A LESSON IN SOCIAL RESPONSIBILITY: CORPORATE RESPONSE TO THE 1980'S TYLENOL TRAGEDIES

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Thank you, Linda. It is a pleasure and an honor to be a member of this distinguished panel.

Twenty years ago next week, seven people died in the western suburbs of Chicago as a result of taking Extra-Strength Tylenol capsules containing cyanide.[1] These capsules were manufactured and sold by a subsidiary of Johnson & Johnson (J&J).[2] Strange as it may seem, this was the beginning of what has come to be regarded as an outstanding example of corporate social responsibility. I was a member of the executive team charged with responding to this terrible tragedy and I want to talk to you today about these events and the lessons they can teach us.

The analgesic Tylenol, in all its forms, was the country's leading nonprescription painkiller, holding a market share in excess of thirty percent.[3] The capsules were one of its largest selling dosage forms.[4] Tylenol as a brand was J&J's largest selling product and one of its most profitable.[5]

We received news of the first deaths on a Thursday afternoon in the last week of September when a Chicago reporter called our public relations department. We spent the succeeding hours consumed in finding out what happened, figuring out how it happened, and communicating with the various interested parties, including the Food and Drug Administration (FDA), the Federal Bureau of Investigation (FBI), the medical profession,

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* David Collins was chairman of McNeil Consumer Products Company and was a member of the strategy committee for managing the Tylenol crisis. This speech was delivered at Vermont Law School as part of the Vermont Law School's Corporate Responsibility Symposium held on September 27, 2002. Editor's note: this speech was based on the author's extensive personal knowledge of the events described. The editors of the *Vermont Law Review* have added selected footnotes to assist readers interested in this subject.

1. ROGENE A. BUCHHOLZ, FUNDAMENTAL CONCEPTS AND PROBLEMS IN BUSINESS ETHICS 214 (1989); LAWRENCE G. FOSTER, ROBERT WOOD JOHNSON: THE GENTLEMAN REBEL 617 (1999); Mark L. Mitchell, *The Impact of External Parties on Brand-Name Capital: The 1982 Tylenol Poisonings and Subsequent Cases*, 27 ECON. INQ. 601, 603 (1989).

2. BUCHHOLZ, *supra* note 1, at 214; FOSTER, *supra* note 1, at 617; Andrew S. Krulwich et al., *Recalls: Legal and Corporate Responses to FDA, CPSC, NHTSA, and Product Liability Considerations*, 39 BUS. LAW. 757, 767 (1984).

3. BUCHHOLZ, *supra* note 1, at 214; Mitchell, *supra* note 1, at 603.

4. *See* BUCHHOLZ, *supra* note 1, at 214 ("Of the total Tylenol sales, $125 million was sales of Extra-Strength capsules, which was the fastest growing segment in the Tylenol line."); *see also* Richard W. Stevenson, *Johnson & Johnson's Recovery*, N.Y. TIMES, July 5, 1986, at A33 (reporting that capsules made up thirty-five percent of all Tylenol products sold at the time of their withdrawal).

5. Harvey L. Pitt & Karl A. Groskaufmanis, *When Bad Things Happen to Good Companies: A Crisis Management Primer*, 15 CARDOZO L. REV. 951, 951 (1994); Brian O'Reilly, *Johnson & Johnson Is on a Roll*, FORTUNE, Dec. 26, 1994, at 178.

the retail trade, and of course the public. In addition, we notified the retail trade to stop sale of all packages from the same lots as those of the contaminated bottles.

By Saturday, we had determined that the poison could not have been inserted in our plants. Rather, it had to have been done after the product hit the store shelves. So it seemed we were in the clear, though we still did not know why someone would have done such a thing.

On Monday night, while we were in Washington with the FDA discussing the situation and its implications for the entire nonprescription drug industry, we got word of another reported poisoning. This time, it was in California and involved a totally different poison and manufacturing lot.[6] Because we had no information on how various poisons interacted with the gel of the capsule, we had to give credence to this report. On Tuesday, fearing more copycat incidents using the capsules as weapons, J&J withdrew all nonprescription capsules from the market. This recall included all capsules both in the United States and around the world, no matter what their brand name. In total, this withdrawal and the halt of production involved over thirty million bottles of capsules and cost in excess of $140 million.[7] In selective testing on the returned packages, we discovered one more contaminated bottle—so it is likely that at least one more life was saved.

Tylenol's share of the U.S. market, represented solely by the solid dosage forms, dropped to around ten percent virtually overnight.[8] In several international markets where the product was recently introduced, the business disappeared completely, never to return.

Seven weeks later, J&J reintroduced Tylenol in a triple safety seal container and within six months had regained most of its U.S. market share.[9] Tylenol remains the market leader to this day.[10] And to this day we do not know who poisoned those capsules.

In the ensuing years since 1982 there have been many other examples of corporations responding to public expectations, including J&J's complete

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6. FOSTER, *supra* note 1, at 621 (noting that the poisoned capsules in California contained strychnine); Krulwich, *supra* note 2, at 768; Judith Cummings, *No Link to Chicago Found in California Case*, N.Y. TIMES, Oct. 7, 1982, at B12.

