change the world by taking risks and exerting his relentless will, to include, most significantly, the “constructive destabilization” of Middle East regimes such as Iraq.⁴⁶⁵ Thus, DC scores high on six of seven sub-constructs of adventurism and is scored an adventurist.

e. Summary of IVs: Dick Cheney

Dick Cheney is a militaristic anomist who is hostile and adventuristic.

ii. DVs: CLC and Halliburton

potential nominees—fueling speculation this had been DC’s plan and reinforcing a perception of DC as “gratuitous, petty, and vindictive.” *Id.* at 4–6, 28–29.

⁴⁶⁰ When Joseph Wilson, husband of CIA clandestine officer Valerie Plame, published an op-ed disputing DC’s claim Iraq had been attempting to acquire uranium from Niger, DC allegedly advised his Chief of Staff, Scooter Libby, to leak the fact of Plame’s covert status to the media to pressure Wilson and then successfully resisted congressional demands for the transcript of his FBI interview regarding the matter, wherein he was questioned as to whether, as widely believed, he was the source of the illegal leak. *See id.* at 364–65 (chronicling the Plame/Libby scandal).

⁴⁶¹ In a staff meeting after September 11, 2001, DC stated the U.S. would “have to work . . . the dark side” and “[a] lot of what need[ed] to be done [t]here [would] have to be done quietly, without any discussion, using sources and methods that [we]re available . . . [and] any means at [their] disposal . . . to achieve[their] objectives.” *Id.* at 160.

⁴⁶² *Id.* at 19 (noting, in DC’s experience, “you usually end up with the least worst option.”) (quoting DC).

⁴⁶³ *Id.* at 17, 86, 95. DC never gets angry and is “not the hugging kind” according to GWB. *Id.* at 328.

⁴⁶⁴ *See id.* at 119–20 (chronicling and analyzing DC’s actions and orders on September 11, 2001).

⁴⁶⁵ *Id.* at 242, 252.

Although he had no private-sector experience, DC was hired as CEO of Halliburton (H), an oil services company, in August 1995 to leverage the extensive influence he developed in Congress and as Secretary of Defense from 1989 to 1993.⁴⁶⁶ During his tenure at H, DC spent “countless days on the road, using his contacts to court key business players around the world, especially in the Middle East[,]”⁴⁶⁷ expanding government contracting, and doubling revenues in five years.⁴⁶⁸ DC’s retirement in 2000 with a \$20 million severance package was framed as that of a “triumphant CEO, a self-reliant insider-turned-outsider who competently and ethically grew his company while increasing shareholder value.”⁴⁶⁹ However, closer examination supports an inference that luck and spin kept a messy legacy quiet long enough for DC to return to politics. In addition to fraud,⁴⁷⁰ commentators allege political cronyism and collusion with officials beholden to DC in the steering of government contracts to H,⁴⁷¹ although proof of it is “a little like trying to build a murder case without the murder weapon.”⁴⁷² By 2003, H was the primary U.S. Army contractor—up from 19th—and the no-bid process whereby H secured contracts—LOGCAP—had been implemented by DC as Secretary of Defense in 1993.⁴⁷³ LOGCAP, a monopoly that pays a guaranteed profit for construction, food service, sanitation, laundry, postal, energy, prison, and other services to the U.S. government, was created to enhance military logistical capability and efficiency by shifting these functions to one civilian contractor.⁴⁷⁴ From inception, LOGCAP has been controversial: DC’s Department of Defense awarded it to H, the very company it asked to draft the proposal, and, as a “cost-plus” contract, it is a de facto blank

⁴⁶⁶ See DUBOSE & BERNSTEIN, *supra* note 422, at 106–08 (describing H as devastated by declining 1980s oil prices and reporting DC was hired in the hope his “Rolodex” would reinvigorate H). Still, despite DC’s contacts, his lack of private sector experience was so remarkable that the price of H fell on news of his appointment. BRIODY, *supra* note 416, at 191–92.

⁴⁶⁷ CHITTICK, *supra* note 19, at 167.

⁴⁶⁸ BRIODY, *supra* note 416, at 204.

⁴⁶⁹ DUBOSE & BERNSTEIN, *supra* note 422, at 104–05.

⁴⁷⁰ During DC’s tenure, H engaged in systematic inflation of project costs, use of substandard materials, overstaffing, excess production, and other acts of waste, fraud, and abuse for which it entered into settlements with the Justice Department subsequent to DC’s departure. See generally CHATERJEE, *supra* note 421. By 2004, H was under investigation by the Department of Defense, the SEC, Justice, and the GAO for acts and omissions during DC’s tenure. BRIODY, *supra* note 416, at 234.

⁴⁷¹ See, e.g., DUBOSE & BERNSTEIN, *supra* note 422, at 152–64.

⁴⁷² BRIODY, *supra* note 416, at 224.

⁴⁷³ DUBOSE & BERNSTEIN, *supra* note 422, at 153. While Secretary of Defense, DC asked H to develop a classified report on how a single private firm could develop logistical capabilities in the event of military overstretch. *Id.*

⁴⁷⁴ CHATERJEE, *supra* note 421, at xvi (chronicling the shift to civilian logistical support and the creation of LOGCAP); BRIODY, *supra* note 416, at 184–88, 198–206 (detailing the creation, award, and controversies of LOGCAP).

check making H the “government quartermaster.”⁴⁷⁵ Whereas H lost money before LOGCAP, from 1995–2000, H earned \$2 billion for LOGCAP in Bosnia and Kosovo.⁴⁷⁶

More serious are allegations DC exploited his office to steer a LOGCAP contract to restore Iraqi oil production, awarded to H prior to the 2003 intervention by the United States.⁴⁷⁷ That the close relationship between H and the Department of Defense benefited DC, and that neither DC nor H are fully forthcoming about the extent and timing of these benefits,⁴⁷⁸ fuels speculation the 2003 invasion was motivated by financial self-dealing.⁴⁷⁹ The dubious constitutionality of DC’s secretive Energy Policy Development Group (EPDG) formed to achieve environmental deregulation and removal of sanctions against oil producing nations,⁴⁸⁰ the revelation EPDG began studying maps of Iraqi oil fields in 2001, and H’s retaliation against whistleblowers⁴⁸¹ reinforced a perception of a scofflaw firm marshaling influence to spark an unprovoked “war for oil.” During DC’s tenure, H suffered other scandals, including violating sanctions,⁴⁸² bribery,⁴⁸³ violation of labor laws,⁴⁸⁴ and accounting fraud.⁴⁸⁵ In

⁴⁷⁵ DUBOSE & BERNSTEIN, *supra* note 422, at 160.

⁴⁷⁶ BRIODY, *supra* note 416, at 198.

⁴⁷⁷ *See id.* at 221 (alleging violation of federal law in the award of the Restore Iraqi Oil contract); DUBOSE & BERNSTEIN, *supra* note 422, at 158–60 (analyzing adverse actions taken against officials who protested legal violations in the bid and award process). Whether DC participated in the award of contracts to H, ordered or permitted his staff to do so, or otherwise knew or should have known is contested. *See id.* at 153 (discussing unsuccessful discovery in litigation). DC claims he “never went near the Defense Department” while vice president and never lobbied on behalf of H. *Id.* at 152–53. The Defense Department defends the award on “national security” grounds. Critics suggest bid and award meetings conducted after the secret award were a “sham,” and DC’s claim of ignorance is incredible. *See id.* at 158–60.

⁴⁷⁸ Although DC claimed to have severed all financial ties to H after resigning in 2000, H made six-figure payments to DC from 2000 to 2005, and DC cashed in stock options to earn over \$18.5 million—interests that, according to the Congressional Research Service, constituted a “continued financial interest” and a “potential conflict.” CHATTERJEE, *supra* note 421, at 49. As late as 2006, DC retained stock options in H worth \$4 million. DUBOSE & BERNSTEIN, *supra* note 422, at 105.

⁴⁷⁹ *See, e.g.*, CHATTERJEE, *supra* note 421, at 28 (reporting this allegation).

⁴⁸⁰ *See* DUBOSE & BERNSTEIN, *supra* note 422, at 7–11 (discussing the creation of and controversies surrounding the operation of the EDG).

⁴⁸¹ *See FBI Interviews Halliburton Whistleblower*, USA TODAY, Nov. 24, 2004, http://www.usatoday30.usatoday.com/news/washington/2004-11-24-halliburton-whistleblower_x.htm; Walker v. Cheney, 230 F. Supp. 2d 51 (2002).

⁴⁸² Although DC opposed unilateral U.S. trade sanctions on the ground they hindered U.S. competition with foreign firms, he claimed to have a “firm policy” against violations. DUBOSE & BERNSTEIN, *supra* note 422, at 17; 111–12; *see also id.* at 115 (reporting H helped found a lobbying group, “USA Engage,” to fight sanctions); *id.* at 116 (noting DC lobbied for a waiver from application of the Iran Libya Sanctions Act of 1996). However, while DC was CEO, H created fictitious foreign subsidiaries out of glorified post office boxes and used them to trade illegally with Libya, Iran, Burma, and Iraq. CHATTERJEE, *supra* note 421, at 45–46. In 1997, H settled with the Commerce Department over charges it violated the U.S. Export Administration Act fifteen times in

respect to these misdeeds, DC claims ignorance.⁴⁸⁶

Moreover, it might fairly be said that a culture of corruption established during DC's tenure survived his departure: since 2000, dozens of H employees have been charged for crimes involving official duties,⁴⁸⁷ abuse of foreign migrant laborers has embarrassed the Department of Defense,⁴⁸⁸ and federal agencies and Congress have launched investigations.⁴⁸⁹ Under the pressure of these scandals, the share price of H—\$49 when DC resigned in 2000—plunged to \$15 by 2002,⁴⁹⁰ and H has labored to “extricat[e] itself from its former CEO's

transactions with Iran. When it was revealed in 2000 H had done over \$70 million in business with Iraq between 1997 and 2000, DC pled ignorance. DUBOSE & BERNSTEIN, *supra* note 422, at 117.

⁴⁸³ Beginning in 1995, a subsidiary of H paid \$180 million in bribes for favorable treatment in contracts connected to construction of a natural gas facility in Nigeria in violation of the Foreign Corrupt Practices Act. See Barbara C. George & Kathey Lacey, *Investigation of Halliburton Co./TKSL's Nigerian Business Practices: Model for Analysis of the Current Anti-Corruption Environment on Foreign Corrupt Practices Act Enforcement*, 96 J. CRIM. L. & CRIMINOLOGY 503 (2006) (detailing investigations). An investigation by the Nigerian government led to parallel investigations by the Justice Department and the SEC in 2004. *Id.* H acknowledged in subsequent SEC filings that it had produced documents and made employees available to the SEC for deposition. *Id.* at 245. DC denied any knowledge of bribery during his tenure at H. DUBOSE & BERNSTEIN, *supra* note 422, at 114. By 2006, the investigations had stalled, and, although by its own admission H had violated the FCPA, no evidence implicated DC beyond the “should have known” standard. *Id.* at 112.

⁴⁸⁴ A Labor Department investigation revealed, during DC's tenure, H charged some costs of senior executive pension and bonus plans to its workers' pension fund and failed to pay pensions owed to employees. CHATTERJEE, *supra* note 421, at 50.

⁴⁸⁵ While DC was CEO, H—in concert with its accounting firm, Arthur Andersen—changed its accounting practices in violation of GAAP to postpone revealing losses on over-budget construction projects and artificially inflate after-tax profits, and failed to inform stockholders. BRIODY, *supra* note 416, at 213. The SEC opened an investigation in July 2002, and H restated earnings and settled twenty-nine shareholder lawsuits over financial violations in June 2003. *Id.* Among the practices questioned were the creation of fifty-eight SPEs during DC's tenure. *Id.* at 227. In 2004, the SEC fined H \$7.5 million and imposed fines on H executives; no action was taken against DC. DUBOSE & BERNSTEIN, *supra* note 422, at 118.

⁴⁸⁶ See BRIODY, *supra* note 416, at 288 (questioning whether DC can credibly claim to have not had knowledge of any of the misconduct).

⁴⁸⁷ CHATTERJEE, *supra* note 421, at xv.

⁴⁸⁸ In 2006, General George Casey issued an order, “Prevention of Trafficking in Persons in MFI-I,” ordering contractors and other persons and entities within DOD jurisdiction to cease deceptive hiring practices, charging excessive fees to foreign workers, and permitting substandard living conditions and wages. *Halliburton/KBR Scandals*, ALLGOV, <http://www.allgov.com/departments/department-of-defense/defense-criminal-investigative-service?agencyid=7361> (last visited Apr. 21, 2015).

⁴⁸⁹ In 2004, Congress issued subpoenas to investigate the relationship between the UN Oil for Food Program, H, waste and fraud in LOGCAP, and the Bush-Cheney decision to intervene in Iraq in 2003. David Teather, *Congress Inquiry Links Cheney Aide to Halliburton Deal*, GUARDIAN (June 14, 2004), <http://www.theguardian.com/world/2004/jun/15/usa.dickcheney>.

⁴⁹⁰ Following the invasion of Iraq in 2003, H stock soared to \$66 per share but since fell to \$44 per share—more than \$5 less than when DC departed in 2000. See *In 1 Year, Halliburton's Stock Doubles as Troop Deaths Double*, HALLIBURTON WATCH (Sept. 20, 2005), at <http://www.halliburtonwatch.com>.

mismanagement.”⁴⁹¹ In 2007, H relocated to Dubai—a no-tax jurisdiction with looser regulatory standards—although it remains incorporated in the United States and engages in extensive LOGCAP contracting in Iraq and Afghanistan.

9. *Bernard L. Madoff Investment Securities*

a. CEO Bernard Madoff

i. IVs: Scores on Personality Constructs

a. Militarism

Bernard L. Madoff (BM) was born in New York City to middle-class children of Eastern European Jews in 1938⁴⁹² and is universally recalled by childhood contemporaries as a physically unremarkable, introverted individual⁴⁹³ disinterested in current events.⁴⁹⁴ Although he participated in extracurricular activities, including swimming, basketball, playground monitoring, and lifeguarding, BM was and remains a loner.⁴⁹⁵ BM is quiet, distant, and aloof.⁴⁹⁶ He is an intensely secretive person who keeps his own counsel and did not display the trappings of his wealth to make or keep friends;⁴⁹⁷ on the contrary, he grew “cranky” when obligated to socialize⁴⁹⁸ and did so solely to achieve business objectives.⁴⁹⁹ His introversion and isolationism may be a function of low self-esteem: he was considered “dull” by schoolmates and rejected by the opposite sex due to his lack of intellect⁵⁰⁰ and relative poverty.⁵⁰¹

The foregoing may account for a high degree of ambition: BM discovered his road to happiness was paved with cash. As a youth, he ran a lucrative

halliburtonwatch.org/news/stock_troop2.html (postulating H’s share price depends on U.S. military success in foreign conflicts).

⁴⁹¹ DUBOSE & BERNSTEIN, *supra* note 422, at 105–06.

⁴⁹² ANDREW KIRTZMAN, *BETRAYAL: THE LIFE AND LIES OF BERNIE MADOFF* 16 (2010).

⁴⁹³ *Id.* at 14–15.

⁴⁹⁴ JERRY OPPENHEIMER, *MADOFF WITH THE MONEY* 48 (Wiley 2009).

⁴⁹⁵ *See id.* at 31–32.

⁴⁹⁶ *Id.* at 89–90.

⁴⁹⁷ *Id.* at 118.

⁴⁹⁸ KIRTZMAN, *supra* note 492, at 60.

⁴⁹⁹ *See* ERIN ARVEDLUND, *TOO GOOD TO BE TRUE* 19 (2010) (describing BM’s social networking as an undertaking designed to safeguard his business).

⁵⁰⁰ KIRTZMAN, *supra* note 492, at 20.

⁵⁰¹ *See* OPPENHEIMER, *supra* note 494, at 140 (indicating BM experienced embarrassment as a child because his family’s economic circumstances would not permit him to wear “trendy” clothes).

sprinkler business and was “the image of a driven young man” who “radiated an entrepreneur’s spirit.”⁵⁰² Through long, hard hours doing manual labor and trading stocks in struggling firms, he discovered a gift for making money, and, in his cultural milieu, this conferred a sense of status and a belief he could “be one of them, the big shot, the Jewish prince who could dole out favors and advice, . . . a great power in the Jewish world of his fathers.”⁵⁰³

BM enlisted in the U.S. Army Reserve in 1960 primarily to avoid the draft, rather than out of a sense of patriotic duty or nationalistic beliefs.⁵⁰⁴ He then attended the University of Alabama and Hofstra University on swimming and Army Reserve Officers’ Training Corps (ROTC) scholarships.⁵⁰⁵ College classmates described an “assured, authoritarian” demeanor and noted BM had few friends.⁵⁰⁶ Nothing in the literature suggests he has any ideological commitments or other aspects of dogmatism. In sum, BM scores high on seven of ten sub-constructs of militarism and is thus scored as a militarist.

b. Anomism

Prior to his arrest in 2009, BM had no criminal background whatsoever,⁵⁰⁷ although he was a suspected cheat at the golf course,⁵⁰⁸ a confirmed cheat in his marriage,⁵⁰⁹ and a frequent sexual harasser of his female employees.⁵¹⁰ An ingrained disregard for law and legal authorities may have been bequeathed by his parents, who ran illegal stock trading operations out of the family home and may have elicited BM’s participation in this venture.⁵¹¹ BM enjoyed pretending

⁵⁰² KIRTZMAN, *supra* note 492, at 15.

⁵⁰³ *Id.* at 26–27, 39, 74.

⁵⁰⁴ *Id.* at 36. BM later exaggerated a medical condition to acquire a medical discharge and avoid additional service as was his obligation, reinforcing the impression he is not especially patriotic. *See id.* at 167.

⁵⁰⁵ *See id.* at 30, 36.

⁵⁰⁶ OPPENHEIMER, *supra* note 494, at 58.

⁵⁰⁷ KIRTZMAN, *supra* note 492, at 9.

⁵⁰⁸ *See* OPPENHEIMER, *supra* note 494, at 92 (reporting BM reported golf scores that never varied below eighty or above eighty-nine—returns from the links that mirrored his fictitious market returns and raised skepticism).

⁵⁰⁹ BM was a serial adulterer during his marriage to Ruth, often meeting women—including prostitutes—for trysts at his office and paid “hush money” to prevent disclosure. *Id.* at 62, 185; KIRTZMAN, *supra* note 492, at 111–12.

⁵¹⁰ BM made “sophomoric sexual comments” and was so inappropriate with female employees that he paid cash severances to several to avoid lawsuits. OPPENHEIMER, *supra* note 494, at 111–12.

⁵¹¹ KIRTZMAN, *supra* note 492, at 9. The SEC closed down the operation in 1963. *Id.* at 35. Commentators refer to an “ethically and morally bankrupt household” where BM’s “values, principles, behavior, sense of right and wrong, ideals, and standards were established.” OPPENHEIMER, *supra* note 494, at 29.

to be a “wise Jewish elder,” but he is a self-confirmed “lox and bagels” Jew who did not attend synagogue, celebrate religious rituals, or otherwise participate in his faith.⁵¹² BM does have some legal training—he attended law school for one year, primarily to earn a draft deferment, only to drop out and form his business.⁵¹³ However, he has no specific training in corporate law, and the extent of his knowledge of the field appears to have been confined to a group of pliant lawyers on retainer with whom he shared little information about his business.⁵¹⁴ BM thus scores high on four of five sub-constructs of anomism and is scored as an anomist.

c. Hostility

As a youth, BM was a “happy-go-lucky guy,”⁵¹⁵ and friends report that even in adulthood BM had a “great sense of humor,” was “very considerate” and personable,⁵¹⁶ and shared freely of his wealth.⁵¹⁷ Others suggest BM is more emotionally complex and variable and, “in his inner sanctum, he c[an] be gregarious, coarse, generous, gentle, rude, and sometimes vicious.”⁵¹⁸ With his employees, he vacillated between paying off their mortgages and honeymoons, throwing elaborate office parties, and otherwise treating them as valued members of a team with making crude sexual jokes, hurling insults, and degrading them.⁵¹⁹ With potential clients, he was “so rude, he was a bastard,” perhaps out of a natural proclivity, or perhaps to maintain the air of phony exclusivity essential to his business.⁵²⁰ With his social equals, BM fostered the impression he was a “[g]od [and] . . . [he] was special, so unique,”⁵²¹ and he boasted often he was the “most powerful man on Wall Street.”⁵²² Whether BM

⁵¹² KIRTZMAN, *supra* note 492, at 96–97.

⁵¹³ OPPENHEIMER, *supra* note 494, at 64–66.

⁵¹⁴ See KIRTZMAN, *supra* note 492, at 66 (describing the relationship between BM and his Wall Street attorneys).

⁵¹⁵ *Id.* at 24.

⁵¹⁶ DEBORAH STROBER & GERALD STROBER, CATASTROPHE: THE STORY OF BERNARD L. MADOFF, THE MAN WHO SWINDLED THE WORLD 72 (2009) (describing BM as “loved and respected.”).

⁵¹⁷ OPPENHEIMER, *supra* note 494, at 210. Others note BM was unenthused about the “charity circuit.” KIRTZMAN, *supra* note 492, at 58.

⁵¹⁸ *Id.* at 110.

⁵¹⁹ See *id.* at 104–09 (describing the bipolarity of BM’s treatment of his employees).

⁵²⁰ ARVEDLUND, *supra* note 499, at 159 (speculating on why BM behaved as he did with potential clients).

⁵²¹ KIRTZMAN, *supra* note 492, at 96 (quoting Nobel laureate Elie Wiesel, an acquaintance and client of BM).

⁵²² OPPENHEIMER, *supra* note 494, at 18.

is suffering from narcissistic personality disorder, as some surmise, is unknown, but most believe a latent misanthropy and deep absence of empathy surfaced in his personality, producing some “inner need to screw the system in a grand way that no one had ever done before.”⁵²³

Given the nature of his criminal enterprise, it is unsurprising BM made a practice of hiring only those he deemed insufficiently smart to be able to discover the workings of his Ponzi scheme.⁵²⁴ In addition to his lack of trust, BM exhibits elevated cynicism, narcissism, and Machiavellianism. Even while running the largest Ponzi scheme in history, BM boasted on his website that his clients “[knew] that Bernard Madoff ha[d] a personal interest in maintaining an unblemished record of value, fair dealing, and high ethical standards that ha[d] always been the firm’s hallmark.”⁵²⁵ After he dropped out of law school, the U.S. Army ordered him to report for active duty to fulfill his ROTC scholarship obligation, and BM, realizing he would be sent to Vietnam, “suddenly suffered a medical malady” in the form of an ulcer, which led to a medical discharge.⁵²⁶ Deception is a life-long trait: in grade school BM gave a report on a nonexistent book to avoid punishment for failing to execute the assignment, and, as an adult, he spun a “rags-to-riches” story out of whole cloth, claiming to have grown up poor on the Lower East Side, rather than middle-class in Laurelton.⁵²⁷ He is an “incredibly shrewd man in understanding human psychology” and manipulates others to serve his narcissistic ego.⁵²⁸ There is, however, no evidence BM is ethnocentric. BM thus scores high on nine sub-constructs of hostility and is scored as hostile.

d. Adventurism

BM is not impulsive, but he suffers from obsessive-compulsive disorder and is manic about appearances, cleanliness, and order.⁵²⁹ He is an optimist with an internal locus of control who has long believed it possible to structure

⁵²³ *Id.* at 81–82 (quoting a long-term friend of BM); KIRTZMAN, *supra* note 494, at 74 (“[BM], who grew up feeling inferior, may well have looked on [his victims] . . . as societies of judgmental Jews he wanted to impress—or get his revenge on.”).

⁵²⁴ OPPENHEIMER, *supra* note 494, at 117 (“You could have a great job at [BM] if you were a semimoron, because . . . you didn’t ask too many questions.”).

⁵²⁵ *Id.* at 3.

⁵²⁶ *Id.* at 64–66.

⁵²⁷ *Id.* at 22–23.

⁵²⁸ STROBER & STROBER, *supra* note 516, at 80–83 (discussing diagnoses by psychiatrists who believe BM suffers from narcissistic personality disorder, fractured ego, and other maladies).

⁵²⁹ KIRTZMAN, *supra* note 492, at 117. Doors left ajar, window blinds not properly aligned, and colors other than black and gray were all triggers for BM’s obsessive compulsive disorder (OCD). OPPENHEIMER, *supra* note 494, at 125.

the world to create happiness by acquiring its primary determinant: money.⁵³⁰ As a schoolboy he manifested a “devil-may-care” attitude and “didn’t take anything overly seriously,”⁵³¹ and later in life he demonstrated “no anxiety, guilt, or remorse” in connection with his swindles,⁵³² even when SEC investigators probed his operations in 2004.⁵³³ However, BM has an abnormally large appetite for risk, as illustrated by his decades-long criminal enterprise and by an anecdote from his college years that describes him joyriding down icy side streets, just missing parked cars, solely for a thrill not shared by his passengers.⁵³⁴ Attendant to this is elevated stress: despite his optimism, BM “always had a sense of worry about him,”⁵³⁵ and he has persistent facial tics. BM thus scores high on five of seven sub-constructs of adventurism and is scored an adventuristic decision-maker.

e. Summary of IVs: Bernard Madoff

Bernard Madoff is a militaristic anomist who is hostile and adventuristic.

ii. DVs: CLC and Bernard L. Madoff Investment Securities

Until his arrest in 2009, BM and his financial services firm Bernard L. Madoff Investment Securities (BLMIS) were relative unknowns beyond Wall Street. When BM dropped out of law school in 1960, he created BLMIS, which was then a one-man boutique firm specializing in trading penny stocks.⁵³⁶ With seed money and Jewish community contacts provided by his father-in-law, BM grew BLMIS rapidly by promising investors supra-normal market returns of 18%, and “[t]his was to be the template for all of [BM’s] future [business]: friends and family were guaranteed a certain return on their money annually, and, pleased and grateful, they were converted into an instant sales force . . . They came with indubitable references and glowing reports about the young [BM].⁵³⁷

Claiming to use a sophisticated “spit-strike conversion strategy”—a hybrid

⁵³⁰ KIRTZMAN, *supra* note 492, at 28 (stating, for BM, “money [is] his key to happiness.”).

⁵³¹ OPPENHEIMER, *supra* note 494, at 41.

⁵³² KIRTZMAN, *supra* note 492, at 8.

⁵³³ *See id.* at 148 (describing BM as without “nervousness or . . . remorse” when duping SEC investigators in 2004).

⁵³⁴ *See id.* at 33 (noting BM’s unusual “appetite for risk and his apparent belief he was impervious to its consequences.”).

⁵³⁵ *Id.* at 61.

⁵³⁶ *Id.* at 37.

⁵³⁷ ARVEDLUND, *supra* note 499, at 45.

stock and options hedging approach that produced consistent returns based on equal parts science and timing⁵³⁸—BM lured wealthy investors from Jewish social networks with promises of guaranteed money.⁵³⁹ Yet, BM delivered remarkable returns over the next four-plus decades—even during bear markets—only because he was not really trading. BLMIS was partitioned to create a legitimate brokerage business that at its peak traded 10% of the total shares on the New York Stock Exchange (NYSE)⁵⁴⁰ and, more importantly, created a cover for a separate, secretive, and illegal “investment advisory” business that pretended to invest through a London trading office but in fact did not.⁵⁴¹ BM received cash deposits from investors⁵⁴² in brokerage accounts and deposited the cash in his personal JPMorgan Chase bank account.⁵⁴³ BLMIS employees created a fictitious paper trail to support the appearance the investment advisory fund was functioning lawfully and to deceive SEC auditors.⁵⁴⁴ In reality, BLMIS was the biggest private sector Ponzi scheme ever, paying earlier investors with the contributions of more recent rubes but skimming enough from the take to reap immense personal wealth. BM easily fooled regulatory authorities during numerous audits and investigations,⁵⁴⁵ and new investors, if they suspected insider trading, were unwilling to ask why the

⁵³⁸ KIRTZMAN, *supra* note 492, at 66 (describing BM’s claims about his investment strategy). A hedge fund is a complicated arrangement that functions by making bets on securities an investor believes will increase in price while at the same time making other bets—“options” to purchase or sell shares—on securities the investor believes will decrease in price. These “longs” and “shorts” offset and return a reasonable but stable yield to the investor over time, and a portfolio of such bets earns a profit.