7. *See* BUCHHOLZ, *supra* note 1, at 221, 226–27 (estimating that the recall cost alone was $50 million).

8. *Id.* at 221; Mitchell, *supra* note 1, at 603.

9. BUCHHOLZ, *supra* note 1, at 223–24; FOSTER, *supra* note 1, at 634; N.R. Kleinfield, *Tylenol's Rapid Comeback*, N.Y. TIMES, Sept. 17, 1983, at A33.

10. *See* Johnson & Johnson, *Product Categories: Pain Relievers/Analgesics*, *at* http://www.jnj.com/product/categories/Pain_Relievers.htm (last visited Aug. 12, 2003) (stating that more hospitals use Tylenol than any other brand).

and permanent withdrawal of consumer capsules after a second, and still unsolved, poisoning in 1986.[11] But unfortunately there have also been many examples of corporate behavior that failed to live up to the legitimate expectations of the public. And that is why we are here today—because of the recent scandalous behavior on the part of those corporations and their management.

Let us then examine why a company like J&J would behave as it did and what lessons there are for our consideration. Please realize that the Tylenol capsules were not defective when they were manufactured and sold. Nor was J&J under any legal obligation to do what it did. What it did, in other words, went beyond the legal mandates to respond to more demanding imperatives. The question is what these imperatives were and why they were so compelling.

The answer goes back almost sixty years. In the early 1930s, General Robert Wood Johnson, long-time CEO and principal shareholder of J&J, formulated what he called a new industrial philosophy. These are his words:

> [I]t is in the enlightened self-interest of modern industry to realize that its service to its customers comes first, its service to its employees and management second, and its service to its stockholders last. It is to the enlightened self-interest of industry to accept and fulfill its full share of social responsibility.[12]

The General captured this new industrial philosophy in the well-known J&J Credo, the updated version of which is reprinted below:

> We believe our first responsibility is to the doctors, nurses and patients, to mothers and fathers and all others who use our products and services. In meeting their needs everything we do must be of high quality. We must constantly strive to reduce our costs in order to maintain reasonable prices. Customers' orders must be serviced promptly and accurately. Our suppliers and distributors must have an opportunity to make a fair profit.
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> We are responsible to our employees, the men and women who work with us throughout the world. Everyone must be considered as an individual. We must respect their dignity and recognize their merit. They must have a sense of security in their jobs. Compensation must be fair and adequate, and working

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11. *See* BUCHHOLZ, *supra* note 1, at 226–27 (reporting a cost of nearly $150 million to recall the capsules and cease producing them); FOSTER, *supra* note 1, at 634, 637.

12. Robert Wood Johnson, *Try Reality* (1935) (pamphlet).

> conditions clean, orderly and safe. We must be mindful of ways to help our employees fulfill their family responsibilities. Employees must feel free to make suggestions and complaints. There must be equal opportunity for employment, development and advancement for those qualified. We must provide competent management, and their actions must be just and ethical.
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> We are responsible to the communities in which we live and work and to the world community as well. We must be good citizens—support good works and charities and bear our fair share of taxes. We must encourage civic improvements and better health and education. We must maintain in good order the property we are privileged to use, protecting the environment and natural resources.
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> Our final responsibility is to our stockholders. Business must make a sound profit. We must experiment with new ideas. Research must be carried on, innovative programs developed and mistakes paid for. New equipment must be purchased, new facilities provided and new products launched. Reserves must be created to provide for adverse times. When we operate according to these principles, the stockholders should realize a fair return.[13]

The General first published this Credo in 1947 in a book entitled *Or Forfeit Freedom*.[14] This Credo and its priorities infused the business of J&J thereafter.[15] In the 1970s, J&J's top management, fearing that the Credo principles had lost their relevance in a new economy and for a company much changed from the 1940s, hosted a series of Credo challenge meetings to find out what the operating executives believed.[16] The results confirmed the continued pertinence and vitality of the Credo. Thus, when the poisonings occurred in 1982, J&J and its people were ready to respond according to the Credo, placing consumer protection above protecting shareholder profit.[17]

I have often been asked how one creates a values-based culture like the Credo capable of significantly influencing corporate behavior. My quick answer is: it takes a committed founder, a written set of values, and sixty years of training and performance. But seriously, the Tylenol experiences do illustrate elements of what it takes to insure responsible corporate

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13. Johnson and Johnson, *Our Credo*, *at* http://www.jnj.com/our_company/our_credo/index.htm (last visited Aug. 12, 2003).

14. ROBERT WOOD JOHNSON, OR FORFEIT FREEDOM 79–81 (1947).

15. FOSTER, *supra* note 1, at 367 (stating that at J&J, "[t]he Credo was law").

16. *See id.* at 613–16 (describing the Credo challenge meetings).