⁵³⁹ *See id.* at 73–74 (describing BM’s investors as a “highly networked” group of wealthy Jews who trusted BM as a fellow “member of the tribe” and an “extended family member[]” with “shared responsibility to look out for [them].”).

⁵⁴⁰ ARVEDLUND, *supra* note 499, at 70.

⁵⁴¹ KIRTZMAN, *supra* note 492, at 176. The “investment advisory” business was illegal because it was not registered as a separate entity from the brokerage as required by SEC regulations, and, thus, BM kept its existence secret from all but a very few. *Id.* at 146.

⁵⁴² In addition to individuals lured into his scheme through family and social networks, other investors included “feeder funds”—“financial octop[i]” that, in effect, were co-conspirators with BLMIS and worked as sales agents to draw and pool investment capital. *Id.* at 44; 88–94.

⁵⁴³ ARVEDLUND, *supra* note 499, at 176 (detailing BLMIS’ Ponzi scheme).

⁵⁴⁴ *See id.* at 171, 181 (describing how BLMIS covered its tracks to deceive auditors).

⁵⁴⁵ Private audits of the investment advisory business were strictly prohibited on “trade secrets” grounds, and SEC investigators were undermanned, underfunded, and undertrained in the architecture and operations of hedge funds to be able to discern illegality. KIRTZMAN, *supra* note 492, at 198, 229. Moreover, BM, as one of the founders of the NASDAQ exchange, had generated competition with the NYSE and was thus perceived by the SEC as having interests in alignment with its own. *See* ARVEDLUND, *supra* note 499, at 33, 77 (explaining reasons for SEC failures to detect BM’s illegal operations); KIRTZMAN, *supra* note 492, at 65 (suggesting BM’s status as a NASDAQ founder blinded investigators). An SEC investigation concluded in 2007 with no enforcement after BM committed perjury by denying allegations of fraudulent trades; BM reported later that he was “amazed” at the youth and inexperience of SEC regulators. *Id.* at 186.

goose laid golden eggs.⁵⁴⁶ The scheme had “an unbelievable performance record . . . [with] no resemblance to any other investment manager’s track record throughout recorded human history,”⁵⁴⁷ yet, so long as more money entered BLMIS than was being withdrawn, the ruse endured.⁵⁴⁸

However, in 2008, a perfect storm of housing, manufacturing, credit, stock, and employment market collapses triggered a liquidity crisis that drove many investment advisory fund investors to withdraw and spooked prospective new investors.⁵⁴⁹ When, in December 2008, BM failed to stem the flood of demands for withdrawal of as much as \$65 billion due, he wrote checks to family members, friends, and employees for the last \$300 million in his account, confessed his crime to his sons, and was arrested by the FBI for what was soon determined to be the biggest fraud in financial history.⁵⁵⁰ As a result of the collapse and bankruptcy of BLMIS, over five thousand investors lost money, including luminaries in many fields; some individuals, charities, and financial firms were completely wiped out.⁵⁵¹ In March 2009, BM pled guilty to eleven felonies and refused a plea bargain that would have required him to implicate others.⁵⁵² He was sentenced in June 2009 to 150 years’ imprisonment.⁵⁵³ All investors, including feeder fund managers, claim to have known nothing of the scheme.⁵⁵⁴ BM has steadfastly refused to account for missing funds and is expected to die in prison.⁵⁵⁵

⁵⁴⁶ Some blame investors, contending they were willfully ignorant, greedy arrogant, or lazy. See, e.g., ARVEDLUND, *supra* note 499, at 96, 104–05 (examining investors’ motives and reasons for failing to suspect illegality in their unusually good investment returns); KIRTZMAN, *supra* note 492, at 51–52, 157 (“[A] lot of people . . . cast aside all suspicions and all doubt and all fear, and . . . let greed overrule all else.”). For an examination of BM’s Ponzi scheme and an account of the SEC’s failure to detect it despite a decade of warning, see HARRY MARKOPOLIS, *NO ONE WOULD LISTEN: A TRUE FINANCIAL THRILLER* (2010).

⁵⁴⁷ KIRTZMAN, *supra* note 492, at 84 (quoting an interview with Harry Markopolos).

⁵⁴⁸ ARVEDLUND, *supra* note 499, at 165 (opining that the BLMIS scheme might have continued indefinitely but for the crash).

⁵⁴⁹ See KIRTZMAN, *supra* note 492, at 214–21 (chronicling causes of and important events in the Wall Street “meltdown” that ultimately imploded BLMIS).

⁵⁵⁰ *Id.* at 224–36 (chronicling the final days of BLMIS).

⁵⁵¹ *Id.* at 7–8, 244.

⁵⁵² *Id.* at 260. It is widely believed that BM is shielding family members and other associates by refusing cooperation. ARVEDLUND, *supra* note 499, at 268–77.

⁵⁵³ Diana B. Henriques, *Madoff Is Sentenced to 150 Years for Ponzi Scheme*, N.Y. TIMES, June 29, 2009, <http://www.nytimes.com/2009/06/30/business/30madoff.html?pagewanted=all&r=0>.

⁵⁵⁴ KIRTZMAN, *supra* note 492, at 260.

⁵⁵⁵ ARVEDLUND, *supra* note 499, at 277.

10. Countrywide Mortgage/Financial

a. CEO Angelo Mozilo

i. IVs: Scores on Personality Constructs

a. Militarism

Angelo Mozilo (AM), the son of Italian immigrants, is an “aggressive, short, ballsy, street-smart New Yorker” acutely aware he is “not a product of privileged Ivy League education and polish,” and “Harvard types would look down on him when he was a young man in New York trying to make his way.”⁵⁵⁶ At the age of twelve, he began a career as a “feisty, charismatic, gifted salesman” behind the counter of his father’s butcher shop,⁵⁵⁷ earned a degree in business at New York University while working full-time as a mortgage lender, and extended a reputation as a “tough guy”⁵⁵⁸ in 1968 when he founded Countrywide Mortgage—later Countrywide Financial (C). The “bad boy of the mortgage industry” is a fierce competitor with a “winner-take-all” philosophy toward life and business and has always been determined to realize his ambition to be a “major player—one way or another.”⁵⁵⁹ He is a meritocrat⁵⁶⁰ who gloats over victories” and describes business as a “battle.”⁵⁶¹

AM is a control-obsessed perfectionist who secured his corporate headquarters “like a top-secret [military] base” with “guards at every checkpoint”⁵⁶² and insisted his employees be “wholesome, honest, hardworking, . . . the best of America,” yet, overt expressions of nationalism conflicted with C’s culture, and requests from patriotic employees for time off in recognition of Memorial Day and Independence Day were rejected.⁵⁶³ AM was on a “mission

⁵⁵⁶ ADAM MICHAELSON, *THE FORECLOSURE OF AMERICA: THE INSIDE STORY OF THE RISE AND FALL OF COUNTRYWIDE HOME LOANS, THE MORTGAGE CRISIS, AND THE DEFAULT OF THE AMERICAN DREAM* 269 (2009).

⁵⁵⁷ *Id.* at 140.

⁵⁵⁸ Bernard Condon, *Last Man Standing*, FORBES (Nov. 27, 2000, 12:00 AM), <http://www.forbes.com/forbes/2000/1127/6614108a.html>.

⁵⁵⁹ *Id.* AM “couldn’t accept being second or third” and sought “dominance” over his competitors. MICHAEL W. HUDSON, *THE MONSTER: HOW A GANG OF PREDATORY LENDERS AND WALL STREET BANKERS FLEECED AMERICA—AND SPAWNED A GLOBAL CRISIS* 212 (2010).

⁵⁶⁰ MICHAELSON, *supra* note 556, at 182.

⁵⁶¹ Condon, *supra* note 558.

⁵⁶² MICHAELSON, *supra* note 556, at 70–71. The “mechanisms of Countrywide processes, procedures, checking and rechecking, and attention to perfect, verifiable detail had to be on a par with or exceeding that of NASA.” *Id.* at 111.

⁵⁶³ *Id.* at 97, 121, 234.

to help Americans achieve the dream of home ownership,” and left no one else any “strength, position, [or] power to change [C’s] entire company mission, culture, and reason for being.”⁵⁶⁴ When employees arrived late for meetings, they would find the door locked; they experienced pressure to sign a loyalty oath and wear a green armband signifying their devotion to C.⁵⁶⁵ To the external world, C was an extension of AM and his personality—a “wonderful, helpful neighbor,” but the employees’ role was to put their noses to grindstones and execute AM’s mission.⁵⁶⁶ Despite his competitiveness, aggression, ambition, favorable attitude toward power, and dogmatism, AM is a “warm, slick, reassuring” character⁵⁶⁷ with high self-esteem who holds seats on boards of directors, boards of trustees, charitable and fraternal organizations, and industry advisory groups.⁵⁶⁸ Still, AM scores high on six of ten sub-constructs and is scored as a militaristic decision-maker.

b. Anomism

Nothing in the literature suggests AM should be scored high on the amorality sub-construct, and AM has no formal legal training. No evidence indicates AM has demonstrated systematic disregard for law or legal authorities. C may have contracted with unscrupulous real estate appraisers and developed business models that skirted laws and regulations,⁵⁶⁹ including offering “sweetheart deals” to influential friends of AM, but, prior to its collapse, C had a corporate compliance culture that required employees to “ben[d] over backward to make sure that every [act] was accurate, truthful, legal, and thoroughly vetted through the byzantine rules and regulations among the [fifty] states.”⁵⁷⁰ Moreover, “[C] had at its center a culture of ethics Every meeting, every report, every lunchroom poster really pounded it into our brains that we should always be doing the honest, right thing for our customers, for our shareholders, for our values.”⁵⁷¹

Presumably, the corporate culture reflects AM’s personal views on law

⁵⁶⁴ *Id.* at 23, 54.

⁵⁶⁵ *Id.* at 59, 262.

⁵⁶⁶ To drive his employees, AM “mixed equal parts pride and fear. Some recall him checking slips from the company garage to see who was cutting out early. Employees took the stairs[,] rather than waste time waiting for an elevator.” Condon, *supra* note 558.

⁵⁶⁷ MICHAELSON, *supra* note 556, at 140.

⁵⁶⁸ Condon, *supra* note 558.

⁵⁶⁹ See MICHAELSON, *supra* note 556, at 324 (suggesting C committed minor ethical violations under AM’s tenure but finding nothing attributable to AM).

⁵⁷⁰ *Id.* at 193.

⁵⁷¹ *Id.* at 192.

and compliance; accordingly, AM is scored low on all five sub-constructs of anomism and, thus, is scored as a non-anomistic decision-maker.

c. Hostility

AM is a self-confessed vulgar “son of a bitch” who is volatile emotionally and holds grudges.⁵⁷² He blames rivals for price wars he starts himself,⁵⁷³ regards opponents as “enemies,” and cultivates a corporate culture where attacking the “stupidity or sloppiness” of employees is a sport.⁵⁷⁴ The “Rommel of the mortgage business” is an intensely distrustful, cynical employer who made C “Orwellian in its monitoring of employees and steadfast determination to push every worker to the grindstone all day, every day.”⁵⁷⁵ Moreover, he is a narcissist who attributes perceived deficiencies in others to “stupidity,” “ego,” or unworthiness⁵⁷⁶ and has made a perpetual tan, French cuffs, and gold Rolls Royces his signature style. His lack of empathy has proven embarrassing. In 2008, a homeowner in need of loan modification wrote requesting assistance, and, when AM discovered the letter was based on a template provided by a homeowners’ advocacy website, AM sent the following note that was later distributed worldwide: “This is unbelievable. Most of these letters now have the same wording. Obviously they are being counseled by some other person or by the [I]nternet. Disgusting.”⁵⁷⁷

As the mortgage crisis deepened, rather than “being empathetic to the national disaster hitting millions of homes all across the country,” AM led C in an “spastic fit of rage” and developed a “Protect Our House” campaign to “defen[d] the virtues of [C], lash[] out at any detractors, and mak[e] it personal.”⁵⁷⁸

The foregoing contrasts with AM’s apparent absence of elevated levels of misanthropy, ethnocentrism, and selfishness. C’s corporate mission is to advance the American dream for everyone, “especially . . . the underprivileged in our country, through access and opportunity in the mortgage and housing systems[,]” and AM took great pride in lowering barriers to home ownership for minority and lower-income borrowers.⁵⁷⁹ Moreover, he is “extremely loyal to

⁵⁷² Condon, *supra* note 558.

⁵⁷³ *Id.*

⁵⁷⁴ HUDSON, *supra* note 559 (reporting AM reported information about rival firms to New York State Attorney General Eliot Spitzer in an attempt to destroy them).

⁵⁷⁵ MICHAELSON, *supra* note 556, at 60.

⁵⁷⁶ Condon, *supra* note 558.

⁵⁷⁷ MICHAELSON, *supra* note 556, at 275.

⁵⁷⁸ *Id.* at 259–60.

⁵⁷⁹ *Id.* at 96, 126.

his people.”⁵⁸⁰ Still, AM scores high on six of nine sub-constructs of hostility and, thus, is scored as a hostile decision-maker.

d. Adventurism

When his father rejected his idea to modify the family butcher shop to compete with emerging supermarkets in the 1950s, only to see the business fail and his father die of cardiac stress, AM vowed to “never shrink from risk” again.⁵⁸¹ Accordingly, he gambled throughout the life of C, altering its business model to compete on price and market directly to borrowers, expanding as interest rates fell and competitors became risk-averse, and creating ever-more risky loan products. An examination of AM’s decision-making suggests, although he believes he has the power to succeed through application of judgment and hard work, he acknowledges an inability to dictate events: before the collapse of C, AM claimed the credit-rating agencies’ requirement that C hold more capital than banks limited its growth and profitability.⁵⁸² Moreover, no evidence suggests AM is impulsive; his moves in the markets were planned, and, under his leadership, C developed a conservative, slow-moving culture that vetted decisions carefully.⁵⁸³ Furthermore, while AM is “intensely optimistic”⁵⁸⁴ and does not appear to experience elevated anxiety or stress, his “let the chips fall where they may” attitude—predicated upon a belief, despite hardships, events will ultimately redound to his benefit—evidences some fatalism.⁵⁸⁵ In sum, AM scores high on three sub-constructs of adventurism and is scored as a non-adventurist.

e. Summary of IVs: Angelo Mozilo

Angelo Mozilo is a militaristic non-anomist who is hostile but not adventuristic.

ii. DVs: CLC and Countrywide Mortgage/Financial

AM created C in the late 1960s and, by 2004, with C then the largest home

⁵⁸⁰ PAUL MUIOLO & MATTHEW PADILLA, CHAIN OF BLAME: HOW WALL STREET CAUSED THE MORTGAGE AND CREDIT CRISIS 119 (2008).

⁵⁸¹ Condon, *supra* note 558.

⁵⁸² *See id.* (quoting AM as stating the credit-rating agencies placed a “governor on my engine”).

⁵⁸³ MICHAELSON, *supra* note 556, at 102, 111.

⁵⁸⁴ *Id.* at 271. Even when the real estate market was crashing in 2006, AM insisted he saw “early signs of stabilization” and 2008 would be a “hell of a year.” HUDSON, *supra* note 559, at 270.

⁵⁸⁵ MICHAELSON, *supra* note 556, at 258.

loan lender in the United States, was widely regarded as the “father of . . . the modern mortgage business.”⁵⁸⁶ However, in an effort to expand market share and make homeownership available to borrowers whose credit scores suggested they were greater risks, C began marketing “exotic” subprime loan products, including a “Pay Option Adjustable Rate Mortgage” (POARM). The POARM—lawful then—allowed a borrower to purchase a house and select from a set of monthly payment options that included a negative amortization payment of an amount less than interest and principal otherwise due; the assumption was the value would continue to appreciate, and, as the borrower’s income grew, the borrower would either refinance before the loan re-set to a higher interest rate or begin to make payments that decreased loan principal.⁵⁸⁷ At least one senior executive questioned whether the assumption of constant future home value appreciation was valid and noted that if not “half the country could be upside down on these loans,” but more senior C officials believed the “risk [wa]s offset by the opportunity for market share and revenue gain” and if C did not make the loans its competitors would.⁵⁸⁸ When C initiated the POARM program, the dissenting executive pronounced, prophetically, he had “just witnessed the beginning of the end of [C] and maybe the entire U.S. economy.”⁵⁸⁹

By 2006, interest rates ticked upward, loan applications slowed, and layoffs began across the mortgage industry. In the 2006 annual report, AM claimed C was a “strong, viable financial company” and he “continue[d] to be bullish in the long-term prospects” of the firm despite challenges in the “shrinking mortgage market.”⁵⁹⁰ In August 2007, with housing values in free-fall, borrowers unable to refinance as a result of unfavorable loan-to-value ratios, and foreclosure rates climbing, C, unwilling to admit a structural transformation was in effect and determined to compete with Ameriquest Mortgage,⁵⁹¹ began drawing on its \$11 billion credit line.⁵⁹² Bank of America—long interested in acquiring C—took a \$2 billion equity stake with an option to buy if C were ever for sale.⁵⁹³ AM explored the creation of a “loan recall” program to achieve a soft landing, but Freddie Mac and Fannie Mae regulations blocked the approach; by the end of that year, with C’s credit line exhausted, Bank of America exercised its option and purchased C for \$4 billion in January

⁵⁸⁶ *Id.* at xiii. In 2005, C funded one of every five mortgages in the U.S. *Id.* at 125.

⁵⁸⁷ *See id.* at 10, 15–17, 155 (describing C’s POARM product).

⁵⁸⁸ *Id.* at 21, 204–05 (outlining the reasons C extended POARM loans despite the risks).

⁵⁸⁹ *Id.* at 23.

⁵⁹⁰ *See* COUNTRYWIDE 2007 ANNUAL REPORT.

⁵⁹¹ *See* HUDSON, *supra* note 559, at 280 (reporting experts’ belief C would have survived if AM “hadn’t become fixated on competing with Ameriquest.”).

⁵⁹² MICHAELSON, *supra* note 556, at 257–59.

⁵⁹³ *Id.* at 259.

2008.⁵⁹⁴

Some suggest AM was unfairly vilified because he was the face of the subprime mortgage crisis and all he and C were guilty of was assuming too much risk and failing to adapt—an indictment that can be leveled at borrowers as well.⁵⁹⁵ However, as C was collapsing in 2007, AM sold \$129 million of his shares in C while publicly touting the stock and using shareholder funds to repurchase stock to support the share price.⁵⁹⁶ During the scrutiny that followed, it was discovered C had extended “sweetheart” financing, including discounted rates and fees, to influential politicians, including members of the House and Senate Banking and Budget Committees and a former CEO of Fannie Mae—all individuals who exercised regulatory authority over C.⁵⁹⁷ AM was subpoenaed by and berated before congressional committees,⁵⁹⁸ and shareholders, state pension funds, and owners of mortgage-backed securities filed suits alleging serial violations of SEC, Fannie Mae, and Freddie Mac regulations.⁵⁹⁹ With housing values down by 30% in many areas of the country, state and municipal revenues diminished, leading to budget deficits that in turn sparked political unrest across the Midwest.⁶⁰⁰ On June 4, 2009, the SEC charged AM with insider trading and securities fraud,⁶⁰¹ and on October 15, 2010, the parties reached a settlement in which AM agreed to pay \$67.5 million and accept a lifetime ban from serving with any public company,⁶⁰² thereby avoiding a civil trial that might have developed evidence, along with an ongoing FBI investigation, to support criminal charges.⁶⁰³ However, this fine is a small

⁵⁹⁴ *Id.* at 267–272.

⁵⁹⁵ *Id.* at 186, 307–08 (arguing AM and C were not solely responsible for C’s collapse because borrowers overleveraged themselves to purchase houses they could not afford).

⁵⁹⁶ Gretchen Morgenson, *Inside the Countrywide Lending Spree*, N.Y. TIMES, Aug. 26, 2007, <http://www.nytimes.com/2007/08/26/business/yourmoney/26country.html?pagewanted=all>.

⁵⁹⁷ Sam Gustin, *Countrywide VIP Loans Went to Key Lawmakers: Congressional Report*, TIME (July 6, 2012), <http://www.business/time.com/2012/07/06/countrywide-vip-loans-went-to-key-law-makers-congressional-report/>.

⁵⁹⁸ See MUIOLO & PADILLA, *supra* note 580, at 270–73 (describing the hearing before the House Oversight Committee in January 2008).

⁵⁹⁹ See, e.g., *Luther v. Countrywide Home Loans Servicing LP*, 533 F.3d 1032 (9th Cir. 2008) (alleging C “omitted and misstated the credit worthiness of the underlying mortgage borrowers” thereby greatly underrepresenting the risk of the investment to plaintiffs); *Brill v. Countrywide Home Loans Inc.*, 427 F.3d 446 (7th Cir. 2005).

⁶⁰⁰ Jake Grovum, *2008 Financial Crisis Impact Still Hurting States*, USA TODAY, Sept. 15, 2013, <http://www.usatoday.com/story/money/business/2013/09/14/impact-on-states-of-2008-financial-crisis/2812691/>.

⁶⁰¹ See Sec. and Exch. Comm’n v. Mozilo, No. CV09-3994HFWNABX, 2009 WL 3807124, at *1 (C.D. Cal. Nov. 3, 2009).

⁶⁰² Per the Director of the SEC Division of Enforcement: “[AM’s] record penalty is the fitting outcome for a corporate executive who deliberately disregarded his duties to investors.” *Id.*

⁶⁰³ In February 2011, the United States dropped a criminal investigation into the facts at issue in

fraction of the more than \$600 million of AM's net worth, and C reimbursed AM \$20 million pursuant to an indemnification clause in AM's employment contract.⁶⁰⁴ AM rejects responsibility and instead "blame[s] everyone from al-Qaeda to the ratings agencies" for the bursting of the real estate bubble and the collapse of C.⁶⁰⁵

B. Analysis

1. Methodological Considerations and Limitations

The ultimate objective in the field of CLC is the specification and testing of a theory with explanatory and predictive power. Theoretical testing requires data analysis, but, as the complexity of the phenomenon increases, the availability of data decreases. Some phenomena, such as corporate scandal, yield insufficient cases to support the testing of general propositions with traditional quantitative analysis. Indeed, the data universe is limited, at first blush, to an "n" of fewer than thirty cases of corporate scandal.

Moreover, phenomena that are causally linked to human agency and social processes are so complex and rooted in specific contexts that quantitative methods often obscure nuances, rendering barren descriptions and weak explanations. Although there is pressure to transform contextually-sensitive social phenomena, including the study of CLC, into empirical questions "answerable" with statistics, and although statistical analysis does afford a rigorous assessment of patterns of covariation across a wide range of cases, statistical analysis treats cases as aggregates of a limited number of variables and generalizes from identifiable patterns of variance. By drawing a small number of independent variables from their natural contexts and relegating all others to theoretical irrelevance, statistical analysis marginalizes human agency. A fundamental canon in science is that the research question, rather than methodological preferences, should drive experimental design. When few cases exist and the hypothesized chain of causation involves human agency, the "comparative method" best fosters development and testing of theory.

2. The Comparative Method

The comparative method is case-oriented and relies upon comprehensive historical research to identify causal factors while simultaneously comparing

the civil settlement between SEC and AM.

⁶⁰⁴ Gretchen Morgenson, *Lending Magnate Settles Fraud Case*, N.Y. TIMES, Oct. 15, 2010, <http://www.nytimes.com/2010/10/16/business/16countrywide.html>.

⁶⁰⁵ MUIOLO & PADILLA, *supra* note 580, at 256.

each case as a holistic entity to every other case. Researchers compare and contrast combinations of casual factors in one case with different combinations in another and, through systematic “eyeballing,” identify patterns of similarity and difference in the distribution of outcomes associated with various combinations. Comparativists then identify which of the possible causal factors is constant across all cases of a particular outcome and thereby denote degrees of isomorphism. While the comparative method does not prove causation, it creates a point of departure for experimental research. As formalized here, the comparative method treats each personality construct as a causal factor/independent variable and each outcome as a dependent variable.

3. Formalization: *Qualitative Comparative Analysis*

Events do not simply happen but instead occur only under precisely delimited conditions. Formal methods led researchers to find combustion requires oxygen, microbes cause infectious disease, and an absence of Vitamin C causes scurvy. Qualitative Comparative Analysis (QCA) rests upon the axiom that, short of laboratory experimentation, which is nearly impossible in the social sciences, inductive logic is required to determine necessary and sufficient causal factors of outcomes.

a. Causal Factors and Outcomes

QCA, a methodology developed to investigate questions grounded in human agency, permits the investigator of a particular DV, or “outcome,” to identify, through interpretation of all existing historical cases of the outcome, a broad number, “n”, of probable IVs, or “causal factors.”⁶⁰⁶ These causal factors are measured dichotomously across the universe of cases. Each case is examined for the presence or absence of the causal factor; its presence is indicated by a capital letter, for example, “A,” and its absence by a lower-case letter, “a.” The theoretical number of combinations of causal factors is thus 2^n where “n” is the number of independent variables.

b. Necessary and Sufficient Conditionality

⁶⁰⁶ The term “causal factor” is a misnomer. Although it is possible to establish associative relationships between variables through QCA, it is impossible to prove causation. An associative relationship is a statement that the presence of an IV tends to occur in connection with the presence of a DV; it does not mean the DV is caused by the IV, although a causal inference may be drawn. Proof of causation requires controlled experimentation to prove the IV, rather than some intervening variable, causes the DV to occur and that the association is not simply one of covariance.

Each of the 2^n cases is placed in a “truth table” matrix that associates particular outcomes with particular combinations of causal factors that manifested in actual historical cases. Where cells in the truth table are unfilled due to an absence of the particular combination in the historical record, experimental research augments history and exhausts all possible combinations of causal factors. While QCA cannot yield completely generalizable laws on the basis of very few cases, it nonetheless specifies relationships of necessity and sufficiency between causal factors and outcomes that hold across the universe of extant cases. A “necessary” causal factor is one that always precedes a given outcome/effect and in the absence of which the outcome/event cannot occur. A “sufficient” causal factor is a factor in the presence of which a given outcome/effect must occur.

c. Prime Implicants

QCA employs Boolean algebra to reduce several combinations of causal factors productive of the same outcome(s) to “prime implicants.” In formal logic, an “implication” is formed when two statements are combined by placing the word “if” before the first and the word “then” between them. For example, “If I drink this glass of water, then my thirst will be quenched.” In an implication, the statement between the words “if” and “then” is known as the “antecedent;” the statement which follows the word “then” is the “consequent.” An implication asserts that its antecedent implies its consequent; thus, if the statement “I drink this glass of water” is true, it is also true that “my thirst will be quenched.” Implication does not suggest it is impossible to satisfy thirst in any other manner, nor does implication imply there may not be other outcomes attendant to drinking the glass of water. It may be argued beer may satisfy my thirst, or the water may be poisoned, and, thus, although it quenches thirst, it may also produce death. However, the essential meaning of implication is the relationship asserted between antecedent and consequent: if the antecedent is true, the consequent is also true.

A “prime implicant” is a special implicant in which the antecedent is the minimum combination of causal factors, which together are either 1) sufficient to cause a particular outcome, or 2) necessary to cause a particular outcome across the universe of cases, and the consequent is that outcome. For any given outcome, y , for which there is a prime implicant, x , if x is a true statement of existing causal factors then either 1) y must occur as a result of the existence of x , or 2) x is a prerequisite for the production of y . A prime implicant can be identified by surveying the universe of cases in which a given outcome is expressed and eliminating each of the “ n ” causal constructs for which there is more than one possible value from the causal construct combinations associated

with that outcome. Taken together, those constructs that remain in every case in which the outcome occurs constitute the prime implicant.

d. Probabilities: Hypothetical Analysis

When the historical record fails to exhaust all possible combinations of causal factors, it is impossible to specify necessary and sufficient causality. QCA then analyzes preliminary hypotheses regarding relationships between causal factors and outcomes to derive probabilistic statements to inform experimental research. Consider the phenomenon of “successful social revolution,” which has occurred three times. In all three cases the causal factor of “collapsing monarchy” was present, but in only two—the Russian Revolution in 1917 and the Chinese Revolution in 1949—was “charismatic leadership” present. In the third—the French Revolution in 1789—it was absent. Accordingly, while “collapsing monarchy” is a necessary condition for social revolution, “charismatic leadership” is not. However, the preliminary hypothesis, “The stronger and more charismatic the leader of the revolutionary element, the more successful the resulting social revolution,” is affirmed by two of three, or 66.7%, of cases, as is the probabilistic statement, “A successful social revolution will be led by a strong and charismatic leader.”