17. *See id.* at 345 (discussing the Credo's use as a guide in managing the Tylenol crisis).

behavior. First and foremost in my mind is the commitment of senior management. J&J's senior executives not only talked the talk, but they also walked the walk. In fact, the Tylenol withdrawal decision, while the most famous, was only one amongst many Credo-motivated decisions that J&J made over the years.[18] And we all knew that we had the support of senior management in making decisions consistent with the Credo values and priorities.

Second, and only slightly less important, is the commitment to the long term which the Credo-based values approach mandates. When asked why he chose the course he did, J&J CEO Jim Burke responded that we had no choice if we were to live up to the Credo.[19] This kind of commitment is under pressure today—pressure from Wall Street, pressure from large institutional investors, and pressure from all others interested in daily or quarterly performance.

Third, the Tylenol withdrawal shows clearly that there are societal values which a values-based business must embrace above the legitimate priority of making a profit. While it is assuredly true that the primary purpose of any business in a market economy is to make a profit, this task must be viewed in a broader social environment. The Credo does this by elevating consumer welfare and consumer protection above the profit-making priority.

Let me close with a few comments on corporate social responsibility in the present and future global economy. I start by posing a question: Is J&J and its Credo an icon or an antique? I do not ask this question because of the scandals involving Enron, WorldCom, Tyco, and others. Unfortunately, there have always been crooks in the business world. And perhaps this will always be so, because business is conducted by people and people, unfortunately, are not perfect.

I raise this question because the Credo's challenge is more than simply compliance with the law. Neither J&J nor any enterprise needs a credo to distinguish and to choose right from wrong. Meeting the challenge of the Credo does not rest in choosing right versus wrong. Rather, it rests in the far more difficult task of choosing right versus right. As an illustration, consider the Tylenol episode. If J&J had decided not to withdraw the product, but to take smaller remedial measures, their actions would have been neither illegal nor wrong. Going further, it would have been an acceptable course of action, one subsequently taken by many companies in

18. *See id.* at 614–15, 639–47 (describing other decisions based on the Credo, including the location of the company's corporate headquarters and the use of the Credo as a management tool).

19. *See id.* at 631 ("Had we not made these decisions according to the Credo, we would have broken faith with our people.")(quoting James Burke).

similar situations. But for J&J, with its Credo commitment to protection of the consumer first and foremost, withdrawal won out over all other appropriate but potentially less effective alternatives. Robert Wood Johnson understood this, which is why he never limited Credo compliance to what is legally required.

The answer to my question—icon or antique—is in my view clear. One of the beneficial fall-outs of our current scandals is that we are seeing an intensive public focus on the need for corporate social responsibility. This is good because business people, particularly the newer entrants to the workplace, must know what the public demands of them, and perhaps most important, must have permission to meet those demands.

This public focus is hopefully sending a strong message to the business community. The General heard this message over sixty years ago. Here is a quote from the preface to the credo:

> We may be sure, however, that both alarm and bitter anger will arise if huge corporations either abuse their power or fail to render the service required by society.
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> The evidence on this point is clear. American institutions, both public and private, exist because the people want them, believe in them, or at least are willing to tolerate them. The day has passed when business was a private matter—if it ever really was. In a business society, every act of business has social consequences and may arouse public interest. Every time business hires, builds, sells, or buys, it is acting for the American people as well as for itself, and it must be prepared to accept full responsibility for its acts.
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> This is a proper situation, and a good one for America. . . . If private enterprise is to survive it must meet [the public's] demands by accepting the goal of total service and by driving toward it as rapidly as keen minds and the world's greatest system for production will enable us to go.
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> We have defined the goal of business progress in terms of its obligations to society.[20]

Is the business community responding? I would say yes, but slowly. Just last week, for example, the New York Times reported on an encouraging development of business schools introducing an ethical component into the admissions criteria.[21] This is all positive, but we need

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20. JOHNSON, *supra* note 14, at 78–79.

21. Lynnley Browning, *M.B.A. Programs Now Screen for Integrity, Too*, N.Y. TIMES, Sept. 15,

more. For one thing, CEOs must speak out in defense not only of their companies, but also of the free market system that has served us so well. That is what the General did when he published his Credo, and there is much at stake in insuring public understanding, appreciation, and acceptance of our economic system.

Many have observed that a relentless pursuit of personal self interest characterized the decade of the 1990s.[22] This environment gave birth to many of the business practices that now scandalize us. Wouldn't it be great to think that this tradition of selfishness ended with the example of the firemen, police, and others who performed with such selflessness on 9/11? I hope it did, because there is a lot at stake in the responsiveness of the business community to the public's demand for social responsibility. It was no accident that General Johnson entitled his Credo book *Or Forfeit Freedom*.

I suggest, in closing, that the continued freedom of American business to operate in the free market system depends on an appropriate response to the demands for social responsibility of the American public.

2002, at C4.

22. *See, e.g.*, Timothy L. Fort, The First Man *and the* Company Man: *The Common Good, Transcendence, and Mediating Institutions*, 36 AM. BUS. L.J. 391, 392 (1999) (arguing that the businessmen of the 1990s did not seek the public good, but rather self-interest defined the good).