4. QCA Applied to the Association of Personality Constructs and CLC Outcomes

a. Personality Constructs as Causal Factors

Four personality constructs, each of which is a causal factor and an IV, are labeled as follows:

- militarism: A (presence of construct/factor) or a (absence of construct/factor);
- anomism: B (presence of construct/factor) or b (absence of construct/factor);
- hostility: C (presence of construct/factor) or c (absence of construct/factor);
- adventurism: D (presence of construct/factor) or d (absence of construct/factor).

Personality construct scores for each CEO are aggregated to create personality profiles for all historical cases of corporate scandal. Four dichotomized IVs yield 2^4 , or sixteen, possible personality profiles. As Table I

illustrates, the presence of each outcome/DV in a case is scored “1,” while its absence is scored “0”:

Table I: Personality Construct Scores

Firm/ CEO/ Profile	Financial Violation	Securities Violation	Inflated Compensation	Market Manipulation	Bribery	Political Influence	Labor Law	Enviro	Resist Enforce	Bad Reputation	Restate Earnings	Subpoena	Legal Penalties	Legal Death	Deny & Blame
Enron/ JS/ ABCD	1	1	1	1	1	1	1	0	1	1	1	1	1	1	1
WC/ BE/ aBCD	1	1	0	1	0	1	0	0	1	0	1	1	1	1	1
ImClone/ SW/ ABCD	0	1	1	0	0	0	1	0	0	1	0	1	1	0	0
AIG/ HG/ AbCd	1	0	0	0	0	1	0	0	1	0	1	0	0	0	1
HS/ Scrushy/ ABCd	1	0	1	0	0	1	1	0	0	0	1	0	0	0	1
Sunbeam/ Dunlap/ ABCD	1	1	1	0	0	0	1	0	0	1	1	0	1	1	1
Tyco/ DK/ aBCD	0	1	1	0	0	0	0	0	0	0	0	0	0	0	1
H/ Cheney/ ABCD	1	1	0	1	1	1	1	1	1	1	1	1	1	0	1
BM/ BMLS/ ABCD	1	1	1	0	0	0	1	0	1	0	0	1	1	1	0
AM/ Counry Wide/	0	1	0	0	1	0	0	0	0	1	0	1	1	0	0

19	The more anomistic the CEO, the more likely his/her firm will be to manipulate the market.	5/10
20	The more anomistic the CEO, the more likely his/her firm will be to engage in bribery.	3/10
21	The more anomistic the CEO, the less likely his/her firm will be to buy political influence.	3/10
22	The more anomistic the CEO, the more likely his/her firm will be to violate employee rights.	8/10
23	The more anomistic the CEO, the more likely his/her firm will be to violate environmental standards.	3/10
24	The more anomistic the CEO, the more likely his/her firm will be to resist enforcement.	5/10
25	The more anomistic the CEO, the more likely his/her firm will be to earn reputations as bad corporate citizens..	5/10
26	The more anomistic the CEO, the more likely his/her firm will be to restate earnings.	6/10
27	The more anomistic the CEO, the more likely s/he will be subpoenaed by Congress.	6/10
28	The more anomistic the CEO, the more likely s/he and his/her firm will incur legal penalties.	7/10
29	The more anomistic the CEO, the more likely his/her firm will be to suffer legal death.	6/10
30	The more anomistic the CEO, the more likely s/he will be to deny wrongdoing and blame others.	7/10
31	The more hostile the CEO, the more likely his/her firm will be to violate financial regulations.	7/10
32	The more hostile the CEO, the more likely his/her firm will be to violate securities regulations.	8/10
33	The more hostile the CEO, the more likely his/her firm will be to inflate executive compensation.	6/10
34	The more hostile the CEO, the more likely his/her firm will be to manipulate the market.	3/10
35	The more hostile the CEO, the more likely his/her firm will be to engage in bribery.	3/10
36	The more hostile the CEO, the less likely his/her firm will be to buy political influence.	5/10
37	The more hostile the CEO, the more likely his/her firm will be to violate employee rights.	6/10
38	The more hostile the CEO, the more likely his/her firm will be to violate environmental standards.	1/10
39	The more hostile the CEO, the more likely his/her firm will be to resist enforcement.	5/10
40	The more hostile the CEO, the more likely his/her firm will be to earn reputations as bad corporate citizens.	5/10
41	The more hostile the CEO, the more likely his/her firm will be to restate earnings.	6/10
42	The more hostile the CEO, the more likely s/he will be subpoenaed by Congress.	6/10

43	The more hostile the CEO, the more likely s/he and his/her firm will incur legal penalties.	7/10
44	The more hostile the CEO, the more likely his/her firm will be to suffer legal death.	4/10
45	The more hostile the CEO, the more likely s/he will be to deny wrongdoing and blame others.	7/10
46	The more adventuristic the CEO, the more likely his/her firm will be to violate financial regulations.	6/10
47	The more adventuristic the CEO, the more likely his/her firm will be to violate securities regulations.	9/10
48	The more adventuristic the CEO, the more likely his/her firm will be to inflate executive compensation.	7/10
49	The more adventuristic the CEO, the more likely his/her firm will be to manipulate the market.	6/10
50	The more adventuristic the CEO, the more likely his/her firm will be to engage in bribery.	4/10
51	The more adventuristic the CEO, the more likely his/her firm will be to buy political influence.	4/10
52	The more adventuristic the CEO, the less likely his/her firm will be to violate employee rights.	3/10
53	The more adventuristic the CEO, the more likely his/her firm will be to violate environmental standards.	5/10
54	The more adventuristic the CEO, the less likely his/her firm will be to resist enforcement.	4/10
55	The more adventuristic the CEO, the less likely his/her firm will be to earn reputations as bad corporate citizens..	5/10
56	The more adventuristic the CEO, the more likely his/her firm will be to restate earnings.	5/10
57	The more adventuristic the CEO, the more likely s/he will be subpoenaed by Congress.	7/10
58	The more adventuristic the CEO, the more likely s/he and his/her firm will incur legal penalties.	8/10
59	The more adventuristic the CEO, the more likely his/her firm will be to suffer legal death.	7/10
60	The more adventuristic the CEO, the less likely s/he will be to deny wrongdoing and blame others.	4/10

b. Prime Implicants of CLC Outcomes

No outcome is associated with a single personality profile across all ten cases, thus it is not possible to identify a prime implicant for any outcome.

Although several outcomes are associated with the presence or absence of personality constructs across several cases, including in every case in which a particular outcome is expressed—for example, “violate financial regulations” occurred in seven of ten cases, and in all seven occurrences the CEO scored “C” for the presence of the hostility construct. For none is the presence of a given personality construct associated with each case wherein the outcome occurs while the absence of that personality construct is associated with each case wherein the outcome does not occur—for example, in the three cases where no violation of financial regulations occurred the CEO scored “C” for present and not “c” for absent on the hostility construct. Hypothetically, a single personality profile could serve as a prime implicant in all ten historical cases across all sixteen possible personality profiles. However, in the ten cases, only four personality profiles—ABCD, aBCD, AbCd, ABCd—have been associated with corporate scandal. Where history has not exhausted all possible combinations of causal factors and prevents specification of necessary and sufficient causality, QCA directs the investigator to perform hypothetical analysis to derive probabilistic statements.

c. Hypothetical Analysis

No Preliminary Hypothesis (PH) is affirmed by all or none of the ten historical cases of corporate scandal. Nonetheless, if there were no relationship between any personality construct and any outcome, chance predicts each PH would be affirmed by five cases and rejected by five cases. To affirm a particular PH, an arbitrary determination is made that it must be supported by at least 70% of cases in which the outcome is expressed; to reject a particular PH, and to affirm the null hypothesis expressing the inverse relationship of causal factor and outcome, it must be affirmed by 30% or fewer of the cases in which the outcome is expressed. This requirement establishes a sufficiently significant improvement over chance that a measure of confidence can be placed in those PHs affirmed or rejected. Reformulated hypotheses, stated as working postulates (WPs) are offered in Table III:

Table III: Working Postulates

WP1	The more militaristic the CEO, the more likely his/her firm will be to violate financial regulations.	8/10
WP2	The more militaristic the CEO, the less likely his/her firm will be to manipulate the market.	7/10
WP3	The more militaristic the CEO, the more likely his/her firm will be to violate employee rights.	8/10
WP4	The more militaristic the CEO, the less likely his/her firm will be to violate	7/10

	environmental standards.	
WP5	The more militaristic the CEO, the more likely his/her firm will be to earn reputations as bad corporate citizens.	7/10
WP6	The more militaristic the CEO, the more likely s/he and his/her firm will incur legal penalties.	7/10
WP7	The more anomistic the CEO, the more likely his/her firm will be to violate financial regulations.	8/10
WP8	The more anomistic the CEO, the more likely his/her firm will be to violate securities regulations.	8/10
WP9	The more anomistic the CEO, the more likely his/her firm will be to inflate executive compensation.	8/10
WP10	The more anomistic the CEO, the less likely his/her firm will be to engage in bribery.	7/10
WP11	The more anomistic the CEO, the less likely his/her firm will be to buy political influence.	7/10
WP12	The more anomistic the CEO, the more likely his/her firm will be to violate employee rights.	8/10
WP13	The more anomistic the CEO, the less likely his/her firm will be to violate environmental standards.	7/10
WP14	The more anomistic the CEO, the more likely s/he and his/her firm will incur legal penalties.	7/10
WP15	The more anomistic the CEO, the more likely s/he will be to deny wrongdoing and blame others.	7/10
WP16	The more hostile the CEO, the more likely his/her firm will be to violate financial regulations.	7/10
WP17	The more hostile the CEO, the more likely his/her firm will be to violate securities regulations.	8/10
WP18	The more hostile the CEO, the less likely his/her firm will be to manipulate the market.	7/10
WP19	The more hostile the CEO, the less likely his/her firm will be to engage in bribery.	7/10
WP20	The more hostile the CEO, the less likely his/her firm will be to violate environmental standards.	9/10
WP21	The more hostile the CEO, the more likely s/he and his/her firm will incur legal penalties.	7/10
WP22	The more hostile the CEO, the more likely s/he will be to deny wrongdoing and blame others.	7/10
WP23	The more adventuristic the CEO, the more likely his/her firm will be to violate securities regulations.	9/10
WP24	The more adventuristic the CEO, the more likely his/her firm will be to inflate executive compensation.	7/10

WP25	The more adventuristic the CEO, the more likely his/her firm will be to violate employee rights.	7/10
WP26	The more adventuristic the CEO, the more likely s/he will be subpoenaed by Congress.	7/10
WP27	The more adventuristic the CEO, the more likely s/he and his/her firm will incur legal penalties.	8/10
WP28	The more adventuristic the CEO, the more likely his/her firm will be to suffer legal death.	7/10

d. Analysis of Associative Relationships

i. Militarism and CLC

WP 1 confirms the intuition that a CEO who is fixated upon achieving wealth, power, and status to the detriment of other ends, including the discharge of responsibilities to stakeholders, will violate financial regulations if rules stand in the way. Similarly, as WP 3 suggests, it stands to reason that such a person so motivated will run roughshod over the legally-protected rights and interests of employees. Moreover, as violations mount, detection is inevitable in the long run, and WP 5 predicts that along the path the odds the illegal conduct of firms, or at least some aspects of it, will “leak” into the community and earn them and their CEOs reputations as scofflaws increases in direct proportion to the frequency of their lawbreaking which, in turn, is a function of CEO militarism. Finally, it stands to reason, as WP 6 suggests, firms with militaristic CEOs will be more likely to commit legal violations that result in legal penalties.

In contrast, it is counterintuitive, as WPs 2 and 4 suggest, that militaristic CEOs are better environmental defenders than their non-militaristic peers and less likely to manipulate the market. Both findings are likely an artifact of the small number of cases, and the former is likely the result of the fact that few, if any, include the enterprises—mining, manufacturing, etc.—against which most of the existing environmental legal regime is directed.

ii. Anomism and CLC

Anomistic CEOs—ignorant and even disdainful of law and legal authorities and bereft of an internal moral code—will instinctively regard legal and moral restrictions on their conduct in purely instrumental terms. As WPs 7, 8, 9, and 12 suggest, little, if any, independent weight will be accorded to financial and securities laws, customary expectations regarding executive compensation, or the rights of employees in their CLC decision-making, and

behaviors will be guided largely, or even solely, by other considerations. WP 14 indicates anomistic CEOs assume greater legal risk and, therefore, incur greater legal exposure, to include the increased likelihood of prosecution, and, with prosecution, conviction. Finally, it is consistent with the general description of anomism that, as WP 15 anticipates, the anomistic CEO, who knows and cares little about the legal regime he or she is accused of violating and has never felt impressed by any sense of legal obligation, will deny any knowledge of or responsibility for his or her wrongdoing and seek to attribute any such responsibility to other parties. Although there is a human tendency to deny responsibility for one's mistakes, this tendency is strongest in the anomistic CEO, who does not believe in the law, and, if in fact the law exists, is sure he or she is above it.

WPs10 and 11, however, are counterintuitive. An anomistic CEO is precisely the sort expected to engage in buying political influence and outright bribery, notwithstanding any legal prohibition. Still, at least insofar as WP 10 is concerned, only a small number of cases are available for study and the practice may largely be limited to international firms doing business overseas. Similarly, the finding in WP 13—an anomistic CEO is less likely to engage a firm in violation of environmental law—is difficult to explain and may be driven in part by the limited number of cases and the lack of representation in the sample by extractive and manufacturing firms that engage in operations with potential environmental impacts.

iii. Hostility and CLC

It stands to reason, as WPs 16 and 17 postulate, that self-absorbed, delusional, amoral CEOs who distrust and dislike humanity would treat “lesser” people as tools for grabbing wealth and power in contravention of financial and securities laws. Hostility may warp CEO judgments. It also should follow, as WP 21 anticipates, that such selfish and hostile personalities subordinate firm interests to their own in ultimately futile attempts to stave off detection and punishment. And, as WP 22 indicates, when confronted with evidence of their wrongdoing, hostile CEOs are psychologically predisposed to preserve delusions of perfection and nobility, deny wrongdoing, and blame the “little people” who have failed them.

The finding in WP 18 is likely an artifact of too few cases. Only five firms—Enron, WorldCom, AIG, Halliburton, and Countrywide—possessed the kind of market clout that could disturb the efficient operation of markets, and the majority of these firms did wield this clout. Had more firms with market power and hostile CEOs been available for study, intuition suggests the direction of this relationship would be reversed. WP 19 is also counterintuitive; we would

expect that the more hostile a CEO is the *more* likely he or she would be to look upon bribery as nothing more than necessary business expense paid to achieve gains, particularly as against those unwilling to pay. It may be that hostility is no absolute bar to the exercise of prudent discretion, or that parties seeking bribes are more cautious in their dealings with CEOs they recognize as hostile and tend to refrain from conduct in which they suspect their would-be co-conspirators would later implicate them. Because the analysis of the ten cases of corporate scandal yield only three instances of bribery, it is premature to claim much strength for the associative relationship implied by WP 19. The same must be said for WP 20; the ten cases reveal only a single attempt to violate environmental laws, and the prediction that the more hostile the CEO the less likely his or her firm will violate environmental standards may be the product of insufficient data.

iv. Adventurism and CLC

WP 23 states impulsive, optimistic gamblers who repose great faith in their capacity to control events and absorb stress are, as CEOs, compelled to undertake business strategies that afford the prospect of significant benefits—specifically, violating securities regulations—while presenting significant risks in the form of financial and legal consequences to themselves, their firms, their shareholders, and their communities. As WPs 24 and 25 predict, seeking inflated compensation and abusing subordinate employees for selfish motives are behaviors associated with the adventurist CEO because the payoff to the CEO is great and the potential penalties—the loss of face and the loss of human capital to the firm—seem small in comparison. WP 26, which postulates that the more adventurist the CEO the more likely he or she will be subpoenaed by Congress, illustrates that, although risk and optimism are necessary parts of a business strategy and although some of the greatest human triumphs have been attained by the assumption of great amounts of risk—aviation and the discovery of drugs for cancer are but two—risk can also lead to business failure, and to the sort of financial and accounting shenanigans designed to shield failure from investors. WP 27 and WP 28 illustrate a strong association between adventurism and legal penalties, as well as the legal death of the adventurist's firm. Apparently, not only Congress but also shareholders eager to recoup losses and prosecutors motivated by visions of higher office take a dim view of CEO adventurism.

e. Outcome Maximizing Associations and Combinations

Although no CLC outcome has a prime implicant, several are associated

with personality profiles that share at least one personality construct score across at least 70% of associated profiles. WP 1, “The more militaristic a CEO, the more likely his/her firm will be to violate financial regulations,” is supported by seven of ten, or 70%, of cases, while six of seven, or 86%, of personality profiles associated with the presence of the outcome “violate financial regulations” contain the personality construct “A,” “militaristic,” and, thus, reinforce WP 1. Nineteen Outcome Maximizing Associations (OMAs) meet or exceed the 70% confidence level on both measures: WPs 1, 3, 5, 6, 7, 8, 9, 12, 14, 15, 16, 17, 22, 23, 24, 25, 26, 27, and 28.

An “Outcome Maximizing Combination” (OMC) represents that construct or aggregation of constructs that yields the greatest probability, relative to all others, that the corresponding outcome will occur. Each construct that generates an OMA for an outcome is included in the OMC for that outcome. Constructs that do not meet this threshold are excluded from OMCs, and it is assumed that these constructs have no greater influence than chance on the associated outcomes. For example, for the outcome “violate securities regulation,” three WPs—WP 9, “The more anomistic the CEO the more likely his/her firm will be to violate securities regulations,” WP 19, “The more hostile the CEO the more likely his/her firm will be to violate securities regulations,” and WP 27, “The more adventuristic the CEO the more likely his/her firm will be to violate securities regulations”—are OMAs. Therefore, “anomism,” “hostility,” and “adventurism,” indicated by the score BCD, form the OMC for “violate securities regulations. However, PH 2, “The more militaristic the CEO the more likely his/her firm will be to violate securities regulations,” was supported by 60% of cases and, thus, did not meet the 70% threshold to be included as a WP and, thus, is excluded as an OMA. Consequently, neither the presence nor absence of militarism is part of the OMC for “violate securities regulations,” and whether the CEO is militaristic or not has no greater influence than chance on the outcome “violate securities regulations. Table IV illustrates OMCs for all CLC outcomes:

Table IV: Outcome Maximizing Combinations

	Outcome Maximizing Combination
Financial Violation	AC
Securities Violation	BCD
Inflated Compensation	BD
Market Manipulation	None
Bribery	None
Political Influence	None

Labor Law	ABD
Enviro	None
Resist Enforce	A
Bad Reputation	C
Restate Earnings	ABD
Subpoena	ABCD
Legal Penalties	D
Legal Death	D
Deny & Blame	BC

Each construct is associated with six OMCs, a finding that suggests all constructs are equally associated with CLC outcomes. Yet, as further analysis reveals, hostility, and to a lesser extent adventurism, may be the “master” CLC personality constructs that harness the greatest explanatory and predictive power. If so, then the capacity to determine the presence or absence of hostility and adventurism is a potent tool in CEO selection and retention. That anomism may yield less predictive power is counterintuitive inasmuch as one might expect this construct, which most closely taps attitudes, beliefs, and values about law and legal institutions, to offer greater insight into CEO behaviors regarding CLC. The fact that beliefs, attitudes, and values held by a CEO regarding law may be less salient to explaining and predicting the compliance of his firm than his hostility or adventurism is remarkable.

f. Probabilistic Statements of Association

A “Probabilistic Statement of Association” (PSA) is a synthetic statement of the associative strength between a personality construct and a CLC outcome across a minimum of 70% of the ten historical cases in hypothetical analysis, as well as across a minimum of 70% of cases in which the outcome is actually expressed. A PSA expresses the strength of the associative relationship in terms of the probability that a given CLC outcome will occur given information about the construct or profile of the CEO who makes CLC decisions. PSAs do not imply the absolute truth of the associative relationship, nor do they identify the microprocesses that “produce” outcomes. Nonetheless nineteen PSAs, illustrated in Table V, help extend the reach of data analysis:

Table V: Probabilistic Statements of Association

1	A militaristic CEO associates with violation of financial regulation in 7 of 10 cases (70%) and
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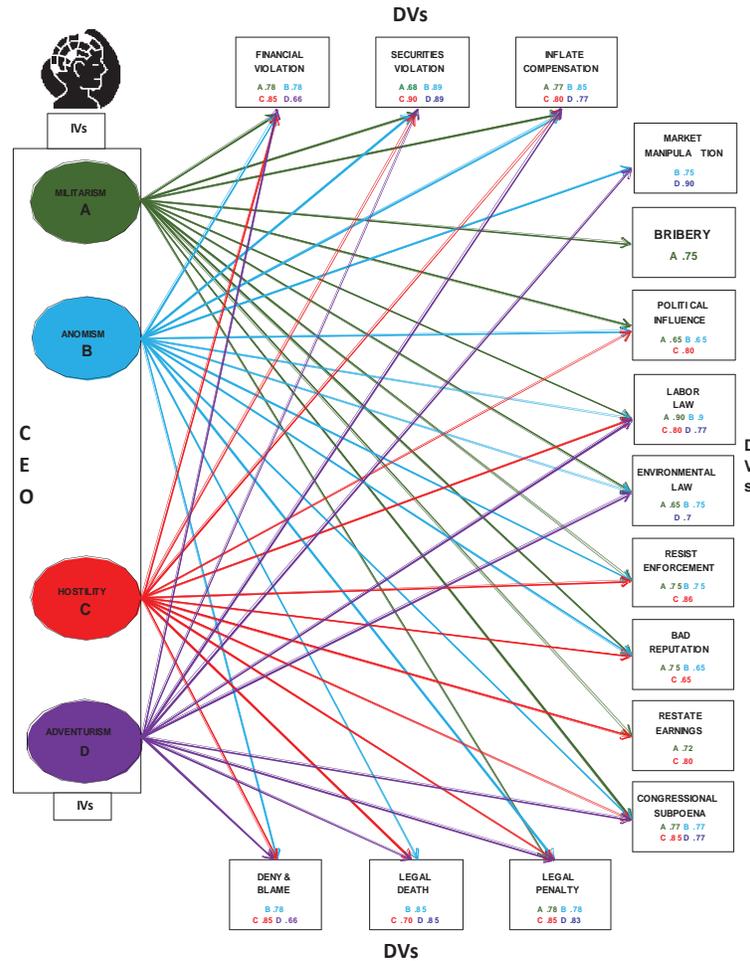
	6 of 7 outcome occurrences (86%) for an average probability of .78.
2	A militaristic CEO associates with violation of employee rights in 8 of 10 cases (100%) and 6 of 6 outcome occurrences (100%) for an average probability of .90.
3	A militaristic CEO associates with a bad reputation in 7 of 10 cases (70%) and 5 of 5 outcome occurrences (100%) for an average probability of .85.
4	A militaristic CEO associates with legal penalties in 7 of 10 cases (70%) and 6 of 7 outcome occurrences (86%) for an average probability of .78.
5	An anomistic CEO associates with violation of financial regulations in 7 of 10 cases (70%) and 6 of 7 outcome occurrences (86%) for an average probability of .78.
6	An anomistic CEO associates with violation of securities regulations in 8 of 10 cases (80%) and 7 of 8 outcome occurrences (88%) for an average probability of .84.
7	An anomistic CEO associates with inflated executive compensation in 8 of 10 cases (80%) and 6 of 6 outcome occurrences (100%) for an average probability of .90.
8	An anomistic CEO associates with violation of employee rights in 8 of 10 cases (80%) and 6 of 6 outcome occurrences (100%) for an average probability of .90.
9	An anomistic CEO associates with legal penalties in 7 of 10 cases (70%) and 6 of 7 outcome occurrences (86%) for an average probability of .78.
10	An anomistic CEO associates with denial of wrongdoing in 7 of 10 cases (70%) and 6 of 7 outcome occurrences (86%) for an average probability of .78.
11	A hostile CEO associates with violations of financial regulations in 7 of 10 cases (70%) and 7 of 7 outcome occurrences (100%) for an average probability of .85.
12	A hostile CEO associates with violations of securities regulations in 7 of 10 cases (70%) and 8 of 8 outcome occurrences (100%) for an average probability of .85.
13	A hostile CEO associates with denial of wrongdoing and attribution of blame in 7 of 10 cases (70%) and 7 of 7 outcome occurrences (100%) for an average probability of .85.
14	An adventuristic CEO associates with securities violations in 9 of 10 cases (90%) and 7 of 8 outcome occurrences (88%) for an average probability of .89.
15	An adventuristic CEO associates with inflated executive compensation in 7 of 10 cases (70%) and 5 of 6 outcome occurrences (83%) for an average probability of .77.
16	An adventuristic CEO associates with violation of employee rights in 7 of 10 cases (70%) and 5 of 6 outcome occurrences (83%) for an average probability of .77.
17	An adventuristic CEO associates with a congressional subpoena in 7 of 10 cases (70%) and 5 of 6 outcome occurrences (83%) for an average probability of .77.
18	An adventuristic CEO associates with legal penalties in 8 of 10 cases (80%) and 6 of 7 outcome occurrences (86%) for an average probability of .83.
19	An adventuristic CEO associates with legal death in 7 of 10 cases (70%) and 4 of 4 outcome occurrences (100%) for an average probability of .85.

PSAs offer explanatory and predictive probabilities for eleven of fifteen DVs/outcomes; no PSA can be deduced on the basis of existing data for four CLC outcomes at or above the 70% threshold. For example, PSAs 4, 9, and 18,

taken together, suggest the probability that legal penalties were or will be imposed upon a firm led into scandal by a militaristic, anomistic, and adventuristic CEO is 80%—the average of 78%, 78%, and 83%. Put differently, the probability that a militaristic, anomistic, and adventuristic CEO has or will be more likely to make business decisions that result in legal penalties than will a non-militaristic, non-anomistic, and non-adventuristic CEO is 80%. The corollary also holds: the probability that legal penalties have been or will be imposed upon a firm led by a non-militaristic, non-anomistic, and non-adventuristic CEO is 20%.

C. Combined Theoretical Model

Coefficients of Associative Relationships (CAR) relax the rigor in establishing association between personality constructs and CLC outcomes and are measured by calculating the average of (1) the percentage of cases in hypothetical analysis supporting a particular associative relationship between a construct and a particular outcome and (2) the percentage of QCA outcome occurrences in which the associative relationship between the construct and outcome is expressed. For example, for militarism and “violate financial regulations,” the associative relationship is supported in 70% of cases and the militarism sub-construct is present in 6 of 7, or 86%, of occurrences of “violate financial regulations.” Thus, the CAR for the relationship between militarism and “violate financial regulations” is .78—the average of .70 and .86. In Figure 1, arrows indicate associative relationships between constructs and CLC outcomes. The strengths of associative relationships are indicated by labeling each arrow with a CAR ranging from -1.00 to -.50 and .50 to 1.00. A relationship of perfect positive association is accorded a CAR of 1.00; a relationship of perfect negative association is accorded a CAR of -1.00. A CAR of .5 or -.5 signifies the equivalent of chance. This measurement is analogous to the correlation coefficients used in regression analysis; however, true measurement of correlation is not feasible given the small “n” of cases, and, thus, relationships of association are employed to the same end. Where an arrow connects a construct to a CLC outcome labeled with a positive CAR, the presence of the personality construct associates with the CLC outcome. The obverse of this stated relationship is also true. For an arrow labeled with a negative CAR the absence of the personality construct associates with the CLC outcome to which it is connected. Again, the obverse of this relationship is also true. In the Model, only those CARs with coefficients greater than or equal to .65 are represented:



D. General Observations and Caveats

Perfect explanation and prediction of human decisions made in complex and dynamic situations characterized by uncertainty and stress transcend the current state of science, as do attempts to predict exactly when, where, and how future corporate scandals will erupt. It is important to stress the limited and conditional nature of the causal significance of personality. Nevertheless, heuristic testing of the CLC pretheory has generated several associative

relationships between CEO personality constructs and CLC outcomes. These relationships, presented in narrative format, are building blocks upon which to continue development and testing of the theory.

1. *“Ideal-Typic” CEOs and Associated CLC Outcomes*

a. ABCD

The CEO who is a militarist and is anomistic, hostile, and adventuristic—ABCD—is an authoritarian, even imperial, leader and an aggressive competitor with prior military service and low self-esteem who will view the use of power favorably both within the firm to establish hierarchies and in its business strategy to defeat rivals, and will prefer to make decisions in isolation. He or she will have little regard for law or legal authorities, will lack moral or ethical qualms about violating obligations regarding finance or securities regimes, and will know little of the substance of law generally and even less about corporate law. He or she will not trust others and will regard stakeholders—employees, investors, business partners—in solely instrumental terms: their worth to him/her will be measured simply by whether they contribute to his or her grand visions of wealth, power, and status, and failing any value he or she will express a generalized animus toward them, particularly if they are of different social groups than him or her. He or she will be an optimistic gambler whose belief that he or she can assert his or her will upon events and bend others to his or her aims will impel him or her to take risks and cut corners, and he or she will resolve the tremendous anxiety and stress that accompanies this risky behavior by trusting blindly and, in effect, rolling the dice that neither he or she nor his or her firm will be caught when committing CLC violations.

The ABCD CEO is more likely than a CEO with any other personality profile to preside over a firm that engages in fraudulent accounting, misrepresentation of the firm’s financial condition, insider trading, and other securities violations. This CEO creates a culture of lavish compensation packages for executives that are indefensible by reference to the marketplace while disregarding laws that protect other employees against discrimination, fair employment practices, violations of pension and retirement benefits, and reprisals for whistleblowing. Prior to discovery of its substantial and systematic violations of law, the firm led by this CEO will earn a bad reputation with employees, investors, lenders, customers, vendors, local communities, and regulators for unethical and unlawful practices. These external stakeholders may intuitively recognize and naturally resent the ABCD CEO’s decision to discount their influence and interests; however, any anxiety and stress that attend the prospects of developing a bad reputation are more than offset by the

ABCD CEO's optimistic hope that the profit from such a strategy more than compensates the firm for the risk entailed in "going it alone." Moreover, when he or she fails to overcome risks that a less adventurous CEO would not have assumed and the firm stumbles publicly, Congress may well come calling. However, this CEO will feel no independent compliance pull. His or her lack of trust in the political and legal system, coupled with the belief Congress is "the enemy," will place the CEO in an adversarial relationship, and he or she will likely refuse to testify on Fifth Amendment grounds. Congressional committees, frustrated by the lack of voluntary compliance and by the inability to attribute business failures to the assumption of understandable risk rather than to illegality, will be compelled to subpoena him or her. This CEO's gamble that neither he or she nor his or her firm will be detected, or if detected, prosecuted, or if prosecuted, convicted, will often be a losing bet, for this personality profile is most closely associated with the imposition of civil and criminal legal penalties.

Precisely how unbridled, aggressive ambition coupled with a lack of legal or ethical foundation and a hostile, instrumental, risk-hungry approach translates into these CLC violations, and the consequences that follow, is the stuff of future research. Still, the preceding description readily evokes Jeffrey Skilling, Sam Waksal, Albert Dunlap, Dick Cheney, and Bernard Madoff—ABCD CEOs.

b. (A/a)BCD

The (A/a)BCD CEO may view reason and persuasion, rather than power, as appropriate methods for making and implementing decisions, and may prefer to build coalitions and affiliations. His or her successes may be shared successes. However, he or she will have little regard for law or legal authorities, will lack moral or ethical qualms about violating legal obligations, and will know little of the substance of law generally and even less about corporate law. He or she will not trust others and will regard rivals and stakeholders—employees, investors, business partners—in instrumental terms: their worth to him or her will be measured simply by whether they contribute to his or her grand visions of wealth, power, and status, and failing any value he or she will express a generalized animus toward them, particularly if they are of different social groups than him or her. The (A/a)BCD CEO's wildly optimistic belief that he or she can assert his or her will upon events to gain advantage over competitors will impel him or her to take great risks, and he or she will resolve accompanying anxiety and stress by trusting blindly and gambling that neither he or she nor his or her firm will be sanctioned by regulators.

The (A/a)BCD CEO is the most likely personality profile to direct a firm to violate antitrust laws, fix prices or production levels, commit industrial

espionage, and manipulate the market. He or she is also most likely to preside over the bankruptcy or liquidation of his or her firm as a result of having engaged in practices made illegal under corporate law. Ignorance, it seems, may spell not bliss but actually danger in a CEO, whose gambles that he or she can conspire to restrain fair trade, that his or her firm will not post losses that cannot be covered by earnings, and that the firm will remain liquid in the face of demanding creditors and unwilling debtors, will prove fatal. When the firm and its leaders are subjected to legal penalties, the (A/a)BCD CEO will deny wrongdoing, withhold apologies or remorse, and blame others. As a superior creature who regards the “little people” he or she employs or who hold the firm’s shares or live as neighbors as mere objects meant to serve ends, and as someone who does not feel any compliance pull whatsoever, the (A/a)BCD CEO feels no empathy for those who suffer his or her decisions and must displace the blame upon a lesser person better suited to bear it. Although denying blame for our mistakes and casting it upon others may be a function of simply being human—few of us are able to openly admit that we are imperfect and that who we would like to be and who we are expected to be in social life are not always achieved—and while denying wrongdoing may be a rational defense that all but the clinically insane or the most honest offer to minimize attendant political and legal costs, the (A/a)BCD CEO is least likely of all personality profiles to accept any responsibility.

The present study cannot conclude militarism has a significant associative relationship with the outcome “manipulate the market.” However, three CEOs led their firms to commit this CLC violation, and two—Jeffrey Skilling and Dick Cheney—are militarists. Moreover, four firms suffered legal death: Enron, WorldCom, Sunbeam, and Bernard L. Madoff Investment Securities. Each of their CEOs, save for Bernie Ebbers, is a militarist. Furthermore, two other firms led by CEOs with the personality profile (A/a)BCD, namely ImClone and Tyco, were able to escape legal death only by the astute planning of a merger partner in the case of the former and by a rapid and sound reorganization plan instituted by a new executive team and board in the case of the latter.

c. A(B/b)C(D/d)

The A(B/b)C(D/d) CEO is an authoritarian and nationalistic leader with prior military service who has low self-esteem and is isolated from others but has fierce ambition and competitive drive and regards the use of power as an appropriate means of achieving goals. He or she will not trust others and will regard stakeholders—employees, investors, business partners—in solely instrumental terms: their worth to him or her will be measured simply by whether they contribute to his or her grand visions of wealth, power, and status,

and failing any value he or she will express a generalized animus toward them, particularly if they are of different social groups than him or her. The A(B/b)C(D/d) CEO is more likely than those with other personality profiles to direct a firm to corrupt business practices by accepting or offering cash, services, or gifts to influence business decisions. This CEO's drive for power, control, and the defeat of his or her rivals, coupled with a disregard for law and legal authorities and moral sources of rules, will convince him or her that corruption is a part of the human condition and that it is legitimate to gain advantage over competitors by unlawful means, and he or she is unlikely to experience sufficient anxiety or stress to dissuade him or her from doing so. Neither the anomism nor adventurism constructs demonstrated associations of sufficient strength for inclusion in the ideal-typic personality profile for bribery.

d. ABC(D/d)

The ABC(D/d) CEO is an authoritarian, nationalistic leader with prior military service who has low self-esteem and is isolated but has fierce ambition and competitive drive and regards power as an appropriate method of reaching decisions within the firm. He or she will be a self-absorbed, amoral individual who makes decisions in isolation and will not seek to build affiliations with others unless they serve his or her goal of achieving and protecting wealth, power, and status. He or she will not trust others and will regard stakeholders—employees, investors, and even politicians—in solely instrumental terms: their worth to him or her will be measured simply by whether they advance his or her grand visions of wealth, power, and status, and if they do not he or she will bear them an animus.

The ABC(D/d) CEO is more likely than CEOs with other personality profiles to allow or require corporate or employee funds, facilities, or services to be used to support political candidates or parties in violation of law. Despite his or her hostility, in the case of powerful politicians who grant patronage in the form of desirable laws, generous political oversight, and prosecutorial discretion, he or she is willing to pay for their services, and this reflects the perceived utility of the political influence purchased and the benefits accorded to his or her pursuit of wealth, power, and status, rather than the intrinsic value of the relationships. Adventurism appears theoretically irrelevant. Five CEOs—Jeffrey Skilling, Bernard Ebbers, Richard Scrushy, Hank Greenberg, and Dick Cheney—bought political influence; all are “hostile.” Perhaps the purchase of political influence is valued even by CEOs who are self-absorbed and disinterested in affiliations because they view the value of the relationship secured by cash as form of insurance against unfavorable legal, political, and judicial results, as a valuable enhancement to the firm's public reputation, or as

an advance payment on any potential future liabilities.

This CEO is also most likely to resist regulatory authorities in the implementation and enforcement of corporate law: for the ABC(D/d) CEO, cooperation as a rule, and cooperation with legal and regulatory authorities is anathema. Because regulators directly threaten his or her wealth, power, and status, the hostile, anomistic militarist will regard them as competitors in a zero-sum game. In five cases of corporate scandal in the present study, CEOs resisted enforcement, and all five express AC in their personality profiles.

e. AB(C/c)D

The AB(C/c)D CEO is an authoritarian and nationalistic leader with prior military service who has low self-esteem and is isolated but has fierce ambition and competitive drive and regards the use of power as appropriate means to achieve ends. He or she is a self-absorbed, amoral individual who will not seek to build affiliations with others unless they serve his or her goal of achieving and protecting wealth, power, and status. His or her wildly optimistic belief that he or she can assert his or her will upon events to gain advantage over competitors will impel him or her to take great risks, and the AB(C/c)D CEO will be too fast to assume them and too optimistic to gauge accurately the probable outcomes of his or her decisions; the decision to violate environmental standards, which the AB(C/c)D CEO is more likely to make than any other personality profile, will be an ill-considered choice that takes into consideration neither the likely probabilities of detection nor the costs and benefits of noncompliance to the firm. In the ten cases of corporate scandal, only one CEO—Dick Cheney, who is scored ABCD—engaged in environmental violations.

f. AbC(D/d)

The AbC(D/d) CEO is an authoritarian and nationalistic leader with prior military service who has low self-esteem and is isolated but has fierce ambition and competitive drive and values the use of power to achieve ends. He or she is a self-absorbed individual who will not build affiliations with others unless they serve his or her goal of achieving and protecting wealth, power, and status. He or she will not trust others and will regard employees, investors, business partners, and even politicians in solely instrumental terms: their worth to him or her will be measured simply by whether they advance his or her goals, and if they do not he or she will bear them an animus, particularly if they are of different social groups than him or her. For the AbC(D/d) CEO, however, while the business arena is for combat, law and legal authorities are important in regulating its extremes, and he or she may well be knowledgeable about law

generally and corporate law specifically and governed by independent sources of moral restraint. Thus, while he or she may direct the firm to engage in corporate illegality that inflates the financial health of the firm and wins wealth, power, and status, his or her lack of anomism may attenuate the extent or severity of any legal transgressions to which the AbC(D/d) CEO commits the firm. The AbC(D/d) CEO is more likely than other CEOs to lead a firm that restates earnings during his or her tenure as a consequence of violations of various aspects of CLC. Of the ten CEOs studied, two have personality profiles that include the constructs AbC—Hank Greenberg and Angelo Mozilo—but only one was required to restate earnings as a result of the commission of legal violations.

2. Personality Profiles

a. “The Outlaw”

A CEO with the personality profile ABCD—militaristic, anomistic, hostile, and adventuristic—is a corporate disaster incarnate. “The Outlaw”⁶⁰⁷ is a human predator who will demand inflated compensation, abuse employees, violate environmental laws, buy political favors, and direct the commission of serious financial and securities violations that will trash the good name of the firm, trigger analyst inquiries, require restatements of earnings, incur the wrath of Congress and the media, destroy evidence and obstruct justice, and lead the firm down the scandalous road to falling stock prices, dwindling earnings, civil and criminal penalties, and bankruptcy and dissolution. The Outlaw will deny any wrongdoing and blame others for personal and corporate misfortunes and show no remorse for his or her actions. Although he or she may forfeit some ill-gotten gains and lose some of his or her freedom for a while, the Outlaw will become extremely wealthy in the process and may even live to ride again.

b. “The Rustler”

The personality profile aBCD—nonmilitaristic but anomistic, hostile, and adventuristic—appears almost indistinguishable from The Outlaw at first blush,

⁶⁰⁷ The four personality profiles of the ten CEOs in the present study are assigned names drawn from a set of stock characters common to American Westerns that are as stylized and precisely defined as the characters of the Italian Renaissance Commedia dell’Arte or the Japanese Kabuki Theatre. The universality of the characters, themes, and conflicts is part of what makes Westerns so compelling as art and entertainment, and their use here is meant to invest the experimental profiles with meaning and color. See *Western Characters*, TV ROPES <http://tvtropes.org/pmwiki/pmwiki.php/Main/WesternCharacters> (last visited Feb. 22, 2015).

yet “The Rustler” is less aggressive, less competitive, more likely to work in groups, and less in need of stroking to boost self-esteem than his or her cousin. Whereas The Outlaw steals by daring daylight raids and seeks worldwide fame, The Rustler works by stealth and in the dark and prefers to be nameless and faceless as he or she grows the herd. However, the ultimate result to the firm of hiring The Rustler as CEO is similarly destructive: The Rustler will quietly violate antitrust laws, fix prices or production levels, commit industrial espionage, manipulate the free operation of the markets, and so badly mismanage the firm that it will suffer bankruptcy and dissolution. Of course, The Rustler will deny responsibility and point the finger at others for the downfall of the firm.

c. “The Rancher”

“The Rancher”—militaristic but non-anomistic, hostile but not adventurous—is committed to nothing more than the safety of his or her herd and its value at market, and he or she is threatened in this by Outlaws and Rustlers. He or she is ready, willing, and able to use force to protect the herd, which he or she and his or her cowboys drive hard. He or she lives on the open range, distrusts and dislikes cowboys and Indians he or she does not know, and has little to do with townspeople except at market time. If the Sheriff or his Deputy should call upon him or her for assistance, “The Rancher”—committed to and reliant upon the rule of law and courts as the first line-of defense of his or her stock—will offer his or her support, but he or she otherwise remains aloof and out of the fray. As CEO, The Rancher will generate and expend significant political and social capital, and take and pay bribes, to prevent and minimize problems the firm might face. While it may have to restate earnings, the firm will not engage in serious violations of the law under The Rancher, who will fulfill his or her mission: to shield the firm against predators and husband it to abundance.

d. “The Mayor”

“The Mayor”—personality profile ABCd—is a vainglorious individual who abuses his or her office for personal gain without care for the townsmen or the rule of law, and the only cause for which he or she will expend personal resources is to ensure re-election. As CEO, The Mayor will violate financial regulations, engage in bribery and buy and sell political influence, and obligate the firm to restate earnings to reflect the damage done to shareholders. When scandal erupts The Mayor will spend the significant political influence he or she has purchased to resist enforcement and avoid legal penalties, but if the firm

does incur sanctions The Mayor will scapegoat underlings. Unseating The Mayor as CEO is possible; bringing The Mayor to account for misdeeds is quite another matter.

IV. CRITICISMS AND DIRECTIONS FOR FUTURE RESEARCH

A. *Criticisms and Responses*

1. *Reductionism*

Those with intellectual commitments to theories that regard other levels of analysis as more fundamental to the explanation of the behavior of firms may dismiss personality as little more than “a magic slogan to charm away the problems that [their] intellectual tools don’t handle.”⁶⁰⁸ Others may take exception to the claim that personality, rather than firm, industry, or national culture, the powers and makeup of boards of directors or auditors, CMPs, the availability of comprehensive and “toothy” legal regimes, or the courage of whistleblowers, is central to explanations for firm decisions regarding CLC; for these critics, personality constructs are “noisy” variables, and the reductionism of PT will invariably be sacrificial of explanatory and predictive power.⁶⁰⁹

Indeed, the “perfect” model of CLC might well treat firm behaviors as resulting from a combination of causes and in turn amalgamate insights and variables from all pre-theories and all levels of analysis. However, such a model would be so cumbersome and so difficult to conceptualize and apply that some reductionism would be necessary to permit replication and falsification. Neither the naïve view of CLC as the mere projection of personalities nor the belief decision-making is entirely insulated from the effects of personality enjoys empirical support. If firm behaviors could be explained solely by reference to the personalities of CEOs, there would be no discernible pattern of behavior at variance with predictions derived from the analysis of those personalities. The data do not support this conclusion. Still, personality is not epiphenomenal to CLC: although there may be circumstances in which all CEOs will decide identically, decisions as to at least some of the most relevant outcomes appear to be influenced by personality.

⁶⁰⁸ HERBERT SIMON, ADMINISTRATIVE BEHAVIOR: A STUDY OF DECISION-MAKING PROCESSES IN ADMINISTRATIVE ORGANIZATION 23 (1947).

⁶⁰⁹ CAMPBELL JONES, MARTIN PARKER & RENE TEN BOS, FOR BUSINESS ETHICS: A CRITICAL APPROACH 4 (2005).

2. Lack of Parsimony

Personality theories are difficult to test empirically, and researchers must expend labor, time, and resources to acquire knowledge about the subjects of investigation, as well as requisite training in psychobiographical research, qualitative methodology, and formal modeling. Critics, however, should concede that a theory attempting to offer relevant explanations and predictions of CLC, a phenomenon of great complexity, will be similarly complex. If parsimony, rather than explanatory and predictive power, is the measure of success, there are grounds for concern. However, if the present theory harnesses as much explanatory and predictive power as can be corralled at present, it behooves those who would fault its lack of parsimony to develop the research and experimental techniques that will enable collaboration in the field.

3. Ecologically Fallacious

Some may fault the present theory for presuming associative relationships that obtain within a very small “n” of cases can be generalized to the universe of potential CEOs. Indeed, there may be another set of personality constructs that generates better explanatory and predictive power, and it is possible replication studies will score decision-makers differently and reach contrary findings. Generalizing inductively from a very small number of cases is inherently problematic, for anomalous individual cases are more likely to drive findings than they will in larger populations. However, because the data employed herein nearly spans the universe of major corporate scandals over the last fifteen years, it is not a sample in the scientific sense, and, thus, inferences need not necessarily build upon skewed data. Moreover, the conclusions of the present study are conditional and intended to explain a very limited number of context-dependent cases of corporate scandal and serve as points of departure for further research.

4. Data Defects and Selection Bias

The data is not voluminous. In one case, a single primary source was used to develop a CEO personality profile, and the potential for bias and other errors is magnified. Moreover, psychobiographical research, always arduous, is especially so when analyzing CEOs who, although they enjoy celebrity, do not inspire nearly so much biographical work as do heads of state and entertainers. Further, the cases chosen have been included specifically because the CEOs had already been mired in corporate scandal. Many other CEOs about whom as much has been written have not, and, although this is not guarantee against their guilt, the presumption runs in their favor. Studies of other CEOs, including

those who have not been publicly linked with violations of corporate law, will be undertaken in future research to develop and refine the present theory.

B. Directions for Future Research

1. Experimental Research

Only four distinct combinations of the four personality constructs have been identified in the personality profiles of CEOs who presided over corporate scandals: ABCD, aBCD, AbCd, and ABCd. However, these four personality constructs generate 2^4 , or sixteen, possible combinations. Twelve combinations of the four constructs exist theoretically within a sufficiently numerous population but cannot as yet be identified, analyzed, and placed in a truth table. When, as here, the historical record fails to exhaust all possible combinations of personality constructs, it is impossible to specify necessary and sufficient causality in respect of any particular outcome, unless the historical record can be augmented either through the passage of time and the availability of additional corporate scandals, or by the production of additional cases in an experimental setting. Data associated with experimental profiles and derived from survey and simulation research can be integrated with historical data and subjected to QCA.

2. Additional Dependent Variables and Intervening Variables

Investigation of associative relationships between personality and additional CLC outcomes will expand the scope of the present study. Moreover, future iterations of this research may reveal the substance and process of decisions regarding CLC are in effect intervening variables to which greater theoretical significance may be attributed.

3. Quantitative Analysis

Generation of simulated cases of CLC will allow introduction of quantitative methods, including content analysis and pathways analysis, to complement QCA. Multivariate statistical analysis—principal components or best subsets regression analysis—may suggest one or more IVs can be dropped from the theory without sacrificing explanatory power. More powerful theories may be built by including additional IVs, and the scope may be extended to additional DVs. Integration of variables drawn from other levels of analysis may aid in determining the causal significance of personality-level variables relative to inputs from the international political economy, the political and economic character of states, and the nature of organizational-cultural units.

V. CONCLUSIONS

Why do CEOs rob corporations? Willie Sutton, were he alive, might look around and reply, yet again, “Because that’s where the money is.”⁶¹⁰ The market value of the top twenty-five Fortune 500 firms is approximately \$4 trillion. Yet, times have changed since 1934. The investor class has moved its cash from banks into equity shares in public firms. The crooked class no longer grabs its loot by brandishing weapons, informing bank tellers that “this here’s a stick-up,” and shooting G-men on the way out; now it cooks the books, talks up stock before selling short, and lies to Congress. Moreover, robbery today is far bigger business than in the 1930s when career criminals like Willie Sutton became famous for blasting their way out of banks with \$20,000 in currency. In the last fifteen years, rogue executives made away with \$1 trillion in shareholder assets and killed enough jobs to employ the city of Houston.

In response, prosecutors have claimed several celebrity CEOs as trophies and Congress, eager to assuage defrauded voters, has imposed stricter—and far more expensive—legal obligations upon public firms. Yet, despite the valiant efforts of legal architects to deter corporate scofflaws, no one seriously believes legislative package cobbled together will hand regulators the silver bullets necessary to slay the seemingly immortal criminal class. Wherever the money is, the crooks will flock.

For the same reason, CMPs, statements of new practices from overhauled boards of directors, encomiums to ethical decision-making, and other paraphernalia of the post-Enron “corporate ethics” era, while packed with symbolic meaning, are too often worth no more than the paper upon which they are printed or the air into which they are uttered. One need only read the twenty-odd pages of Enron’s Code of Ethics, written long before that firm slid into the abyss, to grasp this sobering truth. Managers understand, or quickly learn, crime often pays, but CMPs will not pick up a check, and modification of perquisites, bolstering of the independence of auditors, and public support for corporate social responsibility initiatives eat at the bottom line.

Yet, if the status quo is intolerable, what then is to be done to save managerial capitalism from itself? For the foreseeable future, firms will continue to be the latter-day equivalent of banks—where the money is—for the vast American middle class. Does the temptation caused by access to a great deal of Other People’s Money invariably corrupt managers, and is law thus epiphenomenal to firm behavior? Access to the vault is far easier to come by *circa* 2014 for corporate executives with prestigious MBAs than it was for Depression-era crooks with Thompson submachine guns. Is the solution

⁶¹⁰ See SUTTON *supra* note 2.

inherent in the content or the enforcement of the law itself? Is there a perfect constellation of legal regime, CMPs, and ethics instruction that can spontaneously induce a degree of corporate compliance sufficient to overcome the urge to simply take the money and run? Instead of incarcerating Jeffrey Skilling for twenty-four years, should we broadcast his public beheading on pay-per-view television from Enron Plaza in Houston, with the proceeds donated to Enron's creditors? If our faith in the ability of the academy to implement a reformation of the ethics of adult students is weak, and if our taste for the blood of white-collar criminals is underdeveloped, we must return to the beginning: "Why do CEOs rob corporations?" If we ask again, emphasizing the third, rather than the last, word, it may be possible to provide answers.

Some CEOs—but only *some* CEOs—rob corporations. They do this not only because that is where the money is but *because that is who they are*. Other CEOs dutifully discharge their fiduciary and civic responsibilities while enriching their employees, their investors, and the communities in which they do business for the very same reason: *that is who they are*. It is vexing that one cannot readily explain or predict why any given CEO enters the robbers' den or honestly shepherds the firm. Yet, it *is* possible, if one learns to read the runes of personality, to divine the general path a firm will follow under the leadership of any particular CEO. *Undertheorization*, and not the inherent greed of mankind or the incommensurability of law and business, is truly the bane of CLC. Researchers must dedicate energies to the empirical study of the relationships between rules and behaviors if the desiderata attendant to compliance—fundamental fairness and efficiency in the operation of the markets, maximization of shareholder wealth, just compensation of the managerial class, elimination of political corruption, equality of opportunity, general promotion of respect for law, and effective legislative oversight of national commerce—are to be secured, in part, through the contributions of scholarship.

This program need not exclude any school of thought or methodology. Although human agency is crucial and individual-level variables are indispensable to explanations and predictions of CLC, the most sophisticated model will incorporate insights from all pre-theories and variables from multiple levels of analysis, including the nature of the international political economy, the regulatory and judicial culture of the state, dyadic interactions with other states and firms, the organizational cultures of firms, the dynamics of decision teams, and even neuroeconomic inputs. No single method, paradigm, or discipline will harvest all that is knowable about CLC. Each will inform the others regardless of its pretensions. Still, if the present account of the relationship is inchoate, the salience of personality to CLC is an existential reality. Without an account of the linkages between rules and behaviors, any attempt to enhance CLC by altering the existing regime will succeed only by the

intervention of Fortune.

In other words, achieving substantial compliance with corporate law is not merely a matter of the conjuration and codification of proper rules and institutions. Rather, it is to the selection and training of the right people to administer, interpret, and implement the normative content animating legal rules and institutions to which all stakeholders must direct the bulk of their attention.⁶¹¹ Because much of the variation in CLC is attributable to personality, manipulation of the legal rules may well be a useless venture without simultaneous manipulation of CEO personalities, either through training or, more likely, by incorporating analysis of compliance propensities within the matrix of considerations governing CEO selection by boards of directors or shareholders. Firms should take seriously the personalities of those whom they consider for the position most responsible for shaping the values, decisions, and futures of the firm and its stakeholders. Hostile and adventuristic CEO applicants, and to a lesser extent those who are militaristic and anomistic, may well gut the firms that hire them, while CEOs with profiles that de-emphasize these constructs may well provide the sound and steady leadership that navigates legal shoals and stewards firms to good long-term results.

Unless and until neo-Marxists or Islamic fascists topple the state and establish industrial communes or a waqf, corporations will always be “where the money is” and will always attract criminals bent on robbery. However, firms may also be fortunate enough to draw enlightened trustees who would safeguard their wealth by implementing the most effective of legal strategies: specifically, contesting, within established political and legal boundaries, every creation, interpretation, and application of law that runs contrary to shareholders’ interests, but scrupulously—even monastically—adhering to the letter and spirit of authoritative determinations of legal obligation once those determinations issue. The vast majority of would-be CEOs will orient themselves on a continuum between these poles. Accordingly, CLC is a primary constituent of a corporate strategy that requires a firm not only to select industries and markets in which to compete and methods to develop and sustain competitive advantage but to decide whether and how it will live out the meaning of the following creed: CEOs—not firms—decide whether or not to comply with law, and their choices have profound implications for their firms, their communities, and their nations. Compliance with law is an act not merely of corporate social responsibility but of self- and national-preservation.

For, although both are created with a theoretically infinite lifespan, neither

⁶¹¹ “Virtue ethicists” suggest managers with the proper values, motivations, and attitudes—and not simply those who reason from correct principles—are most likely to do what “virtue” requires of a good manager in given circumstances. *See, e.g.*, R.C. SOLOMON, *ETHICS AND EXCELLENCE: COOPERATION AND INTEGRITY IN BUSINESS* (1992).

a corporation nor a nation is guaranteed its perpetual existence. Yugoslavia is as dead as Enron, and unitary Iraq is as much on life support as is Sunbeam. Just as rogue dictators—Slobodan Milosevic and Saddam Hussein—pried apart latent fissures to fracture their nations and bury their peoples under rubble, so are rogue CEOs—Jeffrey Skilling and Albert Dunlap—the proximate causes of corporate legal tsunamis that extinguish firms and inundate stakeholders with debt, unemployment, and despair. It is for further research to reveal suspected parallels in personality and decision-making that explain these two sets of rogues and the misery they inflicted upon others. It is enough for now to note the most important lesson of the last fifteen years of political economic history stands in stark relief against a backdrop of bloodshed and bankruptcy: in business, as in war, decisions about legal compliance form part of a strategic calculus and can pave a road to ruin.

Legal compliance is at the core of corporate strategy, and firms committed to survival and prosperity must mind the bitter lessons of the recent past as they sift through aspirants to their leadership. The most effective way to achieve compliance is, quite simply, to have individuals comply with the law. Lest the past become prologue, wise firms—no less than wise states—must, when selecting the individuals at the apex of their decisional hierarchies, treat personality seriously and delve deeper than Willie Sutton into the relationship between personality and corporate legal compliance.